HM Revenue & Customs

HM Treasury

DRAFT CLAUSES & EXPLANATORY NOTES

for

FINANCE BILL 2014

10 December 2013

Introduction

This document contains draft clauses and explanatory notes to be included in Finance Bill 2014. Accompanying draft secondary legislation is provided alongside the relevant clause, where available.

The consultation on this legislation is open until 4 February 2014.

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

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

1 Charge for 2014-15 and rates for that year

Income tax is charged for the tax year 2014-15, and for that tax year—

(a) the basic rate is 20%,

(b) the higher rate is 40%, and

(c) the additional rate is 45%.

2 Basic rate limit for 2014-15

(1) For the tax year 2014-15 the amount specified in section 10(5) of ITA 2007 (basic rate limit) is replaced with "£31, 865".

(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 2014-15 for those born after 5 April 1948

(1) For the tax year 2014-15 the amount specified in section 35(1) of ITA 2007 (personal allowance for those born after 5 April 1948) is replaced with "£10,000".

(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

INCOME TAX CHARGE AND RATES FOR 2014-15

SUMMARY

1. This clause provides for income tax for the tax year 2014-15.

DETAILS OF THE CLAUSE

2. Section 1 provides for income tax for 2014-15 and provides the main rates of tax.

BACKGROUND NOTE

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

4. This clause imposes a charge to income tax for the tax year 2014-15. It also provides the main rates of income tax for 2014-15: 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 03000 586462 (email: roopal.pujara@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

BASIC RATE LIMIT FOR 2014-15

SUMMARY

1. This clause sets the amount of the basic rate limit for income tax at £31,865 for 2014-15.

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 (£32,010) with £31,865 for 2014-15.

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 2014-15.

BACKGROUND NOTE

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

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

6. Budget 2013 announced that the basic rate limit will be set at £31,865 for 2014-15.

7. The table below sets out the amount of the basic rate limit for 2013-14, the indexed amount for 2014-15, and the amount specified by this clause for 2014-15.

2013-14	2014-15 indexed	2014-15 by this clause
£32,010	£33,100	£31,865

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 2014-15 for those born after 5 April 1948 in an amount above indexation.

9. If you have any questions about this change, or comments on the legislation, please contact Roopal Pujara on 03000 586462 (email: roopal.pujara@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PERSONAL ALLOWANCE FOR 2014-15 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, for 2014-15.

DETAILS OF THE CLAUSE

2. Subsection (1) replaces the amount of the personal allowance for those born after 5 April 1948 in section 35(1) of the Income Tax Act 2007 (£9,440) with £10,000 for 2014-15.

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 2014-15.

BACKGROUND NOTE

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

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

6. Budget 2013 announced that the basic personal allowance will be increased to £10,000 in 2014-15.

7. The table below sets out the amount of personal allowance for 2013-14, the indexed amount for 2014-15 and the amount specified in this clause for 2014-15: for those born after 5 April 1948.

2013-14	2014-15 indexed	2014-15 by this clause
£9,440	£9,740	£10,000

8. 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 for 2014-15 in an amount below indexation.

9. If you have any questions about this change, or comments on the legislation, please contact Roopal Pujara on 03000 586462 (email: roopal.pujara@hmrc.gsi.gov.uk).

1 Indexation of limits and allowances under ITA 2007

(1) ITA 2007 is amended as follows.

(2) In section 21 (indexation of the basic rate limit and starting rate limit for savings)—

(a) in each of subsections (1), (3) and (3A), for "retail prices index" substitute "consumer prices index", and

(b) after subsection (5) insert—

"(6) In this section "consumer prices index" means the all items consumer prices index published by the Statistics Board."

(3) In section 57 (indexation of allowances)—

(a) in each of subsections (2), (3) and (4), for "retail prices index" substitute "consumer prices index", and

(b) after subsection (6) insert—

"(7) In this section "consumer prices index" means the all items consumer prices index published by the Statistics Board."

(4) The amendments made by subsections (2) and (3) have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

INDEXATION FOR INCOME TAX ALLOWANCES AND LIMITS

SUMMARY

1. Clause [X] changes the basis of indexation for income tax allowances and limits from the retail prices index (RPI) to the consumer prices index (CPI).

DETAILS OF THE CLAUSE

2. Subsection (2) replaces 'retail prices index' with 'consumer prices index' in section 21(1), (3) and (3A), and inserts a definition for 'consumer prices index' after Section 21(5), as a new subsection (6).

3. Subsection (3) replaces 'retail prices index' with 'consumer prices index' in section 57(2), (3) and (4), and inserts a definition for 'consumer prices index' after Section 57(6), as a new subsection (7).

4. Subsection (4) sets out that the amendments made by subsections (2) and (3) have effect from 2015-16 and for subsequent tax years.

BACKGROUND NOTE

5. This change reflects the Government's intention to move the underlying indexation assumption for direct taxes to the CPI.

6. Income tax personal allowances, the basic rate limit, the starting rate limit for savings and the adjusted net income limit are increased each year by the annual percentage increase in the RPI ("indexation"). This clause will change the basis of indexation from the RPI to the CPI.

7. Section 21 of the Income Tax Act 2007 (ITA) applies where the RPI for the September before the start of the tax year is higher than it was for the previous tax year. Where section 21 applies, the amount of the basic rate limit and the starting rate limit for savings are increased by the annual percentage increase in the RPI (subject to rounding).

8. Section 57 of ITA applies where the RPI for the September before the start of the tax year is higher than it was for the previous September. Where section 57 applies, the amount of the personal allowance for people born after 5 April 1948; the married couple's allowance; the minimum amount of married couple's allowance; the income limit that applies to the

higher personal allowances and the married couple's allowance; and the blind person's allowance are increased by the annual percentage increase in the RPI (subject to rounding).

9. Where sections 21 and 57 apply, the increased amounts must be set in a Treasury Order before the start of the tax year.

10. The changes made by this clause mean that, with effect from the tax year 2015-16, the calculations made under section 21 and 57 will be made by reference to the percentage increase in the CPI rather than the percentage increase in the RPI.

11. If you have any questions about this change, or comments on the legislation, please contact Roopal Pujara on 03000 586462 (email: roopal.pujara@hmrc.gsi.gov.uk).

1 Tax relief for married couples and civil partners

(1) ITA 2007 is amended as follows.

(2) After section 55 insert—

"CHAPTER 3A

TRANSFERABLE TAX ALLOWANCE FOR MARRIED COUPLES AND CIVIL PARTNERS

Introduction

55A Tax reduction under Chapter

(1) This Chapter contains provisions about the entitlement of a spouse or civil partner to a tax reduction in a case where the other party to the marriage or civil partnership has elected for a reduced personal allowance.

(2) A tax reduction under this Chapter is given effect at Step 6 of the calculation in section 23.

(3) For the effect of section 809B (claim for remittance basis to apply) applying to an individual for a tax year, see section 809G (no entitlement to tax reduction).

Tax reduction

55B Tax reduction: entitlement

(1) An individual is entitled to a tax reduction for a tax year of the appropriate percentage of the transferable amount if—

(a) the individual makes a claim, and

(b) the conditions in subsection (2) are met.

(2) The conditions are that—

(a) the individual is married to, or in a civil partnership with, the same person ("the individual's spouse or civil partner")—

(i) for the whole or part of the tax year, and

(ii) when the claim is made,

(b) the individual is not, for the tax year, liable to tax at a rate other than the basic rate, the dividend ordinary rate or the starting rate for savings,

(c) the individual's spouse or civil partner makes an election for the purposes of this section which is in force for the tax year (see section 55D),

(d) the individual meets the requirements of section 56 (residence) for the tax year, and

(e) neither the individual nor the individual's spouse or civil partner makes a claim for the tax year under section 45 (married couple's allowance: marriages before 5 December 2005) or section 46 (married couple's allowance: marriages and civil partnerships on or after 5 December 2005).

(3) "The appropriate percentage" is the basic rate at which the individual would be charged to income tax for the tax year to which the reduction relates.

(4) "The transferable amount"—

(a) for the tax year 2015-16, is £1000, and

(b) for the tax year 2016-17 and subsequent tax years, is given by the formula—

$$\frac{1000}{PA1} \times PA2$$

where—

PA1 is the amount of personal allowance specified in section 35(1) for the tax year 2015-16, and

PA2 is the amount of personal allowance specified in that section for the tax year to which the reduction relates.

(5) If the transferable amount calculated in accordance with subsection (4) would otherwise not be a multiple of £10, it is to be rounded up to the nearest amount which is a multiple of £10.

(6) If an individual is entitled to a tax reduction under subsection (1), the personal allowance to which the individual's spouse or civil partner is entitled under section 35, 36 or 37 is reduced for the tax year by the transferable amount.

(7) If an individual who is entitled to a tax reduction for a tax year under subsection (1) dies during that tax year, subsection (6) is to be ignored (but this does not affect the individual's entitlement to the tax reduction).

55C Procedure for claims for tax reduction

(1) This section applies to claims under section 55B(1).

(2) A claim is to be made not more than 4 years after the end of the tax year to which it relates.

(3) A claim continues in force in each subsequent tax year if the conditions in section 55B(2) continue to be met, unless—

(a) subsection (4) applies, or

(b) the claim is withdrawn.

(4) Where a claim is made after the end of the tax year to which it relates, the claim has effect for the tax year to which it relates only (and accordingly does not continue in force for subsequent tax years under subsection (3)).

(5) A claim may be withdrawn only by a notice given by the individual by whom the claim was made.

(6) The withdrawal of a claim under subsection (5) does not, except in the cases dealt with by subsection (7), have effect until the tax year after the one in which the notice is given.

(7) The withdrawal of a claim under subsection (5) has effect for the tax year in which the notice is given if—

(a) in a case where the individual concerned met the condition in section 55B(2)(a) by reason of being married, the marriage has come to an end in that tax year, or

(b) in a case where the individual concerned met the condition in section 55B(2)(a) by reason of being in a civil partnership, the civil partnership has come to an end in that tax year.

(8) For the purposes of subsection (7)(a), a marriage comes to an end if any of the following is made in respect of it—

(a) a decree absolute of divorce, a decree of nullity of marriage or a decree of judicial separation, or

(b) in Scotland, a decree of divorce, a declarator of nullity or a decree of separation.

(9) For the purposes of subsection (7)(b), a civil partnership comes to an end if any of the following is made in respect of it—

(a) a dissolution order or nullity order, which has been made final,

(b) a separation order, or

(c) in Scotland, a decree of dissolution, a declarator of nullity or a decree of separation.

(10) A notice under subsection (5) must—

(a) be given to an officer of Revenue and Customs, and

(b) must be in the form specified by the Commissioners for Her Majesty's Revenue and Customs.

Election to reduce personal allowance

55D Election to reduce personal allowance

(1) An individual may make an election for the purposes of section 55B(2)(c) if—

(a) the individual is married to, or in a civil partnership with, the same person—

(i) for the whole or part of the tax year concerned, and

(ii) when the election is made,

(b) the individual is entitled to a personal allowance under section 35, 36 or 37 for that tax year,

(c) assuming the individual's personal allowance was reduced as set out in section 55B(6), the individual would not for that year be liable to tax at a rate other than the basic rate, the dividend ordinary rate or the starting rate for savings, and

(d) where the individual meets the requirements of section 56 (residence) for the tax year by reason of meeting the condition

in subsection (3) of that section, the individual meets the condition in subsection (2) of this section.

(2) The condition is that the individual's hypothetical net income for the tax year concerned is less than the amount of the personal allowance to which the individual is entitled for that tax year under section 35, 36 or 37.

(3) For the purposes of subsection (2), an individual's "hypothetical net income" is the amount that would be that individual's net income calculated at Step 2 of section 23 if that individual's income tax liability were calculated on the basis that the individual—

(a) was UK resident for the tax year concerned (and the year was not a split year),

(b) was domiciled in the United Kingdom for that tax year,

(c) in that tax year, did not fall to be regarded as resident in a country outside the United Kingdom for the purposes of double taxation arrangements having effect at the time, and

(d) for that tax year, had made a claim for any available relief under section 6 of TIOPA 2010 (as required by subsection (6) of that section).

(4) An individual's hypothetical net income for a tax year is, to the extent that it is not sterling, to be calculated by reference to the average exchange rate for the year ending on 31 March in the tax year concerned.

55E Procedure for elections under section 55D

(1) An election under section 55D is to be made not more than 4 years after the end of the tax year to which it relates.

(2) If the conditions in paragraphs (a) to (d) of section 55D(1) continue to be met, an election continues in force in each subsequent tax year unless—

(a) subsection (3) applies,

(b) the election is withdrawn, or

(c) it ceases to have effect under subsection (5).

(3) Where an election is made after the end of the tax year to which it relates, the election has effect for the tax year to which it relates only (and accordingly does not continue in force for subsequent tax years under subsection (2)).

(4) An election may be withdrawn only by a notice given by the individual by whom the election was made.

(5) If an individual's spouse or civil partner does not obtain a tax reduction under section 55B in respect of a tax year in which an election is in force the election ceases to have effect for subsequent tax years; but this does not prevent an individual making a further election for the purposes of section 55B(2)(c) (whether or not in relation to the same marriage or civil partnership).

(6) The withdrawal of an election under subsection (4) does not, except in the cases dealt with by subsection (7), have effect until the tax year after the one in which the notice is given.

(7) The withdrawal of an election under subsection (4) has effect for the tax year in which the notice is given if—

(a) in a case where the individual concerned met the condition in section 55D(1)(a) by reason of being married, the marriage has come to an end in that tax year, or

(b) in a case where the individual concerned met the condition in section 55D(1)(a) by reason of being in a civil partnership, the civil partnership has come to an end in that tax year.

(8) The reference in subsection (7)(a) to a marriage having come to an end is to have the same meaning as it has for the purposes of section 55C(7)(a) (see section 55C(8)).

(9) The reference in subsection (7)(b) to a civil partnership having come to an end is to have the same meaning as it has for the purposes of section 55C(7)(b) (see section 55C(9)).

(10) A notice under subsection (4) must—

(a) be given to an officer of Revenue and Customs, and

(b) must be in the form specified by the Commissioners for Her Majesty's Revenue and Customs.

Supplementary

55F Limitation on number of claims and elections

(1) An individual is not entitled to more than one tax reduction under section 55B for a tax year (regardless of whether the individual is a party to more than one marriage or civil partnership in the tax year).

(2) An individual is not entitled to have more than one election for the purposes of section 55B which operates for a tax year (regardless of whether the individual is a party to more than one marriage or civil partnership in the tax year)."

(3) In section 26 (tax reductions), in subsection (1)(a), after the entry relating to Chapter 3 of Part 3 insert—

"Chapter 3A of Part 3 of this Act (transferable tax allowance for married couples and civil partners),".

(4) In section 31 (total income: supplementary), in subsection (2), after "basic" insert "rate".

(5) In section 33 (overview of Part)—

(a) in subsection (3), after "partners" insert "where a party to the marriage or civil partnership is born before 6 April 1935",

(b) after that subsection insert—

"(3A) Chapter 3A provides for a transferable tax allowance for married couples and civil partners.",

(c) in subsection (4), in the opening words, for "and 3" substitute ", 3 and 3A",

(d) in subsection (4)(a), after "Chapter 3" insert "or 3A", and

(e) in subsection (4)(b), for "those allowances and tax reductions" substitute "the allowances under Chapter 2 and tax reductions under Chapter 3".

(6) In the heading for Chapter 3 of Part 3 after "PARTNERS" insert "; PERSONS BORN BEFORE 6 APRIL 1935".

(7) In section 56 (residence), in subsection (1)(b), after "Chapter 3" insert "or 3A".

(8) In section 809G (claim for remittance basis: effect on allowances), in subsection (2)—

(a) omit the "or" following paragraph (b), and

(b) after paragraph (b) insert—

"(ba) any tax reduction under Chapter 3A of that Part (transferable tax allowance for married couples and civil partners), or".

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

EXPLANATORY NOTE

TAX RELIEF FOR MARRIED COUPLES AND CIVIL PARTNERS

SUMMARY

1. This measure introduces a transferable tax allowance for married couples and civil partners.

DETAILS OF THE CLAUSE

2. Clause X inserts sections 55A to 55F into Income Tax Act 2007 to provide for the transfer of income tax personal allowances for married couples and civil partners.

3. New section 55A introduces the new provisions and provides that the transferred allowance is given effect as a deduction from an individual's income tax liability.

4. New section 55B provides the conditions that an individual must meet to claim the transferred allowance and sets out how the tax reduction is to be calculated. Where an individual or their spouse is entitled to the married couple's allowance (available to spouses and civil partners born before 6 April 1935) they are not entitled to a tax reduction under this clause. From 2016-17, the amount of the transfer for a tax year is calculated by reference to a proportion of the personal allowance for those born after 5 April 1948.

5. New section 55C sets out the procedures for making a claim under new section 55B. A claim will have effect in subsequent tax years unless it is withdrawn. If the claim is made after the end of the tax year to which it relates, the claim only applies to that year. A claimant can only withdraw their claim with effect from the tax year following the tax year in which they make the withdrawal. There is an exception where during a tax year their marriage or civil partnership comes to an end. The exception allows the claimant spouse or civil partner to withdraw their claim with effect in the year they make the withdrawal.

6. New section 55D provides the conditions that an individual must meet to make an election to surrender entitlement to the transferred amount of their personal allowance. If an individual is entitled to a personal allowance but is not a UK resident for the tax year, they must have a hypothetical income that is less than the personal allowance they are entitled to.

7. New section 55E provides the procedures for an individual to make an election. The provisions mirror those in new section 55C that apply to claimants. In addition, an election becomes ineffective where the claimant does not obtain a tax reduction.

8. New section 55F provides that an individual cannot have more than one tax reduction or election for a tax year. It also makes consequential amendments flowing from the new provisions.

BACKGROUND NOTE

9. This measure introduces a transferable personal allowance for married couples and civil partners where neither spouse or civil partner is liable to income tax at the higher or additional rate. From 2015-16, a spouse or civil partner (a transferor) who meets the qualifying conditions will be able to elect to transfer a fixed amount of their personal allowance to their spouse or civil partner (the transferee). Where the transferee makes a claim to the transferred allowance their income tax liability is reduced by an amount calculated in accordance with new section 55B.

10. Individuals will be able to withdraw their election or claim with effect from the tax year following the tax year in which they notify HM Revenue & Customs. However, both the transferor and the transferee have the option to withdraw their election or claim with effect from the tax year that their marriage or civil partnership comes to a legal end.

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

1 Share incentive plans: increases in maximum annual awards etc

(1) Schedule 2 to ITEPA 2003 (share incentive plans) is amended as follows.

(2) In paragraph 35(1) (free shares: maximum annual award) for "£3,000" substitute "£3,600".

(3) In paragraph 46(1) (partnership shares: maximum amount of deductions from employee's salary) for "£1,500" substitute "£1,800".

(4) The amendments made by this section have effect for the tax year 2014-15 and subsequent tax years.

EXPLANATORY NOTE

SHARE INCENTIVE PLANS: INCREASES IN MAXIMUM ANNUAL AWARDS ETC

SUMMARY

1. Clause X increases the maximum value of the shares that can be awarded or purchased each year under the Share Incentive Plan (SIP) tax advantaged employee share scheme.

DETAILS OF THE CLAUSE

2. Subsections (1) to (4) amend Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 to increase the maximum value of the SIP free shares that can be awarded to an employee each year from £3,000 to £3,600; and the maximum amount of an employee's salary that can be used to purchase SIP partnership shares each year from £1,500 to £1,800. These increased limits will take effect from 6 April 2014.

BACKGROUND NOTE

3. SIPs are tax advantaged 'all employee' share schemes, which enable employees to acquire shares in various ways, up to maximum values specified in legislation. SIP features may include the purchase of 'partnership shares' by employees by deduction from salary, or the award of 'free shares' by employers.

4. This increase in SIP limits reflects the Government's support for employee share ownership.

5. Alongside this measure, the Government also proposes to increase the maximum amount an employee can contribute to savings arrangements linked to tax advantaged Save As You Earn share option schemes. That change will be implemented by Treasury Order and will take effect from 6 April 2014.

6. If you have any questions about this change, or comments on the legislation, please contact Hasmukh Dodia on 03000 585201 (email: shareschemes@hmrc.gsi.gov.uk).

1 Employee share schemes

Schedule 1 makes provision in relation to employee share schemes.

SCHEDULES

SCHEDULE 1

Section 1

EMPLOYEE SHARE SCHEMES

PART 1

SHARE INCENTIVE PLANS

Amendments to Chapter 6 of Part 7 of ITEPA 2003

1 Chapter 6 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: share incentive plans) is amended as follows.

2 In the title omit "APPROVED".

3 (1) Section 488 (introduction to share incentive plans) is amended as follows.

(2) In the heading omit "**Approved**".

(3) In subsection (1)—

(a) omit paragraph (a), and

(b) in paragraph (b) for "those plans" substitute "share incentive plans ("SIPs") which are Schedule 2 SIPs".

(4) Omit subsection (2).

(5) In subsection (4)—

(a) omit the definitions of "approved" and "approval", and

(b) after the definition of "PAYE deduction" insert—

""Schedule 2" SIP is to be read in accordance with paragraph 1 of Schedule 2 (subject to Part 10 of that Schedule);".

4 (1) Section 489 (operation of tax advantages) is amended as follows.

(2) In the heading for "**approved**" substitute "**Schedule 2**".

(3) In subsection (1) for "an approved" substitute "a Schedule 2".

5 In section 498 (no charge on shares ceasing to be subject to plan in certain circumstances) in subsection (9)(b) for "an approved" substitute "a Schedule 2".

6 (1) Section 500 (operation of tax charges) is amended as follows.

(2) In the heading for "**approved**" substitute "**Schedule 2**".

(3) In subsection (1) for "an approved" substitute "a Schedule 2".

7 In section 503 (charge on partnership share money) in subsection (2), in the entry for paragraph 56, for "withdrawal of plan approval" substitute "plan ceasing to be a Schedule 2 SIP".

8 In section 509 (modification of section 696) in subsection (1)(a) for "an approved" substitute "a Schedule 2".

9 In section 510 (payments by trustees) in subsection (1) for "an approved" substitute "a Schedule 2".

10 In section 511 (deductions to be made by trustees) in subsection (1) for "an approved" substitute "a Schedule 2".

11 In section 515 (tax advantages and charges under other Acts) in subsection (2)(a) and (d) for "an approved" substitute "a Schedule 2".

12 Schedule 2 is amended as follows.

13 In the title omit "APPROVED".

14 In the cross-heading before paragraph 1 for "*Approval of*" substitute "*Introduction to Schedule 2*".

15 (1) Paragraph 1 (introduction) is amended as follows.

(2) For sub-paragraphs (1) and (2) substitute—

"(A1) For the purposes of the SIP code a share incentive plan (a "SIP") is a "Schedule 2" SIP if the requirements of Parts 2 to 9 of this Schedule are (and are being) met in relation to the SIP."

(3) For sub-paragraph (4) substitute—

"(4) Sub-paragraph (A1) is subject to Part 10 of this Schedule which—

(a) requires notice of a plan to be given to Her Majesty's Revenue and Customs ("HMRC") in order for the plan to be a "Schedule 2" SIP (see paragraph 81A(1)),

(b) provides for a plan in relation to which such notice is given to be taken to be a "Schedule 2" SIP (see paragraph 81A(4)), and

(c) gives power to HMRC to enquire into a plan and to decide that the plan should no longer be a "Schedule 2" SIP (see paragraphs 81F to 81I)."

16 In the cross-heading before paragraph 6 omit "*for approval*".

17 (1) Paragraph 6 (general requirements for SIPs) is amended as follows.

(2) Make the existing text sub-paragraph (1).

(3) After the new sub-paragraph (1) insert—

"(2) The requirements of this Part are also to be taken to include the requirements of paragraphs 89 and 90 (plan termination notices etc)."

18 (1) Paragraph 7 (the purpose of the plan) is amended as follows.

(2) In sub-paragraph (1)—

(a) after "provide" insert ", in accordance with this Schedule,", and

(b) for "nature" substitute "form".

(3) After sub-paragraph (1) insert—

"(1A) The plan must not provide benefits to employees otherwise than in accordance with this Schedule.

(1B) For example, the plan must not provide cash to employees as an alternative to shares."

(4) Omit sub-paragraph (2).

19 In paragraph 18 (requirement not to participate in other SIPs) in sub-paragraph (1) for "approved" substitute "Schedule 2".

20 In paragraph 18A (participation in more than one connected SIP) in sub-paragraph (1) for "approved" substitute "Schedule 2".

21 In paragraph 37 (holding period: power of participant to direct trustees) in sub-paragraph (3)(b) for "an approved" substitute "a Schedule 2".

22 In paragraph 43 (partnership shares: introduction) after sub-paragraph (2A) insert—

"(2B) Partnership shares may (notwithstanding sub-paragraph (2A) if relevant) be subject to provision requiring partnership shares acquired on behalf of an employee to be offered for sale on the employee ceasing to be in relevant employment but only if the requirement of sub-paragraph (2C) is met.

(2C) The consideration at which the shares are required to be offered for sale must be at least equal to—

(a) the amount of the partnership share money applied in acquiring the shares on behalf of the employee, or

(b) if lower, the market value of the shares at the time they are offered for sale."

23 In the cross-heading before paragraph 56 for "*withdrawal of approval*" substitute "*plan ceasing to be a Schedule 2 SIP*".

24 (1) Paragraph 56 (repayment of partnership share money) is amended as follows.

(2) In sub-paragraph (1) for "approval of the plan is withdrawn (see paragraph 83)" substitute "plan is no longer to be a Schedule 2 SIP by virtue of paragraph 81H or 81I".

(3) In sub-paragraph (2) for "notice of the withdrawal of approval" substitute "the closure notice or the default notice (as the case may be)".

25 (1) Paragraph 65 (general requirements as to dividend shares) is amended as follows.

(2) Make the existing text sub-paragraph (1).

(3) After the new sub-paragraph (1) insert—

"(2) Dividend shares may (notwithstanding sub-paragraph (1)(b) if relevant) be subject to provision requiring dividend shares acquired on behalf of an employee to be offered for sale on the employee ceasing to be in relevant employment but only if the requirement of sub-paragraph (3) is met.

(3) The consideration at which the shares are required to be offered for sale must be at least equal to—

(a) the amount of the cash dividends applied in acquiring the shares on behalf of the employee, or

(b) if lower, the market value of the shares at the time they are offered for sale."

26 (1) Paragraph 71 (establishment of trustees) is amended as follows.

(2) For sub-paragraph (4) substitute—

"(4) The trust instrument may only contain terms which are necessary for the purpose of securing compliance with the requirements of this Part of this Schedule."

(3) In sub-paragraph (6) for "reasonably incidental to complying" substitute "necessary for the purpose of securing compliance".

27 In paragraph 71A (duty to monitor participants) for "approved" substitute "Schedule 2".

28 For Part 10 substitute—

"PART 10

NOTIFICATION OF PLANS, ANNUAL RETURNS AND ENQUIRIES

Notice of SIP to be given to HMRC

81A (1) For a SIP to be a "Schedule 2" SIP, notice of the SIP must be given to Her Majesty's Revenue and Customs ("HMRC").

(2) The notice must—

(a) be given by the company,

(b) contain, or be accompanied by, such information as HMRC may require, and

(c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.

(3) A declaration within this sub-paragraph is a declaration that—

(a) the requirements of Parts 2 to 9 of this Schedule are (and are being) met in relation to the SIP, and

(b) if the declaration is made after the date on which the first award of shares is made under the SIP, those requirements—

(i) have always been met in relation to the SIP from (and including) that date, and

(ii) were met in relation to that award.

(4) If notice is given under this paragraph in relation to a SIP, for the purposes of the SIP code the SIP is to be taken to be a "Schedule 2" SIP from (and including) the relevant date (but not before that date).

(5) But if the notice is given after the initial notification deadline, the SIP is to be taken to be a "Schedule 2" SIP only from the beginning of the relevant tax year.

(6) For the purposes of this paragraph—

"the initial notification deadline" is 6 July in the tax year following that in which the first award of shares is made under the SIP,

"the relevant date" is—

(a) the date on which the declaration within sub-paragraph (3) is made, or

(b) if that declaration is made after the date on which the first award of shares is made under the SIP, the date on which that award is made, and

"the relevant tax year" is—

(a) if the notice under this paragraph is given on or before 6 July in a tax year, the tax year preceding the tax year in which the notice is given, or

(b) if the notice under this paragraph is given after 6 July in a tax year, the tax year in which the notice is given.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

Annual returns

81B (1) This paragraph applies in relation to a SIP which is a Schedule 2 SIP during all or part of a tax year.

(2) The company must give a return for the tax year to HMRC.

(3) The return must—

(a) contain, or be accompanied by, such information as HMRC may require, and

(b) be given on or before 6 July in the following tax year.

(4) The information which may be required under sub-paragraph (3)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—

(a) any person who has participated in the SIP, or

(b) any other person whose liability to tax the operation of the SIP is relevant to.

(5) If during a tax year an alteration is made—

(a) in a key feature of the SIP, or

(b) in the terms of the plan trust,

the return for the tax year must contain a declaration within sub-paragraph (6) made by such persons as HMRC may require.

(6) A declaration within this sub-paragraph is a declaration that the requirements of Parts 2 to 9 of this Schedule—

(a) are (and are being) met in relation to the SIP, and

(b) have always been met in relation to the SIP since the alteration.

(7) For the purposes of sub-paragraph (5)(a) a "key feature" of a SIP is a provision of the SIP which is necessary in order for the requirements of Parts 2 to 9 of this Schedule to be met in relation to the SIP.

(8) A return is not required for any tax year following that in which the termination condition is met in relation to the SIP.

(9) For the purposes of this Part "the termination condition" is met in relation to a SIP when—

(a) a plan termination notice has been issued in relation to it under paragraph 89, and

(b) all the requirements under paragraphs 56(3), 68(4)(c) and 90 have been met by the trustees.

81C (1) This paragraph applies if the company fails to give a return for a tax year (including any information required to accompany it) on or before the date mentioned in paragraph 81B(3)(b) ("the date for delivery").

(2) The company is liable for a penalty of £100.

(3) If the company's failure continues after the end of the period of 3 months beginning with the date for delivery, the company is liable for a further penalty of £300.

(4) If the company's failure continues after the end of the period of 6 months beginning with the date for delivery, the company is liable for a further penalty of £300.

(5) The company is liable for a further penalty under this sub-paragraph if—

(a) the company's failure continues after the end of the period of 9 months beginning with the date for delivery,

(b) HMRC decide that such a penalty is payable, and

(c) HMRC give notice to the company specifying the date from which the penalty is payable.

(6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).

(7) The date specified in the notice under sub-paragraph (5)(c)—

(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 (5)(a).

(8) Liability for a penalty under this paragraph does not arise if the company satisfies HMRC (or, on an appeal under paragraph 81K, the tribunal) that there is a reasonable excuse for its failure.

(9) For the purposes of sub-paragraph (8)—

(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the company's control,

(b) where the company relies on any other person to do anything, that is not a reasonable excuse unless the company took reasonable care to avoid the failure, and

(c) where the company had a reasonable excuse for the failure but the excuse ceased, the company is to be treated as having continued to have the excuse if the failure is

remedied without unreasonable delay after the excuse ceased.

Notices and returns to be given electronically

81D (1) A notice under paragraph 81A, and any information accompanying the notice, must be given electronically.

(2) A return under paragraph 81B, and any information accompanying the return, must be given electronically.

(3) But, if HMRC consider it appropriate to do so, HMRC may allow the company to give a notice or return or any accompanying information in another way; and the notice, return or information must be given in that other way.

(4) The Commissioners for Her Majesty's Revenue and Customs—

(a) must prescribe how notices, returns and accompanying information are to be given electronically;

(b) may make different provision for different cases or circumstances.

81E (1) This paragraph applies if a return under paragraph 81B, or any information accompanying such a return, is given otherwise than in accordance with paragraph 81D.

(2) The company is liable for a penalty of an amount decided by HMRC.

(3) The penalty must not exceed £5,000.

Enquiries

81F (1) This paragraph applies if notice is given in relation to a SIP under paragraph 81A.

(2) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so no later than—

(a) 6 July in the tax year following the tax year in which the initial notification deadline falls, or

(b) if the notice under paragraph 81A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.

"The initial notification deadline" and "the relevant tax year" have the meaning given by paragraph 81A(6).

(3) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so no later than 6 July in the second tax year following that in which a return containing a declaration within paragraph 81B(6) is given.

(4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 9 of this Schedule—

(a) are not (or are not being) met in relation to the SIP, or

(b) have not been met in relation to the SIP.

(5) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so.

(6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition has been met in relation to the SIP.

81G (1) An enquiry under paragraph 81F(2), (3) or (5) is completed when HMRC give the company a notice (a "closure notice") stating—

(a) that HMRC have completed the enquiry, and

(b) that—

(i) paragraph 81H is to apply,

(ii) paragraph 81I is to apply, or

(iii) neither paragraph 81H nor paragraph 81I is to apply.

(2) If the company receives notice under paragraph 81F(2), (3) or (5), the company may make an application to the tribunal for a direction requiring a closure notice for the enquiry to be given within a specified period.

(3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).

(4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.

81H (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 9 of this Schedule—

(i) are not (or are not being) met in relation to the SIP, or

(ii) have not been met in relation to the SIP, and

(b) that the situation is, or was, so serious that this paragraph should apply.

(2) If this paragraph applies—

(a) the SIP is no longer to be a Schedule 2 SIP, and

(b) the company is liable for a penalty of an amount decided by HMRC.

(3) Sub-paragraph (2)(a) does not affect the operation of the SIP code in relation to shares awarded under the SIP before the giving of the closure notice.

(4) References in the SIP code to a Schedule 2 SIP in relation to such shares are to the SIP as it stood when the shares were awarded.

(5) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which participants in the SIP have not been liable, or will not be liable in the future, and

(b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the SIP having been taken to be a Schedule 2 SIP at any relevant time (taking into account sub-paragraphs (3) and (4) as relevant).

(6) In sub-paragraph (5) "relevant time" means any time before the giving of the closure notice when requirements of Parts 2 to 9 of this Schedule were not (or were not being) met in relation to the SIP.

81I (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 9 of this Schedule—

(i) are not (or are not being) met in relation to the SIP, or

(ii) have not been met in relation to the SIP, but

(b) that the situation is not, or was not, so serious that paragraph 81H should apply.

(2) If this paragraph applies, the company—

(a) is liable for a penalty of an amount decided by HMRC, and

(b) must, no later than 90 days after the day on which the closure notice is given, secure that the requirements of Parts 2 to 9 of this Schedule are (and are being) met in relation to the SIP.

(3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.

(4) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the SIP before the giving of the closure notice or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).

(5) If the company fails to comply with sub-paragraph (2)(b), HMRC may give the company a notice stating that that is the case (a "default notice").

(6) If the company is given a default notice—

(a) the SIP is no longer to be a Schedule 2 SIP, and

(b) the company is liable for a further penalty of an amount decided by HMRC.

(7) Sub-paragraph (6)(a) does not affect the operation of the SIP code in relation to shares awarded under the SIP before the giving of the default notice.

(8) References in the SIP code to a Schedule 2 SIP in relation to such shares are to the SIP as it stood when the shares were awarded.

(9) The penalty under sub-paragraph (6)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which participants in the SIP have not been liable, or will not be liable in the future, and

(b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the SIP having been taken to be a Schedule 2 SIP at any relevant time (taking into account sub-paragraphs (7) and (8) as relevant).

(10) In sub-paragraph (9) "relevant time" means any time before the giving of the default notice when requirements of Parts 2 to 9 of this Schedule were not (or were not being) met in relation to the SIP.

Assessment of penalties

81J (1) This paragraph applies if the company is liable for a penalty under this Part.

(2) HMRC must assess the penalty and notify the company of the assessment.

(3) The assessment—

(a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the company is not within the charge to corporation tax, an assessment to income tax,

(b) may be enforced as if it were such an assessment, and

(c) may be combined with such an assessment.

(4) The notice to the company under sub-paragraph (2) must state the accounting period of the company or the tax year in respect of which the penalty is assessed.

Appeals

81K (1) The company may appeal against a decision of HMRC that the company is liable for a penalty under paragraph 81C or 81E.

(2) The company may appeal against a decision of HMRC mentioned in paragraph 81H(1) or 81I(1).

(3) The company may appeal against a decision of HMRC to give the company a default notice under paragraph 81I.

(4) The company may appeal against a decision of HMRC as to the amount of a penalty payable by the company under this Part.

(5) The company may appeal against a decision of an officer of Revenue and Customs to give a direction under section 998 of CTA 2009 (withdrawal of corporation tax deductions in relation to a Schedule 2 SIP).

(6) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the company is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).

(7) Sub-paragraph (6) does not require the company to pay a penalty before an appeal, the outcome of which could affect the company's liability for the penalty or its amount, is determined.

(8) On an appeal under sub-paragraph (1), (3) or (5) the tribunal may affirm or cancel the decision.

(9) On an appeal under sub-paragraph (2), the tribunal may—

(a) affirm or cancel the decision, or

(b) substitute for the decision another decision which HMRC had power to make.

(10) On an appeal under sub-paragraph (4), the tribunal may—

(a) affirm the amount of the penalty decided, or

(b) substitute another amount for that amount."

29 In paragraph 90 (effect of plan termination notice) in sub-paragraph (2) for "awarded to" substitute "appropriated to, or acquired on behalf of,".

30 (1) Paragraph 93 (power to require information) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—

(a) which the officer reasonably requires for the performance of any functions of Her Majesty's Revenue and Customs or an officer of Revenue and Customs under the SIP code, and

(b) which the person to whom the notice is addressed has or can reasonably obtain."

(3) In sub-paragraph (2)(a)—

(a) for sub-paragraph (i) substitute—

"(i) to check anything contained in a notice under paragraph 81A or a return under paragraph 81B or to check any information accompanying such a notice or return, or", and

(b) in sub-paragraph (ii) after "plan" insert "or any other person whose liability to tax the operation of a plan is relevant to".

31 In paragraph 100 (index of defined expressions)—

(a) omit the entries for "approval" and "approved", and

(b) at the appropriate place insert—

"Schedule 2 SIP	paragraph 1 (and see Part 10)".

Other amendments: TCGA 1992

32 TCGA 1992 is amended as follows.

33 In section 236A (relief for transfers to share incentive plans) for "an approved" substitute "a Schedule 2".

34 (1) Section 238A (share schemes and share incentives) is amended as follows.

(2) In the heading omit "**Approved**".

(3) In subsection (1) omit "approved".

(4) In subsection (2)(a) for "approved" substitute "Schedule 2".

35 Schedule 7C (relief for transfers to share plans) is amended as follows.

36 In the title for "APPROVED" substitute "SCHEDULE 2".

37 In paragraph 2 (conditions relating to disposal) in sub-paragraph (1) for "approved" substitute "a Schedule 2 SIP".

38 Schedule 7D (share schemes and share incentives) is amended as follows.

39 In the title omit "APPROVED".

40 In the title of Part 1 for "APPROVED" substitute "SCHEDULE 2".

41 (1) Paragraph 1 (introduction to Part 1) is amended as follows.

(2) In sub-paragraph (1) for "an approved" substitute "a Schedule 2".

(3) In sub-paragraphs (2) and (3) omit "approved".

42 In paragraph 2 (gains accruing to trustees) in sub-paragraph (1)(a) omit r "approved".

Other amendments: ITEPA 2003 and Part 4 of FA 2004

43 ITEPA 2003 is amended as follows.

44 In section 227 (scope of Part 4) in subsection (4)(c) omit "approved".

45 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 6, omit "approved".

46 (1) Section 431A (provision relating to restricted securities) is amended as follows.

(2) In the heading for "**approved**" substitute "**tax advantaged**".

(3) In subsection (2)(a) for "an approved" substitute "a Schedule 2".

47 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(a) omit "approved".

48 (1) Section 554E (exclusions under Part 7A) is amended as follows.

(2) In subsections (1)(a) and (3)(a)(i) and (b)(i) for "an approved" substitute "a Schedule 2".

(3) In subsection (4)(a) and (b) for the first "approved" substitute "Schedule 2".

49 In paragraph 11 of Schedule 4 (CSOP schemes: material interest) in sub-paragraph (5)(a) for "approved" substitute "Schedule 2".

50 In paragraph 30 of Schedule 5 (enterprise management incentives: material interest) in sub-paragraph (7)(a) for "share incentive plan approved" substitute "Schedule 2 SIP".

51 In section 195 of FA 2004 (pensions: transfer of certain shares to be treated as payment of contribution) in subsection (5), in the definition of "share incentive plan", omit "approved".

Other amendments: ITTOIA 2005

52 Chapter 3 of Part 4 of ITTOIA 2005 (savings and investment income: dividends etc from UK resident companies) is amended as follows.

53 In section 382 (contents of Chapter 3) in subsection (1)(c) for "an approved" substitute "a Schedule 2".

54 In the cross-heading before section 392 for "*approved*" substitute "*Schedule 2*".

55 In section 392 (SIP shares: introduction) in subsection (1) for "an approved" substitute "a Schedule 2".

56 (1) Section 394 (distribution when dividend shares cease to be subject to SIP) is amended as follows.

(2) In subsection (1) for "an approved" substitute "a Schedule 2".

(3) In subsection (7) for "approved" substitute "Schedule 2".

57 In section 395 (reduction in tax due in cases within section 394) in subsections (1)(b) and (4) for "approved" substitute "Schedule 2".

58 In section 396 (interpretation) in subsections (1) and (2) omit "approved".

59 Chapter 4 of Part 4 of ITTOIA 2005 (savings and investment income: dividends etc from non-UK resident companies) is amended as follows.

60 In the cross-heading before section 405 for "*approved*" substitute "*Schedule 2*".

61 (1) Section 405 (SIP shares: introduction) is amended as follows.

(2) In subsection (1) for "an approved" substitute "a Schedule 2".

(3) In subsections (3) and (4) omit "approved".

62 (1) Section 407 (dividend payment when dividend shares cease to be subject to SIP) is amended as follows.

(2) In subsection (1) for "an approved" substitute "a Schedule 2".

(3) In subsection (5) for "approved" substitute "Schedule 2".

63 In section 408 (reduction in tax due in cases within section 407) in subsections (1)(b) and (3) for "approved" substitute "Schedule 2".

64 Chapter 9 of Part 6 of ITTOIA 2005 (exempt income) is amended as follows.

65 In the cross-heading before section 770 for "*Approved*" substitute "*Schedule 2*".

66 (1) Section 770 (amounts applied by SIP trustees) is amended as follows.

(2) In subsection (1)(a) for "an approved" substitute "a Schedule 2".

(3) In subsections (5) and (6) omit "approved".

Other amendments: Part 9 of ITA 2007

67 Part 9 of ITA 2007 (special rules about settlements and trusts) is amended as follows.

68 In section 462 (overview of Part) in subsection (5) for "an approved" substitute "a Schedule 2".

69 In section 479 (trustees' accumulated or discretionary income charged at special rates) in subsection (5) for "approved" substitute "Schedule 2".

70 (1) Section 488 (application of section 479 to trustees of SIP) is amended as follows.

(2) In the heading for "**approved**" substitute "**Schedule 2**".

(3) In subsection (1)—

(a) in paragraph (a) for "an approved" substitute "a Schedule 2", and

(b) in paragraph (b) omit "approved".

71 In section 489 ("the applicable period") in subsection (8)(a) for approved substitute "Schedule 2".

72 In section 490 (interpretation of Chapter 5) in subsection (1) omit "approved".

Other amendments: Chapter 1 of Part 11 of CTA 2009

73 Chapter 1 of Part 11 of CTA 2009 (relief for employee share acquisition schemes: share incentive plans) is amended as follows.

74 (1) Section 983 (overview of Chapter) is amended as follows.

(2) In subsection (1) for "approved" substitute "Schedule 2".

(3) In subsection (7) for "approval of a plan is withdrawn" substitute "a plan ceases to be a Schedule 2 share incentive plan".

75 (1) Section 987 (deduction for cost of setting up plan) is amended as follows.

(2) In the heading for "**an approved**" substitute "**a Schedule 2**".

(3) In subsection (1) for "approved by an officer of Revenue and Customs" substitute "a Schedule 2 share incentive plan".

(4) In subsection (3) for "approval" substitute "relevant date".

(5) In subsection (4) for "approval is given" (in both places) substitute "relevant date falls".

(6) After subsection (5) insert—

"(6) In this section "the relevant date", in relation to a share incentive plan, has the meaning given in paragraph 81A(6) of Schedule 2 to ITEPA 2003."

76 (1) Section 988 (deductions for running expenses) is amended as follows.

(2) In the heading for "**an approved**" substitute "**a Schedule 2**".

(3) In subsections (1) and (3) for "an approved" substitute "a Schedule 2".

77 In section 989 (deduction for contribution to plan trust) in subsection (1)(a) for "an approved" substitute "a Schedule 2".

78 In section 994 (deduction for providing free or matching shares) in subsection (1) for "an approved" substitute "a Schedule 2".

79 In section 995 (deduction for additional expense in providing partnership shares) in subsection (1)(a) for "an approved" substitute "a Schedule 2".

80 In section 997 (no deduction for expenses in providing dividend shares) in subsection (1) for "an approved" substitute "a Schedule 2".

81 For the cross-heading before section 998 substitute "*Plan ceasing to be a Schedule 2 SIP*".

82 (1) Section 998 (withdrawal of deductions) is amended as follows.

(2) In the heading for "**approval for share incentive plan withdrawn**" substitute "**share incentive plan ceases to be a Schedule 2 share incentive plan**".

(3) In subsection (1)—

(a) in paragraph (a) for "an approved" substitute "a Schedule 2", and

(b) for paragraph (b) substitute—

"(b) by virtue of paragraph 81H or 81I of Schedule 2 to ITEPA 2003 the plan is no longer to be a Schedule 2 share incentive plan."

Other amendments: Individual Savings Account Regulations 1998 (S.I. 1998/1870)

83 The Individual Savings Account Regulations 1998 are amended as follows.

84 (1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)(a)—

(a) omit the definition of "approved SIP",

(b) in the definition of "ceasing to be subject to the plan" for "an approved" substitute "a Schedule 2", and

(c) at the appropriate place insert—

"Schedule 2 SIP" shall be construed in accordance with the SIP code (see section 488(3) of ITEPA 2003);".

(3) In paragraph (1)(b), in the definitions of "participant" and "plan shares", for "an approved" substitute "a Schedule 2".

85 In regulation 7 (qualifying investments) in paragraph (2)(h)(iii) for "an approved" substitute "a Schedule 2".

Commencement and transitional provision

86 The amendments made by this Part are treated as having come into force on 6 April 2014.

87 (1) This paragraph applies to a SIP established before 6 April 2014.

(2) If the SIP was an "approved" SIP immediately before 6 April 2014, the amendments made by paragraphs 18 and 26 above have effect in relation to the SIP only if, and when, a provision of the SIP or the plan trust is altered on or after that date.

(3) Paragraph 81A of Schedule 2 to ITEPA 2003 (as inserted by paragraph 28 above) has effect in relation to the SIP—

(a) as if, at the end of sub-paragraph (1), the words "on or before 6 July 2015" were inserted,

(b) if the date on which the first award of shares is made under the SIP falls before 6 April 2014—

(i) as if, in sub-paragraph (3)(b)(i) and in paragraph (b) of the definition of "the relevant date" in sub-paragraph (6), the reference to the date on which the first award of shares is made under the SIP were a reference to 6 April 2014, and

(ii) as if sub-paragraph (3)(b)(ii) were omitted,

(c) as if sub-paragraph (5) were omitted, and

(d) as if, in sub-paragraph (6), the definitions of "the initial notification deadline" and "the relevant tax year" were omitted.

(4) But the SIP cannot be a "Schedule 2" SIP if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.

(5) Sub-paragraph (4) is without prejudice to the outcome of any appeal under paragraph 82 or 85 of Schedule 2 to ITEPA 2003 against the refusal or decision to withdraw approval.

(6) The amendments made by this Part do not affect any right of appeal under paragraph 82 or 85 of Schedule 2 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the SIP.

(7) Sub-paragraph (8) applies in relation to shares appropriated to, or acquired on behalf of, an individual before 6 April 2014 under the SIP at a time when the SIP was an "approved" SIP.

(8) On and after 6 April 2014, the SIP code has effect in relation to the shares as if they were appropriated to, or acquired on behalf of, the individual under the SIP at a time when the SIP was a "Schedule 2" SIP (even if no notice under paragraph 81A of Schedule 2 to ITEPA 2003 is given in relation to the SIP).

(9) In relation to the SIP—

(a) paragraph 81F of Schedule 2 to ITEPA 2003 (as inserted by paragraph 28 above) has effect as if for sub-paragraph (2) there were substituted—

"(2) HMRC may enquire into the SIP if HMRC give notice to the company of HMRC's intention to do so no later than 6 July 2016.", and

(b) the cases covered by paragraphs 81F(4)(b), 81H(1)(a)(ii) and 81I(1)(a)(ii) of Schedule 2 to ITEPA 2003 (as inserted by paragraph 28 above) include cases in which requirements of Parts 2 to 9 of that Schedule were not met before 6 April 2014.

(10) The amendments made by paragraph 30 above do not affect a notice given in relation to the SIP under paragraph 93 of Schedule 2 to ITEPA 2003 before 6 April 2014.

(11) If the SIP was an "approved" SIP before 6 April 2014, the amendments made by this Part do not affect the deductions which may be made in relation to the SIP under section 987 of CTA 2009 (deduction for costs of setting up SIP) if they would otherwise do so.

PART 2

SAYE OPTION SCHEMES

Amendments to Chapter 7 of Part 7 of ITEPA 2003

88 Chapter 7 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: SAYE option schemes) is amended as follows.

89 In the title omit "APPROVED".

90 (1) Section 516 (introduction to SAYE option schemes) is amended as follows.

(2) In the heading omit "**Approved**".

(3) In subsection (1)—

(a) omit paragraph (a) and the "and" after it, and

(b) in paragraph (b) for "those" substitute "SAYE option schemes which are Schedule 3 SAYE option".

(4) Omit subsection (2).

(5) In subsection (3)(c) for "approved" substitute "Schedule 3".

(6) In subsection (4)—

(a) omit the definition of "approved", and

(b) after the definition of "SAYE option scheme" insert—

""Schedule 3" SAYE option scheme is to be read in accordance with paragraph 1 of Schedule 3 (subject to Part 8 of that Schedule);".

91 In section 517 (share options to which Chapter applies) in subsection (1)(a) for "an approved" substitute "a Schedule 3".

92 (1) Section 519 (no charge in respect of exercise of option) is amended as follows.

(2) In subsection (1)(a) for "approved" substitute "a Schedule 3 SAYE option scheme".

(3) In subsection (3A)—

(a) in paragraph (a) for "approved" substitute "a Schedule 3 SAYE option scheme", and

(b) for paragraph (b) substitute—

"(b) the option is exercised by virtue of provision included in the scheme under paragraph 37 of Schedule 3 apart from provision included under sub-paragraph (4B) of that paragraph,".

(4) In subsection (3H)(b) for "an approved" substitute "a Schedule 3".

(5) In subsection (5)(b)—

(a) for "paragraph 42(3) provides" substitute "paragraphs 40H(4) and 40I(8) provide",

(b) for "approved" substitute "a Schedule 3 SAYE option scheme", and

(c) for "approval of the scheme has been previously withdrawn" substitute "the scheme is no longer a Schedule 3 SAYE option scheme".

93 Schedule 3 is amended as follows.

94 In the title omit "APPROVED".

95 In the cross-heading before paragraph 1 for "*Approval of*" substitute "*Introduction to Schedule 3*".

96 (1) Paragraph 1 (introduction) is amended as follows.

(2) For sub-paragraphs (1) and (2) substitute—

"(A1) For the purposes of the SAYE code an SAYE option scheme is a "Schedule 3" SAYE option scheme if the requirements of Parts 2 to 7 of this Schedule are (and are being) met in relation to the scheme."

(3) For sub-paragraph (4) substitute—

"(4) Sub-paragraph (A1) is subject to Part 8 of this Schedule which—

(a) requires notice of a scheme to be given to Her Majesty's Revenue and Customs ("HMRC") in order for the scheme to be a "Schedule 3" SAYE option scheme (see paragraph 40A(1)),

(b) provides for a scheme in relation to which such notice is given to be taken to be a "Schedule 3" SAYE option scheme (see paragraph 40A(4)), and

(c) gives power to HMRC to enquire into a scheme and to decide that the scheme should no longer be a "Schedule 3" SAYE option scheme (see paragraphs 40F to 40I)."

97 In the title of Part 2 omit "FOR APPROVAL".

98 In the cross-heading before paragraph 4 omit "*for approval*".

99 For paragraph 5 (general restriction on contents of scheme) substitute—

"5 (1) The purpose of the scheme must be to provide, in accordance with this Schedule, benefits for employees and directors in the form of share options.

(2) The scheme must not provide benefits to employees or directors otherwise than in accordance with this Schedule.

(3) For example, the scheme must not provide cash as an alternative to share options or shares which might otherwise be acquired by the exercise of share options."

100 In paragraph 17 (requirements relating to shares that may be subject to share options) after sub-paragraph (1) insert—

"(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 37(3D)."

101 In paragraph 25 (requirements as to contributions to savings arrangements) in sub-paragraph (3)(a) for "approved" substitute "Schedule 3".

102 (1) Paragraph 28 (requirements as to price for acquisition of shares) is amended as follows.

(2) After sub-paragraph (3) insert—

"(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure—

(a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations the same as what it was immediately before the variation or variations, and

(b) that the total price at which those shares may be acquired is immediately after the variation or variations manifestly the same as what it was immediately before the variation or variations.

(3B) Sub-paragraph (3) does not authorise any variation which would result in the requirements of the other paragraphs of this Schedule not being met in relation to the share option."

(3) Omit sub-paragraph (4).

103 In paragraph 34 (exercise of options: scheme-related employment ends) in sub-paragraph (5)—

(a) omit paragraph (a) and the "or" after it, and

(b) in paragraph (b) after "organiser" insert "where the transfer is not a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006".

104 (1) Paragraph 37 (exercise of options: company events) is amended as follows.

(2) In sub-paragraph (1) for "(2), (4) or (5)" substitute "(2)".

(3) After sub-paragraph (3B) insert—

"(3C) Sub-paragraphs (3D) to (3F) apply if the scheme makes provision under sub-paragraph (1).

(3D) The scheme may provide that if, in consequence of the person mentioned in sub-paragraph (2)(a) obtaining control of the company, shares in the company to which a share option relates no longer meet the requirements of Part 4 of this Schedule, the share option may be exercised no later than 7 days after the relevant date notwithstanding that the shares no longer meet those requirements.

(3E) The scheme may provide that a share option relating to shares in the company which is exercised no earlier than 7 days before the relevant date is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1).

(3F) If the scheme makes provision under sub-paragraph (3E) it must also provide that if—

(a) a share option is exercised in reliance on that provision in anticipation of a person obtaining control of a company, but

(b) that person does not obtain control of the company within the required period,

the exercise of the share option is to be treated as having had no effect.

(3G) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (4) or (4A)."

(4) In sub-paragraph (4)(b) for "an approved" substitute "a Schedule 3".

(5) After sub-paragraph (4) insert—

"(4A) The relevant date for the purposes of this sub-paragraph is the date on which a non-UK company reorganisation arrangement applicable to or affecting—

(a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or

(b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employments or directorships or their participation in a Schedule 3 SAYE option scheme,

becomes binding on the shareholders covered by it.

(4B) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (5)."

105 (1) Paragraph 38 (exchanges of options on company reorganisation) is amended as follows.

(2) In sub-paragraph (2) after paragraph (b) omit "or" and insert—

"(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement; or".

(3) In sub-paragraph (3) after paragraph (b) omit "and" and insert—

"(ba) where control is obtained in the way set out in sub-paragraph (2)(ba), within the period of 6 months beginning with the date on which the non-UK company reorganisation arrangement becomes binding on the shareholders covered by it, and".

106 In paragraph 39 (requirements about share options granted in exchange) after sub-paragraph (7) insert—

"(8) For the purposes of this paragraph the market value of any shares is to be determined using a methodology agreed by Her Majesty's Revenue and Customs."

107 For Part 8 substitute—

"PART 8

NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

Notice of scheme to be given to HMRC

40A (1) For an SAYE option scheme to be a "Schedule 3" SAYE option scheme, notice of the scheme must be given to Her Majesty's Revenue and Customs ("HMRC").

(2) The notice must—

(a) be given by the scheme organiser,

(b) contain, or be accompanied by, such information as HMRC may require, and

(c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.

(3) A declaration within this sub-paragraph is a declaration that—

(a) the requirements of Parts 2 to 7 of this Schedule are (and are being) met in relation to the scheme, and

(b) if the declaration is made after the date on which the first option is granted under the scheme, those requirements—

(i) have always been met in relation to the scheme from (and including) that date, and

(ii) were met in relation to that grant.

(4) If notice is given under this paragraph in relation to an SAYE option scheme, for the purposes of the SAYE code the scheme is to be taken to be a "Schedule 3" SAYE option scheme from (and including) the relevant date (but not before that date).

(5) But if the notice is given after the initial notification deadline, the scheme is to be taken to be a "Schedule 3" SAYE option scheme only from the beginning of the relevant tax year.

(6) For the purposes of this paragraph—

"the initial notification deadline" is 6 July in the tax year following that in which the first option is granted under the scheme,

"the relevant date" is—

(a) the date on which the declaration within sub-paragraph (3) is made, or

(b) if that declaration is made after the date on which the first option is granted under the scheme, the date on which that grant is made, and

"the relevant tax year" is—

(a) if the notice under this paragraph is given on or before 6 July in a tax year, the tax year preceding the tax year in which the notice is given, or

(b) if the notice under this paragraph is given after 6 July in a tax year, the tax year in which the notice is given.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

Annual returns

40B (1) This paragraph applies in relation to an SAYE option scheme which is a Schedule 3 SAYE option scheme during all or part of a tax year.

(2) The scheme organiser must give a return for the tax year to HMRC.

(3) The return must—

(a) contain, or be accompanied by, such information as HMRC may require, and

(b) be given on or before 6 July in the following tax year.

(4) The information which may be required under sub-paragraph (3)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—

(a) any person who has participated in the scheme, or

(b) any other person whose liability to tax the operation of the scheme is relevant to.

(5) If during a tax year an alteration is made in a key feature of the scheme, the return for the tax year must contain a declaration within sub-paragraph (6) made by such persons as HMRC may require.

(6) A declaration within this sub-paragraph is a declaration that the requirements of Parts 2 to 7 of this Schedule—

(a) are (and are being) met in relation to the scheme, and

(b) have always been met in relation to the scheme since the alteration.

(7) For the purposes of sub-paragraph (5) a "key feature" of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 7 of this Schedule to be met in relation to the scheme.

(8) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.

(9) For the purposes of this Part "the termination condition" is met in relation to a scheme when—

(a) all options granted under the scheme—

(i) have been exercised, or

(ii) are no longer capable of being exercised in accordance with the scheme (because, for example, they have lapsed or been cancelled), and

(b) no more options will be granted under the scheme.

40C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (including any information required to accompany it) on or before the date mentioned in paragraph 40B(3)(b) ("the date for delivery").

(2) The scheme organiser is liable for a penalty of £100.

(3) If the scheme organiser's failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.

(4) If the scheme organiser's failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.

(5) The scheme organiser is liable for a further penalty under this sub-paragraph if—

(a) the scheme organiser's failure continues after the end of the period of 9 months beginning with the date for delivery,

(b) HMRC decide that such a penalty is payable, and

(c) HMRC give notice to the scheme organiser specifying the date from which the penalty is payable.

(6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).

(7) The date specified in the notice under sub-paragraph (5)(c)—

(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 (5)(a).

(8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the tribunal) that there is a reasonable excuse for its failure.

(9) For the purposes of sub-paragraph (8)—

(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser's control,

(b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and

(c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Notices and returns to be given electronically

40D (1) A notice under paragraph 40A, and any information accompanying the notice, must be given electronically.

(2) A return under paragraph 40B, and any information accompanying the return, must be given electronically.

(3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any

accompanying information in another way; and the notice, return or information must be given in that other way.

(4) The Commissioners for Her Majesty's Revenue and Customs—

(a) must prescribe how notices, returns and accompanying information are to be given electronically;

(b) may make different provision for different cases or circumstances.

40E (1) This paragraph applies if a return under paragraph 40B, or any information accompanying such a return, is given otherwise than in accordance with paragraph 40D.

(2) The scheme organiser is liable for a penalty of an amount decided by HMRC.

(3) The penalty must not exceed £5,000.

Enquiries

40F (1) This paragraph applies if notice is given in relation to an SAYE option scheme under paragraph 40A.

(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than—

(a) 6 July in the tax year following the tax year in which the initial notification deadline falls, or

(b) if the notice under paragraph 40A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.

"The initial notification deadline" and "the relevant tax year" have the meaning given by paragraph 40A(6).

(3) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 6 July in the second tax year following that in which a return containing a declaration within paragraph 40B(6) is given.

(4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 7 of this Schedule—

(a) are not (or are not being) met in relation to the scheme, or

(b) have not been met in relation to the scheme.

(5) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so.

(6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition is met in relation to the scheme.

40G (1) An enquiry under paragraph 40F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a "closure notice") stating—

(a) that HMRC have completed the enquiry, and

(b) that—

(i) paragraph 40H is to apply,

(ii) paragraph 40I is to apply, or

(iii) neither paragraph 40H nor paragraph 40I is to apply.

(2) If the scheme organiser receives notice under paragraph 40F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a closure notice for the enquiry to be given within a specified period.

(3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).

(4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.

40H (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 7 of this Schedule—

(i) are not (or are not being) met in relation to the scheme, or

(ii) have not been met in relation to the scheme, and

(b) that the situation is, or was, so serious that this paragraph should apply.

(2) If this paragraph applies—

(a) the scheme is no longer to be a Schedule 3 SAYE option scheme, and

(b) the scheme organiser is liable for a penalty of an amount decided by HMRC.

(3) Sub-paragraph (4) applies in relation to an option granted under the scheme if the option—

(a) is granted before the giving of the closure notice at a time when the scheme is a Schedule 3 SAYE option scheme, but

(b) is exercised after the giving of the closure notice.

(4) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.

(5) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which participants in the scheme have not been liable, or will not be liable in the future, and

(b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been taken to be a Schedule 3 SAYE option scheme at any relevant time (taking into account sub-paragraph (4) as relevant).

(6) In sub-paragraph (5) "relevant time" means any time before the giving of the closure notice when requirements of Parts 2 to 7 of this Schedule were not (or were not being) met in relation to the scheme.

40I (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 7 of this Schedule—

(i) are not (or are not being) met in relation to the scheme, or

(ii) have not been met in relation to the scheme, but

(b) that the situation is not, or was not, so serious that paragraph 40H should apply.

(2) If this paragraph applies, the scheme organiser—

(a) is liable for a penalty of an amount decided by HMRC, and

(b) must, no later than 90 days after the day on which the closure notice is given, secure that the requirements of Parts 2 to 7 of this Schedule are (and are being) met in relation to the scheme.

(3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.

(4) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the scheme before the closure notice was given or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).

(5) If the scheme organiser fails to comply with sub-paragraph (2)(b), HMRC may give the scheme organiser a notice stating that that is the case (a "default notice").

(6) If the scheme organiser is given a default notice—

(a) the scheme is no longer to be a Schedule 3 SAYE option scheme, and

(b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.

(7) Sub-paragraph (8) applies in relation to an option granted under the scheme if the option—

(a) is granted before the giving of the default notice at a time when the scheme is a Schedule 3 SAYE option scheme, but

(b) is exercised after the giving of the default notice.

(8) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.

(9) The penalty under sub-paragraph (6)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which participants in the scheme have not been liable, or will not be liable in the future, and

(b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been taken to be a Schedule 3 SAYE option scheme at any relevant time (taking into account sub-paragraph (8) as relevant).

(10) In sub-paragraph (9) "relevant time" means any time before the giving of the default notice when requirements of Parts 2 to 7 of

this Schedule were not (or were not being) met in relation to the scheme.

Assessment of penalties

40J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.

(2) HMRC must assess the penalty and notify the scheme organiser of the assessment.

(3) The assessment—

(a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax,

(b) may be enforced as if it were such an assessment, and

(c) may be combined with such an assessment.

(4) The notice to the scheme organiser under sub-paragraph (2) must state the accounting period of the scheme organiser or the tax year in respect of which the penalty is assessed.

Appeals

40K (1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 40C or 40E.

(2) The scheme organiser may appeal against a decision of HMRC mentioned in paragraph 40H(1) or 40I(1).

(3) The scheme organiser may appeal against a decision of HMRC to give the scheme organiser a default notice under paragraph 40I.

(4) The scheme organiser may appeal against a decision of HMRC as to the amount of a penalty payable by the scheme organiser under this Part.

(5) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).

(6) Sub-paragraph (5) does not require the scheme organiser to pay a penalty before an appeal, the outcome of which could affect the scheme organiser's liability for the penalty or its amount, is determined.

(7) On an appeal under sub-paragraph (1) or (3), the tribunal may affirm or cancel the decision.

(8) On an appeal under sub-paragraph (2), the tribunal may—

(a) affirm or cancel the decision, or

(b) substitute for the decision another decision which HMRC had power to make.

(9) On an appeal under sub-paragraph (4), the tribunal may—

(a) affirm the amount of the penalty decided, or

(b) substitute another amount for that amount."

108 (1) Paragraph 45 (power to require information) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—

(a) which the officer reasonably requires for the performance of any functions of Her Majesty's Revenue and Customs or an officer of Revenue and Customs under the SAYE code, and

(b) which the person to whom the notice is addressed has or can reasonably obtain."

(3) In sub-paragraph (2)(a)—

(a) for sub-paragraph (i) substitute—

"(i) to check anything contained in a notice under paragraph 40A or a return under paragraph 40B or to check any information accompanying such a notice or return, or", and

(b) in sub-paragraph (ii) after "scheme" insert "or any other person whose liability to tax the operation of a scheme is relevant to".

109 After paragraph 47 insert—

"Non-UK company reorganisation arrangements

47A (1) For the purposes of the SAYE code a "non-UK company reorganisation arrangement" is an arrangement made in relation to a company under the law of a territory outside the United Kingdom—

(a) which gives effect to a reorganisation of the company's share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods, and

(b) which is approved by a resolution of members of the company.

(2) A resolution does not count for the purposes of sub-paragraph (1)(b) unless the members who vote in favour of approving the arrangement represent more than 50% of the total voting rights of all the members having the right to vote on the issue."

110 In paragraph 49 (index of defined expressions)—

(a) omit the entry for "approved", and

(b) at the appropriate places insert—

"non-UK company reorganisation arrangement	paragraph 47A
Schedule 3 SAYE option scheme	paragraph 1 (and see Part 8)".

Other amendments: TCGA 1992

111 TCGA 1992 is amended as follows.

112 (1) Section 105A (shares acquired on same day: election for alternative treatment) is amended as follows.

(2) For "approved-scheme" (in all places) substitute "tax-advantaged-scheme".

(3) In subsection (1)(b)(ii) omit "approved".

113 In section 105B (provision supplementary to section 105A) in subsections (7) and (8) for "approved-scheme" substitute "tax-advantaged-scheme".

114 In section 238A (share schemes and share incentives) in subsection (2)(b) for "approved" substitute "Schedule 3".

115 Part 2 of Schedule 7D (SAYE option schemes) is amended as follows.

116 In the title for "APPROVED" substitute "SCHEDULE 3".

117 In paragraph 9 (introduction) in sub-paragraphs (1) and (2) omit "approved".

118 (1) Paragraph 10 (market value rule not to apply) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (a)(i) for "an approved" substitute "a Schedule 3", and

(b) in paragraph (b) for "approved" substitute "a Schedule 3 SAYE option scheme".

(3) For sub-paragraph (3) substitute—

"(3) Sub-paragraph (3A) applies for the purposes of sub-paragraph (1)(b) if—

(a) the SAYE option scheme is no longer to be a Schedule 3 SAYE option scheme by virtue of paragraph 40H or 40I of Schedule 3 to ITEPA 2003, and

(b) the option was granted before, but exercised after, the giving of the closure notice or the default notice (as the case may be).

(3A) The scheme is to be taken still to be a Schedule 3 SAYE option scheme when the option is exercised."

Other amendments: ITEPA 2003, Part 4 of FA 2004, ITTOIA 2005 and CTA 2009

119 ITEPA 2003 is amended as follows.

120 In section 227 (scope of Part 4) in subsection (4)(e) omit "approved".

121 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 7, omit "approved".

122 In section 431A (provision relating to restricted securities) in subsection (2)(b) for "an approved" substitute "a Schedule 3".

123 In section 473 (introduction to taxation of securities options) in subsection (4)(a) for "approved" substitute "Schedule 3".

124 In section 476 (charge on occurrence of chargeable event) in subsection (6), in the entry for section 519, omit "approved".

125 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(b) omit "approved".

126 (1) Section 554E (exclusions under Part 7A) is amended as follows.

(2) In subsection (1)(b) for "an approved" substitute "a Schedule 3".

(3) In subsection (3)(a)(ii) and (b)(ii) for the first "an approved" substitute "a Schedule 3".

(4) In subsection (4)(a) and (b) for the second "approved" substitute "Schedule 3".

127 In section 697 (PAYE: enhancing the value of an asset) in subsection (4)—

(a) in paragraph (a) omit the words from "Schedule 3" to the second "or",

(b) after paragraph (a) insert—

"(aa) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3),", and

(c) in paragraph (b) for "such a scheme" substitute "a scheme mentioned in any of the preceding paragraphs".

128 In section 701 (PAYE: meaning of "asset") in subsection (2)(c)—

(a) in sub-paragraph (i) omit "Schedule 3 (approved SAYE option schemes) or", and

(b) after sub-paragraph (i) insert—

"(iza) any shares acquired by the employee under a scheme which is a Schedule 3 SAYE option scheme (see Schedule 3),".

129 In section 195 of FA 2004 (pensions: transfer of certain shares to be treated as payment of contribution) in subsection (5), in the definition of "SAYE option scheme", omit "approved".

130 (1) Section 703 of ITTOIA 2005 (SAYE interest: meaning of "certified SAYE savings arrangement") is amended as follows.

(2) In subsection (2)(b) for "an approved" substitute "a Schedule 3".

(3) In subsection (3) for the definition of "SAYE option scheme" substitute—

""Schedule 3 SAYE option scheme" has the meaning given in Schedule 3 to ITEPA 2003."

131 (1) Section 999 of CTA 2009 (deduction for costs of setting up SAYE option scheme etc) is amended as follows.

(2) In subsection (1)—
  (a) in paragraph (a) omit "that is approved by an officer of Revenue and Customs", and
  (b) in paragraph (b) for "it is approved" substitute "the relevant date".

(3) In subsection (2)—
  (a) at the beginning of paragraph (a) insert "Schedule 3",
  (b) at the beginning of paragraph (b) insert "Schedule 4", and
  (c) omit the final sentence.

(4) In subsection (6) for "approval is given" (in all places) substitute "relevant date falls".

(5) After subsection (7) insert—

"(8) In this section "relevant date"—
  (a) in relation to a Schedule 3 SAYE option scheme, has the meaning given in paragraph 40A(6) of Schedule 3 to ITEPA 2003, and
  (b) in relation to a Schedule 4 CSOP scheme, has the meaning given in paragraph 28A(6) of Schedule 4 to ITEPA 2003."

Other amendments: Individual Savings Account Regulations 1998 (S.I. 1998/1870)

132 The Individual Savings Account Regulations 1998 are amended as follows.

133 In regulation 2(1)(a) (interpretation)—
  (a) omit the definition of "approved SAYE option scheme", and
  (b) at the appropriate place insert—
  "Schedule 3 SAYE option scheme" shall be construed in accordance with the SAYE code (see section 516(3) of ITEPA 2003);".

134 In regulation 7 (qualifying investments) in paragraphs (2)(h)(i) and (10)(a) for "an approved" substitute "a Schedule 3".

Commencement and transitional provision

135 The amendments made by this Part are treated as having come into force on 6 April 2014.

136 (1) This paragraph applies to an SAYE option scheme established before 6 April 2014.

(2) If the scheme was an "approved" SAYE option scheme immediately before 6 April 2014, the amendment made by paragraph 99 above has effect in relation to the scheme only if, and when, a provision of the scheme is altered on or after that date.

(3) Paragraph 40A of Schedule 3 to ITEPA 2003 (as inserted by paragraph 107 above) has effect in relation to the scheme—
  (a) as if, at the end of sub-paragraph (1), the words "on or before 6 July 2015" were inserted,
  (b) if the date on which the first option is granted under the scheme falls before 6 April 2014—

(i) as if, in sub-paragraph (3)(b)(i) and in paragraph (b) of the definition of "the relevant date" in sub-paragraph (6), the reference to the date on which the first option is granted under the scheme were a reference to 6 April 2014, and

(ii) as if sub-paragraph (3)(b)(ii) were omitted,

(c) as if sub-paragraph (5) were omitted, and

(d) as if, in sub-paragraph (6), the definitions of "the initial notification deadline" and "the relevant tax year" were omitted.

(4) But the scheme cannot be a "Schedule 3" SAYE option scheme if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.

(5) Sub-paragraph (4) is without prejudice to the outcome of any appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against the refusal or decision to withdraw approval.

(6) The amendments made by this Part do not affect any right of appeal under paragraph 41 or 44 of Schedule 3 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the scheme.

(7) Sub-paragraph (8) applies in relation to an option granted before 6 April 2014 under the scheme at a time when the scheme was an "approved" SAYE option scheme.

(8) On and after 6 April 2014, the SAYE code has effect in relation to the option as if it were granted under the scheme at a time when the scheme was a "Schedule 3" SAYE option scheme (even if no notice under paragraph 40A of Schedule 3 to ITEPA 2003 is given in relation to the scheme).

(9) Sub-paragraph (10) applies in relation to an option granted before 6 April 2014 under the scheme at a time when the scheme was an "approved" SAYE option scheme if—

(a) no notice is given under paragraph 40A of Schedule 3 to ITEPA 2003 in relation to the scheme, and

(b) the option is exercised on or after 6 April 2014.

(10) The scheme is to be taken to be a "Schedule 3" SAYE option scheme at the time of the exercise of the option for the purposes of the following provisions in their application to the option—

(a) section 519 of ITEPA 2003 (exemption in respect of exercise of share option), and

(b) paragraph 10(1)(b) of Schedule 7D to TCGA 1992 (market value rule not to apply).

(11) In relation to the scheme—

(a) paragraph 40F of Schedule 3 to ITEPA 2003 (as inserted by paragraph 107 above) has effect as if for sub-paragraph (2) there were substituted—

"(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 6 July 2016.", and

(b) the cases covered by paragraphs 40F(4)(b), 40H(1)(a)(ii) and 40I(1)(a)(ii) of Schedule 3 to ITEPA 2003 (as inserted by paragraph 107 above) include cases in which requirements of Parts 2 to 7 of that Schedule were not met before 6 April 2014.

(12) The amendments made by paragraph 108 above do not affect a notice given in relation to the scheme under paragraph 45 of Schedule 3 to ITEPA 2003 before 6 April 2014.

(13) If the scheme was an "approved" SAYE option scheme before 6 April 2014, the amendments made by this Part do not affect the deductions which may be made in relation to the scheme under section 999 of CTA 2009 (deduction for costs of setting up scheme) if they would otherwise do so.

PART 3

CSOP SCHEMES

Amendments to Chapter 8 of Part 7 of ITEPA 2003

137 Chapter 8 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: CSOP schemes) is amended as follows.

138 In the title omit "APPROVED".

139 (1) Section 521 (introduction to CSOP schemes) is amended as follows.

(2) In the heading omit "**Approved**".

(3) In subsection (1)—

(a) omit paragraph (a), and

(b) in paragraph (b) for "those" substitute "CSOP schemes which are Schedule 4 CSOP".

(4) Omit subsection (2).

(5) In subsection (3)(c) for "approved" substitute "Schedule 4".

(6) In subsection (4)—

(a) omit the definition of "approved", and

(b) after the definition of "CSOP scheme" insert—

""Schedule 4" CSOP scheme is to be read in accordance with paragraph 1 of Schedule 4 (subject to Part 7 of that Schedule);".

140 In section 522 (share options to which Chapter applies) in subsection (1)(a) for "an approved" substitute "a Schedule 4".

141 (1) Section 524 (no charge in respect of exercise of option) is amended as follows.

(2) In subsections (1)(a) and (2E)(a) for "approved" substitute "a Schedule 4 CSOP scheme".

(3) In subsection (2L)(b) for "an approved" substitute "a Schedule 4".

142 Schedule 4 is amended as follows.

143 In the title omit "APPROVED".

144 In the cross-heading before paragraph 1 for "*Approval of*" substitute "*Introduction to Schedule 4*".

145 (1) Paragraph 1 (introduction) is amended as follows.

(2) For sub-paragraphs (1) and (2) substitute—

"(A1) For the purposes of the CSOP code a CSOP scheme is a "Schedule 4" CSOP scheme if the requirements of Parts 2 to 6 of this Schedule are (and are being) met in relation to the scheme."

(3) For sub-paragraph (4) substitute—

"(4) Sub-paragraph (A1) is subject to Part 7 of this Schedule which—

(a) requires notice of a scheme to be given to Her Majesty's Revenue and Customs ("HMRC") in order for the scheme to be a "Schedule 4" CSOP scheme (see paragraph 28A(1)),

(b) provides for a scheme in relation to which such notice is given to be taken to be a "Schedule 4" CSOP scheme (see paragraph 28A(4)), and

(c) gives power to HMRC to enquire into a scheme and to decide that the scheme should no longer be a "Schedule 4" CSOP scheme (see paragraphs 28F to 28I)."

146 In the title for Part 2 omit "FOR APPROVAL".

147 In the cross-heading before paragraph 4 omit "*for approval*".

148 For paragraph 5 (general restriction on contents of scheme) substitute—

"5 (1) The purpose of the scheme must be to provide, in accordance with this Schedule, benefits for employees and directors in the form of share options.

(2) The scheme must not provide benefits to employees or directors otherwise than in accordance with this Schedule.

(3) For example, the scheme must not provide cash as an alternative to share options or shares which might otherwise be acquired by the exercise of share options."

149 In paragraph 6 (limit on value of shares subject to options) in sub-paragraph (1)(b) for "approved" substitute "Schedule 4".

150 In paragraph 15 (requirements relating to shares that may be subject to share options) after sub-paragraph (1) insert—

"(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 25A(5B)."

151 In paragraph 21 (requirements relating to share options) in sub-paragraph (1) before the entry for paragraph 22 insert—

"paragraph 21A (general requirements as to terms of option),".

152 After paragraph 21 insert—

"General requirements as to terms of option

21A (1) A share option which is granted must be capable of being exercised at some time during the period covered by section 524(2).

(2) The following terms of the option must be stated, and notified to the participant, at the time the option is granted—

(a) the price at which shares may be acquired by the exercise of the option,

(b) the number and description of the shares which may be acquired by the exercise of the option,

(c) the restrictions to which those shares may be subject,

(d) the times at which the option may be exercised (in whole or in part), and

(e) the circumstances under which the option will lapse or be cancelled (in whole or in part), including any conditions to which the exercise of the option is subject (in whole or in part).

(3) Terms stated as required by sub-paragraph (2) may be varied after the grant of the option, but—

(a) in the case of the price, only as provided for in paragraph 22,

(b) in the case of the number or description of shares, only as provided for in paragraph 22 or by way of a mechanism which is stated and notified to the participant at the time the option is granted, and

(c) in any other case, only by way of a mechanism which is stated and notified to the participant at the time the option is granted.

(4) Subject to sub-paragraph (5)—

(a) any terms stated for the purposes of sub-paragraph (2)(c) or (e), and

(b) any mechanism stated for the purposes of sub-paragraph (3)(b) or (c),

must be based on fair and objective criteria.

(5) Such terms or any such mechanism—

(a) may confer a discretion on the participant;

(b) may confer a discretion on any other person but only if it is fair and reasonable for the discretion to be conferred on that person;

and a discretion falling within paragraph (b) must be exercised in a way that is fair and reasonable."

153 (1) Paragraph 22 (requirements as to price for acquisition of shares etc) is amended as follows.

(2) In sub-paragraph (1) omit paragraph (a) and the "and" after it.

(3) After sub-paragraph (3) insert—

"(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure—

(a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations the same as what it was immediately before the variation or variations, and

(b) that the total price at which those shares may be acquired is immediately after the variation or variations manifestly the same as what it was immediately before the variation or variations.

(3B) Sub-paragraph (3) does not authorise any variation which would result in the requirements of the other paragraphs of this Schedule not being met in relation to the share option."

(4) Omit sub-paragraphs (4) and (5).

154 (1) Paragraph 25A (exercise of options: company events) is amended as follows.

(2) In sub-paragraph (1) omit "or (6)".

(3) After sub-paragraph (5) insert—

"(5A) Sub-paragraphs (5B) to (5D) apply if the scheme makes provision under sub-paragraph (1).

(5B) The scheme may provide that if, in consequence of the person mentioned in sub-paragraph (2)(a) obtaining control of the company, shares in the company to which a share option relates no longer meet the requirements of Part 4 of this Schedule, the share option may be exercised no later than 7 days after the relevant date notwithstanding that the shares no longer meet those requirements.

(5C) The scheme may provide that a share option relating to shares in the company which is exercised no earlier than 7 days before the relevant date is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1).

(5D) If the scheme makes provision under sub-paragraph (5C) it must also provide that if—

(a) a share option is exercised in reliance on that provision in anticipation of a person obtaining control of a company, but

(b) that person does not obtain control of the company within the required period,

the exercise of the share option is to be treated as having had no effect.

(5E) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (6) or (6A)."

(4) In sub-paragraph (6)(b) for "an approved" substitute "a Schedule 4".

(5) After sub-paragraph (6) insert—

"(6A) The relevant date for the purposes of this sub-paragraph is the date on which a non-UK company reorganisation arrangement applicable to or affecting—

(a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or

(b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than

by reference to their employments or directorships or their participation in a Schedule 4 CSOP scheme,

becomes binding on the shareholders covered by it."

155 (1) Paragraph 26 (exchanges of options on company reorganisation) is amended as follows.

(2) In sub-paragraph (2) after paragraph (b) insert—

"(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement;".

(3) In sub-paragraph (3) after paragraph (b) omit "and" and insert—

"(ba) where control is obtained in the way set out in sub-paragraph (2)(ba), within the period of 6 months beginning with the date on which the non-UK company reorganisation arrangement becomes binding on the shareholders covered by it, and".

156 In paragraph 27 (requirements about share options granted in exchange) after sub-paragraph (7) insert—

"(8) For the purposes of this paragraph the market value of any shares is to be determined using a methodology agreed by Her Majesty's Revenue and Customs."

157 For Part 7 substitute—

"PART 7

NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

Notice of scheme to be given to HMRC

28A (1) For a CSOP scheme to be a "Schedule 4" CSOP scheme, notice of the scheme must be given to Her Majesty's Revenue and Customs ("HMRC").

(2) The notice must—

(a) be given by the scheme organiser,

(b) contain, or be accompanied by, such information as HMRC may require, and

(c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.

(3) A declaration within this sub-paragraph is a declaration that—

(a) the requirements of Parts 2 to 6 of this Schedule are (and are being) met in relation to the scheme, and

(b) if the declaration is made after the date on which the first option is granted under the scheme, those requirements—

(i) have always been met in relation to the scheme from (and including) that date, and

(ii) were met in relation to that grant.

(4) If notice is given under this paragraph in relation to a CSOP scheme, for the purposes of the CSOP code the scheme is to be

taken to be a "Schedule 4" CSOP scheme from (and including) the relevant date (but not before that date).

(5) But if the notice is given after the initial notification deadline, the scheme is to be taken to be a "Schedule 4" CSOP scheme only from the beginning of the relevant tax year.

(6) For the purposes of this paragraph—

"the initial notification deadline" is 6 July in the tax year following that in which the first option is granted under the scheme,

"the relevant date" is—

(a) the date on which the declaration within sub-paragraph (3) is made, or

(b) if that declaration is made after the date on which the first option is granted under the scheme, the date on which that grant is made, and

"the relevant tax year" is—

(a) if the notice under this paragraph is given on or before 6 July in a tax year, the tax year preceding the tax year in which the notice is given, or

(b) if the notice under this paragraph is given after 6 July in a tax year, the tax year in which the notice is given.

(7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

Annual returns

28B (1) This paragraph applies in relation to a CSOP scheme which is a Schedule 4 CSOP scheme during all or part of a tax year.

(2) The scheme organiser must give a return for the tax year to HMRC.

(3) The return must—

(a) contain, or be accompanied by, such information as HMRC may require, and

(b) be given on or before 6 July in the following tax year.

(4) The information which may be required under sub-paragraph (3)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—

(a) any person who has participated in the scheme, or

(b) any other person whose liability to tax the operation of the scheme is relevant to.

(5) If during a tax year an alteration is made in a key feature of the scheme, the return must contain a declaration within sub-paragraph (6) made by such persons as HMRC may require.

(6) A declaration within this sub-paragraph is a declaration that the requirements of Parts 2 to 6 of this Schedule—

(a) are (and are being) met in relation to the scheme, and

(b) have always been met in relation to the scheme since the alteration.

(7) For the purposes of sub-paragraph (5) a "key feature" of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 6 of this Schedule to be met in relation to the scheme.

(8) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.

(9) For the purposes of this Part "the termination condition" is met in relation to a scheme when—

(a) all options granted under the scheme—

(i) have been exercised, or

(ii) are no longer capable of being exercised in accordance with the scheme (because, for example, they have lapsed or been cancelled), and

(b) no more options will be granted under the scheme.

28C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (including any information required to accompany it) on or before the date mentioned in paragraph 28B(3)(b) ("the date for delivery").

(2) The scheme organiser is liable for a penalty of £100.

(3) If the scheme organiser's failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.

(4) If the scheme organiser's failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.

(5) The scheme organiser is liable for a further penalty under this sub-paragraph if—

(a) the scheme organiser's failure continues after the end of the period of 9 months beginning with the date for delivery,

(b) HMRC decide that such a penalty is payable, and

(c) HMRC give notice to the scheme organiser specifying the date from which the penalty is payable.

(6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).

(7) The date specified in the notice under sub-paragraph (5)(c)—

(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 (5)(a).

(8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 28K, the tribunal) that there is a reasonable excuse for its failure.

(9) For the purposes of sub-paragraph (8)—

(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser's control,

(b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and

(c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Notices and returns to be given electronically

28D (1) A notice under paragraph 28A, and any information accompanying the notice, must be given electronically.

(2) A return under paragraph 28B, and any information accompanying the return, must be given electronically.

(3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any accompanying information in another way; and the notice, return or information must be given in that other way.

(4) The Commissioners for Her Majesty's Revenue and Customs—

(a) must prescribe how notices, returns and accompanying information are to be given electronically;

(b) may make different provision for different cases or circumstances.

28E (1) This paragraph applies if a return under paragraph 28B, or any information accompanying such a return, is given otherwise than in accordance with paragraph 28D.

(2) The scheme organiser is liable for a penalty of an amount decided by HMRC.

(3) The penalty must not exceed £5,000.

Enquiries

28F (1) This paragraph applies if notice is given in relation to a CSOP scheme under paragraph 28A.

(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than—

(a) 6 July in the tax year following that in which the initial notification deadline falls, or

(b) if the notice under paragraph 28A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.

"The initial notification deadline" and "the relevant tax year" have the meaning given by paragraph 28A(6).

(3) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 6 July in the tax year following that in which a return containing a declaration within paragraph 28B(6) is given.

(4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 6 of this Schedule—

(a) are not (or are not being) met in relation to the scheme, or

(b) have not been met in relation to the scheme.

(5) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so.

(6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition is met in relation to the scheme.

28G (1) An enquiry under paragraph 28F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a "closure notice") stating—

(a) that HMRC have completed the enquiry, and

(b) that—

(i) paragraph 28H is to apply,

(ii) paragraph 28I is to apply, or

(iii) neither paragraph 28H nor paragraph 28I is to apply.

(2) If the scheme organiser receives notice under paragraph 28F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a closure notice for the enquiry to be given within a specified period.

(3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).

(4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.

28H (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 6 of this Schedule—

(i) are not (or are not being) met in relation to the scheme, or

(ii) have not been met in relation to the scheme, and

(b) that the situation is, or was, so serious that this paragraph should apply.

(2) If this paragraph applies—

(a) the scheme is no longer to be a Schedule 4 CSOP scheme, and

(b) the scheme organiser is liable for a penalty of an amount decided by HMRC.

(3) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which participants in the scheme have not been liable, or will not be liable in the future, and

(b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been taken to be a Schedule 4 CSOP scheme at any relevant time.

(4) In sub-paragraph (3) "relevant time" means any time before the giving of the closure notice when requirements of Parts 2 to 6 of this Schedule were not (or were not being) met in relation to the scheme.

28I (1) This paragraph applies if HMRC decide—

(a) that requirements of Parts 2 to 6 of this Schedule—

(i) are not (or are not being) met in relation to the scheme, or

(ii) have not been met in relation to the scheme, but

(b) that the situation is not, or was not, so serious that paragraph 28H should apply.

(2) If this paragraph applies, the scheme organiser—

(a) is liable for a penalty of an amount decided by HMRC, and

(b) must, no later than 90 days after the day on which the closure notice is given, secure that the requirements of Parts 2 to 6 of this Schedule are (and are being) met in relation to the scheme.

(3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.

(4) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the scheme before the closure notice was given or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).

(5) If the scheme organiser fails to comply with sub-paragraph (2)(b), HMRC may give the scheme organiser a notice stating that that is the case (a "default notice").

(6) If the scheme organiser is given a default notice—

(a) the scheme is no longer to be a Schedule 4 CSOP scheme, and

(b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.

(7) The penalty under sub-paragraph (6)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—

(a) the total income tax for which participants in the scheme have not been liable, or will not be liable in the future, and

(b) the total national insurance contributions for which any persons have not been liable, or will not be liable in the future,

in consequence of the scheme having been taken to be a Schedule 4 CSOP scheme at any relevant time.

(8) In sub-paragraph (7) "relevant time" means any time before the giving of the default notice when requirements of Parts 2 to 6 of this Schedule were not (or were not being) met in relation to the scheme.

Assessment of penalties

28J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.

(2) HMRC must assess the penalty and notify the scheme organiser of the assessment.

(3) The assessment—

(a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax,

(b) may be enforced as if it were such an assessment, and

(c) may be combined with such an assessment.

(4) The notice to the scheme organiser under sub-paragraph (2) must state the accounting period of the scheme organiser or the tax year in respect of which the penalty is assessed.

Appeals

28K (1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 28C or 28E.

(2) The scheme organiser may appeal against a decision of HMRC mentioned in paragraph 28H(1) or 28I(1).

(3) The scheme organiser may appeal against a decision of HMRC to give the scheme organiser a default notice under paragraph 28I.

(4) The scheme organiser may appeal against a decision of HMRC as to the amount of a penalty payable by the scheme organiser under this Part.

(5) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).

(6) Sub-paragraph (5) does not require the scheme organiser to pay a penalty before an appeal, the outcome of which could affect the scheme organiser's liability for the penalty or its amount, is determined.

(7) On an appeal under sub-paragraph (1) or (3), the tribunal may affirm or cancel the decision.

(8) On an appeal under sub-paragraph (2), the tribunal may—

(a) affirm or cancel the decision, or
(b) substitute for the decision another decision which HMRC had power to make.

(9) On an appeal under sub-paragraph (4), the tribunal may—
(a) affirm the amount of the penalty decided, or
(b) substitute another amount for that amount."

158 (1) Paragraph 33 (power to require information) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—
(a) which the officer reasonably requires for the performance of any functions of Her Majesty's Revenue and Customs or an officer of Revenue and Customs under the CSOP code, and
(b) which the person to whom the notice is addressed has or can reasonably obtain."

(3) In sub-paragraph (2)(a)—
(a) for sub-paragraph (i) substitute—
"(i) to check anything contained in a notice under paragraph 28A or a return under paragraph 28B or to check any information accompanying such a notice or return, or", and
(b) in sub-paragraph (ii) after "scheme" insert "or any other person whose liability to tax the operation of a scheme is relevant to".

159 After paragraph 35 insert—

"Non-UK company reorganisation arrangements

35ZA(1) For the purposes of the CSOP code a "non-UK company reorganisation arrangement" is an arrangement made in relation to a company under the law of a territory outside the United Kingdom—
(a) which gives effect to a reorganisation of the company's share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods, and
(b) which is approved by a resolution of members of the company."

(2) A resolution does not count for the purposes of sub-paragraph (1)(b) unless the members who vote in favour of approving the arrangement represent more than 50% of the total voting rights of all the members having the right to vote on the issue."

160 In paragraph 37 (index of defined expressions)—
(a) omit the entry for "approved", and
(b) at the appropriate places insert—

"non-UK company reorganisation arrangement	paragraph 35ZA
Schedule 4 CSOP scheme	paragraph 1 (and see Part 7)".

Other amendments: TCGA 1992

161 TCGA 1992 is amended as follows.

162 In section 238A (share schemes and share incentives) in subsection (2)(c) for "approved" substitute "Schedule 4".

163 Part 3 of Schedule 7D (CSOP schemes) is amended as follows.

164 In the title for "APPROVED" substitute "SCHEDULE 4".

165 (1) Paragraph 11 (introduction) is amended as follows.

(2) In sub-paragraphs (1) and (2) omit "approved".

(3) In sub-paragraph (3)(a)(i) for "an approved" substitute "a Schedule 4".

166 In paragraph 12 (relief where income tax charged in respect of grant of option) in sub-paragraph (4)(b) for "approved" substitute "a Schedule 4 CSOP scheme".

167 In paragraph 13 (market value rule not to apply) in sub-paragraphs (1)(a) and (3) for "approved" substitute "a Schedule 4 CSOP scheme".

Other amendments: ITEPA 2003

168 ITEPA 2003 is amended as follows.

169 In section 227 (scope of Part 4) in subsection (4)(g) omit "approved".

170 In section 417 (scope of Part 7) in subsection (2), in the entry for Chapter 8, omit "approved".

171 In section 431A (which makes provision relating to restricted securities etc) in subsection (2)(c) for "an approved" substitute "a Schedule 4".

172 In section 473 (introduction to taxation of securities options) in subsection (4)(b) for "approved" substitute "Schedule 4".

173 In section 475 (no charge in respect of acquisition of option) in subsection (2) omit "approved".

174 In section 476 (charge on occurrence of chargeable event) in subsection (6), in the entry for section 524, omit "approved".

175 In section 480 (deductible amounts) in subsection (4) omit "approved".

176 In section 539 (CSOP and other options relevant for purposes of section 536) in subsection (4) for "approved under Schedule 4 (CSOP schemes)" substitute "which is a Schedule 4 CSOP scheme (see Schedule 4)".

177 In section 549 (application of Chapter 11 of Part 7) in subsection (2)(c) omit "approved".

178 (1) Section 554E (exclusions under Part 7A) is amended as follows.

(2) In subsection (1)(c) for "an approved" substitute "a Schedule 4".

(3) In subsection (3)(a)(ii) and (b)(ii) for the second "an approved" substitute "a Schedule 4".

(4) In subsection (4)(a) and (b) for the third "approved" substitute "Schedule 4".

179 In section 697 (PAYE: enhancing the value of an asset) in subsection (4) before paragraph (b) insert—

"(ab) any shares acquired by the employee under a scheme which is a Schedule 4 CSOP scheme (see Schedule 4),".

180 In section 701 (PAYE: meaning of "asset") in subsection (2)(c)(ia) for "approved under Schedule 4 (approved CSOP schemes)" substitute "which is a Schedule 4 CSOP scheme (see Schedule 4)".

181 In paragraph 5 of Schedule 5 (enterprise management incentives: maximum entitlement of employee) in sub-paragraph (5) for "approved under Schedule 4 (CSOP schemes)" substitute "which is a Schedule 4 CSOP scheme (see Schedule 4)".

Commencement and transitional provision

182 The amendments made by this Part are treated as having come into force on 6 April 2014.

183 (1) This paragraph applies to a CSOP scheme established before 6 April 2014.

(2) If the scheme was an "approved" CSOP scheme immediately before 6 April 2014, the amendment made by paragraph 148 above has effect in relation to the scheme only if, and when, a provision of the scheme is altered on or after that date.

(3) Paragraph 28A of Schedule 4 to ITEPA 2003 (as inserted by paragraph 157 above) has effect in relation to the scheme—

(a) as if, at the end of sub-paragraph (1), the words "on or before 6 July 2015" were inserted,

(b) if the date on which the first option is granted under the scheme falls before 6 April 2014—

(i) as if, in sub-paragraph (3)(b)(i) and in paragraph (b) of the definition of "the relevant date" in sub-paragraph (6), the reference to the date on which the first option is granted under the scheme were a reference to 6 April 2014, and

(ii) as if sub-paragraph (3)(b)(ii) were omitted,

(c) as if sub-paragraph (5) were omitted, and

(d) as if, in sub-paragraph (6), the definitions of "the initial notification deadline" and "the relevant tax year" were omitted.

(4) But the scheme cannot be a "Schedule 4" CSOP scheme if, before 6 April 2014, an application for its approval was refused or an officer of Revenue and Customs decided to withdraw its approval.

(5) Sub-paragraph (4) is without prejudice to the outcome of any appeal under paragraph 29 or 32 of Schedule 4 to ITEPA 2003 against the refusal or decision to withdraw approval.

(6) The amendments made by this Part do not affect any right of appeal under paragraph 29 or 32 of Schedule 4 to ITEPA 2003 against a refusal or decision made before 6 April 2014 in relation to the scheme.

(7) Sub-paragraph (8) applies in relation to an option granted before 6 April 2014 under the scheme at a time when the scheme was an "approved" CSOP scheme.

(8) On and after 6 April 2014, the CSOP code has effect in relation to the option as if it were granted under the scheme at a time when the scheme was a "Schedule 4" CSOP scheme (even if no notice under paragraph 28A of Schedule 4 to ITEPA 2003 is given in relation to the scheme).

(9) In relation to the scheme—

(a) paragraph 28F of Schedule 4 to ITEPA 2003 (as inserted by paragraph 157 above) has effect as if for sub-paragraph (2) there were substituted—

"(2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 6 July 2016.", and

(b) the cases covered by paragraphs 28F(4)(b), 28H(1)(a)(ii) and 28I(1)(a)(ii) of Schedule 4 to ITEPA 2003 (as inserted by paragraph 157 above) include cases in which requirements of Parts 2 to 6 of that Schedule were not met before 6 April 2014.

(10) The amendments made by paragraph 158 above do not affect a notice given in relation to the scheme under paragraph 33 of Schedule 4 to ITEPA 2003 before 6 April 2014.

(11) If the scheme was an "approved" CSOP scheme before 6 April 2014, the amendments made by this Part and paragraph 131 above do not affect the deductions which may be made in relation to the scheme under section 999 of CTA 2009 (deduction for costs of setting up scheme) if they would otherwise do so.

PART 4

ENTERPRISE MANAGEMENT INCENTIVES

Amendments to Schedule 5 to ITEPA 2003

184 Schedule 5 to ITEPA 2003 (enterprise management incentives) is amended as follows.

185 (1) Paragraph 44 (notice of option to be given to HMRC) is amended as follows.

(2) In sub-paragraph (2) omit paragraph (b) and the "and" before it.

(3) In sub-paragraph (4) for "each of sub-paragraphs (5) and (6)" substitute "sub-paragraph (5)".

(4) In sub-paragraph (5)—

(a) after paragraph (a) omit "and", and

(b) after paragraph (b) insert ", and

(c) that the individual to whom the option has been granted has made and signed a written declaration within sub-paragraph (6) and that the declaration is held by the employer company".

(5) After sub-paragraph (5) insert—

"(5A) The employer company must—

(a) retain the declaration mentioned in sub-paragraph (5)(c) and produce it to an officer of Revenue and Customs if requested to do so by such an officer before the end of the period of 7 days after the day on which the request is made, and

(b) give a copy of that declaration to the individual before the end of the period of 7 days after the day on which the declaration is signed by the individual."

(6) After sub-paragraph (7) insert—

"(8) The notice, and any information supporting it, must be given electronically.

(9) But, if an officer of Revenue and Customs considers it appropriate to do so, the officer may allow the employer company to give the notice or any supporting information in another way; and the notice or information must be given in that other way.

(10) The Commissioners for Her Majesty's Revenue and Customs—

(a) must prescribe how notices and supporting information are to be given electronically;

(b) may make different provision for different cases or circumstances."

186 For paragraph 52 (annual returns) substitute—

"52 (1) This paragraph applies in relation to a company whose shares are (or have been) subject to qualifying options.

(2) The company must give to Her Majesty's Revenue and Customs ("HMRC") a return for each tax year falling (wholly or partly) in the company's qualifying option period.

(3) The company's "qualifying option period" is the period—

(a) beginning when the first qualifying option to which the company's shares are subject is granted, and

(b) ending when the termination condition is met.

(4) "The termination condition" is met when the company's shares—

(a) are no longer subject to qualifying options, and

(b) will no longer become subject to qualifying options.

(5) The return for a tax year must—

(a) contain, or be accompanied by, such information as HMRC may require, and

(b) be given on or before 6 July in the following tax year.

(6) The information which may be required under sub-paragraph (5)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of any person who has been granted a qualifying option to which the company's shares are subject.

52A (1) A return under paragraph 52, and any information accompanying the return, must be given electronically.

(2) But, if HMRC consider it appropriate to do so, HMRC may allow a company to give a return or any accompanying information in another way; and the return or information must be given in that other way.

(3) The Commissioners for Her Majesty's Revenue and Customs—

(a) must prescribe how returns and accompanying information are to be given electronically;

(b) may make different provision for different cases or circumstances."

187 In paragraph 53 (compliance with time limits) after sub-paragraph (2) insert—

"(3) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the person's control, and

(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the person took reasonable care to avoid the failure."

188 After paragraph 57 insert—

"Penalties

57A A company is liable for a penalty of £500 if the company fails—

(a) to produce a declaration to an officer of Revenue and Customs as required by paragraph 44(5A)(a) before the end of the period mentioned in that provision, or

(b) to provide a copy of a declaration to an individual as required by paragraph 44(5A)(b) before the end of the period mentioned in that provision,

and Her Majesty's Revenue and Customs ("HMRC") decide that such a penalty is payable.

57B (1) This paragraph applies if a company fails to give a return for a tax year (including any information required to accompany it) on or before the date mentioned in paragraph 52(5)(b) ("the date for delivery").

(2) The company is liable for a penalty of £100.

(3) If the company's failure continues after the end of the period of 3 months beginning with the date for delivery, the company is liable for a further penalty of £300.

(4) If the company's failure continues after the end of the period of 6 months beginning with the date for delivery, the company is liable for a further penalty of £300.

(5) The company is liable for a further penalty under this sub-paragraph if—

(a) the company's failure continues after the end of the period of 9 months beginning with the date for delivery,

(b) HMRC decide that such a penalty is payable, and

(c) HMRC give notice to the company specifying the date from which the penalty is payable.

(6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under sub-paragraph (5)(c).

(7) The date specified in the notice under sub-paragraph (5)(c)—

(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 (5)(a).

57C (1) This paragraph applies if a return under paragraph 52, or any information accompanying such a return, is given otherwise than in accordance with paragraph 52A.

(2) The company is liable for a penalty of an amount decided by HMRC.

(3) The penalty must not exceed £5,000.

57D (1) This paragraph applies if a company is liable for a penalty under this Part.

(2) HMRC must assess the penalty and notify the company of the assessment.

(3) The assessment—

(a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the company is not within the charge to corporation tax, an assessment to income tax,

(b) may be enforced as if it were such an assessment, and

(c) may be combined with such an assessment.

(4) The notice to the company under sub-paragraph (2) must state the accounting period of the company or the tax year in respect of which the penalty is assessed.

57E (1) A company may appeal against a decision of HMRC that the company is liable for a penalty under this Part.

(2) A company may appeal against a decision of HMRC as to the amount of a penalty payable by the company under this Part.

(3) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to corporation tax or, if the company is not within the charge to corporation tax, income tax

(including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).

(4) Sub-paragraph (3) does not require a company to pay a penalty before an appeal, the outcome of which could affect the company's liability for the penalty or its amount, is determined.

(5) On an appeal under sub-paragraph (1), the tribunal may affirm or cancel the decision.

(6) On an appeal under sub-paragraph (2), the tribunal may—
(a) affirm the amount of the penalty decided, or
(b) substitute another amount for that amount."

Commencement and transitional provision

189 The amendments made by this Part are treated as having come into force on 6 April 2014.

190 The amendments made by paragraph 185 above have effect in relation to options granted on or after 6 April 2014.

191 (1) The amendment made by paragraph 186 above has effect so as to require returns for the tax year 2014-15 and subsequent tax years.

(2) It has effect in relation to companies whose qualifying option periods begin before 6 April 2014 (as well as those whose qualifying option periods begin on or after that date).

(3) It does not affect the duty of a company to deliver a return for a tax year earlier than the tax year 2014-15 in accordance with paragraph 52 of Schedule 5 to ITEPA 2003 as that paragraph stood before its substitution.

192 The amendment made by paragraph 187 above does not affect a reasonable excuse which began before 6 April 2014.

PART 5

OTHER EMPLOYEE SHARE SCHEMES

Amendments to Chapter 1 of Part 7 of ITEPA 2003

193 Chapter 1 of Part 7 of ITEPA 2003 (employment income: income and exemptions relating to securities: general) is amended as follows.

194 (1) Section 421J (duty to provide information) is amended as follows.

(2) Omit subsections (3), (7), (8), (11) and (12).

(3) In subsection (10) for "by, or by a notice under," substitute "by a notice under".

195 After section 421J insert—

"421JA Annual returns

(1) This section applies in relation to a person who is (or has been) a responsible person (see section 421L) in relation to reportable events (see section 421K).

(2) The person must give to Her Majesty's Revenue and Customs ("HMRC") a return for each tax year falling (wholly or partly) in the person's reportable event period.

(3) The person's "reportable event period" is the period—
  (a) beginning when the first reportable event occurs in relation to which the person is a responsible person, and
  (b) ending when the person will no longer be a responsible person in relation to reportable events.

(4) The return for a tax year must—
  (a) contain, or be accompanied by, such information as HMRC may require, and
  (b) be given on or before 6 July in the following tax year.

(5) The information which may be required under subsection (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of any employee.

(6) A person's return for a tax year under this section need not contain, or be accompanied by, duplicate information and a person is not required to give a return for a tax year under this section if it would only contain, or be accompanied by, duplicate information.

(7) "Duplicate information" means information which is contained in or accompanies—
  (a) a return which another person gives for the tax year under this section, or
  (b) a return which any person gives for the tax year under any of the following provisions—
    (i) paragraph 81B of Schedule 2 (annual return for Schedule 2 SIP);
    (ii) paragraph 40B of Schedule 3 (annual return for Schedule 3 SAYE option scheme);
    (iii) paragraph 28B of Schedule 4 (annual return for Schedule 4 CSOP scheme);
    (iv) paragraph 52 of Schedule 5 (annual return for company whose shares are subject to qualifying options under the EMI code).

421JB Returns to be given electronically

(1) A return under section 421JA, and any information accompanying the return, must be given electronically.

(2) But, if HMRC consider it appropriate to do so, HMRC may allow a person to give a return or any accompanying information in another way; and the return or information must be given in that other way.

(3) The Commissioners for Her Majesty's Revenue and Customs—

(a) must prescribe how returns and accompanying information are to be given electronically;
(b) may make different provision for different cases or circumstances.

421JC Penalties for late returns

(1) This section applies if a person fails to give a return under section 421JA for a tax year (including any information required to accompany it) on or before the date mentioned in section 421JA(4)(b) ("the date for delivery").

(2) The person is liable for a penalty of £100.

(3) If the person's failure continues after the end of the period of 3 months beginning with the date for delivery, the person is liable for a further penalty of £300.

(4) If the person's failure continues after the end of the period of 6 months beginning with the date for delivery, the person is liable for a further penalty of £300.

(5) The person is liable for a further penalty under this subsection if—
(a) the person's failure continues after the end of the period of 9 months beginning with the date for delivery,
(b) HMRC decide that such a penalty is payable, and
(c) HMRC give notice to the person specifying the date from which the penalty is payable.

(6) The penalty under subsection (5) is £10 for each day that the failure continues from (and including) the date specified in the notice under subsection (5)(c).

(7) The date specified in the notice under subsection (5)(c)—
(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 subsection (5)(a).

(8) Liability for a penalty under this section does not arise if the person satisfies HMRC (or, on an appeal under section 421JF, the tribunal) that there is a reasonable excuse for the person's failure.

(9) For the purposes of subsection (8)—
(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the person's control,
(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the person took reasonable care to avoid the failure, and
(c) where the person had a reasonable excuse for the failure but the excuse ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

421JD Penalty if information not given correctly

(1) This section applies if a return under section 421JA, or any information accompanying such a return, is given otherwise than in accordance with section 421JB.

(2) The person in question is liable for a penalty of an amount decided by HMRC.

(3) The penalty must not exceed £5,000.

421JE Assessment of penalties

(1) This section applies if a person is liable for a penalty under section 421JC or 421JD.

(2) HMRC must assess the penalty and notify the person of the assessment.

(3) The assessment—
  (a) is to be treated for procedural purposes in the same way as an assessment to corporation tax or, if the person is not within the charge to corporation tax, an assessment to income tax,
  (b) may be enforced as if it were such an assessment, and
  (c) may be combined with such an assessment.

(4) The notice to the person under subsection (2) must state the tax period in respect of which the penalty is assessed.

(5) "Tax period" means—
  (a) if the assessment is being treated as an assessment to corporation tax, an accounting period of the company in question, or
  (b) if the assessment is being treated as an assessment to income tax, a tax year.

421JF Appeals

(1) A person may appeal against a decision of HMRC that the person is liable for a penalty under section 421JC or 421JD.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by the person under section 421JC or 421JD.

(3) An appeal under this section is to be treated in the same way as an appeal against an assessment to corporation tax or, if the person is not within the charge to corporation tax, an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the tribunal).

(4) Subsection (3) does not require a person to pay a penalty before an appeal, the outcome of which could affect the person's liability for the penalty or its amount, is determined.

(5) On an appeal under subsection (1), the tribunal may affirm or cancel the decision.

(6) On an appeal under subsection (2), the tribunal may—
  (a) affirm the amount of the penalty decided, or
  (b) substitute another amount for that amount."

196 In section 421K (reportable events) in subsection (1) for "section 421J (duty to provide information)" substitute "sections 421J and 421JA (duties to provide information and annual returns)".

197 In section 421L (responsible persons) in subsection (1) for "section 421J (duty to provide information)" substitute "sections 421J and 421JA (duties to provide information and annual returns)".

Commencement and transitional provision

198 The amendments made by this Part are treated as having come into force on 6 April 2014.

199 The amendments made by paragraph 194 above have no effect in relation to reportable events occurring before 6 April 2014.

200 (1) Section 421JA of ITEPA 2003 (as inserted by paragraph 195 above) has effect so as to require returns for the tax year 2014-15 and subsequent tax years.

(2) That section has effect in relation to persons whose reportable event periods begin before 6 April 2014 (as well as those whose reportable event periods begin on or after that date).

EXPLANATORY NOTE

EMPLOYEE SHARE SCHEMES

SUMMARY

1. Clause [X] and Schedule [Y] implement several recommendations of the Office of Tax Simplification (OTS) to simplify the tax rules and administrative processes for employee share schemes. The main changes include:

- replacing approval by HM Revenue & Customs (HMRC) with self certification for three of the tax advantaged employee share schemes - Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE) and Company Share Option Plans (CSOP);

- introducing online filing for all employee share scheme returns and information, including for Enterprise Management Incentives (EMI) and non-tax advantaged arrangements providing employment-related securities;

- a number of technical changes to the SIP, SAYE and CSOP rules designed to clarify the legislation, including modification of the 'purpose test' that must be met by these schemes.

2. These changes 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. The changes will come into effect on 6 April 2014.

DETAILS OF THE SCHEDULE

3. The Schedule implements a series of changes across all schemes and arrangements providing employment-related securities.

4. The main legislation as it currently stands 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. Statutory references in this Note are to provisions in ITEPA unless otherwise stated.

Part 1, Share Incentive Plans

5. Paragraph 1 introduces amendments to Chapter 6 of Part 7 of ITEPA, which provides for income tax advantages to be available in connection with shares obtained under SIP.

6. Paragraphs 2-11 make various changes to Chapter 6 to reflect the replacement of the present arrangements for HMRC approval of SIPs with self certification of plans by employers. In particular the paragraphs remove legislative references to 'approved SIPs'. Instead the concept is introduced of SIPs that meet the conditions being certified by employers as 'Schedule 2 SIPs'.

7. Paragraphs 12-30 set out amendments to Schedule 2 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SIPs to self certification by employers, and there are new powers for HMRC to determine that a plan is no longer to be a Schedule 2 SIP, and to make enquiries into the running of a SIP.

8. Paragraph 15 amends the introductory provision for the SIP rules in paragraph 1 Schedule 2, taking account of the new self certification arrangements and HMRC powers to enquire into plans and decide that certain plans should no longer be Schedule 2 SIPs.

9. Paragraph 18 amends paragraph 7 Schedule 2 to introduce a new purpose test to be met by Schedule 2 SIPs. In addition to the current requirement that the purpose of a SIP must be to provide shares that give employees a continuing stake in the company, key new conditions are that SIPs must not provide benefits other than in accordance with Schedule 2, and in particular must not provide participants with cash as an alternative to shares.

10. Paragraph 22 amends paragraph 43 Schedule 2 to make clear that a plan may require an employee who has purchased SIP partnership shares to sell them on leaving service, and provides certain conditions in relation to the consideration paid to the employee for the shares.

11. Paragraph 25 amends paragraph 65 Schedule 2 to make clear that a plan may require an employee who has acquired SIP dividend shares to sell them on leaving service, and provides certain conditions in relation to the consideration paid to the employee for the shares.

12. Paragraph 26 amends paragraph 71 Schedule 2 to revise the requirements that apply to SIP trust instruments.

13. Paragraph 28 inserts a new Part 10 in Schedule 2, setting out rules for notification of SIPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a plan is no longer to be treated as a Schedule 2 SIP and make enquiries into the running of a SIP, as well as appeal rights in respect of these powers.

14. New paragraph 81A of Schedule 2 provides new rules concerning notification of SIPs to HMRC. For a plan to be a Schedule 2 SIP and qualify for favourable tax treatment, the company must give notice to HMRC and make a declaration that the plan has met (and is meeting) the relevant conditions of Schedule 2. The notice should be given by 6 July following the tax year in which the first award of shares is made under the scheme, and sub-paragraph (5) explains when the plan will be a Schedule 2 SIP in cases when this deadline is missed.

15. New paragraph 81B obliges companies to make annual returns to HMRC in respect of Schedule 2 SIPs, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the SIP in the tax year in question and contain a declaration by the employer. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a plan.

16. New paragraph 81C lays down the penalties to which companies may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where companies have a 'reasonable excuse' for the failure.

17. New paragraph 81D provides that notification of SIPs and annual SIP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

18. New paragraph 81E sets out the penalties that may apply where returns are not delivered in the form required by HMRC.

19. New paragraph 81F empowers HMRC to make enquiries into a SIP after giving notice to a company of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 2 are not or have not been met in relation to the plan.

20. New paragraph 81G provides the rules for closure of HMRC enquiries, the decision that may be included within an HMRC closure notice, the right of companies to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

21. New paragraph 81H sets out the action HMRC may take where a SIP has not met (or is not meeting) the conditions of Schedule 2. If the breach of the SIP rules is considered serious enough to warrant it, HMRC may decide that a plan will no longer be a Schedule 2 SIP, and certain penalties will be imposed on the company. This will not affect the operation of the SIP rules (and any tax advantages available) in relation to shares awarded prior to that time.

22. New paragraph 81I sets out the action HMRC may take in cases where a breach of the SIP rules is not considered serious enough for the plan to cease being a Schedule 2 SIP. HMRC will require the company to put right any failure within a specified period, and the company will be liable for certain penalties. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a plan is no longer a Schedule 2 SIP, and the company is liable for a further penalty. This will not affect the operation of the SIP rules (and tax advantages available) in relation to shares awarded prior to the default notice.

23. New paragraph 81J sets out procedures for the assessment and enforcement of penalties by HMRC.

24. New paragraph 81K provides rights for companies to appeal against decisions of HMRC, for example that a plan is no longer to be a Schedule 2 SIP and on imposition of penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.

25. Paragraph 29 confirms that shares appropriated to, or acquired on behalf of, a SIP participant may not be awarded under a plan following its termination. This makes clear that the paragraph 90 Schedule 2 prohibition on the award of further shares after termination of a plan applies to SIP dividend shares as well as other types of SIP shares.

26. Paragraph 30 amends HMRC's powers in paragraph 93 Schedule 2 to require information concerning a SIP. In particular HMRC are empowered to require information needed to check details supplied by companies in their notification of a SIP or annual SIP returns, or to determine the liability to tax of any relevant person.

27. Paragraphs 32-42 make amendments to various provisions of Taxation of Chargeable Gains Act 1992 (TCGA) arising from the replacement of HMRC approval of SIPs with self certification.

28. Paragraphs 43-51 make amendments to various provisions of ITEPA and Finance Act 2004 (FA 2004).

29. Paragraphs 52-66 make amendments to various provisions of Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

30. Paragraphs 67-72 make amendments to various provisions of Income Tax Act 2007 (ITA 2007).

31. Paragraphs 73-82 make amendments to various provisions of Corporation Tax Act 2009 (CTA 2009).

32. Paragraphs 83-85 make amendments to the Individual Savings Account Regulations 1998.

33. Paragraphs 86-87 set out commencement and transitional provisions. The new rules take effect from 6 April 2014.

34. Paragraph 87 provides various transitional arrangements for SIPs approved by HMRC before 6 April 2014. In particular, sub-paragraph (2) provides that where a SIP has been approved by HMRC before 6 April 2014, the new purpose test introduced by paragraph 18 of this Schedule and the revisions to the requirements that apply to SIP trust instruments at paragraph 26 of this Schedule only apply from such time as there is alteration to a provision of the SIP or the trust. This paragraph also modifies arrangements for the notification of these plans under self certification (sub-paragraph (3)), as well as HMRC's powers of enquiry (sub-paragraph (9)). Sub-paragraphs (7) and (8) concern shares acquired or appropriated under a SIP before 6 April 2014. The SIP code (and tax advantages where appropriate) will still apply in relation to these shares, even if the plan is not notified to HMRC. The paragraph also ensures (sub-paragraph 9(b)) that HMRC's ability to determine that a scheme is not a Schedule 2 SIP applies in relation to breaches of the SIP rules that occurred prior to 6 April

2014. By virtue of sub-paragraph (11), the availability of certain corporation tax deductions in relation to set up costs for a SIP approved by HMRC before 6 April 2014 is not affected by any changes in Part 1 of the Schedule.

Part 2, SAYE Option Schemes

35. Paragraph 88 introduces amendments to Chapter 7 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under SAYE schemes.

36. Paragraphs 89-92 make various changes to Chapter 7, mainly to reflect the replacement of the present arrangements for HMRC approval of SAYE schemes with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved SAYE schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 3 SAYE option schemes'.

37. Paragraphs 93-110 set out amendments to Schedule 3 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SAYE schemes to self certification by employers, and there are new powers for HMRC to determine that a scheme is no longer to be a Schedule 3 SAYE scheme, and to make enquiries into the running of a scheme.

38. Paragraph 96 amends the introductory provision for the SAYE rules in paragraph 1 Schedule 3, taking account of the new self certification arrangements and HMRC powers to enquire into schemes and decide that certain schemes should no longer be Schedule 3 SAYE schemes.

39. Paragraph 99 amends paragraph 5 Schedule 3 to introduce a new purpose test to be met by Schedule 3 SAYE schemes. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 3. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

40. Paragraph 102 amends the provisions of paragraph 28 Schedule 3, which allow adjustment of the price, amount or description of shares under an SAYE option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be the same immediately before and after the variation.

41. Paragraph 103 amends provisions in paragraph 34 Schedule 3 concerning exercise of options where employment ceases, to remove a minor element of duplication in relation to arrangements under the Transfer of Undertakings (Protection of Employment) Regulations.

42. Paragraph 104 amends provisions in paragraph 37 Schedule 3 allowing exercise of SAYE options where certain 'company events' occur.

- Where in such cases shares in the company to which an option relates cease to meet the conditions of Schedule 3 (because control of the original company has changed hands), new sub-paragraphs (3C) to (3G) of paragraph 37 allow scheme rules to provide that the option may still be exercised by the participant within a period of seven days either before or after the event. If an option has been exercised in anticipation of a change of control and this does not in the event take place, the exercise is treated as having had no effect.

- The circumstances in which paragraph 37 may apply in 'non-UK company reorganisations' are clarified in sub-paragraph (4A).

43. Paragraph 105 concerns provisions in paragraph 38 Schedule 3 allowing exchange of options on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

44. Paragraph 106 amends provisions in paragraph 39 Schedule 3 concerning the requirements about share options granted in exchange for other SAYE options on a company reorganisation. The market value of shares for the purposes of paragraph 39 must be determined using a methodology agreed by HMRC.

45. Paragraph 107 inserts a new Part 8 in Schedule 3, setting out rules for notification of SAYE schemes, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is no longer to be treated as a Schedule 3 SAYE scheme and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

46. New paragraph 40A of Schedule 3 provides new rules concerning notification of SAYE schemes to HMRC. For a scheme to be a Schedule 3 SAYE scheme and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it has met (and is meeting) the conditions of Schedule 3. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme, and sub-paragraph (5) explains when the scheme will be a Schedule 3 SAYE scheme in cases where this deadline is missed.

47. New paragraph 40B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 3 SAYE schemes, containing the information required by HMRC. Returns must give details of any alterations made to key features of the SAYE scheme in the tax year in question and contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme.

48. New paragraph 40C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where scheme organisers have a 'reasonable excuse' for the failure.

49. New paragraph 40D provides that notification of SAYE schemes and annual SAYE returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

50. New paragraph 40E sets out the penalties that may apply where returns are not delivered in the form required by HMRC.

51. New paragraph 40F empowers HMRC to make enquiries into an SAYE scheme after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 3 are not or have not been met in relation to the scheme.

52. New paragraph 40G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

53. New paragraph 40H sets out the action HMRC may take where an SAYE scheme has not met (or is not meeting) the conditions of Schedule 3. If the breach of the SAYE rules is considered serious enough to warrant it, HMRC may decide that a scheme will no longer be a Schedule 3 SAYE scheme and certain penalties will be imposed on the scheme organiser. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, HMRC's decision (as set out in its closure notice).

54. New paragraph 40I sets out the action HMRC may take in cases where a breach of the SAYE rules is not considered serious enough for the scheme to cease being a Schedule 3 SAYE scheme. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser will be liable for certain penalties. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is no longer a Schedule 3 SAYE scheme, and the scheme organiser is liable for a further penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the default notice.

55. New paragraph 40J sets out procedures for the assessment and enforcement of penalties by HMRC.

56. New paragraph 40K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is no longer to be a Schedule 3 SAYE scheme and on imposition of penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.

57. Paragraph 108 amends HMRC's powers in paragraph 45 Schedule 3 to require information concerning an SAYE scheme. In particular HMRC are empowered to require information needed to check details supplied by scheme organisers in their notification of an SAYE scheme or annual SAYE returns, or to determine the liability to tax of any relevant person.

58. Paragraph 109 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the SAYE code.

59. Paragraphs 111-118 make amendments to various provisions of TCGA, mainly arising from the replacement of HMRC approval of SAYE schemes with self certification.

60. Paragraphs 119-131 make amendments to various provisions of ITEPA, FA 2004, ITTOIA and CTA 2009.

61. Paragraphs 132-134 make amendments to the Individual Savings Account Regulations 1998.

62. Paragraphs 135-136 set out commencement and transitional provisions. The new rules take effect from 6 April 2014.

63. Paragraph 136 provides various transitional arrangements for SAYE schemes approved by HMRC before 6 April 2014. In particular, sub-paragraph (2) provides that where a scheme has been approved by HMRC before 6 April 2014, the new purpose test introduced by paragraph 99 of this Schedule only applies from such time as there is alteration to a provision of the scheme. This paragraph also modifies arrangements for the notification of these schemes under self certification (sub-paragraph (3)), as well as HMRC's powers of enquiry (sub-paragraph (11)). Sub-paragraphs (7) to (10) concern SAYE options granted before 6 April 2014. The SAYE code (and tax advantages where appropriate) will still apply in relation to these options, even if the scheme is not notified to HMRC. The paragraph also ensures (sub-paragraph (11)(b)) that HMRC's ability to determine that a scheme is not a Schedule 3 SAYE scheme applies in relation to breaches of the SAYE rules that occurred prior to 6 April 2014. By virtue of sub-paragraph (13), the availability of certain corporation tax deductions in relation to set up costs for a SAYE scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 2 of the Schedule.

Part 3, CSOP Schemes

64. Paragraph 137 introduces amendments to Chapter 8 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under CSOP schemes.

65. Paragraphs 138-141 make various changes to Chapter 7 to reflect the replacement of the present arrangements for HMRC approval of CSOPs with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved CSOP schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 4 CSOP schemes'.

66. Paragraphs 142-160 set out amendments to Schedule 4 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of CSOPs to self certification by employers, and there are new powers for HMRC to determine that a scheme is no longer to be a Schedule 4 CSOP, and to make enquiries into the running of a scheme.

67. Paragraph 145 amends the introductory provision for the CSOP rules in paragraph 1 Schedule 4, taking account of the new self certification arrangements for CSOP and HMRC powers to enquire into schemes and decide that certain schemes should no longer be Schedule 4 CSOPs.

68. Paragraph 148 amends paragraph 5 Schedule 4 to introduce a new purpose test that must met by Schedule 4 CSOPs. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 4. In particular, schemes must not provide participants with cash as an alternative to shares or share options.

69. Paragraph 152 inserts new paragraph 21A in Schedule 4, which sets out a series of general conditions that CSOP options must satisfy. In particular, options must be capable of exercise within a specified period; and the main terms of the option must be stated and notified to the option holder at the outset. Terms of an option may be changed after grant, but only on the basis of a mechanism notified to the option holder at grant, which is based on fair and objective criteria, or as provided for elsewhere in CSOP legislation. The use of discretion in applying mechanisms for change to the terms of an option is permitted, provided this is exercised in a way that is fair and reasonable.

70. Paragraph 153 amends the provisions of paragraph 22 Schedule 4, which allow adjustment of the price, amount or description of shares under a CSOP option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be the same immediately before and after the variation.

71. Paragraph 154 amends provisions in paragraph 25A Schedule 4 allowing exercise of CSOP options where certain 'company events' occur.

- Where in such cases shares in the company to which an option relates cease to meet the conditions of Schedule 4 (because control of the original company has changed hands), sub-paragraphs (5B) to (5D) of paragraph 25A allow scheme rules to provide that the option may still be exercised by the participant within a period of seven days either before or after the event. If an option has been exercised in anticipation of a change of control and this does not in the event take place, the exercise is treated as having had no effect.

- The circumstances in which paragraph 25A may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (6A).

72. Paragraph 155 concerns provisions in paragraph 26 Schedule 4 allowing exchange of option on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

73. Paragraph 156 amends provisions in paragraph 27 Schedule 4 concerning the requirements about share options granted in exchange for other CSOP options on a company

reorganisation. The market value of shares for the purposes of paragraph 27 must be determined using a methodology agreed by HMRC.

74. Paragraph 157 inserts a new Part 7 in Schedule 4, setting out rules for notification of CSOPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is no longer to be treated as a Schedule 4 CSOP and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.

75. New paragraph 28A of Schedule 4 provides new rules concerning notification of CSOPs to HMRC. For a scheme to be a Schedule 4 CSOP and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it has met (and is meeting) the conditions of Schedule 4. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme and sub-paragraph (5) explains when a scheme will be a Schedule 4 CSOP in cases where this deadline is missed.

76. New paragraph 28B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 4 CSOPs, containing the information required by HMRC. Returns must give details of any alterations made to key features of the CSOP in the tax year in question and contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. This requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme.

77. New paragraph 28C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is specified where scheme organisers have a 'reasonable excuse' for the failure.

78. New paragraph 28D provides that notification of CSOPs and annual CSOP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

79. New paragraph 28E sets out the penalties that may apply where returns are not delivered in the form required by HMRC.

80. New paragraph 28F empowers HMRC to make enquiries into a CSOP after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 4 are not or have not been met in relation to the scheme.

81. New paragraph 28G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.

82. New paragraph 28H sets out the action HMRC may take where a CSOP has not met (or is not meeting) the conditions of Schedule 4. If the breach of the CSOP rules is considered serious enough to warrant it, HMRC may decide that a scheme will no longer be a Schedule 4 CSOP and certain penalties will be imposed on the scheme organiser.

83. New paragraph 28I sets out the action that HMRC may take in cases where a breach of the CSOP rules is not considered serious enough for the scheme to cease being a Schedule 4 CSOP. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser will be liable for certain penalties. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is no longer a Schedule 4 CSOP, and the scheme organiser is liable for a further penalty.

84. New paragraph 28J sets out procedures for the assessment and enforcement of penalties by HMRC.

85. New paragraph 28K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is no longer to be a Schedule 4 CSOP and on imposition of penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.

86. Paragraph 158 amends HMRC's powers in paragraph 33 Schedule 4 to require information concerning a CSOP. In particular HMRC are empowered to require information needed to check details supplied by a scheme organiser in their notification of a CSOP scheme or annual CSOP returns, or to determine the liability to tax of any relevant person.

87. Paragraph 159 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the CSOP code.

88. Paragraphs 161-167 make amendments to various provisions of TCGA arising from the move to self certification.

89. Paragraphs 168-181 make amendments to various provisions of ITEPA.

90. Paragraphs 182-183 set out commencement and transitional provisions. The new rules take effect from 6 April 2014.

91. Paragraph 183 provides various transitional arrangements for CSOPs approved by HMRC before 6 April 2014. In particular, sub-paragraph (2) provides that where a CSOP has been approved by HMRC before 6 April 2014, the new purpose test introduced by paragraph 148 of this Schedule only applies from such time as there is alteration to a provision of the scheme. This paragraph also modifies arrangements for the notification of these schemes under self certification (sub-paragraph (3)), as well as HMRC's powers of enquiry (sub-paragraph (9)). Sub-paragraphs (7) to (8) concern CSOP options granted before 6 April 2014. The CSOP code (and tax advantages where appropriate) will still apply in relation to these options, even if the scheme is not notified to HMRC. The paragraph also ensures (sub-paragraph (9)(b)) that HMRC's ability to determine that a scheme is not a Schedule 4 CSOP applies in relation to breaches of the CSOP rules that occurred prior to 6 April 2014. By virtue of sub-paragraph (11), the availability of certain corporation tax deductions in relation

to set up costs for a CSOP scheme approved by HMRC before 6 April 2014 is not affected by certain changes made in this Schedule.

Part 4, Enterprise Management Incentives

92. Paragraph 184 introduces a series of changes to Schedule 5 ITEPA in respect of EMI.

93. Paragraph 185 makes several amendments to paragraph 44 Schedule 5 concerning the requirement to provide HMRC with notice of EMI options granted:-

- The employer company's declaration in the return to HMRC must include confirmation that EMI option holders have made written declarations that they meet the 'working time requirement' of EMI (paragraph 26 Schedule 5), and copies of those declarations must be retained and produced to HMRC if so requested.

- Notices must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

94. Paragraph 186 replaces the existing paragraph 52 Schedule 5, which sets out rules for submission of annual returns in respect of EMI options. New paragraphs 52 and 52A of Schedule 5 reflect the shift to online filing of returns and are consistent with the new provisions in this Schedule for the other tax advantaged schemes.

95. New paragraph 52 of Schedule 5 obliges companies whose shares are or have been subject to an EMI option to make annual returns containing the information required by HMRC. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of termination of a scheme. This will be where there are no outstanding EMI options over the company's shares, and no intention to grant any further options over the company's shares under the scheme.

96. New paragraph 52A provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

97. Paragraph 187 makes a change to paragraph 53 Schedule 5 to clarify the meaning of 'reasonable excuse'.

98. Paragraph 188 inserts new provisions on penalties and appeals (at new paragraphs 57A-57E Schedule 5), similar to those in Parts 1, 2 and 3 of this Schedule.

99. New paragraph 57A of Schedule 5 lays down the penalties to which companies may be liable for failure to deliver the declarations required by paragraph 44 Schedule 5 where an EMI option over its shares has been granted.

100. New paragraph 57B lays down the penalties to which companies may be liable for failure to deliver annual returns by the specified deadline.

101. New paragraph 57C sets out the penalties that may apply where returns are not delivered in the form required by HMRC.

102. New paragraph 57D sets out procedures for the assessment and enforcement of penalties by HMRC.

103. New paragraph 57E provides rights for companies to appeal against decisions of HMRC in relation to penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.

104. Paragraphs 189-192 set out commencement and transitional provisions. The new rules take effect from 6 April 2014, and the rules in relation to annual returns will apply for returns for the tax year 2014-15 onwards.

Part 5, Other Employee Share Schemes

105. Paragraph 193 introduces a series of changes to Chapter 1 of Part 7 of ITEPA, which sets out general rules and requirements in relation to employment-related securities, including arrangements that are not tax advantaged.

106. Paragraphs 194-195 amend section 421J of ITEPA concerning the duty to provide information to HMRC, and insert new provisions (new sections 421JA-421JF of ITEPA) concerning annual returns, electronic submission, penalties and appeals. These changes reflect the shift to online filing of annual returns for employment-related securities and are consistent with the new provisions in this Schedule for the tax advantaged schemes.

107. New section 421JA of ITEPA obliges a responsible person (as defined in section 421L) to make an annual return to HMRC in respect of 'reportable events' within the meaning of section 421K. Returns must contain the information required by HMRC, and be made not later than 6 July following the end of the tax year to which they relate. This requirement to make an annual return to HMRC applies for each year during the period for which they are 'responsible persons' in relation to a reportable event. Sub-paragraph (6) provides that there is no need to report 'duplicate' information, as defined at sub-paragraph (7).

108. New section 421JB provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.

109. New section 421JC lays down the penalties which may apply for failure to deliver annual returns by the specified deadline. An exception is allowed where a person has a 'reasonable excuse' for the failure.

110. New section 421JD sets out the penalties that may apply where returns are not delivered in the form required by HMRC.

111. New section 421JE sets out procedures for the assessment and enforcement of penalties by HMRC.

112. New section 421JF provides rights of appeal against decisions of HMRC in relation to penalties, and lays down rules for the handling of appeals and the action tribunals may take in response to an appeal.

113. Paragraphs 198-200 set out commencement and transitional provisions. The new rules take effect from 6 April 2014, and the rules in relation to annual returns will apply for returns for tax year 2014-15 onwards.

BACKGROUND

114. 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.

115. 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.

116. CSOP is a scheme under which selected employees may be awarded options to purchase shares in their company.

117. 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.

118. The OTS published a report on the tax advantaged employee share schemes in 2012. This identified various areas where the present rules created undue complexities or disproportionate administrative burdens for scheme users, and made recommendations on how the legislation and related provisions could be simplified. The Government implemented the first tranche of changes to give effect to these recommendations in Schedule 2 Finance Act 2013.

119. This measure implements the further OTS recommendations that the Government should introduce self certification and a new 'purpose test' for SIP, SAYE and CSOP (self certification already applies in the case of EMI), and online filing for all employment-related securities returns to HMRC. In drawing up these provisions the Government has consulted extensively over the past 12 months to devise arrangements that will meet the needs of scheme users.

120. The measure also includes minor technical changes to clarify or simplify certain aspects of the current statute, where companies might potentially have found it difficult to self certify with confidence as the legislation stood.

121. If you have any questions about these changes, or comments on the legislation, please contact Andrew Ellis on 03000 585259 (email: andrew.ellis1@hmrc.gsi.gov.uk).

1 Payments made by employer on account of tax where deduction not possible

(1) In section 222 of ITEPA 2003 (payments by employer on account of tax where deduction not possible), in subsection (1)(c), for "before the end of the period of 90 days beginning with the relevant date" substitute "within 90 days after the end of the tax year in which the relevant date falls".

(2) The amendment made by this section has effect in relation to payments of income treated as made on or after 6 April 2014.

2 Employment-related securities etc

Schedule 1 contains provision relating to employment-related securities.

SCHEDULES

SCHEDULE 1

Section 2

EMPLOYMENT-RELATED SECURITIES ETC

PART 1

INTERNATIONALLY MOBILE EMPLOYEES

1 ITEPA 2003 is amended as follows.

2 Part 2 (employment income: charge to tax) is amended as follows.

3 In section 6 (nature of charge to tax on employment income), in subsection (3A), for "Chapter 5A" substitute "Chapter 5B".

4 In section 10 (meaning of "taxable earnings" and "taxable specific income"), in subsection (4), for the words from "Chapter 5A" to the end substitute "Chapter 5B (taxable specific income from employment-related securities etc: internationally mobile employees)".

5 For Chapter 5A (taxable specific income: effect of remittance basis) substitute—

"CHAPTER 5B

TAXABLE SPECIFIC INCOME FROM EMPLOYMENT-RELATED SECURITIES ETC: INTERNATIONALLY MOBILE EMPLOYEES

41F Taxable specific income: internationally mobile employees etc

(1) This section applies if—

(a) an amount counts under Chapters 2 to 5 of Part 7 (employment-related securities etc) as employment income of an individual for a tax year ("the securities income") in respect of an employment ("the relevant employment"), and

(b) one or more of the international mobility conditions is met in relation to the individual (see subsection (2)).

(2) The "international mobility conditions" are—

(a) that any part of the relevant period (see section 41G) is within a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual;

(b) that any part of the relevant period is within a tax year for which the individual is not UK resident;

(c) that any part of the relevant period is within the overseas part of a tax year that is a split year with respect to the individual.

(3) An amount equal to—

$$SI - FSI$$

is an amount of "taxable specific income" from the relevant employment for the tax year mentioned in subsection (1)(a).

(4) In subsection (3)—

(a) SI is the amount of the securities income, and

(b) FSI is the amount of the securities income that is "foreign".

(5) The amount of the securities income that is "foreign" is the sum of any chargeable foreign securities income and any unchargeable foreign securities income (see sections 41H to 41J).

(6) The full amount of any chargeable foreign securities income which is remitted to the United Kingdom in a tax year is an amount of "taxable specific income" from the relevant employment for that year.

(7) Subsection (6) applies whether or not the relevant employment is held when the chargeable foreign securities income is remitted.

(8) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis), treat the relevant securities or relevant securities option as deriving from the chargeable foreign securities income.

(9) But where—

(a) the chargeable event is the disposal of the relevant securities or the assignment or release of the relevant securities option, and

(b) the individual receives consideration for the disposal, assignment or release of an amount equal to or exceeding the market value of the relevant securities or relevant securities option,

for the purposes of that Chapter treat the consideration (and not the relevant securities or relevant securities option) as deriving from the chargeable foreign securities income.

(10) See Chapter A1 of Part 14 of ITA 2007 for the meaning of "remitted to the United Kingdom".

(11) In this section and section 41G—

"the chargeable event" means the event giving rise to the securities income, and

"the relevant securities" or "the relevant securities option" means the employment-related securities or employment-related securities option by virtue of which the amount mentioned in subsection (1)(a) counts as employment income.

41G Section 41F: the relevant period

(1) "The relevant period" is to be determined as follows.

(2) In the case of an amount that counts as employment income by virtue of Chapter 2 of Part 7 (restricted securities) (other than where subsection (4) applies) or Chapter 3 of that Part (convertible securities), the relevant period—

(a) begins with the day of the acquisition, and
(b) ends with the day of the chargeable event.

(3) In the case of an amount that counts as employment income by virtue of section 446B (securities with artificially depressed market value: charge on acquisition), the relevant period is the tax year in which the acquisition occurs.

(4) In a case within subsection (1)(aa) or (b) of section 446E (securities with artificially depressed market value: charge on restricted securities) where an amount counts as employment income by virtue of that section, the relevant period—
(a) begins at the beginning of the tax year in which the chargeable event is treated as occurring, and
(b) ends with the day on which the chargeable event is treated as occurring.

(5) In the case of an amount that counts as employment income by virtue of section 446L (securities with artificially enhanced market value), the relevant period—
(a) begins at the beginning of the tax year in which the valuation date (within the meaning of that section) falls, and
(b) ends with the valuation date.

(6) In the case of an amount that counts as employment income by virtue of section 446U (securities acquired for less than market value: discharge of notional loan) or 446UA (avoidance cases in respect of such securities)—
(a) if the relevant securities were acquired by virtue of the exercise of a securities option ("the option"), the relevant period—
(i) begins with the day of the acquisition of the option, and
(ii) ends with the day the option vests, and
(b) otherwise, the relevant period is—
(i) the tax year in which the notional loan (within the meaning of Chapter 3C of Part 7) is treated as made, or
(ii) if the chargeable event occurs in that year, the period beginning at the beginning of that year and ending with the day of that event.

(7) In the case of an amount that counts as employment income by virtue of—
(a) Chapter 3D of Part 7 (securities disposed of for more than market value), or
(b) Chapter 4 of that Part (post-acquisition benefits from securities),
the relevant period is the tax year in which the chargeable event occurs.

(8) In the case of an amount that counts as employment income by virtue of Chapter 5 of Part 7 (employment-related securities options), the relevant period—
(a) begins with the day of the acquisition, and

(b) ends with the day of the chargeable event or, if earlier, the day the relevant securities option vests.

(9) If the relevant period determined in accordance with subsections (2) to (8) would not, in all the circumstances, be just and reasonable, the relevant period is to be such period as is just and reasonable.

(10) In this section "the acquisition" has the same meaning as in Chapters 2 to 4 or Chapter 5 of Part 7 (see section 421B or 471).

(11) For the purposes of this section an option "vests"—
(a) when it becomes exercisable, or
(b) if earlier, when it becomes exercisable subject only to a period of time expiring.

(12) See section 41F(11) for the definitions of "the chargeable event", "the relevant securities" and "the relevant securities option".

41H Section 41F: chargeable and unchargeable foreign securities income

(1) The extent to which the securities income is "chargeable foreign securities income" or "unchargeable foreign securities income" is to be determined as follows.

(2) Treat an equal amount of the securities income as accruing on each day of the relevant period.

(3) If any part of the relevant period is within a tax year to which subsection (4) applies, the securities income treated as accruing in that part of the relevant period is "chargeable foreign securities income".
This is subject to section 41I (limit where duties of associated employment performed in UK).

(4) This subsection applies to a tax year if—
(a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
(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),
(c) the relevant employment is with a foreign employer, and
(d) the duties of the relevant employment are performed wholly outside the United Kingdom in the year.

(5) If any part of the relevant period is within a tax year to which subsection (6) applies—
(a) if the duties of the relevant employment are performed wholly outside the United Kingdom, the securities income treated as accruing in that part of the relevant period is "chargeable foreign securities income", and
(b) if some, but not all, of those duties are performed outside the United Kingdom—
(i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and

(ii) the income apportioned in respect of duties performed outside the United Kingdom is "chargeable foreign securities income".

(6) This subsection applies for a tax year if—

(a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,

(b) the individual meets the requirement of section 26A for the year (reading references there to the employee as references to the individual), and

(c) some or all of the duties of the relevant employment are performed outside the United Kingdom in the year.

(7) If any part of the relevant period is within a tax year for which the individual is not UK resident—

(a) if the duties of the relevant employment are performed wholly outside the United Kingdom in that year, the securities income treated as accruing in that part of the relevant period is "unchargeable foreign securities income", or

(b) if some, but not all, of those duties are performed outside the United Kingdom in that year—

(i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and

(ii) the income apportioned in respect of duties performed outside the United Kingdom is "unchargeable foreign securities income".

(8) If any part of the relevant period is within the overseas part of a tax year that is a split year with respect to the individual—

(a) if the duties of the relevant employment are performed wholly outside the United Kingdom in that overseas part, the securities income treated as accruing in that part of the relevant period is "unchargeable foreign securities income", or

(b) if some, but not all, of those duties are performed outside the United Kingdom in that overseas part—

(i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and

(ii) the income apportioned in respect of duties performed outside the United Kingdom is "unchargeable foreign securities income".

(9) This section is subject to section 41J (chargeable and unchargeable foreign securities income: just and reasonable apportionment).

41I Limit on "chargeable foreign securities income" where duties of associated employment performed in UK

(1) This section imposes a limit on the extent to which section 41H(3) applies in relation to a period when—

(a) the individual holds associated employments as well as the relevant employment, and

(b) the duties of the associated employments are not performed wholly outside the United Kingdom.

(2) The amount of the securities income for the period that is to be regarded as "chargeable foreign securities income" is limited to such amount as is just and reasonable, having regard to—

(a) the employment income for the period from all the employments mentioned in subsection (1)(a),

(b) the proportion of that income that is general earnings to which section 22 applies (chargeable overseas earnings),

(c) the nature of, and time devoted to, the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the period, and

(d) all other relevant circumstances.

(3) In this section "associated employments" means employments with the same employer or with associated employers.

(4) Section 24(5) and (6) (meaning of "associated employer") applies for the purposes of this section.

41J Chargeable and unchargeable foreign securities income: just and reasonable apportionment

(1) This section applies if the proportion of the securities income that would otherwise be regarded as "chargeable foreign securities income" or "unchargeable foreign securities income" is not, having regard to all the circumstances, just and reasonable.

(2) The amounts of the securities income that are "chargeable foreign securities income" and "unchargeable foreign securities income" are such amounts as are just and reasonable (rather than the amounts calculated in accordance with section 41H)."

6 Part 7 (employment income: income and exemptions relating to securities) is amended as follows.

7 In section 418 (other related provisions), before subsection (1) insert—

"(A1) This Part needs to be read with Chapter 5B of Part 2 (taxable specific income from employment-related securities etc: internationally mobile employees)."

8 Omit section 421E (employment-related securities: exclusions, residence etc).

9 In section 425 (no charge in respect of acquisition in certain cases), after subsection (5) insert—

"(6) No election may be made under subsection (3) unless, at the time of the acquisition, the earnings from the employment are (or would be

if there were any) general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applies."

10 In section 430 (election for outstanding restrictions to be ignored), after subsection (3) insert—

"(4) No election may be made under this section unless, at the time of the chargeable event, the earnings from the employment are (or would be if there were any) general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applies."

11 In section 431 (election for full or partial disapplication of Chapter 2 of Part 7 of ITEPA 2003), after subsection (5) insert—

"(6) No election may be made under this section unless, at the time of the acquisition, the earnings from the employment are (or would be if there were any) general earnings to which any of the charging provisions of Chapters 4 and 5 of Part 2 applies."

12 Omit section 474 (cases where Chapter 5 of Part 7 of ITEPA 2003 (employment-related securities options) does not apply).

13 Part 7A (employment income provided through third parties) is amended as follows.

14 In section 554L (exclusions: earmarking for employee share schemes (3)), in subsection (10)(c)(i), for "section 474" substitute "Chapter 5B of Part 2".

15 (1) Section 554M (exclusions: earmarking for employee share schemes (4)) is amended as follows.

(2) In subsection (9)(b)(i), for "section 474" substitute "Chapter 5B of Part 2".

(3) In subsection (10)(b)(i), for "section 474" substitute "Chapter 5B of Part 2".

16 (1) Section 554N (exclusions: other cases involving employment-related securities etc) is amended as follows.

(2) In subsection (1)(b), omit ", or would apply apart from section 421E(1),".

(3) In subsection (2)(b), omit ", or would apply apart from section 474(1),".

(4) In subsection (6)—
(a) omit "421E(1),", and
(b) omit ", 474(1)".

(5) In subsection (10)—
(a) in paragraph (b), omit ", but ignoring section 474(1)", and
(b) in paragraph (c), omit "or would be a chargeable event apart from section 474(1)".

(6) In subsection (13)(c)(i), for "section 474" substitute "Chapter 5B of Part 2".

17 In Chapter 4 of Part 11 (PAYE: special types of income), in section 700A (employment-related securities etc: remittance basis), in subsection (3), for "41A" substitute "41F".

PART 2

RESTRICTED SECURITIES AND SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE: REPLACEMENT AND ADDITIONAL SECURITIES AND ROLLOVER RELIEF ETC

18 ITEPA 2003 is amended as follows.

19 (1) In Chapter 1 of Part 7 (income and exemptions relating to securities: general), section 421D (replacement and additional securities and changes in interests) is amended as follows.

(2) In subsection (3), insert at the end "and for the purposes of Chapter 3C as a payment made for their acquisition at or before the time of the acquisition".

(3) In subsection (4), insert at the end "or a payment was made for their acquisition at or before the time of the acquisition".

20 In Chapter 2 of Part 7 (restricted securities), before section 431 (election for full or partial disapplication of Chapter 2) but after the heading before that section (supplementary) insert—

"430A Application of this Chapter where securities exchanged for further securities

(1) This section applies if—

(a) an associated person disposes of the employment-related securities (the "old securities") for consideration, otherwise than to another associated person,

(b) the whole or part of the consideration consists of, or includes, other securities which are restricted securities (the "new securities") being acquired by an associated person,

(c) the value of the consideration determined in accordance with subsection (2) is no more than what would have been the market value of the old securities immediately before the disposal but for any restrictions, and

(d) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of the disposal.

(2) The value of the consideration is the sum of—

(a) what would have been the market value of the new securities immediately before the disposal but for any restrictions, and

(b) the value of the rest of the consideration (if any).

(3) If the consideration consists partly of the new securities and partly of other consideration, the disposal is to be treated for the purposes of this Chapter as being two separate disposals as follows—

(a) a disposal, that is a chargeable event within section 427(3)(c), of the appropriate amount of the old securities (see subsection (4)) for such of the consideration as does not consist of the new securities, and

(b) a disposal, to which this section applies, of the remaining old securities for consideration consisting wholly of the new securities.

(4) In subsection (3)(a) the appropriate amount of the old securities is—

$$OS \times \frac{OC}{TC}$$

where—

OS is the total number of the old securities,

OC is the value of such of the consideration as does not consist of the new securities, and

TC is value of the consideration determined in accordance with subsection (2).

(5) If the consideration consists wholly of the new securities—

(a) neither the disposal of the old securities, nor the acquisition of the new securities, gives rise to any liability to income tax,

(b) the disposal is not a chargeable event within section 427(3)(c), and

(c) this Chapter applies to the new securities as it applies to the old securities, subject to subsections (6) to (17).

(6) No election may be made under section 425 or 431 in relation to the new securities.

(7) If, at the time of the disposal, sections 426 to 429 do not apply to the old securities by virtue of—

(a) an election made under section 430(1) or 431(1) in relation to the old securities, or

(b) this subsection,

sections 426 to 430 do not apply to the new securities.

(8) If there is a chargeable event for the purposes of section 426 in relation to any of the new securities, for the purposes of section 428 (amount of charge)—

(a) IUP (see subsection (3) of that section) is to be determined in accordance with subsection (9), and

(b) PCP (see subsection (4) of that section) is to be determined in accordance with subsection (10).

(9) IUP is equal to what IUP was, for the purposes of determining the taxable amount for the purposes of section 426, in relation to chargeable events relating to the old securities that occurred before the disposal (or what it would have been had there been any such chargeable events).

(10) PCP is the aggregate of—

(a) PCP determined in accordance with section 428(4), and

(b) what PCP would have been, for the purposes of determining the taxable amount for the purposes of section 426, if a chargeable event relating to the old securities had occurred immediately before the disposal but after any chargeable events relating to the old securities that actually did occur before the disposal.

(11) Subsections (12) to (14) apply if—

(a) section 425(2) (no liability to income tax on acquisition of certain securities subject to forfeiture etc) applied in relation to the old securities, and

(b) at the time of the disposal, there is still a restriction relating to those securities such that they are restricted securities by virtue of section 423(2) (provision for forfeiture etc).

(12) This Chapter has effect in relation to any of the new securities that are not restricted securities by virtue of section 423(2) as if—

(a) there were a restriction relating to them ("the deemed restriction") corresponding to the restriction relating to the old securities mentioned in subsection (11)(b), and

(b) immediately after their acquisition, the deemed restriction were removed.

(13) Subsection (14) applies if—

(a) there is a restriction by virtue of which some or all of the new securities are, at the time of the disposal, restricted securities, by virtue of subsection (2) of section 423, and

(b) within 5 years after the acquisition of the old securities, the restriction is not removed or varied such that the new securities to which it relates cease to be restricted securities by virtue of that subsection.

(14) For the purposes of this Chapter the restriction mentioned in subsection (13) is to be treated as being removed 5 years after the acquisition of the old securities.

(15) Subsection (16) applies if, at the time of the disposal—

(a) there is a restriction relating to the old securities such that they are restricted securities by virtue of section 423(2), and

(b) subsections (13) and (14) apply in relation to the old securities (including by virtue of subsection (16)).

(16) Subsections (12) to (14) apply in relation to the new securities, but the references in subsections (13)(b) and (14) to the acquisition of the old securities are to be read as references to the acquisition of the original forfeitable securities.

(17) In subsection (16) "original forfeitable securities" means the restricted securities by virtue of the application to which of section 425(2) subsections (13) and (14) apply to the old securities.

(18) In this section references to restricted securities include a restricted interest in securities."

21 (1) In Chapter 3C of Part 7 (securities acquired for less than market value), section 446U (discharge of notional loan) is amended as follows.

(2) In subsection (1), omit the "or" at the end of paragraph (a) and for paragraph (b) substitute—

"(b) if there is an outstanding or contingent liability to pay for the employment-related securities, that liability is released, extinguished, transferred or adjusted so as no longer to bind any associated person (except in circumstances in which subsection (4)(aa) applies), or".

(3) After that subsection insert—

"(1A) Subsection (1)(a) does not apply if, at the time of the acquisition, there was an actual or contingent liability to make one or more further payments equal to the amount initially outstanding for the employment-related securities."

(4) In subsection (4), omit the "or" at the end of paragraph (a) and after that paragraph insert—

"(aa) the employment-related securities are disposed of otherwise than to an associated person together with the liability to make such further payment or payments for consideration of an amount that reflects the transfer of the liability, or".

22 In section 554N (exclusions from Chapter 2 of Part 7A: other cases involving employment related securities etc), in subsection (6), after "429," insert "430A(5)(b),".

PART 3

CT RELIEF FOR EMPLOYEE SHARE ACQUISITIONS

23 Part 12 of CTA 2009 (other relief for employee share acquisitions) is amended as follows.

24 In Chapter 1 (introduction), in section 1002 ("employment"), after subsection (4) insert—

"(5) See also sections 1007A and 1015A (application of Chapters 2 and 3 in relation to employees of overseas companies who work for companies in the UK)."

25 In Chapter 2 (CT relief if shares are acquired by employee or other person), after section 1007 insert—

"1007A Application of Chapter in relation to employees of overseas companies who work for companies in the UK

(1) This section applies if—

(a) a person has an employment ("the actual employment") with a non-UK resident company that is not within the charge to corporation tax ("the overseas employer"),

(b) in performing any of the duties of the actual employment, the person works in the United Kingdom for, but is not employed by, another company ("the host employer"), and

(c) the host employer is—

(i) a UK resident company, or

(ii) a non-UK resident company that is within the charge to corporation tax.

(2) For the purposes of this Chapter, the person is to be treated as having an employment with the host employer, the duties of which consist of the work the person does for the host employer.

(3) In section 1008 (conditions relating to the shares acquired) references to the employing company are to be read as including references to the overseas employer.

(4) If the amount of relief would otherwise be more than the amount of employment income of the person charged to tax under ITEPA 2003 in relation to the acquisition of the shares, the amount of relief is (notwithstanding any other provision of this Chapter) limited to the amount of that income so charged.

(5) If relief is available to more than one host employer in respect of the same acquisition of shares, relief may only be given to one of them in respect of that acquisition.

(6) For the purposes of this section a person works for another person if the person provides, and is obliged to provide, personal service to the other person."

26 In Chapter 3 (CT relief if employee or other person obtains option to acquire shares), after section 1015 insert—

"1015A Application of Chapter in relation to employees of overseas companies who work for companies in the UK

(1) This section applies if—

(a) a person has an employment ("the actual employment") with a non-UK resident company that is not within the charge to corporation tax ("the overseas employer"),

(b) in performing any of the duties of the actual employment, the person works in the United Kingdom for, but is not employed by, another company ("the host employer"), and

(c) the host employer is—

(i) a UK resident company, or

(ii) a non-UK resident company that is within the charge to corporation tax.

(2) For the purposes of this Chapter, the person is to be treated as having an employment with the host employer, the duties of which consist of the work the person does for the host employer.

(3) In section 1016 (conditions relating to the shares acquired) references to the employing company are to be read as including references to the overseas employer.

(4) If the amount of relief would otherwise be more than the amount of employment income of the person charged to tax under ITEPA 2003 in relation to the acquisition of the shares pursuant to the option, the amount of relief is (notwithstanding any other provision of this Chapter) limited to the amount of that income so charged.

(5) If relief is available to more than one host employer in respect of the same acquisition of shares pursuant to an option, relief may only be given to one of them in respect of that acquisition.

(6) For the purposes of this section a person works for another person if the person provides, and is obliged to provide, personal service to the other person."

27 (1) Section 1016 (conditions relating to shares acquired) is amended as follows.

(2) In subsection (1), omit the "or" at the end of paragraph (b) of Condition 2 and

after paragraph (c) of that Condition insert ", or

(d) shares within subsection (1A)".

(3) After subsection (1) insert—

"(1A) Shares are within this subsection if—

(a) after the option is obtained, the company in which the shares are to be acquired ("the relevant company") comes to be controlled by another company ("the takeover"),

(b) immediately before the takeover, the shares were within any of paragraphs (a) to (c) of Condition 2,

(c) as a result of the takeover, the shares cease to be within any of those paragraphs,

(d) the shares are acquired pursuant to the option within the period of 90 days beginning with the day of the takeover, and

(e) the avoidance of tax is not the main purpose (or one of the main purposes) of the takeover."

28 In Chapter 4 (additional CT relief in cases involving restricted shares), after section 1025 insert—

"1025A Application of Chapter in relation to employees of overseas companies who work for companies in the UK

(1) This section applies if the original relief is available under—

(a) Chapter 2 as a consequence of section 1007A, or

(b) Chapter 3 as a consequence of section 1015A.

(2) If the amount of relief available as a result of a chargeable event would otherwise be more than the amount of employment income of the employee charged to tax under ITEPA 2003 in relation to the event, the amount of relief is (notwithstanding any other provision of this Chapter) limited to the amount of that income so charged.

(3) If relief is available to more than one company as a result of the same chargeable event, relief may only be given to one of them in respect of that event.

(4) No relief is available as a result of the employee's death."

29 In Chapter 5 (additional CT relief in cases involving convertible shares), after section 1030 insert—

"1030A Application of Chapter in relation to employees of overseas companies who work for companies in the UK

(1) This section applies if the original relief is, or (in the case of convertible securities that are not shares) would have been, available under—

(a) Chapter 2 as a consequence of section 1007A, or

(b) Chapter 3 as a consequence of section 1015A.

(2) If the amount of relief available as a result of a chargeable event would otherwise be more than the amount of employment income of the employee charged to tax under ITEPA 2003 in relation to the event, the amount of relief is (notwithstanding any other provision of this Chapter) limited to the amount of that income so charged.

(3) If relief is available to more than one company as a result of the same chargeable event, relief may only be given to one of them in respect of that event.

(4) No relief is available as a result of the employee's death."

PART 4

COMMENCEMENT

30 The amendments made by Part 1 of this Schedule have effect in relation to employment-related securities and employment-related securities options where the date of the acquisition is on or after 1 September 2014 (except employment-related securities acquired pursuant to an option acquired before that date).

31 In Part 3 of this Schedule, paragraphs 24 to 26, 28 and 29 come into force on 1 September 2014.

EXPLANATORY NOTE

PAYMENTS MADE BY EMPLOYER ON ACCOUNT OF TAX WHERE DEDUCTION NOT POSSIBLE

EMPLOYMENT-RELATED SECURITIES ETC

SUMMARY

1. Clauses [X & Y] and Schedule [Z] implement a number of recommendations made by the Office of Tax Simplification (OTS) to simplify the tax rules in relation to employment-related securities (ERS) - such as employee shares - or ERS options awarded to employees. It changes the tax treatment of ERS and ERS options awarded to internationally mobile employees, introduces a new relief for certain ERS exchanges, simplifies the rules around nil-paid and partly-paid ERS and extends the corporation tax relief available to companies in relation to employee share acquisitions. It also changes the deadline for employees to make good to their employer amounts the employer has paid to HM Revenue and Customs in respect of the tax due on notional (non-cash) payments received by the employee, before that employee is liable to a tax charge on the relevant amount.

DETAILS OF CLAUSE [X]

2. Subsection (1) of Clause 1 amends section 222 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) concerning payments made by an employer on account of tax, in cases where the deduction of tax amounts on notional (non-cash) payments to an employee (such as ERS income) is not possible. The amendment changes the deadline for an employee to make good the relevant amount to their employer before this outstanding amount is treated as earnings of that employee (and is therefore subject to a tax charge). This deadline is currently 90 days after the notional payment is made by the employer, and will be changed to 90 days after the end of the relevant tax year.

DETAILS OF THE SCHEDULE

Part 1 Internationally mobile employees

3. Paragraphs 1 to 5 amend Part 2 of ITEPA by substituting a new Chapter 5B (taxable specific income from employment-related securities: internationally mobile employees etc) for the current Chapter 5A (taxable specific income: effect of the remittance basis) and making consequential amendments to sections 6 and 10 of ITEPA. The new Chapter 5B comprises sections 41F to 41J, which set out new rules for the taxation of ERS and ERS options received by internationally mobile employees, and also contain provisions on the effect of the remittance basis on ERS income that are currently in Chapter 5A.

4. These new sections of ITEPA set out what income from ERS and ERS options (securities income) is to be subject to UK income tax, either on the normal 'arising' basis or the remittance basis where this applies. The effect of the remittance basis is that, broadly, for those to whom the remittance basis applies, income or gains in respect of foreign duties are only taxable in the UK to the extent that they are remitted to (brought into, used in, or enjoyed in) the UK.

5. New section 41F of ITEPA includes subsection (1) and (2), which set out the scope of the new rules. They apply when an amount counts as employment income under Chapters 2 to 5 of Part 7 of ITEPA (which provides rules for the taxation of ERS and ERS options) and at least one of the 'international mobility conditions' specified in subsection (2) are met. The rules at subsections (3) and (4) identify the amount of securities income from the relevant employment for the tax year that will be subject to income tax on the arising basis. These subsections provide that this amount should be established by deducting securities income that is 'foreign' from total securities income. Subsection (5) specifies that the amount of securities income that is foreign is the total of any 'chargeable foreign securities income' and any 'unchargeable foreign securities income', with reference to new sections 41H to 41J of ITEPA. Subsection (6) identifies any chargeable foreign securities income that will be subject to income tax on the remittance basis. Subsections (7) to (9) make provision in relation to amounts remitted to the UK in a tax year; set out rules that apply on the disposal, assignment or release of ERS or options for consideration; and broadly reproduce certain provisions currently found in section 41A of ITEPA, concerning the effect of the remittance basis on taxable specific income from ERS.

6. New section 41G of ITEPA (at subsections (2) – (8)) defines the 'relevant period' for each type of ERS for the purposes of the international mobility conditions at new section 41F, which determine whether these new rules apply in relation to an individual's ERS income. This is also the period over which securities income is to be apportioned between that which is subject to income tax in the UK, and that which is not. Where appropriate, the relevant periods broadly replicate those already in operation for the remittance basis of taxation at the current section 41B of ITEPA. The rules at subsection (2) to (8) are subject to an override (at subsection (9)) where the relevant period they provide is not just and reasonable.

7. New sections 41H to 41J of ITEPA determine how 'unchargeable' and 'chargeable' foreign securities income are to be calculated, for the purposes of establishing how much of the total securities income is not to be subject to UK income tax or which may be subject to UK income tax on the remittance basis where this applies. Where appropriate, these sections broadly replicate rules currently in sections 41C to 41E of ITEPA, which establish the amount of foreign securities income for the purposes of the remittance basis of taxation.

8. New section 41H of ITEPA sets out rules to determine whether ERS income is 'chargeable or 'unchargeable' foreign securities income. Chargeable foreign securities income will be subject to UK income tax on the remittance basis. Subsection (2) provides that ERS income is regarded as accruing equally on each day within the relevant period, as set out in new section 41G of ITEPA. Subsections (3) to (7) provide rules that apply for the calculation of chargeable and unchargeable foreign securities income in various cases. These include tax years within the relevant period during which: the remittance basis applies, an

individual satisfies or does not satisfy the requirement for a 3-year period of non-residence in the UK at section 26A of ITEPA, and the relevant employment is with a foreign employer, or the duties are performed wholly or partly outside the UK. Subsection (8) sets out the rules that apply where any part of the relevant period is within the overseas part of a tax year that is a split year (where an individual either leaves the UK to live or work abroad or comes from abroad to live or work in the UK). Subsection (9) provides that the rules in this new section are subject to provisions on just and reasonable apportionment at new section 41J of ITEPA.

9. New section 41I of ITEPA limits the amount of securities income that is chargeable foreign securities income in various cases where an individual has associated employment (in addition to their relevant employment), which involves UK duties. Subsection (2) provides that the amount of chargeable foreign securities income for the period is limited to the amount that is just and reasonable with reference to factors specified in this subsection.

10. New section 41J of ITEPA provides an override where the proportion of securities income that is chargeable or unchargeable foreign securities income, as determined under new section 41H, is not just and reasonable in the circumstances.

11. Paragraph 7 of the Schedule inserts a new subsection (A1) into section 418 of ITEPA. This requires Part 7 of ITEPA (concerning income from ERS and ERS options) to be read alongside the new Chapter 5B of Part 2 of ITEPA.

12. Paragraph 8 repeals section 421E of ITEPA which sets out the current residence provisions for the taxation of certain ERS.

13. Paragraphs 9 to11 amend sections 425, 430 and 431 of ITEPA to limit the availability of the elections available under these sections (which allow for the disapplication of certain provisions within Part 7 of ITEPA). They provide that these elections can only be made where at the time of the acquisition of the ERS (or in the case of section 430 at the time of a chargeable event in relation to the ERS), the charging provisions of Chapter 4 and 5 of Part 2 of ITEPA apply in relation to earnings from the relevant employment (or in cases where there are no earnings from that employment, would apply if there were any earnings). These charging provisions apply where an employee is UK resident, or performs duties in the UK.

14. Paragraph 12 repeals section 474 of ITEPA which provides the current residence provisions for the taxation of ERS options.

15. Paragraphs 13 to 16 amend various sections of ITEPA, in consequence of the omission of Chapter 5A and sections 421E and 474 of ITEPA and the insertion of new Chapter 5B of Part 2.

Part 2 Restricted securities and securities acquired for less than market value: replacement and additional securities and rollover relief etc

16. Part 2 of the Schedule provides rollover relief from income tax for certain cases in which restricted securities held by an employee are exchanged for other restricted securities. It also amends the rules at Chapter 3C of Part 7 of ITEPA concerning notional loans, under which tax may be chargeable in relation to nil-paid or partly-paid ERS.

17. Paragraph 19 amends section 421D of ITEPA concerning replacement and additional securities and changes in interests. Sub-paragraph (2) addresses cases in which the value of nil-paid and partly-paid ERS has been reduced by the issue of certain additional or replacement securities. The provision makes clear that, in such cases, the value of that reduction should be treated as a payment for the acquisition of these new securities for the purposes of Chapter 3C of Part 7 of ITEPA. Chapter 3C provides tax rules for ERS acquired for less than market value, including nil-paid and partly-paid ERS, and taxes certain amounts in relation to these ERS as notional loans. Sub-paragraph (3) amends subsection (4) of section 421D of ITEPA to reflect this change.

18. Paragraph 20 inserts new section 430A of ITEPA, which introduces relief from income tax in certain cases where restricted ERS held by an individual ('old securities') are exchanged for other restricted ERS ('new securities'). Restricted ERS are those which contain provision for transfer, reversion or forfeiture which reduces their market value. Subsections (3) and (4) of new section 430A concern circumstances in which old securities are exchanged for new securities as well as other consideration, and provide that the new rollover relief will only be available on that part of the consideration that is new securities. That part of the consideration which is not new securities will give rise to a chargeable event on the disposal of the matching proportion of the old securities. Subsection (5) concerns cases in which the only consideration for the old securities is new securities, and provides that neither the disposal of the old securities nor the acquisition of the new securities will give rise to a tax liability and that Chapter 2 of Part 7 of ITEPA applies to the new securities as it applies to the old securities, subject to subsections (6) to (17).

19. Subsections (6) to (17) of new section 430A set out how the new securities are to be treated under Chapter 2 (concerning the taxation of restricted ERS). The tax arrangements for the old securities will, in certain respects, be transferred to the new securities. This includes (at subsection (7)) any elections to disregard certain provisions of ITEPA made in respect of the old securities under sections 430(1) or 431(1), and (at subsection (8) to (10)) the proportions used to calculate the amount of charge under section 428 of ITEPA, in the case of a subsequent chargeable event in relation to the new ERS.

20. Subsections (11) to (14) of new section 430A apply where no tax was chargeable on acquisition of the old securities by virtue of section 425(2) of ITEPA, because the ERS were 'forfeitable' within 5 years, and a forfeiture restriction still remains on the old securities at the time of the exchange. Broadly, on the occurrence of a chargeable event, income tax will apply in relation to these new securities in the same way as would have been the case for the old securities. Subsection (12) creates a chargeable event immediately after the acquisition of the new securities where the restriction on them is not a forfeiture restriction. Subsections (13) and (14) provide that where the new securities remain forfeitable more than 5 years after

the acquisition of the old securities, the forfeiture restriction is treated as having been removed five years after the acquisition of the old securities, so that a chargeable event occurs at that time. Subsections (15) to (17) ensure that these rules apply as intended in relation to subsequent exchanges of these new securities.

21. Paragraph 21 amends the rules at current section 446U of ITEPA concerning the discharge of notional loans, which apply for nil-paid and partly-paid ERS. Sub-paragraphs (2) and (3) remove certain disposals of these ERS from provisions that would otherwise treat the outstanding notional loans in respect of these ERS as employment income subject to tax at that time. Sub-paragraph (4) provides that the notional loan in relation to these ERS is discharged without this giving rise to an amount of employment income where these ERS are disposed of in certain circumstances.

Part 3 CT relief for employee share acquisitions

22. Part 3 of the Schedule extends the circumstances in which corporation tax relief is available under Part 12 of the Corporation Tax Act 2009 (CTA 2009) in relation to employee share acquisitions.

23. Paragraphs 25, 26, 28 and 29 introduce new sections 1007A, 1015A, 1025A and 1030A of CTA 2009, which modify certain requirements for relief under Part 12 CTA 2009. These new sections concern cases where an individual who is employed by an overseas company works for, but does not have employment with, a UK host company (for example during a period of secondment). The new sections provide that where certain conditions are met, that individual can be treated as having employment with the UK host for the purposes of the relief. This means that relief may be available to the UK host in relation to shares acquired by the individual – even though that host is not the employing company. A limit on the amount of relief available to the UK host is specified as the amount which is chargeable to income tax under ITEPA in relation to the acquisition of the shares, or a chargeable event in relation to the shares (whichever is appropriate). These new sections also make provision for cases in which there is more than one UK host company and circumstances in which the employee has died - as well as providing that relief may be available in relation to shares of the overseas employer or the UK host.

24. Paragraph 27 extends the availability of corporation tax relief under Part 12 of CTA 2009 in relation to shares acquired by exercise of a share option following the takeover of a company. It introduces new subsection (1A) to section 1016 CTA 2009. Section 1016 sets out conditions concerning shares that must be met for relief under Part 12 to be available in relation to share options. The change provides that where, immediately prior to a company takeover, the shares under option satisfied the current requirements at paragraphs (a) to (c) of Condition 2 at section 1016(1), but no longer do so as a result of the takeover, those shares will satisfy the relevant requirements of section 1016(1). This is subject to the shares being acquired by the employee within 90 days of the takeover.

Part 4 Commencement etc

25. Part 4 sets out the relevant dates of commencement for these changes.

BACKGROUND NOTE

26. Income tax is generally due where an employer awards share options, shares or other ERS to employees, and tax may also be due on certain disposals of ERS. The tax rules in this area are designed to ensure that the employment income paid in the form of ERS or options is subject to income tax as appropriate. In certain circumstances, corporation tax relief is available to companies in respect of employee share acquisitions.

27. The OTS published a report and recommendations on unapproved employee share schemes in January 2013. This identified a number of areas in which the current tax rules created undue complexity, and included recommendations for how these might be simplified.

28. The Government consulted on the recommendations being taken forward in this measure during summer 2013. A summary of responses to this consultation was published on 10 December 2013.

29. This measure supports the Government's objective to simplify the tax system. The changes mainly concern the tax treatment of ERS or ERS options, but the change to the rules in section 222 of ITEPA applies to notional (non-cash) payments more generally.

30. This measure will be implemented alongside other simplification changes recommended by the OTS in relation to the Government's four tax advantaged employee share schemes.

31. If you have any questions about these changes, or comments on the legislation, please contact Colin Strudwick on 03000 585275 (email: shareschemes@hmrc.gsi.gov.uk).

1 Companies owned by employee-ownership trusts

Schedule 1 contains provision about tax reliefs in connection with companies owned by employee-ownership trusts.

SCHEDULE 1

Section 1

COMPANIES OWNED BY EMPLOYEE-OWNERSHIP TRUSTS

PART 1

CAPITAL GAINS TAX RELIEF

1 In Part 7 of TCGA 1992 (other property, businesses, investments etc), after section 236G insert—

"236H Disposals to employee-ownership trusts

(1) This section applies where—

(a) a person other than a company ("P") disposes of ordinary share capital of a company ("C") to the trustees of a settlement,

(b) the relief requirements are met, and

(c) P makes a claim under this section.

(2) Section 17(1) does not apply to the disposal.

(3) The disposal, and the acquisition by the trustees, are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

(4) "The relief requirements" are—

(a) that C meets the trading requirement at the time of the disposal and continues to meet that requirement for the remainder of the tax year in which that time falls (see section 236I),

(b) that the settlement meets the all-employee benefit requirement (see section 236J),

(c) that the settlement does not meet the controlling interest requirement immediately before the tax year in which the disposal occurs, but does meet it at the end of that year (see section 236L),

(d) that the limited participation requirement is met (see section 236M), and

(e) that this section does not apply in relation to any related disposal by P or a person connected with P which occurs in an earlier tax year.

(5) A disposal in an earlier tax year is "related" to the disposal in question if—

(a) both disposals are of ordinary share capital of the same company, or

(b) the disposal in the earlier tax year is of ordinary share capital of a company which is, or at the time of that disposal was, a

member of the same group as the company whose ordinary share capital is the subject of the disposal in question.

(6) A claim under this section must include—
(a) information to identify the settlement,
(b) C's name and the address of its registered office, and
(c) the date of the disposal and the number of shares disposed of.

236I Trading requirement

(1) C meets the trading requirement if C is—
(a) a trading company which is not a member of a group, or
(b) the principal company of a trading group.

(2) "Trading company" means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

(3) "Trading group" means a group—
(a) one or more of whose members carry on trading group activities, and
(b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading group activities.

(4) In this section—
"trading activities" means activities carried on by the company in the course of, or for the purposes of, a trade being carried on by it;
"trading group activities" means activities carried on by a member of the group in the course of, or for the purposes of, a trade being carried on by any member of the group.

(5) For the purposes of determining whether C is a trading company or the principal company of a trading group—
(a) the activities of the members of a group are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities), and
(b) a business carried on by a company in partnership with one or more other persons is to be treated as not being a trading activity or a trading group activity.

236J All-employee benefit requirement

(1) A settlement meets the all-employee benefit requirement if the trusts of the settlement—
(a) do not permit any of the settled property to be applied, at any time, otherwise than for the benefit of all the eligible employees on the same terms,
(b) do not permit the trustees, at any time, to apply any of the settled property by creating a trust, or by transferring property to the trustees of any settlement, and
(c) do not permit the trustees, at any time, to make loans to beneficiaries of the trusts.

(2) See section 236K for provision about the requirement in subsection (1)(a) ("the equality requirement").

(3) "Eligible employee" means—

(a) if C meets the trading requirement by virtue of section 236I(1)(a), any person employed by C, and

(b) if C meets the trading requirement by virtue of section 236I(1)(b), any person employed by a relevant group company,

but does not include an excluded participator.

(4) "Excluded participator" means—

(a) a person who is a participator in C, or, where the trading requirement was met by virtue of section 236I(1)(b), in any relevant group company,

(b) any other person who is a participator in any close company that has made a disposition whereby property became comprised in the same settlement, being a disposition which but for section 13 of the Inheritance Tax Act 1984 would have been a transfer of value,

(c) any other person who has been a participator in any company mentioned in paragraph (a) or (b) at any time after, or during the 10 years before, the disposal mentioned in section 236H(1), or

(d) any person who is connected with any person within paragraph (a), (b) or (c).

(5) The participators in a company who are referred to in subsection (4) do not include any participator who—

(a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, the company's share capital, and

(b) on a winding-up of the company would not be entitled to 5% or more of its assets.

(6) In this section—

(a) "relevant group company" means C or any other company which is a member of the group of which C is the principal company,

(b) "close company" and "participator" have the same meaning as in Part 4 of the Inheritance Tax Act 1984,

(c) references to a participator in a company are, in the case of a company which is not a close company, to be construed as references to a person who would be a participator in the company if it were a close company, and

(d) references to the settled property include references to any income arising from it.

236K Further provision about the equality requirement

(1) Trusts are not to be regarded as failing to meet the equality requirement (see section 236J(2)) by reason only that they—

(a) permit the settled property to be applied, where an eligible employee has died, as if a surviving spouse, civil partner or dependant of the deceased person were the eligible employee

(and continued to be employed) for a period of 12 months, or such shorter period as the trusts may provide, starting with the time of death,

(b) prevent the settled property being applied for the benefit of persons who have not been—

(i) if C meets the trading requirement by virtue of section 126I(1)(a), employees of C, and

(ii) if C meets the trading requirement by virtue of section 236I(1)(b), employees of a relevant group company (whether or not the same one),

for a continuous period of 12 months or such shorter period as the trusts may provide, or

(c) permit the trustees to comply with a request from a person that the trustees do not apply any of the settled property for the benefit of that person.

(2) The equality requirement is not infringed by the trusts by reason only that, in addition to requiring the settled property to be applied for the benefit of all the eligible employees on the same terms, they also permit the settled property to be applied for charitable purposes.

(3) The equality requirement is not infringed by applying the settled property by reference to—

(a) an employee's remuneration,

(b) an employee's length of service, or

(c) hours worked by an employee;

but this is subject to subsections (4) and (5).

(4) The equality requirement is infringed if any of the settled property is applied on terms such that some (but not all) employees receive no benefits (other than by virtue of subsection (1)(b) and (c)).

(5) If any of the settled property is applied by reference to more than one of the factors mentioned in subsection (3), the equality requirement is infringed unless—

(a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and

(b) the total entitlement is the sum of those separate entitlements.

(6) Subject to subsection (3), the equality requirement is infringed if any feature of the trusts has, or is likely to have, the effect of conferring benefits wholly or mainly on—

(a) directors, or

(b) employees receiving the higher or highest levels of remuneration, or

(c) employees who—

(i) are employed in a particular part of the business carried on by C or, if C is the principal company of a group, the group, or

(ii) carry on particular kinds of activities.

(7) In this section—

(a) "relevant group company" means C or any other company which is a member of the group of which C is the principal company, and

(b) references to the settled property include references to any income arising from it.

236L Controlling interest requirement

(1) A settlement meets the controlling interest requirement if—

(a) the trustees—

(i) hold more than 50% of the ordinary share capital of C, and

(ii) have powers of voting on all questions affecting C as a whole which, if exercised, would yield a majority of the votes capable of being exercised on them,

(b) the trustees are entitled to more than 50% of the profits available for distribution to the equity holders of C,

(c) the trustees would be entitled, on a winding up, to more than 50% of the assets of C available for distribution to equity holders, and

(d) there are no provisions in any agreement or instrument affecting C's constitution or management or its shares or securities whereby the condition in paragraph (a), (b) or (c) can cease to be satisfied without the consent of the trustees.

(2) Chapter 6 of Part 5 of the Corporation Tax Act 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of subsection (1) as it applies for the purposes of the provisions mentioned in section 157(1) of that Act.

236M Limited participation requirement

(1) The limited participation requirement is met if either—

(a) P has not been a participator in C at any time in the period of 12 months ending immediately after the disposal mentioned in section 236H(1), or

(b) the participator fraction does not exceed 2/5.

(2) "The participator fraction" means—

$$\frac{NP}{NE}$$

where—

NP is the sum of—

(a) the number of persons who immediately after the disposal are both—

(i) participators in C, and

(ii) employees of, or office holders in, C, and

(b) the number of other persons who immediately after the disposal are both—

(i) employees of C or, if C is the principal company of a trading group, of any member of that group, and

(ii) connected with persons within paragraph (a);

NE is the number of persons who immediately after the disposal are employees of C or, if C is the principal company of a group, of any member of the group.

(3) The participators in C who are referred to in subsections (1) and (2) do not include any participator who—

(a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in, its share capital, and

(b) on a winding-up of C would not be entitled to 5% or more of its assets.

(4) In this section—

(a) "participator" has the meaning given by section 454 of CTA 2010, and

(b) references to a participator in a company are, in the case of a company which is not a close company, to be construed as references to a person who would be a participator in the company if it were a close company.

236N Events which trigger deemed disposal and reacquisition by trustees

(1) Where the trustees of a settlement acquire ordinary share capital from a person in a tax year in circumstances where section 236H applies, subsection (3) applies on the first occasion a disqualifying event occurs in relation to the acquisition.

(2) A "disqualifying event" occurs in relation to the acquisition if and when—

(a) at any time after that tax year—

(i) C ceases to meet the trading requirement, or

(ii) the settlement ceases to meet the controlling interest requirement, or

(b) at any time after the acquisition—

(i) the settlement ceases to meet the all-employee benefit requirement,

(ii) the participator fraction exceeds 2/5, or

(iii) the trustees act in a way which, as required by the all-employee benefit requirement, the trusts do not permit.

(3) The trustees are treated as having, immediately after the disqualifying event—

(a) disposed of any ordinary share capital of C held by the trustees, and

(b) immediately reacquired that ordinary share capital,

at its market value at that time.

(4) In applying section 236J for the purposes of subsection (2)(b)(i), subsection (4)(c) of that section applies as if the reference to the disposal mentioned in section 236H(1) were a reference to the time in question under subsection (2) above.

(5) In applying subsections (2) to (4) of 236M for the purposes of subsection (2)(b)(ii), those subsections apply as if references to the

disposal mentioned in section 236H(1) were references to the time in question under subsection (2) above.

236O Relief for deemed disposals under section 71

(1) This section applies where—

(a) a deemed disposal arises under section 71(1) by reason of the trustees of a settlement ("the acquiring settlement") becoming absolutely entitled to settled property against the trustee of that settled property ("the transferring trustee"),

(b) that settled property consists of ordinary share capital of a company,

(c) the relief requirements are met, and

(d) the transferring trustee makes a claim under this section.

(2) Section 17(1) does not apply to the disposal.

(3) The deemed disposal and acquisition by the transferring trustee under section 71(1) are to be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

(4) For the purposes of section 236N(1) the trustees of the acquiring settlement are treated as acquiring the ordinary share capital from the transferring trustee, at the time of the deemed disposal, in circumstances where section 236H applies.

(5) In applying sections 236H(4) and 236I to 236N for the purposes of this section—

(a) references in those provisions to the settlement are to be read as references to the acquiring settlement, and

(b) references in those provisions to C are to be read as references to the company mentioned in subsection (1)(b).

(6) A claim under this section must include—

(a) information to identify the acquiring settlement,

(b) the name of the company mentioned in subsection (1)(b) and the address of its registered office, and

(c) the date of the deemed disposal and the number of shares deemed disposed of.

236P Interpretation sections 236H to 236O

(1) In sections 236H to 236O and this section—

"company" has the meaning given by section 170(9);

"ordinary share capital" has the meaning given by section 1119 of CTA 2010;

"trade" means any trade which is conducted on a commercial basis and with a view to the realisation of profits.

(2) In those sections—

(a) references to a group, to membership of a group or to the principal company of a group, are to be construed in accordance with the provisions of section 170, and

(b) references to a group are to be construed with any necessary modifications where applied to a company incorporated

under the law of a country or territory outside the United Kingdom.

(3) In determining whether a person is connected with another for the purposes of those sections, section 286 applies as if subsection (8) of that section also mentioned uncle, aunt, nephew and niece."

2 The amendment made by paragraph 1 has effect in relation to disposals made on or after 6 April 2014.

PART 2

EMPLOYMENT INCOME EXEMPTION

3 ITEPA 2003 is amended as follows.

4 In Part 4 (employment income: exemptions), after Chapter 10 insert—

"CHAPTER 10A

EXEMPTIONS: BONUS PAYMENTS BY CERTAIN EMPLOYERS

312A Limited exemption for qualifying bonus payments

(1) This section applies in relation to qualifying bonus payments made, in a tax year, to an employee by an employer if the employer is a company which—

(a) meets the trading requirement throughout the qualifying period (see section 312C), and

(b) meets the indirect employee-ownership requirement throughout the qualifying period (see section 312D).

(2) No liability to income tax arises in respect of the qualifying bonus payments if, or to the extent that, the total chargeable amount in respect of those payments does not exceed £3,600 ("the exempt amount").

(3) If this section applies in a tax year in relation to more than one employer of the same person, subsection (2) applies separately in relation to the total payments made by each employer, unless subsection (4) applies.

(4) If two or more of the employers are members of the same group for all or part of the tax year, subsection (2) applies to the total of the payments made to the employee by those employers, other than payments made by an employer at a time when it is not a member of that group (but see subsection (8)).

(5) In applying subsection (2)—

(a) the exempt amount is set against payments in the order in which they are received, and

(b) if two or more payments are received on the same day, which together take the total payments received in the tax year over the exempt amount, subsection (6) applies to determine the amount of each of those payments which is exempt.

(6) In a case within subsection (5)(b), the amount of a payment which is exempt is given by the formula—

$$\frac{P}{SP} \times REA$$

where—

P is the amount of the payment,

SP is the sum of that payment and the other payments received on the same day, and

REA is so much of the exempt amount as remains after taking account of any qualifying bonus payments previously received in that tax year.

(7) Where subsection (2) applies separately to different payments by virtue of subsection (3), subsections (5) and (6) also apply to those payments separately.

(8) If, in a tax year—

(a) an employer makes a payment when it is a member of a trading group, and

(b) later in that tax year the employer ceases to be a member of that group,

the employer is treated for the purposes of this section as remaining a member of that group for the remainder of the tax year (without prejudice to it also being a member of any other group).

(9) The Treasury may by order increase or reduce the sum of money specified in subsection (2).

(10) A statutory instrument containing an order under this section which reduces the sum of money specified may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.

(11) In this section—

"chargeable amount", in respect of a qualifying bonus payment, means the amount of employment income which would be charged to tax in respect of that qualifying bonus payment, apart from this section;

"the qualifying period" means the period of 12 months ending with the day on which the payment is received, but excluding—

(a) if the settlement first met the all-employee benefit requirement in section 236J of TCGA 1992 during that 12 month period, any time before it met that requirement, and

(b) if the settlement first met the controlling interest requirement in section 236L of TCGA 1992 during that 12 month period, any time before it met that requirement.

312B "Qualifying bonus payments"

(1) A payment made by an employer ("E") to an employee is a qualifying bonus payment if—

(a) it does not consist of regular salary or wages,

(b) it is awarded under a scheme which meets the participation requirement and the equality requirement,
(c) it is not made by a service company (see section 312E), and
(d) it is not excluded under subsection (10).

(2) The participation requirement is that all persons in relevant employment must be eligible to participate in any award under the scheme.

(3) The equality requirement is that every person who participates in an award under the scheme must do so on the same terms.

(4) A person is in "relevant employment" if—
(a) where E is a member of a group, the person is employed by any company which is a member of the group, and
(b) in any other case, the person is employed by E.

(5) The participation requirement is not infringed by reason of employees being excluded from participating in an award by reason of their having less than 12 months continuous service in relevant employment at the time of the award.

(6) The equality requirement is not infringed by reason of the amount of an award under the scheme being determined by reference to—
(a) an employee's remuneration,
(b) an employee's length of service, or
(c) hours worked by an employee;
but this is subject to subsections (7) and (8).

(7) The equality requirement is infringed if an award is made on terms such that some (but not all) of the employees participating in the award receive nothing.

(8) If the amount of an award is determined by reference to more than one of the factors mentioned in subsection (6), the equality requirement is infringed unless—
(a) each factor gives rise to a separate entitlement related to the level of remuneration, length of service or (as the case may be) hours worked, and
(b) the total entitlement is the sum of those separate entitlements.

(9) Subject to subsection (6), the equality requirement is infringed if any feature of the scheme has, or is likely to have, the effect of conferring benefits wholly or mainly on—
(a) directors, or
(b) employees receiving the higher or highest levels of remuneration, or
(c) employees who—
(i) are employed in a particular part of the business carried on by E or, if E is a member of a group, the group, or
(ii) carry on particular kinds of activities.

(10) A payment is excluded if the employee is a party to arrangements (whether made before or after the beginning of the employee's employment) under which—

(a) the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the payment, or

(b) the employee and employer agree that the employee is to receive the payment rather than receive some other description of employment income.

312C Section 312A: the trading requirement

(1) For the purposes of section 312A(1) a company meets the trading requirement if—

(a) it is a trading company, or

(b) it is a member of a trading group.

(2) "Trading company" means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

(3) "Trading group" means a group—

(a) one or more of whose members carry on trading group activities, and

(b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading group activities.

(4) In this section—

"trading activities" means activities carried on by the company in the course of, or for the purposes of, a trade being carried on by it;

"trading group activities" means activities carried on by a member of the group in the course of, or for the purposes of, a trade being carried on by any member of the group.

(5) For the purposes of determining whether a company is a trading company or a member of a trading group—

(a) the activities of the members of a group are to be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities), and

(b) a business carried on by a company in partnership with one or more other persons is to be treated as not being a trading activity.

312D Section 312A: the indirect employee-ownership requirement

(1) For the purposes of section 312A(1), a company meets the indirect employee-ownership requirement if—

(a) a settlement meets the controlling interest requirement in respect of—

(i) the company, or

(ii) if the company is a member of a trading group, but not the principal company, that principal company, and

(b) the settlement meets the all-employee benefit requirement.

(2) For this purpose—

(a) section 236L of TCGA 1992 applies to determine if a settlement meets the controlling interest requirement in respect of a company, and

(b) sections 236J and 236K of that Act apply to determine if the settlement meets the all-employee benefit requirement,

(3) But, for the purposes of subsection (2)—

(a) in sections 236J to 236K of that Act references to C are to be read as references to the company mentioned in subsection (2)(a), and

(b) the references in section 236J of that Act to section 236I(1)(a) and section 236I(1)(b) of that Act are to be read as references to section 312C(1)(a) and section 312C(1)(b) of this Act respectively.

(4) "The qualifying period" has the same meaning as in section 312A.

312E "Service company"

(1) For the purposes of section 312B(1) a payment is made by a "service company" if it is made by—

(a) a managed service company within the meaning of section 61B, or

(b) a company ("SC") in respect of which Conditions A and B are met.

(2) Condition A is that the business carried on by SC consists substantially of the provision of the services of persons employed by it.

(3) Condition B is that the majority of those services are provided to persons—

(a) to whom subsection (4) applies, but

(b) who are not members of the same group as the company which makes the payment.

(4) This subsection applies to—

(a) a person who controls or has controlled, or two or more persons who together control or have controlled, SC or any company of which SC is a 51% subsidiary at the time the payment is made,

(b) a person who, or two or more persons who together, at any time before the payment is made—

(i) employed all or a majority of the employees of SC, or

(ii) employed all or a majority of the employees of SC and other companies which are members of the same group as SC at the time of the payment (taken together), and

(c) any company which is a 51% subsidiary of, controlled by or connected or associated with, any person within paragraph (a) or (b).

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

(a) a partnership is to be treated as a single person, and
(b) where a partner (alone or together with others) has control of a company, the partnership is to be treated as having (in the same way) control of that company.

(6) The following provisions apply for the purposes of this section—
(a) section 449 of CTA 2010 ("associated company");
(b) section 995 of ITA 2007 (meaning of "control");
(c) section 286 of TCGA 1992 (connected persons: interpretation).

312F Interpretation of Chapter 10A

(1) In this Chapter—
"company" has the meaning given by section 170(9) of TCGA 1992;
"ordinary share capital" has the meaning given by section 1119 of CTA 2010;
"trade" means any trade which is conducted on a commercial basis and with a view to the realisation of profits.

(2) In this Chapter—
(a) references to a group, to membership of a group or to the principal company of a group, are to be construed in accordance with the provisions of section 170 of TCGA 1992, and
(b) references to a group are to be construed with any necessary modifications where applied to a company incorporated under the law of a country or territory outside the United Kingdom.

(3) In this Chapter references to a payment to an employee include, in the case of an employee who has died, a payment to the employee's personal representatives."

5 In section 717 (orders and regulations made by Treasury etc), in subsection (4) (instruments not subject to negative resolution procedure), after "under" insert "section 312A(9) (tax-exempt amount in respect of certain bonus payments),".

6 In Part 2 of Schedule 1 (index of defined expressions), at the appropriate places insert—

"company (in Chapter 10A of Part 4)	section 312F";
"ordinary share capital (in Chapter 10A of Part 4)"	section 312F";
"trade (in Chapter 10A of Part 4)	section 312F".

7 The amendment made by paragraph 4 has effect in relation to payments received on or after 1 October 2014.

PART 3

MINOR AMENDMENTS

Inheritance Tax Act 1984

8 (1) Section 13 of IHTA 1984 (dispositions by close companies for benefit of employees) is amended as follows.

(2) In subsection (1) for the words from "if the persons" to the end substitute "if—

(a) the persons for whose benefit the trusts permit the property to be applied include all or most of either—

(i) the persons employed by or holding office with the company, or

(ii) the persons employed by or holding office with the company or any one or more subsidiaries of the company, or

(b) the close company meets the trading requirement and the trusts are of a settlement which meets the all-employee benefit requirement."

(3) After subsection (4) insert—

"(4A) Sections 236I, 236J and 236K of the 1992 Act apply to determine if the close company meets the trading requirement, and the settlement meets the all-employee benefit requirement, for the purposes of subsection (1)(b).

For this purpose, references in those sections to C are to be read as references to the close company."

(4) The amendments made by this paragraph have effect in relation to dispositions of property made on or after 6 April 2014.

9 (1) Section 28 of IHTA 1984 (employee trusts) is amended as follows.

(2) In subsection (1), for paragraphs (a) and (b) substitute—

"(a) the trusts of the settlement are of the description specified in section 86(1) and the persons for whose benefit the trusts permit the settled property to be applied include all or most of the persons employed by or holding office with the company, or

(b) the company meets the trading requirement and the trusts are of a settlement which meets the all-employee benefit requirement."

(3) After subsection (6) insert—

"(6A) Sections 236I, 236J and 236K of the 1992 Act apply to determine if the company meets the trading requirement, and the settlement meets the all-employee benefit requirement, for the purposes of subsection (1)(b).

For this purpose, references in those sections to C are to be read as references to the company mentioned in subsection (1)."

(4) The amendments made by this paragraph have effect in relation to transfers of value made on or after 6 April 2014.

10 (1) Section 75 of IHTA 1984 is amended as follows (property becoming subject to employee trusts) is amended as follows.

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

"(a) that—

(i) the persons for whose benefit the trusts permit the settled property to be applied include all or most of the persons employed by or holding office with the company, or

(ii) the company meets the trading requirement and the trusts are of a settlement which meets the all-employee benefit requirement."

(3) After subsection (3) insert—

"(4) Sections 236I, 236J and 236K of the 1992 Act apply to determine if the company meets the trading requirement, and the settlement meets the all-employee benefit requirement, for the purposes of subsection (2)(a).

For this purpose references in those sections to C are to be read as references to the company mentioned in subsection (1)."

(4) The amendments made by this paragraph are treated as having come into force on 6 April 2014.

11 (1) Section 86 of IHTA 1984 (trusts for benefit of employees) is amended as follows.

(2) In subsection (3), after paragraph (c) insert ", or

(d) the settled property consists of or includes ordinary share capital of a company which meets the trading requirement and the trusts on which the settled property is held are those of a settlement which—

(i) meets the controlling interest requirement with respect to the company, and

(ii) meets the all-employee benefit requirement with respect to the company."

(3) After that subsection insert—

"(3A) For the purpose of determining whether subsection (3)(d) is satisfied in relation to settled property which consists of or includes ordinary share capital of a company—

(a) section 236I of the 1992 Act applies to determine if the company meets the trading requirement (with references to "C" being read as references to that company),

(b) sections 236J to 236L of the 1992 Act apply to determine if the settlement meets the all-employee benefit requirement and the controlling interest requirement (with references in those sections to "C" being read as references to that company), and

(c) "ordinary share capital" has the meaning given by section 989 of the Income Tax Act 2007."

(4) The amendments made by this paragraph are treated as having come into force on 6 April 2014.

Corporation Tax Act 2009

12 (1) In section 1292 of CTA 2009 (employee benefit contributions: provision of qualifying benefits), after subsection (6A) insert—

"(6B) For those purposes qualifying benefits are also provided, where a payment of money is made to a person, if and to the extent that the payment is exempt from income tax by virtue of section 312A of ITEPA 2003."

(2) The amendment made by this paragraph has effect in relation to payments made on or after 1 October 2014.

EXPLANATORY NOTE

COMPANIES OWNED BY EMPLOYEE OWNERSHIP TRUSTS

SUMMARY

1. Clause [X] and Schedule [Y] introduce a relief from capital gains tax and an exemption from income tax relevant to the creation and operation of legal structures in which a trading company is owned by a particular sort of trust for the benefit of employees.

2. Part 1 of the Schedule introduces a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).

3. Part 2 of this Schedule introduces an exemption of up to £3,600 per employment by a company or group per tax year from income tax on a qualifying bonus payment. The qualifying bonus payment must be one made to its employees by a company which is owned directly or indirectly by a trust of the type specified in Part 1 at the time of the payment and which meets the qualifying conditions. A qualifying bonus payment will be an award other than regular salary or wages that is paid to all employees of the company (or the group of which it is a member) on equal terms, although bonus amounts can be set by reference to a percentage of salary or length of service or hours worked.

4. Part 3 of this Schedule makes consequential amendments to relevant inheritance tax provisions to support the creation and operation of the trust and to corporation tax legislation to support the payment of tax exempt bonuses by employers.

DETAILS OF THE SCHEDULE

Part 1: capital gains tax relief

5. Part 1 of the Schedule makes changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992) to introduce a relief from capital gains tax on disposals of shares in a trading company or in the parent company of a trading group. The disposals must be made to a trust with specified characteristics, and the trustees must hold a defined controlling interest in the company at the end of the tax year for which the relief is claimed. The trustees must apply the trust's property for the benefit of all the eligible employees of the company (or, as the case may be, the group headed by the company).

6. Paragraph 1 inserts new sections 236H to 236P into TCGA 1992.

7. Subsection (1) of new section 236H summarises the circumstances in which the section applies and relief is due. It refers to the relief requirements which are described more fully in subsection (4).

8. Subsections (2) and (3) of new section 236H ensure that, where the section applies and the TCGA would normally require that the consideration for the disposal would be taken to be the market value of the shares, this 'market value rule' will not apply. Instead, the consideration received by the person disposing of the shares and given by the trust which acquires the shares will be taken to be an amount which results in no gain and no loss arising on the disposal.

9. Subsection (4) of new section 236H introduces five 'relief requirements' all of which must be met in order for the capital gains tax relief to be due. Four of these requirements are described in detail in other sections of the TCGA. The trading requirement must be met by the company whose shares are acquired by the trustees at the time of the disposal and until the end of the tax year in which that disposal is made: see new section 236I, paragraph 12 below. The all-employee benefit requirement must be met by the trust or 'settlement' the trustees of which acquire the shares, see new sections 236J and 236K, paragraphs 16 and 21 below. The controlling interest requirement must also be met by that settlement, see new section 236L, paragraph 25 below. The limited participation requirement is an anti-avoidance provision, referring to the shareholders and other participators in the company, see new section 236M, paragraph 28 below.

10. Subsection (4)(e) and (5) of new section 236H contain the fifth relief requirement. This is that neither the claimant nor anyone connected with him has received relief under section 236H in an earlier year on a disposal of either shares in the same company or shares in a company which was at that time a member of the same group as the company whose shares are the subject of the present claim.

11. Subsection (6) of new section 236H requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim.

12. New section 236I provides details of the trading requirement which must be met by the company ('C') whose shares are acquired by the trust. If C is not in a group then it must be a trading company. Otherwise C must be the parent company of a trading group.

13. Subsection (2) of new section 236I defines a trading company: C may be a trading company even if it carries on some non-trading activities, providing those activities are not substantial in relation to all its activities taken together.

14. Subsection (3) of new section 236I defines a trading group: at least one member of the group must carry on a trade and the activities of all the members taken together must not include to a substantial extent activities which are either non-trading or unrelated to the trade of another group member.

15. Subsection (5) of new section 236I provides for all the activities of the members of a group to be treated as one business and for businesses carried on by a company in its capacity as a member of a partnership not to be treated as trading activities or related to the trade of

another group member. The latter is to ensure that control of the company by the trustees carries with it control of the company's business: if the company is in a partnership it is not generally possible to say that it controls the partnership's business.

16. New section 236J provides details of the all-employee benefit requirement which must be met by the settlement whose trustees acquire the shares in company 'C'. Subsection (1) says that the settlement meets the requirement if the settled property is only permitted to be used for the benefit of all 'eligible employees' on the same terms (this is the equality requirement - see section 236K). The trusts of the settlement must not permit the trustees to create any sub trusts, to transfer property to the trustees of any other settlement or to make loans to beneficiaries of the trust.

17. Subsection (3) of new section 236J defines the 'eligible employees' who must be beneficiaries of the trust. Subject to the exceptions described in subsection (4), every employee of C and (where C is the parent company of a group) every employee of every member of the group headed by C is an eligible employee. The parent company of a group is a member of that group.

18. Subsection (4) of new section 236J lists individuals who are 'excluded participators', and as such cannot be eligible employees for the purposes of subsection (3). These individuals may therefore not be beneficiaries of the trust. An individual is an excluded participator if he or she:

- is a participator in C or in any company which is a member of the group of which C is the parent (the parent company of a group is a member of that group),
- is a participator in a close company which has transferred property to the trustees of the settlement and that transfer would have given rise to an inheritance tax charge but for the exemption in section 13 of the Inheritance Tax Act 1984,
- has been a participator in any of those companies after, or during the ten years before, the disposal on which relief is claimed,
- is connected with any participator identified under the preceding rules in this subsection. (In this context, 'connected with' takes its meaning from section 286 TCGA 1992, and is extended to include uncles, aunts, nephews and nieces. See section 236P(3), paragraph 39 below.)

For these purposes, 'participator' has a restricted meaning - see subsection (5), paragraph 19 below.

19. Subsection (5) of new section 236J applies a special definition of 'participator' for the purposes of deciding whether a person is an excluded participator. A person who does not own, or is not entitled to acquire, 5% or more of any class of share in a company and who would not be entitled to 5% or more of the company's assets on its winding-up is not treated as a participator and therefore cannot be an excluded participator.

20. Subsection (6) of new section 236J defines the terms 'relevant group company' 'close company' and 'participator' as used in this section, and ensures that the restrictions on how the settled property of the trust may be applied in section 236J refer also to income arising from that property.

21. New section 236K explains the 'equality requirement' which was introduced as an element of the all-employee benefit requirement by section 236J(1). This ensures that, with a few specific exceptions, every eligible employee benefits from the trust's income and property, though they need not benefit by exactly the same amounts.

22. Subsections (1) and (2) of new section 236K list four things the trustees may be permitted to do with the trust's income and property without jeopardising the equality requirement's being met:

- apply it for the benefit of a surviving spouse, civil partner or dependant of an eligible employee who has died for up to 12 months after the death (or such shorter period as the trusts may provide), as if the recipient were that eligible employee,
- not apply it to individuals who have not been continuously employed by the company or, as the case may be, the group for a minimum period (not exceeding 12 months) preceding the payment,
- not apply it to employees who have freely asked not to receive benefits, and
- apply it for charitable purposes.

23. Subsections (3) (4) and (5) of new section 236K permit differing amounts to be paid to eligible employees, notwithstanding the equality requirement, but not so that some employees receive nothing at all. An individual's benefit from the trust may be computed by reference to his or her remuneration, length of service, or hours worked, but entitlement on account of each factor must be computed separately and the total payment must be sum of such relevant components.

24. Subsection (6) of new section 236K further ensures that the trust operates fairly for the benefit of all eligible employees (subject to the rules in subsection (3)). The equality requirement, and hence the all-employee benefit requirement, is not met if any feature of the trust actually has, or is likely to have, the effect of giving benefits wholly or mainly to directors or to more highly-paid employees, or to employees in a particular part of the business, or to employees carrying on particular activities.

25. New section 236L provides details of the controlling interest requirement which must be met by the settlement, trustees of which acquire the shares in company 'C', at the end of the tax year in which the relevant disposal is made. The requirement has three conditions, each of which must be satisfied, plus a fourth general condition which ensures the continuation of the controlling interest. For the purposes of the controlling interest requirement, Chapter 6 of Part 5 of the Corporation Tax Act 2010 applies to give the meaning of terms such as 'equity holder'.

26. Subsection (1) of new section 236L requires the trustees:

- to hold a majority of the ordinary share capital of C and that they also have voting powers which represent a majority of votes on questions affecting C as a whole,
- to be entitled to a majority of the profits available for distribution to equity holders of C, and
- to be entitled to a majority of C's assets available for distribution to equity holders in the event of C's winding-up.

27. Even if the three conditions above are met, subsection (1)(d) provides that the controlling interest requirement will not be met if there are any provisions in any agreement or document affecting C's constitution or management or its shares or securities, for any of the conditions to cease to be met without the consent of the trustees.

28. Subsection (1) of new section 236M explains two ways in which the limited participation requirement may be met. It will be met if the claimant has not been a participator in the company C at any time in the 12 months ending immediately after his disposal. Alternatively, it will be met if the 'participator fraction' does not exceed 2/5 (subsection (2)). In this context 'participator' has a special meaning given at subsection (3).

29. Subsection (2) of new section 236M defines the 'participator fraction'. The numerator NP is determined immediately after the disposal: it is the total of (i) the number of persons who are both participators in C and either employees of, or office-holders in, C and (ii) the number of persons immediately after the disposal who are both employees of C (or, as the case may be, of any member of the group headed by C) and connected with anyone included in (i). The denominator NE is the total number of persons who are employed by C (or as the case may be, the group headed by C) immediately after the disposal. In this context 'participator' has a special meaning given at subsection (3). For these purposes, the meaning of 'connected' is given by section 236P, see paragraph 40 below.

30. Subsections (3) and (4) of new section 236M define 'participator' for the purposes of the limited participation requirement. The meaning is as given by section 454 of the Corporation Tax Act 2010, but it does not include any person who does not hold, or is not entitled to acquire, five percent or more of any class of C's share capital and who is also not entitled to five percent or more of C's assets on a winding-up. Where the word is used in connection with a company which is not a close company, 'participator' includes a person who would be a participator in the company if it were a close company.

31. New section 236N makes provisions for gains or losses to accrue to the trustees on the occurrence of a 'disqualifying event'. Disqualifying events largely correspond to the relief requirements in 236H ceasing to be met at a time after relief has been given on a disposal to the trust.

32. Subsection (2) of new section 236N lists the disqualifying events. These are:

- (a) that at any time after the tax year in which relief was granted
  - the company C ceases to meet the trading requirement, or
  - the settlement ceases to meet the controlling interest requirement; or

- (b) at any time after the acquisition of shares (in circumstances where section 236H applies) by the settlement
  - the settlement ceases to meet the all-employee benefit requirement,
  - the participation fraction exceeds 2/5, or
  - the trustees act in a way contrary to the demands of the all-employee benefit requirement.

33. Subsection (3) of new section 236N directs that when a disqualifying event occurs, the trustees are treated as disposing of the shares they hold in C immediately after that event

and reacquiring the same shares for their then market value. Gains and losses latent in all the shares in the ordinary share capital held by the trustees at that time (whether or not they are shares in respect of which relief was granted under section 236H or section 236O) will accrue and may be taxed or relieved subject to the relevant provisions of the Taxes Acts.

34. Subsections (4) and (5) of new section 236N ensure that the all-employee benefit requirement at section 236J and the limited participation requirement at section 236M work properly for the purposes of identifying disqualifying events under section 236N.

35. New section 236O contains special provisions which apply when trustees of a settlement (the acquiring settlement) become entitled to shares in a company which is settled property against the trustee of that property in another settlement (the transferring settlement). Section 71 of TCGA 1992 provides for a disposal and reacquisition to be deemed to occur on that event by the trustees of the transferring settlement, and section 236O ensures that the trustee of the transferring settlement may claim relief on the deemed disposal, subject to the same conditions as apply on actual disposals of shares to a trust.

36. Subsections (2) and (3) of new section 236O allow the relief in the same way as section 236H where section 236O applies.

37. Subsection (4) of new section 236O ensures that the provisions of section 236N (concerning the consequences of disqualifying events) apply to the acquiring settlement in cases where relief is given under section 236O rather than under section 236H.

38. Subsection (5) of new section 236O ensures that the five relief requirements apply to claims under section 236O as they do to claims under section 236H.

39. Subsection (6) of new section 236O requires the claimant to supply certain information to HMRC with any claim, to allow HMRC to check the validity of the claim. This requirement corresponds to section 236H(6).

40. New section 236P defines ‘company’, ‘ordinary share capital’ and ‘trade’ as they are used in sections 236H to 236O. It also provides for references to a group, to membership of a group and to the principal company of a group to be read in a manner consistent with their definitions in section 170 TCGA 1992. References to a group made in relation to a non UK company are construed with any necessary modifications. This section also applies section 286 TCGA for the purposes of deciding whether one person in ‘connected with’ another, subject to the definition of a relative used in that section being extended to include uncle, aunt, nephew and niece.

41. Paragraph 2 of Part 1 of the Schedule provides for the relief to have effect in relation to disposals made in tax year 2014-15 or later years.

Part 2: employment income exemption

42. Paragraph 3 amends provisions within the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

43. Paragraph 4 introduces to Part 4 of the Income Tax (Earnings and Pensions) Act the new Chapter, Chapter 10A, which itself introduces the following provisions.

Section 312A

44. New subsection (1) states the conditions which must be satisfied by an employer company to be able to make a qualifying bonus payment, such conditions being the trading requirement and the indirect employee ownership requirement and both these conditions must be met throughout the qualifying period.

45. New subsection (2) sets the maximum amount of the qualifying bonus payment that is exempt from income tax (the "exempt amount") at £3,600 per tax year.

46. New subsection (3) ensures that, where an employee has received a qualifying bonus from more than one employer in a tax year, the exemption in new subsection (2) applies separately in relation to the total payments made by each employer. The exception to this is set out in new subsection (4).

47. New subsection (4) ensures that where an employee receives a bonus from two or more employers within the same group at the time the payments are received, the exempt amount applies to the total amount of the bonuses received from all employers in the group and not separately in relation to each employer, as with new subsection (3).

48. New subsection (5) specifies the order in which the exempt amount should be applied when more than one qualifying bonus is received in the same tax year by an employee. The situation where two (or more) qualifying bonuses are received on the same day is covered in new subsection 6.

49. New subsection (6) specifies how the exempt amount should be applied where two or more qualifying bonuses are received on the same day. The subsection shows that the exempt amount (or the unused amount of the exempt amount) should be applied in proportion to the amounts of the bonuses received on the same day.

50. New subsection (7) makes clear that the above rules for applying the exempt amount to more than one payment apply in relation to each separate employment within the tax year (other than separate employments within the same group).

51. New subsection (8) states that where an employee has received a qualifying bonus from a member of a group of companies, the paying employer will be treated as remaining a member of that group until the following 5 April even if it has ceased to be a member of that group. This is relevant in determining if the total qualifying bonus payments received in a tax year from the group exceed the exempt amount (see subsection (4) above).

52. New subsection (9) gives the Treasury authority to increase or reduce the exempt amount.

53. New subsection (10) ensures that House of Commons approval is necessary for any reduction in the exempt amount.

54. New subsection (11) provides a definition of the terms "chargeable amount" and "the qualifying period".

Section 312B

55. New subsection (1) sets out the conditions which must be met for a payment to be a qualifying bonus payment. The payment must not be regular salary or wages, must be awarded under a scheme which meets the participation requirement and the equality requirement, must not be made by a service company as set out at new section 312E and must not be an excluded payment under new subsection 312B(10).

56. New subsection (2) defines the participation requirement as a requirement that all persons in relevant employment must be eligible to participate in an award under the scheme.

57. New subsection (3) defines the equality requirement as a requirement that every person who participates in an award under the scheme must do so on equal terms.

58. New subsection (4) defines relevant employment.

59. New subsection (5) states that the participation requirement is not infringed only because employees with less than twelve months' continuous service in relevant employment at the time of the award are excluded from participating in the award.

60. New subsection (6) lists the criteria on which an employer is permitted to base the allocation of an award under the scheme amongst employees without infringing the equality requirement.

61. New subsection (7) states that the equality requirement is infringed if, under the terms of the award, some, but not all, participating employees receive nothing.

62. New subsection (8) states that where the amount of a participating employee's share of an award under the scheme is determined by reference to an employee's remuneration, length of service or hours worked the equality requirement will not be satisfied unless each of those factors gives rise to a separate entitlement and the employee's total entitlement is the sum of those separate entitlements. This means that the entitlements cannot be multiplied together.

63. New subsection (9) states that the equality requirement is infringed if any feature of the scheme has or is likely to have the effect of conferring benefits on certain employees or groups of employees within the business.

64. New subsection (10) defines an excluded payment and ensures that a payment cannot be a qualifying bonus payment if it is made under arrangements (made before or after the employment commences) where the payment is substituted for regular salary or wages.

Section 312C

65. New subsections (1) to (5) define 'trading requirement' and related terms, as referred to in section 312A(1). This requirement must be met throughout the qualifying period (see section 312A(1)).

Section 312D

66. New subsection (1) states that a company meets the indirect employee ownership requirement referred to in section 312A(1) if, throughout the qualifying period, the settlement meets the controlling interest requirement and the all-employee benefit requirement.

67. New subsection (2) by virtue of this subsection the controlling interest requirement and the all-employee requirement which are set out in the new capital gains tax relief provisions apply for determining whether a settlement satisfies those requirements for the purposes of section 312D(1) but with the modifications in sub section (3).

68. New subsection (3) confirms how those capital gains tax provisions should be interpreted for the purposes of their application in accordance with subsection (2).

69. New subsection (4) states that the term 'qualifying period' has the same meaning as in section 312A.

Section 312E

70**.** New subsection (1) states that a payment is made by a 'service company' for the purpose of new subsection 312B(1) if the payment is made by a managed service company within section 61B or a company which meets Conditions A and B set out at new subsections 312E(2) and (3).

71. New subsection (2) states that Condition A is that most of the business carried on by the company must be the provision of the services of its employees.

72. New subsection (3) states that Condition B is that most of those services are provided to persons defined in new subsection (4) but who are not members of the same group as the company which makes the payment.

73. New subsection (4) specifies the persons or companies referred to in subsection (3).

74. New subsection (5) states that for the purposes of applying subsection (4) special rules, set out in subsection (5), apply in relation to partnerships.

75. New subsection (6) lists the three legislative provisions that apply for the purposes of interpreting specified terms used within this section.

Section 312F

76. New subsections (1) and (2) define the words and phrases used in Chapter 10A by cross reference to other tax legislation.

77. Subsection (3) ensures that in the case where an employee has died, the deceased employee's personal representatives are still able to benefit from the exemption to the same extent (if at all) as if the employee had not died.

78. Paragraph 5 ensures that the Treasury authority to increase or reduce the exempt amount is not subject to annulment in pursuance of a resolution of the House of Commons.

79. Paragraph 6 inserts the updated reference to 'company (in Chapter 10A of Part 4)', 'ordinary share capital (in Chapter 10A of Part 4)' and 'trade (in Chapter 10A of Part 4)' in Part 2 of Schedule 1.

80. Paragraph 7 sets the date from which the amendments made to ITEPA apply and the date from which qualifying bonus payments are eligible for the income tax exemption.

Part 3: minor amendments

Inheritance Tax Act 1984

81. Paragraph 8 makes amendments to section 13 of Inheritance Tax Act 1984 (IHTA)

82. Paragraph 8(2) ensures that a transfer of cash or other assets to the trust by a close company is not a transfer of value, and hence is not subject to inheritance tax, if the settlement meets the all-employee benefit requirement in section 236J TCGA and the close company meets the trading requirement in section 236I. This ensures that the transfer to the trust is exempt even if the existing condition in section 13(2)(a) that the trust property must be applied for the benefit of 'all or most' employees is not met because of the application of the provisions in section 236K(1) TCGA.

83. Paragraph 8(3) inserts new section 13(4A) which explains that the trading requirement and all-employee benefit requirement mentioned in section 13(1) have the same meaning as for capital gains tax.

84. Paragraph 8(4) provides that these amendments take effect for transfers (dispositions) made on or after 6 April 2014.

85. Paragraph 9(1) makes amendments to section 28 of IHTA

86. Paragraph 9(2) ensures that a transfer of shares in a company to the trust by an individual is an exempt transfer, and hence exempt from inheritance tax, if the company meets the trading requirements in section 236I TCGA and the settlement meets the all-employee benefit requirement in section 236J TCGA.

87. Paragraph 9(3) inserts new section 28(6A) which explains that the trading requirement and all-employee benefit requirement mentioned in section 28(1) have the same meaning as for capital gains tax.

88. Paragraph 9(4) provides that these amendments come into effect for transfers of value made on or after 6 April 2014.

89. Paragraph 10 makes amendments section 75 of IHTA

90. Paragraph 10(2) ensures that shares in a company which are already held in a trust that become held on trusts to which this schedule applies are exempt from inheritance tax if the company meets the trading requirements in section 236I TCGA and the trusts are of a settlement which meets the all-employee benefit requirement in section 236J TCGA. This provides an exemption in similar circumstances to those in paragraphs 8 & 9.

91. Paragraph 10(3) inserts new section 75(4) which explains that the trading requirement and all-employee benefit requirement mentioned in section 75(2) have the same meaning as for capital gains tax.

92. Paragraph 10(4) provides that these amendments come into force on 6 April 2014.

93. Paragraph 11 makes amendments to section 86 of IHTA

94. Paragraph 11(2) inserts new section 86(3)(d) so that the trust qualifies for the existing exemption from inheritance tax which applies to employee benefit trusts providing that it holds shares in a company which meets the trading requirement in section 236I, and the trust meets the controlling interest requirement in section 236L TCGA and the all-employee benefit requirement in section 236J.

95. Paragraph 11(3) inserts new section 86(3A) which explains that the controlling interest requirement, trading requirement and all-employee benefit requirement mentioned in new section 86(3)(d) have the same meaning as for capital gains tax.

96. Paragraph 11(4) provides that these amendments come into force on 6 April 2014.

Corporation Tax Act 2009 ("CTA2009")

97. Paragraph 12 ensures that a company which would otherwise be entitled to a corporation tax deduction in respect of a qualifying bonus payment is not prevented by section 1290 of the CTA 2009 (Employee benefit contributions) from claiming such deduction by virtue of all or part of such payment being exempt from income tax. It does this by amending section 1292 CTA 2009 (provision of qualifying benefits) so as to provide that if, and to the extent that the qualifying bonus payment is exempt from income tax under new Section 312A of ITEPA, it will be treated as a qualifying benefit.

BACKGROUND NOTE

98. The Government announced in Autumn Statement 2013 that it would provide £70 million annually from 2014-15 to support employee ownership models in order to incentivise growth of the sector. This will be in addition to the existing tax-advantaged share schemes.

99. The support is targeted at legal structures in which a trading company or group is owned by trustees which must act for the benefit of all employees. Structures of this kind have not until now received as much support as is given to arrangements under which employees own shares in their employer directly.

100. The capital gains tax relief and income tax and inheritance tax exemptions further the Government's policy of supporting existing employee-owned companies and promoting the creation of new employee-owned companies. The capital gains tax relief and inheritance tax exemption will encourage the creation of new structures through which employees can benefit from the success of their employer's business. The income tax exemption will allow those businesses to share their successes with employees through tax-advantaged payments.

101. The Government is considering reviewing this exemption in five years time to monitor take up, effectiveness and whether the spend is at the appropriate level.

102. If you have any questions about this change, or comments on the legislation, please contact employmentincome.policy@hmrc.gsi.gov.uk for comments about the income tax exemption; or capitalgains.taxteam@hmrc.gsi.gov.uk for comments about the capital gains tax relief or Inheritance Tax Act amendments.

1 Relief for investments in social enterprises

(1) Schedule 1 makes provision for and in connection with income tax relief for investments in social enterprises.

(2) Schedule 2 makes provision for relief under TCGA 1992 where gains are invested in social enterprises.

SCHEDULES

SCHEDULE 1

Section 1

TAX RELIEF FOR SOCIAL INVESTMENTS

PART 1

THE RELIEF

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

"PART 5B

TAX RELIEF FOR SOCIAL INVESTMENTS

CHAPTER 1

INTRODUCTION

257J Meaning of "SI relief" and "social enterprise"

(1) This Part provides for income tax relief for social investments ("SI relief"), that is, entitlement to tax reductions in respect of amounts invested in social enterprises by individuals.

(2) In this Part "social enterprise" means—
(a) a community interest company,
(b) a community benefit society (see section 257JB) that is not a charity,
(c) a charity, or
(d) any other body prescribed, or of a description prescribed, by an order made by the Treasury.

(3) An order under subsection (2)(d) may make provision as to the bodies which are social enterprises for the purposes of this Part at times before the order comes into force or FA 2014 is passed but, where a body is a social enterprise for the purposes of this Part as a result of an order under subsection (2)(d) that has come into force, no subsequent order under subsection (2)(d) may undo that result in respect of times before the subsequent order comes into force.

257JA Form and amount of relief

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

the individual is entitled to a tax reduction for the tax year in which the amount was invested.

This is subject to the provisions of this Part.

(2) The amount of the reduction to which an individual is entitled under this Part for any particular tax year is the amount equal to tax, at the SI rate for that year, on—

(a) the amount or, as the case may be, the sum of the amounts invested in that year in respect of which the individual is eligible for and claims SI relief, or

(b) if less, £1 million.

(3) The tax reduction is given effect at Step 6 in section 23.

(4) If an individual—

(a) is eligible for and claims SI relief in respect of an amount, and

(b) makes a claim for part of that amount to be treated for the purposes of subsections (1) and (2) as if it had been invested not in the tax year in which it was actually invested but in the preceding tax year,

those subsections apply, and the individual's liability to tax for both tax years is determined, in accordance with the claim.

(5) In this Part "the SI rate" means [X%].

257JB Meaning of "community benefit society"

(1) In this Part "community benefit society" means a body that—

(a) is registered as a community benefit society under the 2014 Act,

(b) is a pre-commencement society (within the meaning of the 2014 Act) that meets the condition in section 2(2)(a)(ii) of the 2014 Act, or

(c) is a society registered, or treated as registered, under section 1 of the Industrial and Provident Societies Act (Northern Ireland) 1969 in the case of which the condition in section 1(2)(b) of that Act is fulfilled,

and in respect of which the condition in subsection (2) is met.

(2) The condition is that—

(a) the body is of a kind prescribed by regulation 5 of, and

(b) the body's rules include a rule in the terms set out in Schedule 1 to,

the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 (S.I. 2006/264) or the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006 (S.R. 2006/258).

(3) The Treasury may by order amend this section for the purpose of—

(a) replacing—

(i) the condition in subsection (2), or

(ii) the condition, or all or any of the conditions, for the time being replacing the condition in subsection (2),

with one or more other conditions;

(b) varying—

(i) the condition in subsection (2), or
(ii) the condition, or any of the conditions, for the time being replacing the condition in subsection (2);

(c) dispensing with—
(i) the condition in subsection (2), or
(ii) the condition, or all or any of the conditions, for the time being replacing the condition in subsection (2).

(4) In this section—
"the 2014 Act" means the Co-operative and Community Benefit Societies Act 2014;
"the 2010 Act" means the Co-operative and Community Benefit Societies and Credit Unions Act 2010.

(5) While neither the 2014 Act, nor section 1 of the 2010 Act, is in force, subsection (1) of this section has effect as if for paragraphs (a) and (b) of that subsection there were substituted—
"(a) is a society registered, or treated as registered, under section 1 of the Industrial and Provident Societies Act 1965 in the case of which the condition in section 1(2)(b) of that Act is fulfilled, or".

(6) If section 1 of the 2010 Act (registration of societies) comes into force before the 2014 Act comes into force then, with effect from the coming into force of that section and until the coming into force of the 2014 Act, subsection (1) of this section has effect as if for paragraphs (a) and (b) of that subsection there were substituted—
"(a) is registered as a community benefit society under section 1 of the Industrial and Provident Societies Act 1965 ("the 1965 Act"),
(b) is a pre-2010 Act society (as defined by section 4A(1) of the 1965 Act) that meets the condition in section 1(3) of the 1965 Act, or".

(7) In the event that section 2 of the 2010 Act (renaming of the 1965 Act) is brought into force before its repeal by the 2014 Act takes effect then, with effect from the coming into force of that section, subsections (5) and (6) of this section have effect as if, in the provisions which they substitute, the references to the Industrial and Provident Societies Act 1965 were references to the Co-operative and Community Benefit Societies and Credit Unions Act 1965.

257JC Charities that are trusts

In this Part, a reference to a company includes a reference to a charity that is a trust.

CHAPTER 2

ELIGIBILITY FOR RELIEF: BASIC RULE AND KEY DEFINITIONS

Eligibility

257K Eligibility for SI relief

(1) An individual ("the investor") who invests in a social enterprise is eligible for SI relief in respect of the amount invested if—
(a) the investment is made—

(i) by the investor on the investor's own behalf,
(ii) on or after 6 April 2014, and
(iii) before 6 April 2019 (but see subsection (3)), and

(b) the conditions set out in Chapters 3 and 4 are met.

(2) The investor is not eligible for SI relief in respect of the amount invested if—

(a) the investor has obtained in respect of that amount, or any part of it, relief under—
(i) Part 5 (enterprise investment scheme),
(ii) Part 5A (seed enterprise investment scheme), or
(iii) Part 7 (community investment tax relief), or

(b) that amount, or any part of it, has under Schedule 5B to TCGA 1992 (enterprise investment scheme: re-investment) been set against a chargeable gain.

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

(4) The Treasury may by order substitute a later date for the date for time being specified in subsection (1)(a)(iii).

Key definitions

257KA Key to reading the rest of the Part

In the following provisions of this Part (except section 257N), a reference to—

"the amount invested",

"the investment",

"the investor", or

"the social enterprise",

is to be read in accordance with section 257K(1).

257KB When investment is made, and "investment date"

(1) In this Part "the investment date" means the date on which the investment is made.

(2) For the purposes of this Part—

(a) so far as the investment is in shares, it is made when the shares are issued to the investor by the social enterprise, and

(b) so far as the investment is in qualifying debt investments (see section 257L), it is made—
(i) when the social enterprise issues the debenture or debentures concerned to the investor, or
(ii) in a case where there is to be no such issuing, when the debenture or debentures concerned, so far as relating to the amount invested, take effect between the social enterprise and the investor.

257KC "Shorter applicable period" and "longer applicable period"

(1) In this Part "the shorter applicable period" and "the longer applicable period" have the meaning given by this section.

(2) The shorter applicable period begins with the investment date.

(3) The longer applicable period begins with—
  (a) the day on which the social enterprise is—
    (i) incorporated (if it is a body corporate), or
    (ii) established (in any other case), or
  (b) if later, the day whose first anniversary is the investment date.

(4) Each of the periods ends with the third anniversary of the investment date.

CHAPTER 3

ELIGIBILITY: CONDITIONS RELATING TO THE INVESTOR AND THE INVESTMENT

257L Investment to be in new shares or new qualifying debt investments

(1) At all times during the shorter applicable period, the investment must be in—
  (a) shares that meet conditions A and B and are issued to the investor by the social enterprise in return for the amount invested, or
  (b) qualifying debt investments of which the investor is the holder in return for advancing the amount invested to the social enterprise.

(2) Condition A is that the shares must carry none of the following—
  (a) a right to a return which, or any part of which, is a fixed amount;
  (b) a right to a return which, or any part of which, is at a fixed rate;
  (c) a right to a return which, or any part of which, is otherwise fixed by reference to the amount invested;
  (d) a right to a return which, or any part of which, is fixed by reference to some other factor that is not contingent on successful financial performance by the social enterprise;
  (e) a right to a return at a rate greater than a reasonable commercial rate.

(3) Condition B is that, for the purpose of determining the amounts due in respect of the shares to their holder in the event of the winding-up of the social enterprise—
  (a) those amounts rank after all debts of the social enterprise except any due to holders of qualifying debt investments in the social enterprise in respect of their qualifying debt investments, and
  (b) the shares do not rank above any other shares in the social enterprise.

(4) In this Part "qualifying debt investments", in relation to the social enterprise, means any debentures of the social enterprise in respect of which the following conditions are met—

(a) neither the principal of the debt concerned, nor any return on that, is charged on any assets,

(b) the rate of any such return is not greater than a reasonable commercial rate of return, and

(c) in the event of the winding-up of the social enterprise, any sums due in respect of the debt (whether principal or return)—

(i) are subordinated to all other debts of the social enterprise except sums due in the case of other unsecured debentures of the social enterprise which rank equally,

(ii) rank equally, if there are shares in the social enterprise and they all rank equally among themselves, with amounts due to share-holders in respect of their shares, and

(iii) rank equally, if there are shares in the social enterprise and they do not all rank equally, with amounts due in respect of their shares to the holders of shares that do not rank above any other shares.

(5) The condition in subsection (3)(b) or (4)(c)(i) is met even if the sums concerned do not rank after debts which are postponed—

(a) by rules under section 411 of the Insolvency Act 1986, or

(b) by or under any other enactment.

257LA Condition that the amount invested must have been paid over

(1) So far as the investment is in shares—

(a) the shares must be subscribed for wholly in cash, and

(b) must be fully paid up at the time they are issued.

(2) So far as the investment is in qualifying debt investments, their full nominal amount must have been advanced wholly in cash by the time the investment is made.

(3) For the purposes of this section—

(a) shares are not fully paid up, or

(b) the full nominal amount of qualifying debt investments has not been advanced,

if there is any undertaking to pay cash to any person at a future time in respect of the acquisition of the shares or investments.

257LB The no pre-arranged exits requirements

(1) There must not at any time in the shorter applicable period be any arrangements in existence for the investment to be redeemed, repaid, repurchased, exchanged or otherwise disposed of in that period.

(2) The issuing arrangements for the investment must not include—

(a) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the social enterprise or a person connected with the social enterprise, or

(b) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the social enterprise or of a person connected with the social enterprise.

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

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

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

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

(a) the arrangements under which the investor makes the investment, and

(b) any arrangements made before, and in relation to or in connection with, the making of the investment by the investor.

257LC The no risk avoidance requirement

(1) There must not at any time in the shorter applicable period be any arrangements in existence the main purpose or one of the main purposes of which is (by means of any insurance, indemnity, guarantee, hedging of risk or otherwise) to provide partial or complete protection for the investor against what would otherwise be the risks attached to making the investment.

(2) The arrangements referred to in subsection (1) do not include any arrangements which are confined to the provision—

(a) for the social enterprise itself, or

(b) if the social enterprise is a parent company that meets the trading requirement in section 257MJ(2)(b)—

(i) for the social enterprise itself,

(ii) for the social enterprise itself and one or more of its subsidiaries, or

(iii) for one or more of the subsidiaries of the social enterprise,

of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided in normal commercial circumstances.

257LD The no linked loans requirement

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

(2) In this section "linked loan" means any loan which—

(a) would not have been made, or

(b) would not have been made on the same terms,

if the investor had not made the investment, or had not been proposing to do so.

(3) References in this section to the making by any person of a loan to the investor or an associate of the investor include—

(a) references to the giving by that person of any credit to the investor or any associate of the investor, and

(b) references to the assignment to that person of a debt due from the investor or any associate of the investor.

257LE The no tax avoidance requirement

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

257LF Restrictions on being an employee, partner or paid director

(1) This section applies—

(a) to the investor, and

(b) to any individual who is an associate of the investor.

(2) An individual to whom this section applies must not at any time in the longer applicable period be—

(a) an employee of—

(i) the social enterprise,

(ii) any subsidiary of the social enterprise,

(iii) a partner of the social enterprise, or

(iv) a partner of any subsidiary of the social enterprise,

(b) a partner of—

(i) the social enterprise, or

(ii) any subsidiary of the social enterprise,

(c) a trustee of—

(i) the social enterprise, or

(ii) any subsidiary of the social enterprise, or

(d) a remunerated director of—

(i) the social enterprise, or

(ii) a linked company.

(3) In this section—

"linked company" means—

(a) a subsidiary of the social enterprise,

(b) a company which is a partner of the social enterprise, or

(c) a company which is a partner of a subsidiary of the social enterprise;

"related person" means—

(a) the social enterprise,

(b) a person connected with the social enterprise,

(c) a linked company of which the individual is a director, or

(d) a person connected with such a company;

"subsidiary", in relation to the social enterprise, means a company which at any time in the longer applicable period is a 51% subsidiary of the social enterprise (and such a company is therefore a subsidiary of the social enterprise for the purposes of this section even at times when it is not a 51% subsidiary of the social enterprise).

(4) For the purposes of subsection (2)(d), an individual who is a director of the social enterprise or a linked company is "remunerated" if the individual (or a partnership of which the individual is a member)—

(a) receives during the longer applicable period a payment from a related person, or

(b) is entitled to receive a payment from a related person in respect of the longer applicable period or any part of that period.

(5) For the purposes of subsection (4) the following are ignored—

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

(b) any interest which represents no more than a reasonable commercial return on money lent to a related person,

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

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

(e) any payment of rent for any property occupied by a related person which does not exceed a reasonable and commercial rent for the property,

(f) any necessary and reasonable remuneration which—

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

(ii) is taken into account in calculating for tax purposes the profits of that trade or profession, and

(g) if condition A or B is met, any other reasonable remuneration (including any benefit or facility) received by the individual, or to which the individual is entitled, for services rendered by the individual—

(i) to the company (whether the social enterprise or a linked company) of which the individual is a director, and

(ii) in the individual's capacity as a director of that company.

(6) Condition A is that the investor made the investment, or previously made another investment meeting the requirement in section 257L(1), at a time when the investor —

(a) had never been connected [in a section 166 sense not a section 993 sense] with the social enterprise, and

(b) had never been involved in carrying on (whether on the investor's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the social enterprise or a subsidiary of the social enterprise.

(7) Condition B is that—

(a) condition A is not met, and
(b) the investment was made before the third anniversary of the date when the investor last made an investment in the social enterprise which met condition A.

(8) References in this section to an individual in the individual's capacity as a director of a company include, if the individual is both a director and an employee of the company, references to the individual in the individual's capacity as an employee of the company but, apart from that, an individual who is both a director and an employee of a company is treated for the purposes of this section as a director, and not an employee, of the company.

(9) In subsections (2), (4) and (5) "director" does not include a trustee of a charity that is a trust.

257LG The requirement not to be interested in capital etc of social enterprise

(1) This section applies—
(a) to the investor, and
(b) to any individual who is an associate of the investor.

(2) In this section "related company" means—
(a) the social enterprise, or
(b) a company which at any time in the longer applicable period is a 51% subsidiary of the social enterprise (and such a company is therefore a related company for the purposes of this section even at times when it is not a 51% subsidiary of the social enterprise).

(3) There must not be a time in the longer applicable period when an individual to whom this section applies has control of a related company.

(4) There must not be a time in the longer applicable period when an individual to whom this section applies directly or indirectly possesses or is entitled to acquire—
(a) more than 30% of the ordinary share capital of a related company,
(b) more than 30% of the loan capital and issued share capital of a related company (the amount of the issued share capital being for this purpose the amount raised by its issue), or
(c) more than 30% of the voting power in a related company.

(5) For the purposes of subsections (3) and (4) ignore any shares in a related company held by the individual, or by an associate of the individual, at a time when that company—
(a) has not issued any shares other than subscriber shares, and
(b) has not begun to carry on, or make preparations for carrying on, any trade or business.

(6) For the purposes of this section, the loan capital of a company—
(a) is treated as including any debt incurred by the company—
(i) for any money borrowed or capital assets acquired by the company,

(ii) for any right to receive income created in favour of the company, or

(iii) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it), and

(b) is treated as not including any debt incurred by the company by overdrawing an account with a person carrying on a business of banking if the debt arose in the ordinary course of that business.

(7) For the purposes of this section—

(a) an individual is treated as entitled to acquire anything which the individual is entitled to acquire at a future date or will at a future date be entitled to acquire, and

(b) there is attributed to any individual any rights or powers of any other person who is an associate of the individual.

257LH Requirement for no collusion with a non-qualifying investor

There must not at any time in the longer applicable period be any scheme or arrangement—

(a) as part of which—

(i) the investor makes the investment, or

(ii) the investor, or an individual who is an associate of the investor, makes any other investment in the social enterprise,

(b) which provides for a person to make an investment in a company other than the social enterprise, where that person is not the individual ("A") who invests as mentioned in paragraph (a), and

(c) to which there is a party (whether or not A) who is an individual in relation to whom not all of the requirements in sections 257LF and 257LG would be met if—

(i) references in those sections to the investor were read as references to that individual, and

(ii) references in those sections to the social enterprise were read as references to the company mentioned in paragraph (b).

CHAPTER 4

ELIGIBILITY: CONDITIONS RELATING TO THE SOCIAL ENTERPRISE

Conditions relating to the social enterprise

257M The financial health requirement

(1) The social enterprise must not be in difficulty when the investment is made.

(2) The social enterprise is "in difficulty" if [it is reasonable to assume that it would be regarded as an enterprise in difficulty for the

purposes of any EU instrument from time to time relating to de minimis State aid].

257MA The amount raised from investments potentially eligible for relief

(1) The amount invested must not be more than the amount given by—

$$\frac{€200{,}000 - T - M}{RCG + RSI}$$

where—

T is the total of any scheme investments made in the aid period,

M is the total of any de minimis aid, other than scheme investments, that is granted to the social enterprise during the aid period,

RCG is the highest rate at which capital gains tax is charged in the aid period, and

RSI is the highest SI rate in the aid period.

(2) In subsection (1) "the aid period" is the 3 years—

(a) ending with the day on which the investment is made, but

(b) in the case of that day, including only the part of the day before the investment is made.

(3) In this section "de minimis aid" means de minimis aid within the meaning of—

(a) Article 2 of Commission Regulation (EC) No. 1998/2006 (de minimis aid) as amended from time to time, or

(b) any provision of an EU instrument from time to time replacing that Article.

(4) For the purposes of subsection (1), the amount of any de minimis aid is the amount of the grant or, if the aid is not in the form of a grant, the gross grant equivalent amount within the meaning of that Regulation as amended from time to time.

(5) For the purposes of this section, a scheme investment is made if—

(a) the social enterprise issues shares, or qualifying debt investments, to an individual (money having been subscribed or advanced for them), and

(b) (at any time) the social enterprise provides a compliance statement under section 257NC in respect of those shares or investments;

and a scheme investment is made on the day when the shares or qualifying debt investments are issued, and the amount of a scheme investment is the amount subscribed for the shares or (as the case may be) advanced for the qualifying debt investments.

(6) For the purposes of subsection (1), if—

(a) the investment or any scheme investments are made, or

(b) any aid is granted,

in sterling or any other currency that is not the euro, its amount is to be converted into euros at an appropriate spot rate of exchange for the date on which the investment is made or the aid is paid.

257MB Power to amend limits on amounts raised

(1) The Treasury may by order amend this Part for the purpose of—
  (a) altering any limit for the time being imposed by this Part on amounts that a social enterprise may raise through investments eligible for SI relief;
  (b) complying with any undertakings given to the European Commission, or any conditions imposed by the Commission, in connection with an application for State aid approval.

(2) In subsection (1) "State aid approval" means approval that the provision made by this Part, so far as it constitutes the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies, is or would be compatible with the internal market, within the meaning of Article 107 of that Treaty.

(3) An order under this section may make incidental, supplemental, consequential, transitional or saving provision.

(4) A statutory instrument that contains (whether alone or with other provisions) an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

257MC The gross assets requirement

(1) If the social enterprise is a single company, the value of its assets—
  (a) must not exceed £15 million immediately before the investment is made, and
  (b) must not exceed £16 million immediately after the investment is made.

(2) If the social enterprise is a parent company, the value of the group assets—
  (a) must not exceed £15 million immediately before the investment is made, and
  (b) must not exceed £16 million immediately after the investment is made.

(3) For the purposes of subsection (2), the value of the group assets is the sum of the values of the gross assets of each of the members of the group, ignoring any assets that consist in rights against, or shares in or securities of, another member of the group.

257MD The unquoted status requirement

(1) At the beginning of the shorter applicable period—
  (a) the social enterprise must not be a quoted company,
  (b) there must be no arrangements in existence for the social enterprise to become a quoted company, and
  (c) there must be no arrangements in existence for the social enterprise to become a subsidiary of a company ("the new company") by virtue of an exchange of shares, or shares and securities, if arrangements have been made with a view to the new company becoming a quoted company.

(2) For the purpose of this section, a company is a "quoted company" if any shares, stocks, debentures or other securities of the company are—

(a) listed on a recognised stock exchange,

(b) listed on an exchange that is in a country outside the United Kingdom and is designated for the purposes of section 184(3)(b), or

(c) dealt in outside the United Kingdom by any means designated for the purposes of section 184(3)(c).

(3) The arrangements referred to in subsection (1)(b), and the seond arrangement referred to in subsection (1)(c), do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the social enterprise or the new company (as the case may be) are at any subsequent time—

(a) listed on a stock exchange that is a recognised stock exchange by virtue of an order under section 1005(1)(b), or

(b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c),

if the order was made after the beginning of the shorter applicable period.

257ME The control and independence requirements

(1) The social enterprise must not at any time in the shorter applicable period control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the social enterprise.

(2) The social enterprise must not at any time in the shorter applicable period—

(a) be a 51% subsidiary of a company, or

(b) be under the control of a company, or under the control of a company and a person connected with that company, without being a 51% subsidiary of the company.

(3) No arrangements must be in existence at any time in the shorter applicable period by virtue of which the social enterprise could fail to meet either or both of subsections (1) and (2) (whether during that period or otherwise).

257MF The qualifying subsidiaries requirement

Any subsidiary that the social enterprise has at any time in the shorter applicable period must be a qualifying subsidiary of the social enterprise.

257MG The property-managing subsidiaries requirement

(1) Any property-managing subsidiary that the social enterprise has at any time in the shorter applicable period must be a qualifying 90% subsidiary of the social enterprise.

(2) In subsection (1) "property-managing subsidiary" means a subsidiary of the social enterprise whose business consists wholly or mainly in the holding or managing of land or any property deriving its value (directly or indirectly) from land.

257MH The number of employees requirement

(1) If the social enterprise is a single company, the full-time equivalent employee number for it must be less than 500 when the investment is made.

(2) If the social enterprise is a parent company, the sum of—
  (a) the full-time equivalent employee number for it, and
  (b) the full-time equivalent employee number for each of its qualifying subsidiaries,

must be less than 500 when the investment is made.

(3) The full-time equivalent number employee number for a company is calculated by taking the number of full-time employees of the company and adding, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

(4) In this section "employee"—
  (a) includes a director, but
  (b) does not include—
    (i) an employee on maternity or paternity leave, or
    (ii) a student on vocational training.

257MI The no partnership requirement

(1) The requirements in this section apply during the shorter applicable period.

(2) The social enterprise must not be a member of any partnership.

(3) Each qualifying 90% subsidiary of the social enterprise must not be a member of a partnership.

257MJ The trading rquirement

(1) The social enterprise must meet the trading requirement throughout the shorter applicable period.

(2) The trading requirement is that—
  (a) the social enterprise is a charity or, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  (b) the social enterprise is a parent company and the business of the group does not consist wholly, or as to a substantial part, in the carrying-on of non-qualifying activities.

(3) If the social enterprise intends that one or more companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
  (a) the social enterprise is treated as a parent company for the purposes of subsection (2)(b), and
  (b) the reference in subsection (2)(b) to the group includes the social enterprise and any existing or future company that will be its qualifying subsidiary after the intention in question is carried out,

but this subsection does not apply at any time after the abandonment of that intention.

(4) For the purposes of subsection (2)(b) "the business of the group" means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.

(6) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—

(a) the holding of shares in or securities of a qualifying subsidiary of the parent company,

(b) the making of loans to another group company, or

(c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company.

(7) In this section—

"incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the body in question,

"mainly trading subsidiary" means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly, and

"non-qualifying activities" means—

(a) excluded activities, and

(b) activities, other than activities carried on by a charity, that are carried on otherwise than in the course of a trade.

257MK Ceasing to meet trading requirement: administration or receivership

(1) The social enterprise is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the enterprise or any of its subsidiaries being in administration or receivership, but this is subject to subsections (2) and (3).

(2) Subsection (1) applies only if—

(a) the entry into administration or receivership, and

(b) everything done as a result of the company concerned being in administration or receivership,

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

(3) The social enterprise ceases to meet trading requirement if before the end of the shorter applicable period—

(a) a resolution is passed, or an order is made, for the winding-up of the social enterprise or any of its subsidiaries (or, in the case of a winding-up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or

(b) the company or any of its subsidiaries is dissolved without winding-up,

but this is subject to subsection (4).

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

257ML The issue must be to raise money for chosen trade or preparing for it

(1) The social enterprise must be a party to the making of the investment (so far as not in bonus shares) in order to raise money for the carrying-on, by the social enterprise or a qualifying 90% subsidiary of the social enterprise, of—

(a) a qualifying trade which on the investment date is carried on by the social enterprise or qualifying 90% subsidiary of the social enterprise, or

(b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a qualifying trade—

(i) which on the investment date is intended to be carried on by the social enterprise or a 90% subsidiary of the social enterprise, and

(ii) which is begun to be carried by the social enterprise or such a subsidiary within 2 years after that date.

(2) In this Chapter—

(a) the purpose within subsection (1) for which money is raised is referred to as "the funded purpose",

(b) the qualifying trade mentioned in subsection (1)(a) or (b) is referred to as "the chosen trade", and

(c) if the funded purpose is the carrying-on of the activity mentioned in subsection (1)(b), "relevant preparation work" means preparations that form the whole or part of the activity.

(3) In determining for the purposes of subsection (1)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of the social enterprise, any carrying-on of the trade by it before it became such a subsidiary is ignored.

(4) The reference in subsection (1)(b)(i) to a qualifying 90% subsidiary of the social enterprise includes a reference to any existing or future body which will be such a subsidiary at any future time.

257MM Requirement to use money raised and to trade for minimum period

(1) All of the money raised by the social enterprise from the making of the investment must, no later than the end of 28 months beginning with the investment date, be employed wholly for the funded purpose.

(2) The chosen trade must have been carried on for a period of at least 4 months ending at or after the time the investment is made and, throughout that period, the trade—

(a) must have been carried on by the social enterprise or a qualifying 90% subsidiary of the social enterprise, and

(b) must not have been carried on by any other person.

(3) Employing money on the acquisition of shares or stock in a body does not of itself amount to employing the money for the funded purpose.

(4) Subsection (1) does not fail to be met merely because an amount of money which is not significant is employed for other purposes.

(5) If—

(a) merely because of the social enterprise or any other company being wound up, or dissolved without winding-up, the qualifying trade is carried on as mentioned in subsection (2) for a period shorter than 4 months, and

(b) the winding-up or dissolution—

(i) is for genuine commercial reasons, and

(ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,

subsection (2) has effect as if it referred to that shorter period.

(6) If—

(a) merely because of anything done as a result of the social enterprise or any other company being in administration, or receivership, the chosen trade is carried on as mentioned in subsection (2) for a period shorter than 4 months, and

(b) the entry into adminstration or receivership, and everything done as a result of the company concerned being in administration or receivership—

(i) is for genuine commercial reasons, and

(ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,

subsection (2) has effect as if it referred to that shorter period.

257MN The social enterprise must carry on the chosen trade

(1) There must not be a time in the shorter applicable period when—

(a) the chosen trade, or

(b) relevant preparation work,

is carried on by a person who is neither the social enterprise nor a qualifying 90% subsidiary of the social enterprise.

(2) If relevant preparation work is carried out in the shorter applicable period by the social enterprise or a qualifying 90% subsidiary of the social enterprise then, for the purposes of determining whether the requirement in subsection (1) is met, ignore any carrying-on of the chosen trade that takes place in that period before the trade begins to be carried on by a person who is the social enterprise or a qualifying 90% subsidiary of the social enterprise.

(3) The requirement in subsection (1) is not regarded as failing to be met if, merely because of any act or event within subsection (4), the chosen trade—

(a) ceases to be carried on in the shorter applicable period by the social enterprise or any qualifying 90% subsidiary of the social enterprise, and

(b) it is subsequently carried on in that period by a person who is not any time in the longer applicable period connected with the social enterprise.

(4) The acts and events within this subsection are—

(a) anything done as a consequence of the social enterprise or any other company being in administration or receivership, and

(b) the social enterprise or any other company being wound up, or dissolved without being wound up.

(5) Subsection (4) applies only if—

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

(b) the winding-up or dissolution,

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

Interpretation of conditions relating to the social enterprise

257MP Meaning of "qualifying trade"

(1) For the purposes of this Chapter, a trade is a qualifying trade if—

(a) it is conducted on a commercial basis and with a view to the realisation of profits, and

(b) it does not at any time in the shorter applicable period consist wholly or as to a substantial part in the carrying-on of excluded activities.

(2) References in this section and sections 257MQ to 257MT (excluded activities) are to be read without regard to the definition of "trade" in section 989.

257MQ Meaning of "excluded activity"

(1) The following are excluded activities for the purposes of sections 257MJ and 257MP—

(a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,

(b) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities (but see subsection (2)),

(c) property development (see section 257MR),

(d) [all or some of the activities excluded from the scope of the Commission Regulation, on de minimis State aid, which is expected to be made early in 2014],

(e) the subsidised generation or export of electricity (see section 257MS), and

(f) providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) if—

(i) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (e), and

(ii) a controlling interest (see section 257MT) in the business is held by a person who also has a controlling interest in the business carried on by the provider of the services or facilities.

(2) The activity of lending money to a social enterprise is not an excluded activity for the purposes of sections 257MJ and 257MP.

257MR Excluded activities: property development

(1) For the purpose of section 257MQ(1)(c) "property development" means the development of land—

(a) by a company which has, or at any time has had, an interest in the land, and

(b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.

(2) For the purposes of subsection (1) "interest in land" means (subject to subsection (3))—

(a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or

(b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.

(3) References in this section to an interest in land do not include—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or

(b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

257MS Excluded activity: subsidised generation or export of electricity

(1) This section supplements section 257MQ(1)(e).

(2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).

(3) The generation of electricity is subsidised if a person receives a FIT subsidy in respect of the electricity generated.

(4) The export of electricity is subsidised if a person receives a FIT subsidy in respect of the electricity exported.

(5) In this section—

"FIT subsidy" means—

(a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to

encourage small-scale low-carbon generation of electricity, or

(b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;

"small-scale low-carbon generation of electricity" has the meaning given by section 41(4) of the Energy Act 2008.

257MT Excluded activity: providing services or facilities for another business

(1) This section explains what is meant by a controlling interest in a business for the purposes of section 257MQ(1)(f).

(2) In the case of a business carried on by a company, a person ("A") has a controlling interest in the business if—

(a) A controls the company,

(b) the company is a close company and A, or an associate of A, is a director of the company and either—

(i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or

(ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital, or

(c) at least half of the business could, in accordance with section 942 of CTA 2010, be regarded as belonging to A for the purposes of section 941 of CTA 2010 (company reconstructions without a change of ownership).

(3) In any other case, a person has a controlling interest in a business if the person is entitled to at least half of the assets used for, or of the income arising from, the business.

(4) For the purposes of this section—

(a) any rights or powers of a person who is an associate of another are to be attributed to that other person, and

(b) "business" includes any trade, profession or vocation.

257MU Meaning of "qualifying subsidiary"

(1) For the purposes of this Chapter, a company ("the subsidiary") is a qualifying subsidiary of another company ("the parent") if—

(a) the subsidiary is a 51% subsidiary of the parent,

(b) no person other than the parent, or another of its subsidiaries, has control of the subsidiary, and

(c) no arrangements are in existence as a result of which either of the conditions in paragraphs (a) and (b) would cease to be met.

(2) The conditions in subsection (1)(a) to (c) do not cease to be met merely because the subsidiary or any other company is wound up, or dissolved without winding up, if the winding-up or dissolution—

(a) is for genuine commercial reasons, and

(b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) The conditions in subsection (1)(a) to (c) do not cease to be met merely because of anything done as a consequence of the subsidiary or another company being in administration, or receivership, if—

(a) the entry into administration or receivership, and

(b) everything done as a consequence of the company concerned being in administration or receivership,

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

(4) The conditions in subsection (1)(a) to (c) do not cease to be met merely because arrangements are in existence for the disposal by the parent or (as the case may be) by another subsidiary of all its interest in the subsidiary if the disposal—

(a) is to be for genuine commercial reasons, and

(b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

257MV Meaning of "qualifying 90% subsidiary" of a social enterprise

(1) For the purposes of this Chapter, a company ("the subsidiary") is a qualifying 90% subsidiary of another company ("the parent") if—

(a) the parent possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,

(b) the parent would—

(i) in the event of a winding-up of the subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,

(c) the parent is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,

(d) no person other than the parent has control of the subsidiary, and

(e) no arrangements are in existence as a result of which any of the conditions in paragraphs (a) to (d) would cease to be met.

(2) For the purposes of this Chapter, a company ("company A") which is a subsidiary of another company ("company B") is a qualifying 90% subsidiary of a third company ("company C") if—

(a) company A is a qualifying 90% subsidiary of company B, and company B is a qualifying 100% subsidiary of company C, or

(b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of company C.

(3) For the purposes of subsection (2) no account is to be taken of any control company C may have of company A.

(4) For the purposes of subsection (2), a company ("company X") is a qualifying 100% subsidiary of another company ("company Y") at

any time when the conditions in subsection (1)(a) to (e) would be met if—

(a) company X were the subsidiary,

(b) company Y were the parent, and

(c) in subsection (1) for "at least 90%" there were substituted "100%".

(5) The conditions in subsection (1)(a) to (e) do not cease to be met merely because of anything done as a consquence of the subsidiary or any other company being wound up, or dissolved without being wound up, if the winding-up or dissolution—

(a) is for genuine commercial reasons, and

(b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(6) The conditions in subsection (1)(a) to (e) do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration, or receivership, if—

(a) the entry into administration or receivership, and

(b) everything done as a consquence of the company concerned being in administration or receivership,

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

(7) The conditions in subsection (1)(a) to (e) do not cease to be met merely because any arrangements are in existence for the disposal by the parent of all its interest in the subsidiary if the disposal—

(a) is to be for genuine commercial reasons, and

(b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

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

(a) the persons who are equity holders of the subsidiary, and

(b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,

are to be determined in accordance with Chapter 6 of Part 5 of CTA 2010.

(9) In making that determination—

(a) references in section 166 of that Act to company A are to be read as references to an equity holder,

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

CHAPTER 5

ATTRIBUTION OF, AND CLAIMS FOR, RELIEF

Attribution

257N Attribution of SI relief to investments

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

This is subject to the provisions of this Part providing for the withdrawal or reduction of SI relief.

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

(a) if the reduction is obtained because of a single distinct investment, the amount of the reduction is attributed to that investment, and

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

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

(ii) is attributed to those investments accordingly.

(3) In this section "distinct investment" means an investment, made on a single day, in—

(a) a single share or single qualifying debt investment, or

(b) two or more shares, or two or more qualifying debt investments, where the shares or qualifying debt investments are in the same social enterprise and of the same class.

(4) If under this section an amount of any reduction in income tax is attributed to a distinct investment—

(a) in the case of a distinct investment of the kind mentioned in subsection (3)(a), that amount is attributed to the share, or qualifying debt investment, concerned, and

(b) in the case of a distinct investment of the kind mentioned in subsection (3)(b), a proportionate part of that amount is attributed to each of the shares, or qualifying debt investments, concerned.

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

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

(b) after the issue of the bonus shares, this Part applies as if those shares had been issued to the individual on the same day as the original shares.

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

(7) If section 257JA(1) and (2) apply in the case of any investment as if part of the amount invested had been invested in a previous tax year, this section has effect as if that part and the remainder had been invested by separate investments (and that part had been invested by an investment made on a day in the previous tax year).

(8) For the purposes of this section, shares or other investments in a company are not treated as being of the same class unless they would be so treated if dealt in on a recognised stock exchange.

Claims

257NA Time for making claims for SI relief

(1) A claim for SI relief in respect of the amount invested may be made—

(a) not earlier than the time the requirement in section 257MM(2) (chosen trade must have been carried on for 4 months) is first met, and

(b) not later than the fifth anniversary of the normal self-assessment filing date for the tax year in which the investment is made.

(2) If section 257JA(1) and (2) apply as if part of the amount invested had been invested in a previous tax year, subsection (1) has effect as if that part and the remainder had been invested by separate investments (and that part had been invested by an investment made on a day in the previous tax year).

257NB Entitlement to claim

(1) The investor is entitled to make a claim for SI relief in respect of the amount invested if the investor has received from the social enterprise a compliance statement in respect of that amount.

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

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

257NC Compliance statements

(1) For the purposes of this Chapter, a "compliance statement" in respect of the investment is a statement by the social enterprise to the effect that, except so far as they fall to be met by or in relation to the individual, the requirements for SI relief—

(a) are for the time being met in relation to the investment (or in relation to investments that include the investment), and

(b) have been so met at all times since the investment was made.

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

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

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

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

(3) The social enterprise may not provide an officer of Revenue and Customs with a compliance statement in respect of the investment—

(a) before the requirement in section 257MM(2) (trade must have been carried for 4 months) is met, or

(b) later than 2 years after the end of the tax year in which the investment is made or, if that requirement is first met after the end of that tax year, later than 2 years after the requirement is first met.

257ND Compliance certificates

(1) For the purposes of this Chapter, a "compliance certificate" is a certificate which—

(a) is issued by the social enterprise in respect of the investment,

(b) states that, except so far as they fall to be met by or in relation to the individual, the requirements for SI relief are for the time being met in relation to the investment, and

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

(2) Before issuing a compliance certificate, the social enterprise must provide an officer of Revenue and Customs with a compliance statement in respect of the investment.

(3) The social enterprise must not issue a compliance certificate without the authority of an officer of Revenue and Customs.

(4) If the social enterprise, or a person connected with the social enterprise, has under [provision corresponding to section 241 of this Act or to paragraph 16(2) or (4) of Schedule 5B to TCGA 1992] given a notice to an officer of Revenue and Customs that relates (whether or not exclusively) to the investment, a compliance certificate must not be issued unless the authority mentioned in subsection (3) of this section is given or renewed after receipt of the notice.

(5) If—

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

(b) an officer of Revenue and Customs has decided whether or not to do so,

an officer of Revenue and Customs must give notice of the decision to the social enterprise.

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

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

CHAPTER 6

WITHDRAWAL OR REDUCTION OF SI RELIEF

Value received by the investor

257P Effect of the investor receiving value from the social enterprise

(1) If the investor receives any value from the social enterprise at any time in the longer applicable period, any SI relief given in respect of the investment must—

(a) if it is greater than the amount given by the formula set out in subsection (2), be reduced by that amount, and

(b) in any other case, be withdrawn.

(2) The formula is—

$$V \times R$$

where—

V is the amount of the value received, and

R is the SI rate for the tax year for which the SI relief was given.

(3) Subsection (1) is subject to—

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

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

(c) section 257PC (value received where part of investment treated as made in previous tax year),

(d) section 257PD (cases where maximum SI relief not obtained),

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

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

(4) Sections 257PB to 257PD are to be applied in the order in which they appear in this Part.

(5) Value received is to be ignored, for the purposes of this section, so far as SI relief attributable to the investment has already been withdrawn or reduced on its account.

(6) For the purposes of this section and sections 257PA to 257PH, an individual—

(a) who acquires any part of the investment, and

(b) who does so on such a transfer as is mentioned in section 257Q (spouses or civil partners),

is treated as the investor.

257PA Value received: insignificant receipts

(1) In this section "insignificant receipt" means a receipt whose amount—

(a) is not more than £1,000, or

(b) is more than £1,000 but is insignificant in relation to the amount invested.

(2) Section 257P(1) does not apply to an insignificant receipt, subject as follows.

(3) Section 257P(1) applies to all receipts within the longer applicable period if, at any time on the investment date or in the preceding 12 months, arrangements are in existence providing for the investor to receive, or to be entitled to receive, value from the social enterprise at any time in the longer applicable period.

(4) Once section 257P(1) has applied to a receipt, it applies also to all other receipts within the longer applicable period except any earlier insignificant receipts.

(5) The amount of the first receipt to which section 257P(1) applies is treated as increased by the total amount of any earlier insignificant receipts.

(6) In subsection (3)—

(a) the reference to the investor includes any person who at any time in the longer applicable period is an associate of the investor (whether or not an associate at the material time), and

(b) the reference to the social enterprise includes any person who at any time in the longer applicable period is connected with the social enterprise (whether or not connected at the material time).

257PB Value received where there is more than one issue of investments

(1) Subsection (3) applies if—

(a) a time in the longer applicable period when the investor receives value from the social enterprise is within the period that for the purposes of this Part is the longer applicable period in relation to another investment in the social enterprise, and

(b) that other investment is one for which the investor has SI relief.

(2) That other investment is an "overlapping investment" for the purposes of subsection (3).

(3) Section 257P(2) has effect in relation to the investment as if the amount V were reduced by multiplying it by—

$$\frac{I}{T}$$

where—

I is the amount on which the investor has SI relief in the case of the investment, and

T is the total of that amount and the corresponding amount for each overlapping investment.

257PC Value received where part of investment treated as made in previous tax year

(1) Subsection (2) applies if—

(a) section 257P(1) applies to a receipt, and

(b) section 257JA(1) and (2) apply as if part of the amount invested had been invested in a previous tax year.

(2) The calculation under section 257P(2) in relation to that receipt is to be made as follows—

Step 1

Apportion the amount referred to as "V" between the tax year in which the investment was made and the preceding tax year by multiplying that amount by—

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

where—

A is the part of the amount invested on which the investor obtains SI relief for the tax year in question, and

B is the sum of—

(a) that part, and

(b) the part of the amount invested on which the investor obtains SI relief for other tax year.

Step 2

In relation to each of the amounts ("V1" and "V2") so apportioned to the two tax years, calculate the amounts ("X1" and "X2") that would be given by the formula if separate investments had been made in those tax years.

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

Step 3

Add amounts X1 and X2 together.

The result is the required amount.

257PD Cases where maximum SI relief not obtained

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

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

(b) the amount ("B") which is equal to income tax at the SI original rate on the amount on which the investor has SI relief in the case of the investment,

section 257P(2) has effect in relation to any value received as if the amount referred to as "V" were reduced by multiplying it by—

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

(2) If the amount of SI relief attributable to the investment has been reduced before the SI relief was obtained, the amount referred to in subsection (1) as "A" is to be treated for the purposes of that subsection as the amount that it would have been without that subsection.

(3) Subsection (2) does not apply to a reduction of SI relief as a result of section 257N(5) (attribution of SI relief where there is a corresponding issue of bonus shares).

257PE When value is received

(1) This section applies for the purposes of sections 257P and 257PB.

(2) The investor receives value from the social enterprise at any time when the social enterprise—

(a) repays, redeems or repurchases any investments in the social enterprise which belong to the investor, or makes any payment to the investor for giving up the investor's right to investments in the social enterprise on their cancellation or extinguishment,

(b) repays, in pursuance of any arrangements for or in connection with the making of the investment, any debt owed to the investor other than a debt which was incurred by the social enterprise—

(i) on or after the investment date, and

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

(c) makes to the investor any payment for giving up on its extinguishment the investor's right to any debt, other than—

(i) a debt in respect of a repayment of the kind mentioned in section 257LF(5)(a) or (f), or

(ii) an ordinary trade debt,

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

(e) makes a loan or advance to the investor which has not been repaid in full before the investment is made,

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

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

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

(i) a payment of a kind mentioned in section 257LF(5), or

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

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

(4) For the purposes of subsection (2)(e), each of the following is treated as a loan made by the social enterprise to the investor—

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

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

(5) The investor also receives value from the social enterprise if—

(a) in respect of ordinary shares, or qualifying debt investments, held by the investor any payment or asset is received in a winding-up or dissolution of the social enterprise, and

(b) the winding-up or dissolution is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(6) The investor also receives value from the social enterprise if—

(a) a person—

(i) purchases any investments in the social enterprise which belong to the investor, or

(ii) makes any payment to the investor for giving up any right in relation to any investments in the social enterprise, and

(b) that person is an individual in relation to whom not all of the requirements in sections 257LF and 257LG would be met if references in those sections to the investor were read as references to that person.

(7) If, because of the investor's disposal of investments in the social enterprise, any SI relief attributable to those investments is withdrawn or reduced under section 257PL, the investor is not to be treated as receiving value from the social enterprise in respect of the disposal.

(8) If the investor is a director of the social enterprise, the investor is not to be treated as receiving value from the social enterprise merely because of the payment to the investor of reasonable remuneration (including any benefit or facility) for any services rendered to the social enterprise as a director or employee.

(9) In this section "ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—

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

(b) is not for longer than that normally given to customers of the person carrying on the trade or business.

257PF The amount of value received

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

Provision	*The amount of value received*
Section 257PE(2)(a), (b) or (c)	The amount received by the investor or, if greater, the market value of the investments or debt
Section 257PE(2)(d)	The amount of the liability
Section 257PE(2)(e)	The amount of the loan or advance, less the amount of any repayment made before the investment is made
Section 257PE(2)(f)	The cost to the social enterprise of providing the benefit or facility, less any consideration given for it by the investor
Section 257PE(2)(g)	The difference between the market value of the asset and the consideration (if any) given for it
Section 257PE(2)(h)	The amount of the payment
Section 257PE(5)	The amount of the payment or the market value of the asset
Section 257PE(6)	The amount received by the investor or, if greater, the market value of the investments

257PG Receipts of value by and from connected persons etc

In sections 257P, 257PA, 257PB, 257PE and 257PF—

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

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

(c) any reference to the social enterprise includes a reference to a person who at any time in the longer applicable period is connected with the social enterprise (whether or not that person is so connected at the material time).

257PH Receipt of replacement value

[Provision corresponding to sections 222 and 223].

257PI Repayments etc of capital to other persons

[Provision corresponding to sections 224 to 230].

257PJ Withdrawal of relief: miscellaneous

[Provision corresponding to sections 232 to 234].

257PK Procedure

[Provision corresponding to sections 235 to 244].

Disposals

257PL Disposal of whole or part of the investment

(1) This section applies if—

(a) the investor disposes of the whole or part of the investment,

(b) the disposal takes place before the shorter applicable period ends,

(c) SI relief is attributable to the shares, or qualifying debt investments, disposed of,

(d) the disposal is not to an individual who—

(i) is the spouse, or civil partner, of the investor, and

(ii) is living together with the investor at the time of the disposal, and

(e) the disposal does not occur as a result of the investor's death.

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

(3) If the disposal is made by way of a bargain at arm's length, the SI relief attributable to those shares or qualifying debt investments must—

(a) if it is greater than the amount given by the formula set out in subsection (4), be reduced by that amount, and

(b) in any other case, be withdrawn.

(4) The formula is—

$$C \times R$$

where—

C is the amount of the consideration received by the investor for the shares or qualifying debt investments, and

R is the SI rate for the tax year for which the SI relief was given.

(5) [Provision corresponding to section 246 (identification of shares on a disposal) will apply for the purposes of this section].

257PM Disposals: further provisions

[Provision corresponding to sections 210, 211 and 212 (disposals: cases where maximum relief not obtained, call options, and put options)].

CHAPTER 7

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

257Q Transfers between spouses or civil partners

(1) This section applies if—

(a) the investor transfers the whole or part of the investment to another individual ("B") during their lives,

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

(c) section 257PH does not apply to the transfer.

(2) This Part (including subsection (1)) has effect, in relation to any subsequent disposal or other event, as if—

(a) B were the investor as respects the transferred stake,

(b) B's liability to income tax had been reduced in respect of the transferred stake for the same tax year as that for which the investor's was so reduced,

(c) the amount by which B's liability to income tax had been reduced in respect of the transferred stake were the same as that by which the investor's liability had been so reduced, and

(d) the same amount of SI relief had continued to be attributable to the transferred stake despite the transfer.

(3) If the amount of SI relief attributable to the transferred stake had been reduced before the relief was obtained by the investor—

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

(b) [the provisions corresponding to sections 210(3), 220(2) and 229(3)] apply in relation to B as they would have applied in relation to the investor.

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

(5) [Provision corresponding to section 246 will apply for the purposes of this section].

257R Meaning of a company being "in administration" or "in receivership"

(1) References in this Part to a company being "in administration" or "in receivership" are to be read as follows.

(2) A company is "in administration" if—

(a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

(b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to an appointment of an administrator under either of those Schedules.

(3) A company is "in receivership" if there is in force in relation to it—

(a) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or

(b) any corresponding order under the law of a country or territory outside the United Kingdom.

257S Meaning of "associate"

(1) In this Part "associate", in relation to a person, means—

(a) any relative or partner of the person,

(b) the trustee or trustees of any settlement in relation to which the person, or any relative of the person (living or dead), is or was a settlor, and

(c) if the person has an interest in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person—

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and

(ii) if the person is a company, any other company which has an interest in those shares or obligations.

(2) In this section "relative" means spouse, civil partner, ancestor or lineal descendant.

257T Meaning of "control"

(1) In this Part "control" is to be read in accordance with sections 450 and 451 of CTA 2010 but as if "company" in those sections included a charity that is a trust.

(2) For the purposes of this Part, a charity that is a trust has "control" of another person if, as a result of the operation of subsection (1), the trustees (in their capacity as trustees of the trust) have, or any of them has, control of the person.

(3) A person has "control" of a charity that is a trust if—

(a) the person is a trustee of the charity and some or all of the powers of the trustees of the charity could be exercised by—

(i) the person acting alone, or

(ii) by the person acting together with any other persons who are trustees of the charity and who are connected with the person,

(b) the person, alone or together with other persons, has power to appoint or remove a trustee of the charity, or

(c) the person, alone or together with other persons, has any power of approval or direction in relation to the carrying-out by the trustees of any of their functions.

(4) Subsection (3) is in addition to, and does not limit, subsection (1); and both of those subsections are subject to subsection (4).

(5) For the purposes of this Part, a regulator is to be treated as not having control of any company regulated by the regulator.

(6) Section 995 of this Act (control) does not apply for the purposes of this Part.

257U Minor definitions etc

(1) In this Part—

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

"bonus shares" means shares which are issued otherwise than for payment (whether in cash or otherwise),

"director"—

(a) is read in accordance with section 452 of CTA 2010 but as if "company" in that section included a charity that is a trust, and

(b) in relation to a charity that is a trust (but subject to section 257LF(9)), includes (in particular) each trustee of the trust,

"disposal", in relation to any shares or other investments, includes disposal of an interest or right in or over them,

"group" means a parent company and its qualifying subsidiaries,

"group company", in relation to a group, means the parent company or any of its qualifying subsidiaries,

"ordinary shares" means shares forming part of a company's ordinary share capital,

"parent company" means a company that has one or more qualifying subsidiaries, and

"single company" means a company that does not have any qualifying subsidiaries.

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

PART 2

CONSEQUENTIAL AMENDMENTS

2 ITA 2007 is amended as follows.

3 In section 2 (overview of Act) after subsection (5A) insert—

"(5B) Part 5B is about relief for social investments."

4 In section 24A(7)(d) (share loss relief on the disposal of certain investments not subject to the limit on deductions imposed by section 24A) after sub-paragraph (ii) insert ", or

(iii) where SI relief is attributable to the shares in question as determined in accordance with Part 5B (income tax relief for social investments)."

5 In section 26(1)(a) (provisions giving rise to deductions at Step 6 of the calculation in section 23) after the entry for Chapter 1 of Part 5A of ITA 2007 insert—

"Chapter 1 of Part 5B (relief for social investments),".

6 In section 27(5) (order in which certain tax reductions are to be made) after the entry for Chapter 1 of Part 5A of ITA 2007 insert—

"Chapter 1 of Part 5B (relief for social investments),".

7 In section 29(4B) (limit on certain tax reductions) after the entry for Chapter 1 of Part 5 of ITA 2007 insert—

"Chapter 1 of Part 5B (relief for social investments),".

8 In section 32 (liabilities to income tax not dealt with in the calculation under Chapter 3 of Part 2) after the entry for section 257G of ITA 2007 insert—

"under [the section in Part 5B that corresponds to section 235] (withdrawal or reduction of relief for social investments),".

9 In section 392 (loan to buy interest in close company) after subsection (3) insert—

"(3A) Subsection (2) does not apply if at any time the individual by whom the shares are acquired or the money is lent, or that individual's spouse or civil partner, makes—

(a) a claim under Part 5B of this Act for relief in respect of the amount invested in acquiring the shares or (as the case may be) in return for the debentures in respect of the money lent, or

(b) a claim in respect of the amount under Schedule 8B to TCGA 1992 (hold-over relief for gains re-invested in social enterprises)."

10 In section 416 (gift aid: meaning of "qualifying donation") after subsection (6) insert—

"(6A) Condition EA is that the payment is by way of, or amounts in substance to, waiver by the individual of entitlement to sums (whether of principal or return) due to the individual from the charity in respect of an amount—

(a) advanced to the charity, and

(b) in respect of which a person, whether or not the individual, has obtained relief under Part 5B (relief for social investments)."

SCHEDULE 2

Section 1

RELIEF FOR GAINS INVESTED IN SOCIAL ENTERPRISES

1 TCGA 1992 is amended as follows.

2 After section 255 insert—

"Investments in social enterprises

255A Hold-over relief for gains re-invested in social enterprises

Schedule 8B to this Act (which provides relief in respect of gains re-invested in social enterprises) has effect.

255B Gains and losses on investments in social enterprises

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

(a) an amount of SI relief is attributable to the asset, and

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

treat the consideration given by the individual for the acquisition of the asset as reduced by the amount of the SI relief.

(2) If—

(a) an individual disposes of an asset,

(b) an amount of SI relief is attributable to the asset,

(c) the disposal takes place after the end of the 3 years beginning with the day when the individual acquired the asset, and

(d) apart from this subsection, there would be a gain on the disposal,

the gain is not a chargeable gain, subject to [provision corresponding to section 150A(3) of this Act].

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

(4) [Provision corresponding to sections 150A(3) to (4) and (10) and 150B].

(5) Sections 104, 105 and 106A do not apply to assets to which SI relief is attributable.

(6) In this section "SI relief" means relief under Part 5B of ITA 2007 (income tax relief for investments in social enterprises).

(7) That Part applies for the purposes of this section to determine whether SI relief is attributable to any asset and, if so, the amount of SI relief so attributable."

3 Before Schedule 9 insert—

"SCHEDULE 8B Section 255A

HOLD-OVER RELIEF FOR GAINS RE-INVESTED IN SOCIAL ENTERPRISES

When does the Schedule apply?

1 (1) This Schedule applies if—

(a) a chargeable gain accrues to an individual ("the investor"),

(b) the investor acquires one or more assets ("the social holding"),

(c) the investor is eligible for SI relief under Part 5B of ITA 2007 in respect of the consideration given for the social holding ("the amount invested"), and

(d) conditions A, B, C, D and E are met.

(2) Condition A is that the gain is one that accrues—

(a) on the disposal by the investor of an asset, or

(b) as a result of the operation of paragraph 3 in connection with a chargeable event within paragraph 4(1)(c) or (d).

(3) Condition B is that the gain is one that accrues—
  (a) on or after 6 April 2014, and
  (b) before 6 April 2019 (but see sub-paragraph (7)).

(4) Condition C is that the investor is resident in the United Kingdom—
  (a) when the gain accrues, and
  (b) when the social holding is acquired.

(5) Condition D is that the social holding is acquired by the investor on the investor's own behalf.

(6) Condition E is that the social holding is acquired—
  (a) in the 3 years beginning with the day when the gain accrues, or
  (b) in the year that ends at the beginning of that day.

(7) The Treasury may by order substitute a later date for the date for the time being specified in sub-paragraph (3)(b).

Claim to hold gain over while invested in a social enterprise

2 (1) The investor may make a claim for the gain to be reduced by the amount invested, or by a part of that amount specified in the claim, subject as follows.

(2) The reduction may not be more than the gain or, if the gain has already been reduced under one or more of the listed provisions, the reduction may not be more than the reduced gain.

(3) The claim may not relate to any part of the amount invested that under any of the listed provisions has already been set against a chargeable gain.

(4) The "listed provisions" are—
  (a) sub-paragraph (1),
  (b) Schedule 5B, and
  (c) paragraph 1(5) of Schedule 5BB.

(5) The total of all reductions claimed by the investor under sub-paragraph (1) in any tax year must not be more than £1,000,000.

(6) If there is relief by way of a reduction under sub-paragraph (1) then, for the purposes of this Schedule, that relief—
  (a) is attributable to the asset or assets that form the social holding, but
  (b) ceases to be attributable to any particular asset when—
    (i) a chargeable event occurs in relation to it, or
    (ii) the person holding it dies.

Held-over gain treated as accruing on disposal etc of the qualifying investment

3 (1) This paragraph applies if there has been a reduction under paragraph 2(1).

(2) A gain equal to the amount of the reduction is treated as accruing when a chargeable event occurs in relation to the social holding without any chargeable event having previously occurred in relation to any of the holding.

(3) When a chargeable event occurs in relation to part only of the social holding without any chargeable event having previously occurred in relation to any of that part, a gain calculated in accordance with sub-paragraph (4) is treated as accruing.

(4) The calculation is—

Step 1

Subtract from the amount of the reduction any gains previously treated as accruing as a result of the operation of sub-paragraph (3).

Step 2

Attribute a proportionate part of the amount calculated at Step 1 to each part of the social holding held, immediately before the occurrence of the chargeable event in question, by the investor or a person who has acquired any part of the holding from the investor on a disposal within marriage or civil partnership.

Step 3

The amount attributed at Step 2 to the part of the social holding in relation to which that chargeable event occurs is the gain treated as accruing as a result of the operation of sub-paragraph (3) on the occurrence of that event.

Chargeable events

4 (1) A chargeable event occurs in relation to an asset that forms the whole or any part of the social holding if (after the acquisition of the holding)—

(a) the investor disposes of the asset otherwise than by way of a disposal within marriage or civil partnership,

(b) the asset is disposed of, otherwise than by way of a disposal to the investor, by a person who acquired the asset on a disposal made within marriage or civil partnership,

(c) the asset is cancelled, redeemed or repaid, or

(d) any of the conditions in Chapters 3 and 4 of Part 5B of ITA 2007 for the investor's eligibility for relief under that Part in respect of the amount invested fails to be met.

(2) In the event of the death of—

(a) the investor, or

(b) a person who, on a disposal within marriage or civil partnership, has acquired the whole or any part of the social holding,

nothing which occurs at or after the time of death is a chargeable event in relation to any part of the holding held by the deceased person immediately before the time of death.

(3) If a person makes a disposal of assets of a particular class while retaining other assets of that class—

(a) assets of that class acquired by the person on an earlier day are treated for the purposes of this Schedule as disposed of before assets of that class acquired by the person on a later day, and

(b) assets of that class acquired by the person on the same day are treated for the purposes of this Schedule as disposed of in the following order—

(i) first, any to which neither relief under this Schedule, nor relief under Part 5B of ITA 2007, is attributable,

(ii) next, any to which relief under this Schedule, but not relief under that Part, is attributable,

(iii) next, any to which relief under that Part, but not relief under this Schedule, is attributable, and

(iv) finally, any to which both relief under that Part, and relief under this Schedule, are attributable.

(4) For the purposes of sub-paragraph (3), assets—

(a) to which relief under this Schedule is attributable, and

(b) which have not been held continuously by the investor since the social holding was acquired,

are treated as having been acquired when the social holding was acquired if relief under Part 5B of ITA 2007 is not also attributable to them.

(5) For the purposes of sub-paragraph (3), assets—

(a) to which relief under Part 5B of ITA 2007 is attributable, and

(b) which were transferred to an individual as mentioned in section 257Q of ITA 2007 (transfers between spouses or civil partners),

are treated as having been acquired when the social holding was acquired.

(6) Chapter 1 of Part 4 of this Act has effect subject to sub-paragraphs (3) to (5).

(7) Sections 104, 105 and 106A do not apply to assets to which relief under this Schedule is attributable if relief under Part 5B of ITA 2007 is not also attributable to them.

(8) [Provision corresponding to paragraph 4(5) of Schedule 5B].

Person to whom held-over gain is treated as accruing

5 (1) This paragraph applies where a gain is treated as accruing as a result of the operation of paragraph 3.

(2) If the chargeable event is a disposal, the gain is treated as accruing to the person who makes the disposal.

(3) If the chargeable event occurs—

(a) when an asset is cancelled, redeemed or repaid, or

(b) when a condition, for eligibility for relief in respect of the consideration given for the acquisition of an asset, fails to be met,

the gain is treated as accruing to the person who holds the asset when the chargeable event occurs.

Dispensing with requirement for cash consideration in certain cases

6 [Provision for a deferred gain to be further deferred in certain cases where that would be allowed by this Schedule but for the fact that the acquisition of assets in the social enterprise concerned is not in return for cash but, in substance, is in exchange for existing assets in the enterprise].

Interpretation of Schedule

7 In this Schedule, a "disposal within marriage or civil partnership" is a disposal to which section 58 (certain disposals between spouses or civil partners) applies."

EXPLANATORY NOTE

TAX RELIEF FOR SOCIAL INVESTMENT

SUMMARY

1. Clause X, and Schedules Y and Z introduce a range of income and capital gains tax reliefs to encourage individuals to invest in qualifying social enterprises. Investments may be in shares or by way of certain types of debt, and the reliefs will be available in respect of investments made on or after 6 April 2014.

DETAILS OF THE SCHEDULES

Schedule 1 Part 1

2. Paragraph 1 inserts new Part 5B into the Income Tax Act 2007 ('ITA'). Part 5B is subdivided into several Chapters.

Chapter 1

3. Chapter 1 contains sections 257J to 257JC which introduce the income tax relief available to individuals who invest in social enterprises.

4. New sections 257J(2) to (3) define "social enterprise" as a community interest company, a community benefit society, or charity, and provide that this definition may be further extended by Treasury order to include other types of body. Any such order may have retrospective effect. No definitions are provided for community interest company or charity, which are defined in other Acts: Part 2 of the Companies (Audit, Investigation and Community Enterprise Act 2004 in the case of Community Interest Companies and Schedule 6 to Finance Act 2010 in the case of charities. "Community benefit society" is explained further at new section 257B.

5. New section 257JA quantifies the amount of the income tax reduction to which an individual is entitled if a claim to relief is made for a tax year.

6. Subsection 257JA(1) provides that an individual may choose to claim relief in respect of some, but not all, of the investment in relation to which the individual is eligible for relief.

7. Subsections 257JA(2) and (3) are expressed in terms of the individual's entitlement to a reduction in tax liability, as a percentage of the amount invested. Relief is given effect in accordance with Chapter 3 of Part 2 ITA, with the reduction being included at Step 6 of section 23.

8. Subsection (2)(b) provides that there is an upper limit on the amount of an individual's entitlement to relief rather than an upper limit on the amount of investment in respect of which the relief can be claimed.

9. Subsection 257JA(4) provides that an individual may elect to have some or all of the investment treated as though made in the tax year preceding that in which it was made, with relief being given accordingly.

10. New section 257JB describes what is meant by a "community benefit society". The Co-operative and Community Benefit Societies Acts are in the process of consolidation so section 257B ensures that that definition applies irrespective of which Act is in force at the relevant time.

11. New section 257JC provides that for the purposes of this Part, charitable trusts are to be treated in the same way as companies which are charities.

Chapter 2

12. Chapter 2 sets out some key terms used in determining eligibility.

13. New section 257K(1) sets a limit of five years on the lifespan on the social investment tax relief scheme, but provides that this lifespan may be extended by Treasury order.

14. New section 257K(2) provides that the investor is not eligible for SI relief if the investor has otherwise obtained relief on the investment via the Enterprise Investment Scheme, Seed Enterprise Investment Scheme or the Community Investment tax relief scheme.

15. New section 257K(3) makes it clear that the conditions for relief apply equally whether individuals make the investment on their own behalf or whether the investment is made or held for them by a nominee.

16. Tax relief is contingent upon the individual making an investment, and the timing of the making of that investment determines the tax year for which relief will be due. New section 257KB explains when the investment is to be considered to be "made". In the case of an investment in shares or loan stock where the enterprise makes an issue to the investor, the investment will be considered to be made at the point of issue.

17. New section 257KC explains the terms "shorter applicable period" and "longer applicable period". Many of the eligibility conditions relating to the investor, the investment and the investee enterprises have to be met for a continuous period of time rather than merely at the point of investment, for the tax relief to continue to be available. In the case of some conditions, that continuous period of time runs from the date of investment. In the case of other conditions, it runs from an earlier date – either the date of incorporation or, if later, twelve months before the date of investment. In all cases the continuous period ends with the third anniversary of the investment date. Investors are not required to wait until the end of the relevant applicable period before claiming tax relief (see new section 257NA) but if any of

the conditions are breached before the end of the applicable period, relief which has been given may be withdrawn or reduced (see Chapter 6).

Chapter 3

18. Chapter 3, sections 257L to 257LH, sets out eligibility conditions relating to the investor and the investment.

19. New section 257L describes the types of investment which may qualify for relief. Investments may be in shares, or in debt instruments including simple loans. The section ensures that either type of investment must be the lowest-ranking of its type in the event of a winding up and therefore exposed to the greatest degree of risk for investors. Investments in shares may not carry any right to an amount of dividend which is fixed absolutely; or whose rate is fixed either by reference to the amount invested or by reference to some other factor which is not contingent upon the enterprise's financial success. Irrespective of the nature of the investment, any right of return must not be greater than a reasonable commercial rate. No definition is provided for "reasonable commercial rate".

20. New section 257LA ensures that income tax relief will only be available where the amount in respect of which relief may be claimed has been paid over in cash to the enterprise when the investment is considered to have been made. This means, for instance, that where an investor has undertaken to provide the enterprise with an amount but the enterprise has not drawn down some or all of the amount committed, then relief will be due only on the drawn down amount.

21. New section 257LB ensures both that the investor has no right to have the investment redeemed, repaid or repurchased during the shorter applicable period; and that the investment is not made with the benefit of any arrangement which might guarantee an exit from the investment.

22. New section 257LC(1) prevents the investment from qualifying if at any time in the shorter applicable period, there exist arrangements aimed at protecting the investor's capital, or otherwise protecting the investor from the risks attached to making the investment. This would include, for example, schemes which insure investors against making a loss, and schemes to maintain the value of the investment artificially.

23. Subsection (2) provides an exception for ordinary commercial matters such as insurance by the enterprise against normal trading risks.

24. New section 257LD denies relief if in the longer applicable period, the investor, or any associate, receives a loan from any person which would not have been made, or would not have been made on the same terms, were it not for the making of the relevant investment. This includes cases where credit is given or a debt due from the investor or associate is assigned. This section mirrors the equivalent Enterprise Investment Scheme provision at section 164 ITA. HMRC has published an interpretation of that provision in Statement of Practice SP6/98 and it is anticipated that that interpretation is likely to apply equally here, providing that the Statement of Practice is still in existence.,

25. New section 257LE prevents the investment from qualifying unless it is made for a genuine commercial reason and not as part of a scheme or arrangement whose purpose is tax avoidance.

26. New section 257LF prevents individuals from qualifying for relief if they are, or their associates are, employees, partners, remunerated directors or trustees of the enterprise, or of other bodies which have certain relationships with the enterprise. Those restrictions apply throughout the longer applicable period described in section 257KC, and therefore exclude individuals who have had (or whose associates have had) one of the relationships mentioned with the enterprise before the date the investment is made, even if that relationship has ended by the time the investment is made. The term "associates" is defined in new section 257[S] as including spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships. Subsection (8) provides that for the purposes of this subsection and subsections (4) and (5), "director" does not include trustee.

27. Subsection (3) defines "subsidiary" as a 51% subsidiary. That term is further explained in section 989 ITA.

28. Subsection (4) explains what is meant by a "remunerated director" in this context. A director is "remunerated" if during the longer applicable period he or a partnership of which he is a member receives, or is entitled to receive, a payment from the social enterprise or any person connected with the social enterprise. "Connected" in this context takes its meaning from section 993 ITA. "Director", for the purpose of Part 5B, takes its meaning from section 452 Corporation Tax Act 2010, modified so that references to companies in that section are to be read as including charities which are trusts. See new section 257U.

29. Subsection (5) provides that certain types of payment are not taken into account in determining whether the director is "remunerated". These are mostly payments of various types which do not constitute payments for services rendered as a director. However, reasonable payments which are for services rendered as a director may also be ignored, if one of two further conditions is met.

30. The first of these conditions is at subsection (6). This is that the investment was made at a time when the director was not connected with the enterprise.

31. The second of the conditions is at subsection (7). This is that if the director was so connected, that the investment is made before the third anniversary of the last investment made by the director at a time when he was not so connected.

32. Subsection (8) provides that in cases where a director is also an employee of an enterprise, for the purposes of new section 257LF the employee relationship is to be disregarded.

33. New section 257LG prevents individuals from qualifying for relief if they, or their associates, have a certain level of interest in the capital of the enterprise or of a 51% subsidiary of the enterprise. This restriction applies throughout the longer applicable period, and it applies in respect of an interest in a company which is a 51% subsidiary at any time in that period, even if it is not such a subsidiary at the time of investment.

34. Subsection (3) prevents an individual from qualifying if that individual or an associate controls the enterprise or a 51% subsidiary. "Control" for this purpose is defined at new section 257[T] and takes the meaning in section 450 and 451 of the Corporation Tax Act 2010, expanded so that references to company in those sections are to be read as including references to charitable trusts. Trustees who alone, or together with another person connected with them, have the power to exercise certain trustee functions, are regarded as controlling an enterprise in this context.

35. Subsection (4) prevents an individual from qualifying for relief if at any time in the longer applicable period, that individual or an associate has directly or indirectly more than 30% of any of the following:

a. the issued share capital of an enterprise or its 51% subsidiary (as defined in section 989 ITA);

b. the aggregate of the loan capital and the issued share capital of the enterprise or its 51% subsidiary (and for the purpose of this sub-subsection, "issued share capital" means the amount raised by the issue - including any share premium - rather than the nominal value of the shares); or

c. the voting power of an enterprise or its 51% subsidiary.

36. Subsection (5) disapplies subsection (3) and (4) in respect of any shareholdings at a time when the enterprise has issued only subscriber shares, and has not yet started its business or any preparations for its business. This prevents an individual from being disqualified merely by virtue of having taken shares in a company for the purpose of registering that company with Companies' House but where it is intended that there will be other investors in due course.

37. Subsection (6) defines "loan capital" for the purpose of subsection (4) as including any debt incurred by the relevant enterprise for any money borrowed or capital asset acquired by it; for any right to receive income created in favour of it; or for consideration the value of which to the enterprise was (at the time the debt was incurred) substantially less than the amount of the debt (including any premium on the debt). But loan capital is treated as excluding debts arising on a normal bank overdraft.

38. New section 257LH imposes a requirement that there must be no "reciprocal" arrangement allowing individuals to circumvent the restrictions in sections 257LF and LG by investing in each other's social enterprises. This provision would apply, for example, where A, B and C are each directors of community interest companies A Ltd, B Ltd and C Ltd respectively, and A invests in B Ltd, B in C Ltd and C in A Ltd.

Chapter 4

39. Chapter 4, sections 257M to 257MV, describe the eligibility conditions relating to the social enterprises.

40. New section 257M(1) stipulates that when the investment is made, the enterprise must not be an "enterprise in difficulty".

41. The concept of an "enterprise in difficulty" is used in the context of European Commission regulations relating to State aid. Subsection (2) explains that an enterprise will be considered to be "in difficulty" for the purpose of section 257M if it is reasonable to assume that it would be regarded as such by the relevant European Commission regulations. At the time of publication of this draft Explanatory Note, the relevant European Commission instruments are in the process of being redrafted. It is anticipated that the definition which will be relevant when Finance Bill 2014 is enacted will be in the Commission's revised Guidelines on de minimis State aid, due to be adopted in early 2014; and that the definition will include various tests to be met as to an enterprise's financial health.

42. New section 257MA sets a limit on the amount of tax-advantaged investment which an enterprise may receive in a rolling three year period. This limit is imposed by the need to comply with the European Commission's guidelines on de minimis State aid, which restrict such aid to an amount not exceeding €200,000 in a three year period. The guidelines also require de minimis aid to be transparent (i.e. ascertainable) at the point at which it is given. As it is not possible to determine at the time of investment what tax reliefs may actually be claimed, the limit is therefore calculated by reference to the maximum amount of tax relief which an investment would be capable of attracting, rather than by reference to amounts of tax relief ultimately claimed.

43. New section 257MB grants a power for Treasury to amend by order the enterprise size and investment limits, or other matters needed in connection with an application for State aid approval.

44. New section 257MC sets out the limits that apply to the value of an enterprise's gross assets before and after an investment. The limits are £15 million immediately before investment and £16m immediately after. The requirement differentiates between a singleton enterprise and one which is the parent of a group. Where the latter is the case, it is the value of the group assets which has to be taken into account.

45. Subsection (3) provides that for this purpose, no account is taken of any assets which consist in rights against another member of the group, or any shares in, or securities of, another such group member.

46. Section 257MC mirrors an equivalent provision in the Enterprise Investment Scheme legislation, at section 186 ITA. HMRC has published a Statement of Practice SP2/06 in relation to that provision, indicating that ordinarily the value of a company's assets will be determined by reference to the values shown on its balance sheets as explained in the Statement. It is anticipated that similar considerations are likely to apply for this new relief, subject to that Statement of Practice still being in existence.

47. New section 257MD provides that when the investment is made, none of the enterprise's shares, stocks, debentures or other securities may be listed on a recognised stock exchange or other designated exchange as defined, and there must be no arrangements in

place for that to happen. This restriction applies in respect of all such instruments issued by the enterprise, not only those in respect of which tax relief may be claimed.

48. New section 257ME contains two tests, each of which must be met for the duration of the shorter applicable period. Both tests rely on the definition of "control" to be found at section 257T, which in turn relies on the definition at sections 450 and 451 of the Corporation Tax Act 2010, modified to take account of charitable trusts. Both tests also rely on the definition of "connection" in section 993 ITA, which applies by virtue of section 1021 ITA.

49. The first test, at subsection (1), prevents an enterprise from qualifying if it controls (either on its own or together with any person connected with it) any company which is not a qualifying subsidiary. "Qualifying subsidiary" for this purpose is as defined at section 257MU.

50. The second test, at subsection (2), prevents an enterprise from qualifying if it is either a 51% subsidiary of another company, or is under the control of another company (or another company and any person connected with that company) without being a 51% subsidiary of that company.

51. New section 257MF provides that any subsidiary which the enterprise has during the shorter applicable period, must be a qualifying subsidiary. The definition of "qualifying subsidiary" for this purpose is to be found at section 257MU.

52. New section 257MG requires that if the enterprise has a subsidiary whose business consists wholly or mainly of holding or managing land, or property deriving its value directly or indirectly from land, that subsidiary (termed a 'property managing subsidiary') must be a qualifying 90% subsidiary of the company. The legislation does not define what is meant by "property deriving its value …indirectly from land", but examples might include the enterprise having shareholdings in a company deriving its value directly or indirectly from land; having any interest in settled property deriving its value directly or indirectly from land; or having any option, consent or embargo affecting the disposition of land. For the definition of 'qualifying 90% subsidiary' see section 257MV.

53. New section 257MH requires that at the time of investment, either the enterprise or the group of which it is a parent, as appropriate, must have fewer than 500 full-time equivalent employees. Part-time employees are to be included on any basis which is "just and reasonable". For the purpose of this section, the term "employee" includes directors, but not employees who are on maternity or paternity leave or students who are on vocational training.

54. New section 257MI provides that neither the enterprise, nor any of its qualifying 90% subsidiaries, may be a member of a partnership at any time during the shorter applicable period. "Partnership" for this purpose will include a limited liability partnership, by virtue of section 863(2) Income Tax (Trading and Other Income) Act 2005.

55. New section 257MJ describes what is termed the "trading requirement". This is not a requirement that the enterprise must either be trading at time of investment or must trade for

any specified period of time. Rather, it is a requirement as to the primary purpose of the enterprise or of the group of which it is a parent. It must be met throughout the shorter applicable period.

56. Subsection (2) provides that the trading requirement can be met in one or other of two ways, depending on whether the enterprise is a single entity or whether it is the parent of a group. A single enterprise must exist essentially for the purpose of carrying on one or more qualifying trades. A single enterprise which is a charity is treated for the purpose of this section as fulfilling this condition, although charities will by their nature exist for a charitable purpose rather than for a trading purpose. An enterprise which is the parent company of a group will fulfil the condition if the business of the group as a whole does not substantially involve non-qualifying activities. Subsection (7) defines "non-qualifying activities" for this purpose as excluded activities (see section 257MQ), or activities (other than carried on by a charity) which are carried on otherwise than in the course of a trade.

57. Subsection (3) treats an enterprise as a parent company if it intends that one or more companies will become its qualifying subsidiaries to carry on one or more trades which qualify for the purpose of Part 5B. Once it ceases to have this intention, however, it is no longer to be regarded as a parent company for the purpose of this section.

58. To enable a determination of whether the parent company of a group meets the trading condition as outlined above, subsection (4) provides that it is the business of the whole group taken together which is to be considered.

59. Subsection (5) provides that incidental activities carried on by a subsidiary which otherwise exists wholly to carry on a qualifying trade, are to be ignored.

60. Subsection (6) provides that the following types of activity are ignored altogether:

a. holding shares in a qualifying subsidiary,

b. making loans to a subsidiary, and making loans to the parent company,

c. holding and managing property used by any group company for the purpose of one or more qualifying trades

61. A company which goes into administration or receivership will tend to fail the trading requirement at section 257MJ. New section 257MK provides that that will not be the case because of anything done as a result of the company being in administration or receivership providing that the entry into administration or receivership, and any subsequent actions, are undertaken for genuine commercial purposes and not for reasons of tax avoidance. Section 257R explains further what is meant by a company going into administration or receivership.

62. New section 257ML provides that the enterprise must be party to the relevant investment for the purpose of raising money for a "funded purpose".

63. Subsection (1) provides that a funded purpose can be either a qualifying trade carried on at the time of investment by the enterprise or a qualifying 90% subsidiary; or activities preparatory to a qualifying trade which the enterprise intends will be carried on either by the enterprise itself, or by a qualifying 90% subsidiary. If it relates to the preparatory activities, then the relevant trade must begin within two years of the date of the investment.

64. New section 257MM imposes requirements on the enterprise as to how it uses the monies raised by the investment, and as to a minimum period of trading.

65. Subsection (1) provides that the monies raised by the investment must be employed wholly for the funded purpose (see section 257ML) within 28 months of the date of the investment. Insignificant uses of the money for other purposes are ignored, by virtue of subsection (4).

66. Subsection (2) provides that the relevant qualifying trade must have been carried on for a period of at least 4 months by either the investee enterprise, or a 90% qualifying subsidiary. This subsection works in conjunction with section 257NC(3) to ensure that an enterprise is not eligible to submit a compliance statement to HMRC until it has completed at least 4 months of trading activity. Subsection (5) and (6) act to ensure that this requirement will still be regarded as having been met if either the enterprise or a qualifying subsidiary is wound up or dissolved, or put into administration or receivership before the end of the 4 month period, providing that such events occur for genuine commercial purposes and not for reasons of tax avoidance.

67. Subsection (3) provides that employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of the funded purpose. This restriction should not prevent the money being used to acquire shares in a subsidiary company, providing that after the share issue the subsidiary is a qualifying 90% subsidiary (see section 257MV) and that subsidiary then goes on to use the money for a funded purpose carried on by it (which will exclude the acquisition of shares or stock in another company).

68. New section 257MN provides that at no time during the shorter applicable period must relevant preparation work or the relevant qualifying trade be carried on by someone other the investee enterprise or one of its qualifying 90% subsidiaries.

69. Subsection (2) provides that this rule does not act to deny relief where an existing trade is carried on by another company and making of the investment is preparatory to the carrying of a qualifying trade by the investee enterprise or one of its qualifying 90% subsidiaries.

70. Subsections (3) to (5) further provide that this rule does not act to deny relief in cases in where the investee enterprise (or any other company) goes into liquidation, administration or receivership provided that these actions are entered into and carried out for genuine commercial reasons.

71. New section 257MP explains what is meant by “qualifying trade” for the purpose of Part 5B.

72. Subsection (1) says that for a trade to be a qualifying trade, it must be conducted on a commercial basis and with a view to the realisation of profits. In addition, the trade must not consist wholly or as to a substantial part in the carrying on of 'excluded activities' as defined in section 257MQ.

73. Subsection (2) provides that what the company does must come within the ordinary meaning of 'trade'; that is, it must not count as a trade merely because of the extension of the meaning of that word in section 989 ITA to include 'any venture in the nature of trade'.

74. New section 257MQ provides a list of activities which are "excluded". This list is needed to determine whether a trade is a qualifying trade and the extent to which the business of a group includes non-qualifying activities. Some activities are necessarily excluded in order to comply with the European Commission's regulations on de minimis State aid. At the time of publication of this draft Explanatory Note, the relevant European Commission regulations are in the process of being redrafted and it is anticipated that by the time Finance Bill 2014 comes to be enacted, the revised regulations will be in force. The list of activities likely to be excluded in order to comply with the revised regulations include agriculture and fisheries, coal and steel production, and road freight transport.

75. In addition to the exclusions made for State aid purposes, the following are also listed in subsection (1) as excluded: dealing in certain types of assets and commodities; certain financial activities; property development; certain subsidised generation or export of electricity; and the provision of certain services to another enterprise in common ownership where that enterprise's trade is excluded.

76. Subsection (2) provides that lending money to a social enterprise is not "excluded". "Social enterprise" for this purpose bears the same meaning as in section 257J.

77. New section 257MR supplements section 257MQ(1)(c) by explaining what is meant by "property development".

78. Subsection (1) explains that property development for this purpose is defined as the development of land in which the enterprise has, or has had, an interest, with the object of realising a gain from the disposal of the land when developed.

79. Subsection (2) provides that for this purpose, 'interest in land' is defined in the legislation as any estate, interest or right over land including any right affecting the use or disposition of land; or any right to obtain such an estate, interest or right from another person, which is conditional upon the other person's ability to grant it.

80. Subsection (3) makes it clear that references to an interest in land for this purpose do not include mortgage creditors or (in Scotland) the interest of a creditor in a charge or security of any kind over land.

81. New section 257MS supplements section 257MQ(1)(e) to exclude the generation or export of electricity in respect of which any person (whether the enterprise undertaking the generation or export or any other person) receives a feed-in tariff under a UK government scheme to encourage small-scale low-carbon generation of electricity or a financial incentive granted under a similar overseas scheme.

82. New section 257MT supplements section 257MQ(1)(f). Together these sections explain that providing services or facilities for any business comprising a trade, profession or vocation carried on by another person (other than the parent of the company) is an excluded activity, where that other business consists to a substantial extent of any activities listed in section 257MQ as excluded, and a controlling interest in that other business is held by a person who also has a controlling interest in the business carried on by the company.

83. Subsection (2) defines a controlling interest in a business as follows. A person has a controlling interest in a business if, in the case of a business carried on by a company, he controls the company, or the company is a close company and he (or an associate of his) is both a director of it and the beneficial owner of, or able directly or through the medium of other companies (or by any other indirect means) to control, more than 30% of its ordinary share capital, or he owns at least one-half of the business by reference to the tests of ownership set out in sections 941 and 942 CTA 2010.

84. Subsection (3) provides that in the case of a business carried on other than by a company, a person is regarded as having a controlling interest in that business if he is entitled to not less than half of the assets used for, or the income arising from, the business.

85. Subsection (4) provides that for these purposes, the rights or powers of any person's associate count as that person's rights and powers.

86. New section 257MU explains what is meant by a "qualifying subsidiary" of an enterprise for the purpose of the sections of Part 5B which use that term.

87. Subsection (1) provides that a company is a qualifying subsidiary if it is a 51% subsidiary of the investee company. The meaning of 51% subsidiary is the same as that given in CTA10/S1154. That is, the investee company must directly or indirectly hold more than 50% of the ordinary share capital. In addition in order to be a qualifying subsidiary, no other person other than the company issuing the shares, or one of its subsidiaries, must control the subsidiary, and there must be no arrangements by virtue of which these requirements could cease to be met. 'Control' for this purpose has the meaning given at section 257T.

88. Subsections (2) and (3) provide that these conditions are not to be regarded as ceasing to be satisfied by reason only of a winding-up or dissolution of the subsidiary or its parent, or of the subsidiary or its parent going into receivership, or of a disposal of the shares in the subsidiary, provided in all cases that this occurs for genuine commercial reasons and not as part of a scheme or arrangement for the avoidance of tax.

89. New section 257MV explains what is meant by a "qualifying 90% subsidiary" of an enterprise.

90. Subsection (1) provides that, for a subsidiary to be a qualifying 90% subsidiary, the relevant enterprise must:

a. own at least 90% of the subsidiary's issued share capital and voting rights.

b. be beneficially entitled to at least 90% of the assets available for distribution to equity holders of the subsidiary

c. be beneficially entitled to at least 90% of any profits of the subsidiary which would be available for distribution to equity holders. "Equity holder" is to be given the same meaning as in Chapter 6 of Part 5 of CTA 2010, as explained at subsection (8) and (9).

d. In addition, no person other than the relevant enterprise must have control of the subsidiary, and there must be no arrangements by virtue of which any of the above conditions could cease to be met.

91. Subsections (2) to (4) provide that a company is still to be treated as a qualifying 90% subsidiary if it is held indirectly via a company which is a qualifying 100% subsidiary of the relevant company, (based on similar considerations to those above).

92. Subsections (5) and (6) provide that the winding up of a subsidiary, or the subsidiary entering into or being in administration or receivership, do not prevent this test from being regarded as met providing that those events take place for genuine commercial reasons and not for the purposes of tax avoidance.

93. Subsection (7) provides that arrangements for the disposal of the subsidiary do not prevent this test from being regarded as met, providing that the disposal is for genuine commercial reasons and not for the purposes of tax avoidance.

Chapter 5

94. Chapter 5, sections 257N to 257ND, deal with attribution of relief to investments, and the procedures for making claims.

95. New section 257N how SI relief is to be attributed to investments where only one investment is made, or where several investments are made in the same tax year. This becomes significant if the investor later disposes of some but not all of the investment:

a. for the purpose of determining what relief is to be withdrawn if the disposal takes place within the qualifying period for the investment;

b. for the purpose of determining whether the disposal takes place after the end of the qualifying period relevant to those particular shares, and is therefore exempt from capital gains tax by virtue of section 255B TCGA

96. New section 257NA explains the time limits for making a claim to SI relief.

97. Subsection (1) says that the claim may not be made earlier than the end of the period of 4 months referred to in section 257MM(2), and not later than the fifth anniversary of the filing date for the tax year in which the investment was made. Note: this overrides the normal claim period provided for in section 43 Taxes Management Act 1970. This is to take account

of the fact that the individual's eligibility to claim depends on the enterprise having met certain conditions which may take some time to fulfil.

98. Subsection (2) provides that if the individual has made an election under section 257JA(4) to have some or all of the investment treated as though made in an earlier tax year, then subsection (1) above applies separately to that part of the investment as though it had been made in the earlier tax year.

99. New section 257NB deals with an individual's entitlement to claim SI relief in respect of an investment in a social enterprise.

100. Subsection (1) provides that in order for an individual to be eligible to claim SI relief, the enterprise must provide the individual with a compliance certificate which can be provided to HMRC in support of a claim.

101. Subsections (2) and (3) provide that a claim to SI relief must have been made in order for the individual's PAYE coding to be amended to take account of the SI relief, or for the individual to make any application for tax to be postponed pending the outcome of an appeal made on the grounds that SI relief will be available.

102. New section 257NC provides more detail about the compliance statement referred to in section 257ND(2).

103. Subsection (1) provides that it is a statement to the effect that, in respect of an investment, the conditions for the relief to apply have so far been met (other than those which have to be met by the individual), and the enterprise's intention is that they will continue to be met for the duration of the relevant applicable period. It is therefore not possible for an enterprise to obtain authority to issue certificates under section 257ND once it has ceased to satisfy any condition. So for instance, coming under the control of another company would make the issue of certificates impossible.

104. Subsection (2) gives HMRC the power to prescribe the form and content of the compliance statement. The statement must include a declaration to the effect that the statement is correct to the best of the enterprise's knowledge and belief, as well as any other declarations which HMRC may require. It is anticipated that a declaration as to the quantum of de minimis State aid received by the enterprise (see section 257MA) will be required under this section.

105. Subsection (3) provides that an enterprise cannot submit a statement more than two years after the end of the year of assessment in which the investment was made, or more than two years after the end of the period of four months referred to in section 257MM(2).

106. New section 257ND explains in more detail the requirements for an individual to obtain the compliance certificate referred to in section 257NB(1).

107. Subsection (1) explains that a compliance certificate is a certificate issued by the investee enterprise to the individual. It must state that the requirements for SI relief have so

far been met (other than those which have to be met by the individual), and it must be in a form prescribed by HMRC.

108. Subsection (2) and (3) provide that the enterprise may not issue a compliance certificate to an individual until it has provided HMRC with a compliance statement (see section 257NC), and before it has had authority to do so from HMRC.

109. Subsection (5) and (6) provides that HMRC must give a decision in respect of any application to it for authority to issue a compliance certificate, and that a refusal to give such authority is a matter against which the enterprise has the right of appeal as provided for in the Taxes Management Act 1970.

Chapter 6

110 Chapter 6, sections 257P to 257PM describe the circumstances in which relief will be withdrawn or reduced.

111 New section 257P provides for SI relief to be reduced or withdrawn if the investor receives value from the enterprise during the longer applicable period. See also section 257PG which extends the effect of this provision. Whether the relief will fall to be reduced or withdrawn completely depends on the amount of the value received in relation to the amount of relief given, as determined by the formula in subsection (2).

112. Subsection (3) lists provisions which supplement section 257P.

113. Subsection (6) provides that for the purpose of the value received provisions, a spouse or civil partner who has acquired any part of an investment in the course of a transaction to which section 257Q applies is to be treated as the investor.

114. New section 257PA provides that where the amount of the value received is 'insignificant' it is ignored. An amount is insignificant for this purpose if it does not exceed £1000, or if it exceeds £1000 it is insignificant in relation to the amount subscribed by the individual for the shares in question. 'Insignificant' is not defined for this purpose.

115. To ensure that this relaxation is not used for tax avoidance purposes, subsection (3) provides that the amount of any value is not to be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the investment. Subsection (6) extends this to include receipts by an associate of the investor, or provision of value by any person connected with the social enterprise. "Arrangements" is as defined in section 257U.

116. Subsections (4) and (5) provide that where there is more than one receipt which, on its own, would be regarded as insignificant, the rule must be applied to the total amount received within the longer applicable period.

117. New section 257PB modifies the calculation given at subsections 257P(1) and (2) for cases where there has been more than one issue of investment attracting SI relief.

118. New section 257PC modifies the calculation given at subsections 257P(1) and (2) for cases where part of the investment is treated as though made in the tax year preceding that in which it was made (see section 257JA(4)).

119. New section 257PD modifies the calculation given at subsections 257P(1) and (2) for cases where the investor has not been able to obtain the maximum amount of SI relief available in respect of the investment. This would be the case where the maximum amount of relief available exceeded the investor's liability to income tax for the tax year in question.

120. New section 257PE explains when value is considered to have been received by an investor, for the purposes of sections 257P and 257PB.

121. Subsections (2) to (6) list a wide range of types of payments, benefits and transactions which will give rise to a withdrawal or reduction of SI relief by virtue of the value received provisions. These will include any repayment or part repayment of the investment in respect of which SI relief has been obtained.

122. Subsection (7) provides that if SI relief is withdrawn because the investor has disposed of the investment within the relevant applicable period, the disposal proceeds are not treated as a receipt of value for the purposes of this section.

123. Subsection (8) provides that if the investor is a director of the enterprise, a payment of reasonable remuneration or the provision of a benefit for services provided in the capacity of director or employee, is not to be treated as value received for the purposes of this section.

124. New section 257PF contains a table setting out how the amount of any value received is to be calculated, depending on the nature of the value received.

125. New section 257PG supplements those sections dealing with receipt of value. It provides that those sections apply equally in cases where the value has been provided indirectly as well as directly to the individual; or where the value has been provided to the individual's associate; or where the value has been provided by a person connected with the social enterprise at any time during the longer applicable period.

126. New sections 257PH to PK are not complete as at time of publication of this draft Explanatory Note. It is envisaged that they will correspond broadly to the provisions contained in sections 222 to 244 ITA, relating to the Enterprise Investment Scheme.

127. New section 257PL explains that if the investment is wholly or partly disposed of during the shorter applicable period other than to a spouse or civil partner – see section 257Q, then relief is to be reduced or withdrawn.

128. Subsection (2) and (3) treat the disposal differently depending on whether it has been made by way of an arms' length bargain or not. Where the disposal is other than at arms' length, the relief is withdrawn entirely. Where it is an arms' length bargain, relief is reduced (including withdrawn completely) by the application of the formula at subsection (4).

129. New section 257PM is not complete as at time of publication of this draft Explanatory Note. It is envisaged that it will correspond broadly to the provisions contained in sections 210, 211 and 212 ITA, relating to the Enterprise Investment Scheme.

Chapter 7

130. Chapter 7, sections 257Q to 257U, deal with miscellaneous and supplementary matters including definitions of key terms used in Part 5B.

131. New section 257Q ensures continuity of tax treatment where shares are transferred between spouses or civil partners in the circumstances specified. No relief is withdrawn where one spouse or civil partner disposes of shares to which relief is attributable to the other. Following such a disposal, for the purposes of any subsequent disposal or other event, the shares are treated as if they had always been owned by the spouse or civil partner to whom they have been transferred.

132. Subsection (5) is not complete at time of drafting of this Explanatory Note, but will include details about the identification of shares on a disposal.

133. New section 257R explains what is meant by a company being in administration or receivership, by reference to the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and any corresponding legislation in a country or territory outside of the United Kingdom.

134. New section 257S explains what is meant by an "associate" of a person in the context of Part 5B. It includes spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.

135. New section 257T explains the term "control" as used in Part 5B.

136. Subsection (1) provides that "control" should be defined in accordance with section s450 and 451 Corporation Tax Act 2010, but with the modification that "company" in those sections should be read as though including a charitable trust.

137. Subsection (2) explains that if the trustees of a charitable trust (acting in their capacity as trustees) either individually or together control another person as defined by sections 450 and 451 CTA 2010, then the charitable trust of which they are trustees is to be regarded as controlling the other person for the purpose of Part 5B.

138. Subsection (3) describes the circumstances in which a person is to be regarded as controlling a charity which is a trust, whether or not a trustee. A trustee who, alone or together with other trustees who are connected with him, can exercise some or all of the powers of the trustees, is to be regarded as controlling the charity. A person who is not a trustee but who either alone or with others has the power to appoint or remove trustees, or to approve or direct the trustees' functions, is to be regarded as controlling the charity.

139. Subsection (4) explains that subsection (3) should be read as expanding upon subsection (1), rather than limiting it.

140. Subsection (5) provides that for the purposes of Part 5B, a regulator is to be treated as not having control of any company merely by virtue of the fact that that company is regulated by that regulator.

141. Subsection (6) disapplies the definition of "control" at section 995 for the purposes of Part 5B. That definition would otherwise apply by virtue of section 1021. Note: this is a departure from the Enterprise Investment Scheme legislation at Part 5 ITA which has been used as a broad model. The EIS legislation uses both the section 995 definition, and that at sections 450 and 451 CTA 2010, at different places.

142. New section 257U provides minor definitions for various terms used in Part 5B, including what is meant by the term "market value" in relation to an asset.

Schedule 1, Part 2

143. Part 2 contains various consequential amendments to the Income Tax Act 2007.

Schedule 2

144. Paragraphs 1 and 2 insert new sections 255A and 255B into the Taxation of Chargeable Gains Act 1992 ('TCGA'). Section 255A directs the reader to new Schedule 8B TCGA where the details of the capital gains tax relief are found.

145. New section 255B provides for special treatment of capital gains and losses which accrue on disposals of assets to which SI relief is attributable.

146. Subsection (1) applies where there would be a loss on a disposal of an asset to which SI relief is attributable. The consideration given for the asset is treated as reduced by the amount of SI relief, so the loss is reduced or eliminated, or becomes a gain.

147. Subsection (2) provides that where an asset to which SI relief is attributable is disposed of three years or more after acquisition, any gain which accrues on the disposal is not a chargeable gain for TCGA purposes.

148. Subsection (3) disapplies the rule in TCGA which means that a loss is not an allowable loss if, in similar circumstances, a gain would not be a chargeable gain.

149. Subsection (5) disapplies the normal asset 'pooling' and identification rules in the TCGA from assets to which SI relief is attributable.

150. Subsections (6) and (7) state that Part 5B of the Income Tax Act 2007 (income tax relief for investments in social enterprises) applies to determine whether SI relief is attributable to any asset, and the amount of relief so attributable.

151. Paragraph 3 of Schedule 2 inserts new Schedule 8B into the TCGA. Paragraph 1(1) of Schedule 8B applies the Schedule if an individual (the investor) has a chargeable gain and acquires specific assets known as 'the social holding', providing the investor is eligible for SI relief on the consideration paid for those assets. Five further conditions must also be met. Where the Schedule applies, the individual may claim for the gain to be reduced as provided for in paragraph (2).

152. Paragraph 1(2) of Schedule 8B sets down the first of the five further conditions: condition A. This is that the gain must either be a gain on an asset which is disposed of, or it must be a previously deferred gain which accrues when a chargeable event occurs in relation to an asset which is, or forms part of, a social holding (see new paragraph (4)(1), paragraph 163 below).

153. Paragraph 1(3) of Schedule 8B sets down the second of the five further conditions: condition B. This is that the gain must accrue between 5 April 2014 and 6 April 2019 (but excluding those dates). The Treasury may substitute a later date for the end of this period by means of a Treasury order (paragraph (1)(6)).

154. Paragraph 1(4) of Schedule 8B sets down the third of the five further conditions: condition C. This is that the investor must be resident in the United Kingdom both when the gain accrues and when the social holding is acquired.

155. Paragraph 1(5) of Schedule 8B sets down the fourth of the five further conditions: condition D. This is that the investor must be acting on his or her own behalf and not in any other capacity in making the investment. For instance, condition D will not be met if the individual makes the investment as a partner for the purposes of the Partnership Act 1890 or the Limited Partnership Act 1907, as a member of a Limited Liability Partnership, as a trustee or as a personal representative of a deceased person.

156. Paragraph 1(6) of Schedule 8B sets down the last of the five further conditions: condition E. This is that the investment must be made either in the three years beginning on the day the gain accrues or in the year ending at the beginning of that day.

157. Paragraph 2(1) and 2(2) of Schedule 8B permit the investor to make a claim for the gain to be reduced by an amount up to a sum equal to the amount invested in the social holding, but not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 2(4)).

158. Paragraph 2(3) of Schedule 8B prevents the amount invested or any part of it being used more than once to generate relief under any of the provisions listed at paragraph 2(4).

159. Paragraph 2(4) of Schedule 8B lists the provisions in TCGA which involve an amount invested being set against a gain and which are therefore mutually exclusive under subparagraphs (2) and (3). These are the hold-over relief under this Schedule 8B, enterprise investment scheme (EIS) deferral relief under Schedule 5B TCGA and seed enterprise investment scheme (SEIS) deferral relief under Schedule 5BB TCGA.

160. Paragraph 2(5) of Schedule 8B imposes an upper limit of £1 million on the gains which may be relieved under this Schedule by an individual in any tax year. This not the same as the limit which applies to the total amount which a single enterprise may receive under EU State aid rules (see paragraph 42 of this Note).

161. Paragraph 2(6) of Schedule 8B explains that when a gain is reduced in this way, the relief represented by the amount of the reduction is 'attributable to' the asset or assets which form the social holding. It also provides that when the person holding an asset dies, or a chargeable event occurs in relation to that asset, the relief ceases to be attributable to it. Paragraph (4)(1) explains what is meant by a 'chargeable event'.

162. Paragraph 3 of Schedule 8B provides for a gain equal to all or part of the reduction made under paragraph 2(1) to accrue and be taxable when a chargeable event occurs in relation to the social holding. If the chargeable event relates only to part of the social holding then a corresponding part of the gain accrues. The total gains which can accrue in relation to a social holding cannot exceed the total amount of the reduction.

163. Paragraph 4(1) of Schedule 8B lists the chargeable events which cause a relieved gain to accrue when they occur. These are:

- the investor disposing of an asset forming all or part of his social holding (but this does not include disposals to their spouse or civil partner)
- the disposal of an asset forming all or part of a social holding by a person who acquired it from their spouse or civil partner (but this does not include disposals back to the investor)
- an asset forming all or part of the investment being cancelled, redeemed or repaid
- any of the conditions for eligibility to SI relief in Chapters 3 and 4 of Part 5B of the Income Tax Act 2007 failing to be met

164. Paragraph 4(2) of Schedule 8B means that the death of the investor, or of a person who acquired the social holding or any part of it from the investor as their spouse or civil partner, will not cause a deferred gain to accrue in relation to the assets in the social holding. Furthermore, nothing which happens at or after the time of death will be a chargeable event, so deferred gains will not accrue.

165. Paragraph 4(3) of Schedule 8B gives rules for identifying assets disposed of out of a holding of fungible assets (such as shares) some of which have one or more reliefs attributable to them. These rules are necessary because in many cases the TCGA 'pools' holdings of assets of the same class and treats them collectively as a single asset. Where some of those assets have relief attributable to them, and their disposal would have particular tax consequences, special rules are needed to identify which assets are disposed of from out of a 'pool'. Under paragraph 4(3)(a) the assets disposed of are identified with assets of the same class on a 'first-in, first-out' basis, taking the acquisitions on a daily basis. Assets acquired on the same day are treated as being disposed of in the following order:

- firstly, assets to which neither hold-over relief under this Schedule 8B nor SI relief under Part 5B of the Income Tax Act 2007 is attributable;
- secondly, assets to which hold-over relief but not SI relief is attributable;
- thirdly, assets to which SI relief but not hold-over relief is attributable

- finally, assets to which both hold-over relief and SI relief are attributable.

Paragraph 2(6) explains what is meant by relief being attributable to an asset

166. Paragraph 4(4) of Schedule 8B ensures that when an asset to which hold-over relief under this Schedule (and not SI relief) is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 4(3) apply as though he or she acquired the assets when the investor acquired them.

167. Paragraph (4)(5) of Schedule 8B ensures that an asset to which SI relief is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 4(3) apply as though he or she acquired the assets when the investor acquired them.

168. Paragraph 4(6) and 4(7) of Schedule 8B provides for the main asset identification rules in the TCGA to be subject to the special rules in paragraph 4, and for the asset pooling and identification rules in sections 104, 105 and 106A not to apply to assets to which hold-over relief and not SI relief is attributable.

169. Paragraph 5 of Schedule 8B specifies to whom gains are treated as accruing when there is a chargeable event of one of the types given in paragraph 4(1).

BACKGROUND NOTE

170. These tax reliefs have been introduced to incentivise investment by individuals in social enterprises, to support the Government's aim of stimulating the social enterprise sector.

171. If you have any questions or comments on the legislation generally, please contact Kathryn Robertson on 03000 585729 (email: kathryn.robertson@hmrc.gsi.gov.uk).

172. If you have any questions or comments relating to the capital gains tax aspects of the legislation, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).

1 Recommended medical treatment

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

(2) In Chapter 11 (miscellaneous exemptions), after section 320B insert—

"Recommended medical treatment

320C Recommended medical treatment

(1) No liability to income tax arises in respect of—

(a) the provision to an employee of recommended medical treatment, or

(b) the payment or reimbursement, to or in respect of an employee, of the cost of such treatment,

if that provision, payment or reimbursement is not pursuant to relevant salary sacrifice arrangements or relevant flexible remuneration arrangements.

(2) But subsection (1) does not apply in a tax year if, and to the extent that, the value of the exemption in that year exceeds £500.

(3) Medical treatment is "recommended" if it is provided to the employee in accordance with a recommendation which—

(a) is made to the employee as part of occupational health services provided to the employee by a service provided—

(i) under an enactment, or

(ii) by, or in accordance with arrangements made by, the employer,

(b) is made for the purpose of assisting the employee to return to work after a period of absence due to injury or ill health, and

(c) meets any other requirements specified in regulations made by the Treasury.

(4) Regulations under subsection (3)(c) may, in particular, specify that the recommendation must be one given after the employee has been certified as unfit for work—

(a) for at least the specified number of consecutive days, and

(b) in the specified manner by a person of a specified description.

(5) "The value of the exemption", in a tax year, is an amount equal to the sum of—

(a) all earnings within section 62 (earnings), and

(b) all earnings which are treated as such under the benefits code,

in respect of which subsection (1) would prevent liability to income tax from arising in the tax year disregarding subsection (2).

(6) In this section—

"medical treatment" means all procedures for diagnosing or treating any physical or mental illness, infirmity or defect;

"relevant salary sacrifice arrangements" means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive an amount of general earnings or specific employment income

in return for the provision of recommended medical treatment or the payment or reimbursement of the cost of such treatment;

"relevant flexible remuneration arrangements" means arrangements (whenever made, whether before or after the employment began) under which the employee and employer agree that the employee is to be provided with recommended medical treatment or the cost of such treatment is to be paid or reimbursed, rather than the employee receiving some other description of employment income;

"specified" means specified in regulations under subsection (3)(c)."

(3) In section 266 (exemption of non-cash vouchers for exempt benefits), in subsection (1), omit the "or" at the end of paragraph (d) and after paragraph (e) insert ", or

(f) section 320C (recommended medical treatment);".

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

EXPLANATORY NOTE

RECOMMENDED MEDICAL TREATMENT

SUMMARY

1. Clause [X] provides for a new exemption from income tax where an employer meets the cost of recommended medical treatment provided to an employee to assist them to return to work after a period of absence due to ill-health or injury, subject to an annual cap of £500.

DETAILS OF THE CLAUSE

2. Subsection 1 amends Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (exemptions).

3. Subsection 2 inserts a new section 320C into Chapter 11 (miscellaneous exemptions).

4. New subsection 320C(1) provides that no liability to income tax arises where an employer either provides recommended medical treatment to an employee or pays or reimburses the costs of such treatment as long as the provision, payment or reimbursement is not subject to salary sacrifice or flexible remuneration arrangements.

5. New subsection 320C(2) limits the value of the exemption in a tax year to £500.

6. New subsection 320C(3) sets out at paragraphs (a) (b) and (c) the cumulative conditions under which medical treatment provided to the employee is "recommended". Paragraph (a) provides that a recommendation is made to an employee as part of occupational health services provided to the employee by a service provided under an enactment, or by, or in accordance with arrangements made by, the employer. Paragraph (b) provides that treatment is for the purposes of assisting an employee to return to work after an absence due to injury or ill health, and paragraph (c) provides the Treasury with a power to set out other requirements in regulations.

7. New subsection 320C(4) provides at paragraphs (a) and (b) that regulations under new subsection 320C(3)(c) may specify that the recommendation must be given after the employee has been certified as unfit for work for at least a minimum number of consecutive days, and in a manner, and by a person, specified in regulations.

8. New subsection 320C(5) clarifies that the value of the exemption in a tax year is an amount equal to the sum of all payments that are classed as earnings under section 62 ITEPA and all benefits that are treated as earnings under the benefits code that would be exempt from liability to income tax under new subsection 320C(1) if the £500 limit at new subsection 320C(2) did not apply.

9. New subsection 320C(6) provides definitions of terms used within new section 320C.

10. Subsection (3) amends section 266 ITEPA by adding to the list of non-cash vouchers that do not give rise to tax liability under Chapter 4 of Part 3 of ITEPA a new paragraph (f) covering medical treatment that meets the requirements of new section 320C. The effect of this is to remove the tax charge that would otherwise arise when the employer arranges for the provision of this form of medical treatment by means of non-cash vouchers.

11. Subsection (4) provides that the amendments made by new section 320C will come into effect from a date set out in a Treasury Order.

BACKGROUND NOTE

12. Under current legislation an employer who arranges and pays for medical treatment for an employee is generally providing a benefit in kind that is treated as earnings and is liable to income tax. Where an employer either pays for medical treatment arranged by an employee or reimburses an employee for the costs of such treatment, this constitutes a payment of earnings and is also subject to income tax.

13. This legislation will provide an exemption from a charge to income tax for any payment by an employer to meet the costs of medical treatment that has been recommended by occupational health services up to a limit of £500 per employee per year. This will support the Government's aim to widen access to occupational health treatment and to encourage employers to engage with the wellbeing of their employees.

14. If you have any questions about this change, or comments on the legislation, please email: employmentincome.policy@hmrc.gsi.gov.uk.

1 Threshold for benefit of loan to be treated as earnings

(1) In section 180 of ITEPA 2003 (threshold for benefit of a loan to be treated as earnings), in subsections (1)(a) and (b), (2) and (3), for "£5,000" (wherever occurring) substitute "£10,000".

(2) The amendments made by this section have effect for the tax year 2014-15 and subsequent tax years (and apply to loans made at any time).

EXPLANATORY NOTE

THRESHOLD FOR BENEFIT OF LOAN TO BE TREATED AS EARNINGS

SUMMARY

1. Clause X introduces an increase in the current statutory threshold in section 180 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) from £5,000 to £10,000 for loans provided by an employer with interest at less than commercial rates, sometimes known as 'beneficial loans'. This clause prevents a tax charge on small amounts of benefit arising from cheaper loans by providing a £10,000 threshold which applies in the two circumstances explained below.

DETAILS OF THE CLAUSE

2. The clause increases the current beneficial loans threshold from £5,000 to £10,000, effective from 6 April 2014 and for subsequent years. The increase in the threshold applies to all loans, no matter when they were taken out.

3. Section 180(1)(a) of ITEPA 2003 is amended to provide that the 'normal' threshold for the cash equivalent of an employed related loan is increased to £10,000. No tax is chargeable if the balance outstanding on all beneficial loans does not exceed £10,000 in the year of assessment.

4. Section 180(1)(b) of ITEPA 2003 is amended to provide that where the balance outstanding on all beneficial loans exceeds the threshold, but the balance outstanding on non-qualifying loans does not exceed £10,000 throughout the tax year, no tax is chargeable in respect of the non-qualifying loans.

5. Section 180(2) of ITEPA 2003 is amended to provide the increase to £10,000 where all taxable cheap loans are aggregated to find whether the normal £10,000 threshold is exceeded for the purposes of subsection (1)(a).

6. Section 180(3) of ITEPA 2003 is amended to provide that for non-qualifying loans (sub-section 1(b)), the £10,000 limit will also apply to the calculation where taxable cheap loans are aggregated. So if the qualifying loans are deducted and the total is then less than £10,000 the cash equivalent of the non-qualifying loans is not treated as earnings

7. Subsections (4) and (5) which define "non-qualifying loan" and "qualifying loan" are not amended.

8. Subsection 2 provides for the increase in the threshold to be effective from the beginning of the 2014-15 tax year and subsequent years.

BACKGROUND NOTE

9. The beneficial loan threshold has remained unchanged since it was first introduced in section 88(3) of the Finance Act 1994. The increase in the threshold is to ensure that it more accurately reflects the current levels of such loan arrangements.

10. Although a beneficial loan can be taken out for any purpose by an employee, one of the most common reasons is to fund the purchase of season tickets for commuting.

11. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy Team at employmentincome.policy@hmrc.gsi.gov.uk.

1 Standard lifetime allowance

Schedule 1 makes provision in relation to the standard lifetime allowance.

SCHEDULES

SCHEDULE 1

Section 1

TRANSITIONAL PROVISION RELATING TO NEW STANDARD LIFETIME ALLOWANCE ETC

PART 1

"INDIVIDUAL PROTECTION 2014"

The protection

1 (1) Sub-paragraph (2) applies on or after 6 April 2014 in the case of an individual—

(a) who, on 5 April 2014, has one or more relevant arrangements (see sub-paragraph (4)),

(b) whose relevant amount is greater than £1,250,000 (see sub-paragraph (5)), and

(c) in relation to whom paragraph 7 of Schedule 36 to FA 2004 (primary protection) does not make provision for a lifetime allowance enhancement factor,

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—

(a) if the individual's relevant amount is greater than £1,500,000, the greater of the standard lifetime allowance and £1,500,000, or

(b) otherwise, the greater of the standard lifetime allowance and the individual's relevant amount.

(3) But sub-paragraph (2) does not apply in relation to any benefit crystallisation event occurring at a time when any of the following provisions applies in the case of the individual—

(a) paragraph 12 of Schedule 36 to FA 2004 (enhanced protection);

(b) paragraph 14 of Schedule 18 to FA 2011 (fixed protection 2012);

(c) paragraph 1 of Schedule 22 to FA 2013 (fixed protection 2014).

(4) "Relevant arrangement", in relation to an individual, means an arrangement relating to the individual under—

(a) a registered pension scheme of which the individual is a member, or

(b) a relieved non-UK pension scheme of which the individual is a relieved member.

(5) An individual's "relevant amount" is the sum of amounts A, B, C and D (see paragraphs 2 to 5).

(6) Sub-paragraphs (7) and (8) apply if, at a time ("the relevant time") on or after 6 April 2014, rights of an individual under a relevant arrangement become subject to a pension debit.

(7) For the purpose of applying sub-paragraph (2) in the case of the individual in relation to benefit crystallisation events occurring at or after the relevant time, the individual's relevant amount is reduced (or further reduced) by the following amount—

$$X - (Y \times Z)$$

where—

X is the amount of the pension debit,

Y is 5% of X, and

Z is the number of tax years beginning after 5 April 2014 but ending on or before the date on which the relevant time falls.

(If the formula gives a negative amount, it is to be taken to be nil.)

(8) But if the individual's relevant amount would be reduced (or further reduced) to £1,250,000 or less, sub-paragraph (2) is not to apply at all in the case of the individual in relation to benefit crystallisation events occurring at or after the relevant time.

Amount A (pre-6 April 2006 pensions in payment)

2 (1) To determine amount A—

(a) apply sub-paragraph (2) if a benefit crystallisation event has occurred in relation to the individual during the period comprising the tax year 2006-07 and all subsequent tax years up to (and including) the tax year 2013-14;

(b) otherwise, apply sub-paragraph (6).

(2) If this sub-paragraph is to be applied, amount A is—

$$25 \times \text{ARP} \times \frac{1,500,000}{\text{SLT}}$$

where—

ARP is (subject to sub-paragraph (3)) an amount equal to—

(a) the annual rate at which any relevant existing pension was payable to the individual at the time immediately before the benefit crystallisation event occurred, or

(b) if more than one relevant existing pension was payable to the individual at that time, the sum of the annual rates at which each of the relevant existing pensions was so payable, and

SLT is an amount equal to what the standard lifetime allowance was at the time the benefit crystallisation event occurred.

(3) Paragraph 20(4) of Schedule 36 to FA 2004 applies for the purposes of the definition of "ARP" in sub-paragraph (2) (and, for this purpose, in paragraph 20(4) any reference to "the time" is to be read as a reference to the time immediately before the benefit crystallisation event occurred).

(4) If the time immediately before the benefit crystallisation event occurred falls before 6 April 2011, in sub-paragraph (3) references to paragraph 20(4) are to be read as references to that provision as it stood at the time immediately before the benefit crystallisation event occurred.

(5) If more than one benefit crystallisation event has occurred, in sub-paragraphs (2) to (4) references to the benefit crystallisation event are to be read as references to the first benefit crystallisation event.

(6) If this sub-paragraph is to be applied, amount A is—

$$25 \times \text{ARP}$$

where ARP is (subject to sub-paragraph (7)) an amount equal to—

(a) the annual rate at which any relevant existing pension is payable to the individual at the end of 5 April 2014, or

(b) if more than one relevant existing pension is payable to the individual at the end of 5 April 2014, the sum of the annual rates at which each of the relevant existing pensions is so payable.

(7) Paragraph 20(4) of Schedule 36 to FA 2004 applies for the purposes of the definition of "ARP" in sub-paragraph (6) (and, for this purpose, in paragraph 20(4) any reference to "the time" is to be read as a reference to 5 April 2014).

(8) In this paragraph "relevant existing pension" means (subject to sub-paragraph (9)) a pension, annuity or right—

(a) which was, at the end of 5 April 2006, a "relevant existing pension" as defined by paragraph 10(2) and (3) of Schedule 36 to FA 2004, and

(b) the payment of which the individual had, at the end of 5 April 2006, an actual (rather than a prospective) right to.

(9) If—

(a) before 6 April 2014, there was a recognised transfer of sums or assets representing a relevant existing pension, and

(b) those sums or assets were, after the transfer, applied towards the provision of a scheme pension ("the new scheme pension"),

the new scheme pension is also to be a "relevant existing pension" (including for the purposes of this sub-paragraph).

Amount B (pre-6 April 2014 benefit crystallisation events)

3 (1) To determine amount B—

(a) identify each benefit crystallisation event that has occurred in relation to the individual during the period comprising the tax year 2006-07 and all subsequent tax years up to (and including) the tax year 2013-14,

(b) determine the amount which was crystallised by each of those benefit crystallisation events (applying paragraph 14 of Schedule 34 to FA 2004 if relevant), and

(c) multiply each crystallised amount by the following fraction—

$$\frac{1,500,000}{\text{SLT}}$$

where SLT is an amount equal to what the standard lifetime allowance was at the time the benefit crystallisation event in question occurred.

(2) Amount B is the sum of the crystallised amounts determined under sub-paragraph (1)(b) as adjusted under sub-paragraph (1)(c).

Amount C (uncrystallised rights at end of 5 April 2014 under registered pension schemes)

4 Amount C is the total value of the individual's uncrystallised rights at the end of 5 April 2014 under arrangements relating to the individual under registered pension schemes of which the individual is a member as determined in accordance with section 212 of FA 2004.

Amount D (uncrystallised rights at end of 5 April 2014 under relieved non-UK pension schemes)

5 (1) To determine amount D—

(a) identify each relieved non-UK pension scheme of which the individual is a relieved member at the end of 5 April 2014, and

(b) in relation to each such scheme—

(i) assume that a benefit crystallisation event occurs in relation to the individual at the end of 5 April 2014, and

(ii) in accordance with paragraph 14 of Schedule 34 to FA 2004, determine what the untested portion of the relevant relieved amount would be immediately before the assumed benefit crystallisation event.

(2) Amount D is the sum of the untested portions determined under sub-paragraph (1)(b)(ii).

Interpretation

6 (1) Expressions used in this Part of this Schedule and Part 4 of FA 2004 have the same meaning in this Part as in that Part.

(2) 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.

PART 2

REGULATIONS

7 (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend Part 1 of this Schedule.

(2) Regulations under this paragraph must not increase any person's liability to tax.

(3) Regulations under this paragraph may include provision having effect in relation to a time before the regulations are made; but the time must be no earlier than 6 April 2014.

8 (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 Part 1 of this Schedule is to be given.

(2) In sub-paragraph (1) references to Part 1 of this Schedule are to that Part as amended from time to time by regulations under paragraph 7.

9 (1) Regulations under paragraph 7 or 8 may include supplementary or incidental provision.

(2) The powers to make regulations under paragraphs 7 and 8 are exercisable by statutory instrument.

(3) A statutory instrument containing regulations under paragraph 7 or 8 is subject to annulment in pursuance of a resolution of the House of Commons.

PART 3

OTHER PROVISION

Amendment of section 219(5A) of FA 2004

10 (1) In section 219 of FA 2004 (availability of individual's lifetime allowance) in subsection (5A) after "effect" insert "where the previous benefit crystallisation event occurred before 6 April 2014".

(2) The amendment made by this paragraph is treated as having come into force on 6 April 2014.

Amendment of section 98 of TMA 1970

11 (1) Column 2 of the Table at the end of section 98 of TMA 1970 (special returns: penalties) is amended as follows.

(2) After the entry for section 228 of TIOPA 2010 insert—

"Regulations under paragraph 16 of Schedule 18 to the Finance Act 2011;".

(3) After the entry for regulations under section 61(5) of FA 2012 insert—

"Regulations under paragraph 3 of Schedule 22 to the Finance Act 2013;

Regulations under paragraph 8 of Schedule 1 to the Finance Act 2014;".

EXPLANATORY NOTE

LIFETIME ALLOWANCE - INDIVIDUAL PROTECTION 2014

SUMMARY

1. Clause X and Schedule Y introduce a new transitional protection regime, individual protection 2014 ('IP14'), for pension savers who are affected by the reduction in the standard lifetime allowance to £1.25 million from 6 April 2014. IP14 entitles individuals who have pension savings on 5 April 2014 of greater than £1.25 million and who do not have primary protection to a lifetime allowance equal to the value of those pension savings, subject to an overall limit of £1.5 million.

DETAILS OF THE SCHEDULE

Part 1

2. Paragraphs 1 to 6 set out who can notify HMRC that they intend to rely on IP14, how their existing pension rights are valued and the level of protected lifetime allowance that they will be entitled to.

3. Paragraph 1(1) provides that individuals can notify HMRC that they intend to rely on IP14 where they have a relevant amount (as defined in paragraph 1(5)) of greater than £1.25 million on 5 April 2014 and they do not have primary protection,

4. Paragraph 1(2) provides that where an individual has IP14 the standard lifetime allowance is replaced by the greater of the individual's relevant amount (subject to an overall limit of £1.5 million) and the standard lifetime allowance.

5. Paragraph 1(3) provides that where an individual who has notified HMRC that they intend to rely on IP14 already has one of three existing LTA protections, fixed protection 2012, fixed protection 2014 or enhanced protection, then as long as one of those more beneficial protections is valid, IP14 does not apply.

6. Paragraph 1(5) defines the relevant amount as the sum of amounts A to D which are defined in paragraphs 2 to 5. This is the value of the individuals pensions in payment plus their savings not yet taken that have benefited from UK tax relief.

7. Paragraphs 1(6) to (8) deal with the position where the pension rights of an individual with IP14 are subject to a pension debit on or after 6 April 2014. In such a case, the individual's relevant amount is reduced by the amount of the debit. However the pension debit is reduced by 5 per cent for each complete tax year between 5 April 2014 and the date of the pension debit.

8. Paragraph 2 sets out how to calculate amount A, which is the value of the pensions that the individual was receiving on 6 April 2006 (A-day).

9. Paragraphs 2(2) to (5) apply where a benefit crystallisation event ('BCE') has subsequently occurred in respect of the individual on or before 5 April 2014. In this case Amount A is 25 times the annual rate of the pre A-day pension immediately before the BCE, multiplied by a factor of £1.5 million (the standard lifetime allowance for 2013-14) over the standard lifetime allowance at the date of the BCE. The factor is applied to take account of any change in the standard lifetime allowance since the BCE, so that that percentage of the current standard lifetime allowance used up by the BCE remains constant.

10. Paragraphs 2(6) and (7) apply where no BCE has occurred in respect of the individual since A-day, in which case amount A is 25 times the annual rate of the pension payable on 5 April 2014.

11. Paragraphs 2(8) and (9) contain definitions of expressions used in sub-paragraphs (2) to (7).

12. Paragraph 3 sets out how to calculate amount B, which is the value of any BCEs in respect of the individual occurring on or before 5 April 2014. Amount B is the aggregate of the value of each BCE, multiplied by a factor of £1.5 million (the standard lifetime allowance for 2013-14) over the standard lifetime allowance at the date of the BCE.

13. Paragraph 4 sets out how to calculate amount C, which is the value of any uncrystallised rights in respect of the individual on 5 April 2014. Amount C is calculated in accordance with the method set out in section 212 of Finance Act 2004 for calculating the value of uncrystallised rights in respect of surchargeable unauthorised member payments under section 210 of Finance Act 2004.

14. Paragraph 5 sets out how to calculate amount D, which is the value of any uncrystallised rights in respect of the individual on 5 April 2014 under relieved non-UK pension schemes. Where an individual is a relieved member of a relieved non-UK pension scheme, to calculate amount D it is assumed that there is a BCE in respect of those rights at that date and the amount that would have been crystallised in accordance with paragraph 14 of Schedule 36 to Finance Act 2004 is calculated.

15. Paragraph 6 provides that expressions used in Schedule 1 have the same meaning as in Part 4 of Finance Act 2004.

Part 2

16. Paragraphs 7 to 9 provide powers for HMRC to make regulations to amend Part 1 and to specify how individuals must give notice of their intention to rely on IP14.

Part 3

17. Part 3 makes consequential amendments to existing legislation as a result of the reduction in the lifetime allowance.

18. Paragraph 10 amends section 219(5A) of Finance Act 2004 so that it only applies to individuals with primary protection where the individual has at least one BCE both before 6 April 2014 and on or after 6 April 2014.

19. Paragraph 11 amends section 98 of the Taxes Management Act 1970 to bring regulations relating to applications for fixed protection 2012, fixed protection 2014 and IP14 within the penalty provisions in section 98.

BACKGROUND NOTE

20. 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 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. The lifetime allowance also applies to any UK tax relieved savings the individual has in a relieved non-UK pension scheme.

21. When an individual becomes entitled to their pension benefits, these benefits are tested to see if they exceed the individual's lifetime allowance. Where they exceed this, the excess is subject to 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 taken as a pension is taxable at 25 per cent.

22. The Government announced on 5 December 2012 that legislation will be introduced to reduce the standard lifetime allowance to £1.25 million for the 2014-15 tax year onwards. They also announced that fixed protection 2014 ('FP14') would be introduced to protect individuals from potentially retrospective tax charges arising from the reduction and that they would consult on whether an individual protection regime should supplement FP14, to offer a more flexible framework. At Budget 2013 the Government confirmed that it would offer individual protection 2014 and that it would consult on the detail of this over the summer. That consultation took place from 10 June to 2 September. A summary of responses to the consultation was published on 10 December 2013.

23. 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).

S T A T U T O R Y I N S T R U M E N T S

2014 No.

INCOME TAX

The Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014

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 the powers conferred by section 251(1) of the Finance Act 2004(**a**) and now exercisable by them(**b**), and paragraphs 8 and 9(1) of Schedule [XX] to the Finance Act 2014(**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) (Individual Protection 2014 Notification) Regulations 2014 and come into force on [XX].

2. In these Regulations—

"amounts A, B, C and D" means the amounts calculated in accordance with paragraphs 2 to 5 of Schedule [XX] to the Finance Act 2014 (individual protection 2014);

"HMRC" means Her Majesty's Revenue and Customs;

"individual's relevant amount" means the amount calculated in accordance with paragraph 1(5) of Schedule [XX] to the Finance Act 2014;

"net amount" means the amount of the pension debit(**d**) after the deduction of the amount (if any) calculated in accordance with paragraph 1(7) of Schedule [XX] to the Finance Act 2014;

"paragraph 1" means paragraph 1 of Schedule [XX] to the Finance Act 2014;

"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(**e**), the Upper Tribunal.

(**a**) 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.

(**b**) 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.

(**c**) 2014 c. [XX].

(**d**) Pension debit is defined in section 279(1) of the Finance Act 2004.

(**e**) S.I. 2009/273 (L. 1).

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.

(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, or

(b) HMRC have revoked the certificate in accordance with regulation 11.

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 giving 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) the individual's relevant amount,

(d) amounts A, B, C and D for the individual,

(e) the date, the amount and (if relevant) the net amount of any pension debit to which a relevant arrangement in relation to the individual became subject on or after 6th April 2014, and

(f) 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.

(2) A paragraph 1 notice must—

(a) be in a form prescribed by HMRC,

(b) contain a declaration that the information provided in the notice is true and complete to the best of the knowledge and belief of the person completing the form, and

(c) be received by HMRC on or before 5th April 2017.

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.

(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 notify HMRC of a pension debit

9. Where HMRC have issued a certificate the individual must—

(a) inform HMRC of the date, the amount and (if relevant) the net amount of any pension debit to which their rights under a relevant arrangement become subject, and

(b) provide that information before the end of the period of 90 days beginning with the day on which the individual's rights under the arrangement become subject to the pension debit.

Replacement of a certificate by HMRC

10.—(1) HMRC may issue a certificate, replacing the previous certificate, if they have reason to believe that—

(a) information given in, or in connection with, the paragraph 1 notice was incorrect or has become incorrect, or

(b) the individual's rights under the arrangement have become subject to a pension debit.

(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 any of the conditions in paragraph 1(1) of Schedule [XX] to the Finance Act 2014 have not been met,

(b) have reason to believe that by virtue of a pension debit paragraph 1(2) of that Schedule has ceased to apply in the case of the individual as a consequence of paragraph 1(8) of that Schedule, 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.

(**a**) 2008 c. 9; taxpayer notice is defined in paragraph 1(2) of Schedule 36.

Preservation of documents

13.—(1) Where HMRC have issued a certificate the individual must preserve—

(a) the certificate until no further benefit crystallisation event(**a**) can occur in relation to the individual; and

(b) all documents relating to the calculation of the individual's relevant amount and amounts A, B, C and D for a period of six years beginning with the day on which the individual gives notification to HMRC.

(2) The requirement to preserve the certificate ceases where the certificate has been revoked.

Personal representatives

14. If an individual dies, anything under these Regulations which could have been done by the individual may be done by the individual's personal representatives.

[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 48 of the Finance Act 2013 (c. 29) has reduced the level of the lifetime allowance, which applies to determine whether the lifetime allowance charge is applicable, to £1,250,000 from tax year 2014-15 onwards.

Part 1 of Schedule [XX] to the Finance Act 2014 (c. [XX]) introduces transitional provisions which provide protection from the lifetime allowance charge ("individual protection 2014") for those who may already have built up pension savings in excess of £1,250,000 in the expectation that the lifetime allowance would remain at £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 individual protection 2014 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 their rights under a relevant arrangement become subject to a pension debit.

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. Regulation 14 enables personal representatives to act in place of an individual.

A Tax Information and Impact Note was published on 10 June 2013 and updated on 10 December 2013 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**) Benefit crystallisation event is defined in section 216 of the Finance Act 2004.

EXPLANATORY MEMORANDUM TO

THE REGISTERED PENSION SCHEMES AND RELIEVED NON-UK PENSION SCHEMES (LIFETIME ALLOWANCE TRANSITIONAL PROTECTION) (INDIVIDUAL PROTECTION 2014 NOTIFICATION) REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument sets out how an individual must give notice to HMRC if they intend to rely on individual protection 2014 ("IP14") to reduce or eliminate any potential lifetime allowance charge from April 2014 when the lifetime allowance for UK tax relieved pension savings was reduced from £1.5 million to £1.25 million for tax year 2014-15 onwards. It also sets out what happens if the notice is refused or if the individual no longer meets the conditions for IP14.

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

3.1 None.

4. Legislative Context

4.1 Part 4 of the Finance Act 2004 ("the Act") made provision for the taxation of registered pension schemes. The Act introduced an overall limit on the amount of UK tax relieved pension savings that an individual can make, this is known as the LTA (sections 218 to 226 of the Act). Any pension savings that exceed the LTA when benefits are taken are subject to a charge to income tax known as the LTA charge (section 214 of the Act).

4.2 Section 48 of the Finance Act 2013 amended section 218 of the Act and reduced the lifetime allowance from £1.5 million to £1.25 million for the 2014-15 tax year onwards. Part 1 of Schedule x to the Finance Act 2014 introduced a new transitional protection regime, IP14, for those who think they may be affected by the reduction in the LTA and who had total UK tax relieved pension savings of greater than £1.25m on 5 April 2014. IP14 gives individuals a personalised LTA based on the value of their pension savings on 5 April 2014, subject to an overall limit of £1.5 million.

4.3 Paragraph 8 of Schedule x to the Finance Act 2014 provided the power for HMRC to make Regulations specifying how an individual must give notice to HMRC if they want to rely on IP14. Paragraph 9 states that the Regulations may include supplementary

or incidental provisions. This is the first time that Regulations have been made using the powers in paragraphs 8 and 9 of Schedule x.

4.4 This instrument is also made under section 251 of the Act which allows HMRC to impose specified information requirements on certain prescribed persons.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Government provides tax relief on pensions savings to encourage individuals to take responsibility for retirement planning and to recognise that pensions are less flexible than other forms of saving. However, the cost of tax relief net of income tax on pensions has almost doubled over the last decade to an annual cost of around £35 billion by 2011-12. Reform to pensions tax relief is an integral part of the Government's deficit reduction package and as part of these reforms the Government has introduced restrictions to the amount of tax-free pension savings that can be made to ensure that pensions tax relief remains fair, affordable and sustainable.

7.2 The level of the standard lifetime allowance reduced from £1.5 million to £1.25 million from the 2014-15 tax year onwards. In recognition that reducing the lifetime allowance created a potential issue for individuals who may have already built up pension pots in the expectation that the lifetime allowance would remain around its previous level of £1.5 million, a transitional protection regime 'fixed protection 2014' was introduced to support individuals who had already made pension savings decisions based on the previous level of the lifetime allowance. Individuals with fixed protection 2014 have a personalised LTA of £1.5 million but in return they had to stop contributing to money purchase schemes and cease to accrue new benefits in defined benefit or cash balance schemes. Fixed protection 2014 however potentially created a 'cliff-edge' for pension savers (and members of defined benefit schemes in particular), as in effect it required individuals to opt out of active membership of their scheme and become a deferred member.

7.3 The introduction of IP14 was intended to help those who want the flexibility of continuing to save in their pension scheme but are affected by the reduced lifetime allowance. IP14 is therefore of particular benefit for those who wanted to continue saving in their pension scheme after 6 April 2014, albeit that they will have a lower LTA than with fixed protection 2014 and will be subject to LTA charges on the additional savings

7.4 In order to rely on IP14, individuals must give notice to HMRC. Where a valid notice is received by HMRC, HMRC will issue a certificate to the individual setting out their personalised lifetime allowance. Individuals must present this certificate to the scheme administrator each time they crystallise any of their pension benefits if they want to benefit from IP14. This instrument sets out the process for individuals to apply for IP14.

- Consolidation

7.5 The instrument does not amend another instrument so consolidation is not an issue.

8. Consultation outcome

8.1 This instrument was subject to consultation as part of the formal consultation 'Pensions Tax Relief – Individual Protection from the Lifetime Allowance Charge' which was published on 10 June 2013. A summary of responses to this consultation was published on 10 December 2013.

8.2 Following the consultation, this instrument has been amended to reflect a change in the eligibility conditions for IP14. Some minor drafting changes have also been made.

9. Guidance

9.1 The guidance will be updated at the next available opportunity after the Regulations come into force to reflect the changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible as this instrument specifies the information individuals have to provide and what actions HMRC have to take when an individual wishes to rely on IP14.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note was published on 10 June 2013 and updated on 10 December 2013 and available in *Overview of Legislation in Draft*, published on the GOV.UK website on 10 December 2013. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 This instrument applies to small business.

11.2 This instrument applies in the same way to small businesses as it does to any other business. Because of the nature of information to be provided, it would not be appropriate to have different requirements for small businesses.

12. Monitoring & review

12.1 The policy will be monitored through information collected from HMRC databases, tax returns, receipts and other statistics.

13. Contact

Paul Cottis at HMRC Tel: 03000 564209 or email: pensions.policy@hmrc.gsi.gov.uk , can answer any queries regarding the instrument.

STATUTORY INSTRUMENTS

2014 No.

INCOME TAX

The Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2014

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 the powers conferred by section 251 of the Finance Act 2004(**a**) and now exercisable by them(**b**), and section 282(A1) of that Act(**c**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2014 and come into force on [XX] 2014.

(2) The amendments in regulations 2 to 5 have effect for the tax year 2014-15 and subsequent years.

Amendment of the Registered Pension Schemes (Provision of Information) Regulations 2006

2. The Registered Pension Schemes (Provision of Information) Regulations 2006(**d**) are amended as follows.

3. In regulation 2(1) (interpretation) after the definition of "fixed protection 2014"(**e**) insert—

> ""individual protection 2014" means transitional protection provided for under Part 1 of Schedule [YY] to the Finance Act 2014(**f**);".

4.—(1) The table appended to regulation 3(1) (provision of information by scheme administrator to the Commissioners) is amended as follows.

(2) In entry 6 (benefit crystallisation events and enhanced lifetime allowance, enhanced protection, fixed protection or fixed protection 2014)(**g**)—

(**a**) 2004 c. 12; section 251(4) was amended by paragraph 47 of Schedule 10 to the Finance Act 2005 (c. 7) and section 251(5)(aa) was inserted by section 49 of the Finance Act 2010 (c. 13).

(**b**) 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.

(**c**) Section 282(A1) was inserted by section 75(1) of the Finance Act 2009 (c. 10).

(**d**) S.I. 2006/567, amended by S.I. 2011/301, 2011/1797, 2013/1742; there are other amending instruments but none is relevant.

(**e**) The definition of "fixed protection 2014" was inserted by S.I. 2013/1742.

(**f**) 2014 c. [ZZ].

(**g**) Entry 6 has been amended by S.I. 2011/301, 2011/1797, 2013/1742.

(a) in the heading, for "or fixed protection 2014" substitute ", fixed protection 2014 or individual protection 2014",

(b) in the first column omit "or" at the end of paragraph (b)(iii) and insert at the end of paragraph (b)(iv)—

", or

(v) individual protection 2014.", and

(c) in the second column omit "or" at the end of paragraph (b) and insert at the end of paragraph (c)—

", or

(d) the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014(**a**) (where the member relies on individual protection 2014).".

5. Regulation 11 (information provided by member to scheme administrator: enhanced lifetime allowance, enhanced protection, fixed protection or fixed protection 2014)(**b**) is amended as follows—

(a) in the heading, for "or fixed protection 2014" substitute ", fixed protection 2014 or individual protection 2014",

(b) omit "or" at the end of paragraph (b) and insert at the end of paragraph (c)—

", or

(d) individual protection 2014 by virtue of Part 1 of Schedule [YY] to the Finance Act 2014,", and

(c) after "Regulations 2013" insert "or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014".

[Name]
[Name]

Date

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) ("the Principal Regulations").

The amendments are consequential on the amendments to Part 4 of the Finance Act 2004 (c. 12) made by the Finance Act 2013 (c. 29) which reduce the pensions lifetime allowance from £1,500,000 to £1,250,000 with effect from 6 April 2014.

Transitional protection ("individual protection 2014") is provided by Part 1 of Schedule [YY] to the Finance Act 2014 (c. [ZZ]) for individuals who think they are likely to exceed the reduced lifetime allowance when they become entitled to their pension benefits and who would otherwise face a lifetime allowance charge on the excess. Individuals must apply for individual protection 2014 on or before 5 April 2017.

(**a**) 2014/[XXXX].
(**b**) Regulation 11 was substituted by S.I. 2011/1797 and amended by S.I. 2013/1742.

Regulation 1 provides that the amendments made by this instrument have effect for the tax year 2014-15 and subsequent years. Power to make legislation with retrospective effect is contained in section 282(A1) of the Finance Act 2004, which allows regulations made under Part 4 of that Act (including under section 251) to include provision having effect in relation to times before they are made if that provision does not increase any person's liability to tax.

Regulation 3 inserts a definition of individual protection 2014 into the Principal Regulations.

Regulation 4 adds references to individual protection 2014 in entry 6 in the table appended to regulation 3(1) of the Principal Regulations.

Regulation 5 amends regulation 11 of the Principal Regulations so that if a member of a registered pension scheme intends to rely on individual protection 2014, the member must give to the pension scheme administrator the reference number issued by HM Revenue and Customs under the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014 (S.I. 2014/[XXX]).

A Tax Information and Impact Note was published on 10 June 2013 and updated on 10 December 2013 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 REGISTERED PENSION SCHEMES (PROVISION OF INFORMATION) (AMENDMENT) REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) ("the Regulations"), as a consequence of the introduction of individual protection 2014 ("IP14") in the Finance Act 2014 ("FA 2014"). This instrument prescribes the information requirements for scheme administrators and individuals where an individual wants to rely on IP14 to reduce or eliminate a lifetime allowance ("LTA") charge.

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

3.1 None.

4. Legislative Context

4.1 Part 4 of Finance Act 2004 ("the Act") made provision for the taxation of registered pension schemes. The Act introduced an overall limit on the amount of UK tax relieved pension savings that an individual can make, this is known as the LTA (sections 218 to 226 of the Act). Any pension savings that exceed the LTA are subject to a charge to income tax known as the LTA charge (section 214 of the Act).

4.2 Section 48 of FA 2013 amended section 218 of the Act and reduced the lifetime allowance from £1.5 million to £1.25 million for the 2014-15 tax year onwards. Part 1 of Schedule x to FA 2014 introduced a new transitional protection regime, IP14, for those who think they may be affected by the reduction in the LTA and who have total UK tax relieved pension savings of greater than £1.25m on 5 April 2014. IP14 will give individuals a personalised LTA based on the value of their pension savings on 5 April 2014, subject to an overall limit of £1.5 million. The Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014 (S.I. 2014/xxxx) set out how and when individuals may apply for IP14 and the conditions for maintaining this transitional protection.

4.3 Section 251 of the Act provides that HMRC may make provision in Regulations requiring persons of a prescribed description to provide information to HMRC or other persons of a prescribed description, in relation to matters relating to registered pension schemes. This instrument is made under section 251 and imposes the information requirements for individuals and pension scheme administrators where

an individual has IP14 and wants to rely on their IP14 certificate setting out their personalised LTA when they crystallise some or all of their pension savings. The information requirements are similar to those that apply where an individual relies on earlier forms of LTA transitional protection.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Government provides tax relief on pensions savings to encourage individuals to take responsibility for retirement planning and to recognise that pensions are less flexible than other forms of saving. However, the cost of tax relief net of income tax on pensions has almost doubled over the last decade to an annual cost of around £35 billion by 2011-12. Reform to pensions tax relief is an integral part of the Government's deficit reduction package and as part of these reforms the Government has introduced restrictions to the amount of tax-free pension savings that can be made to ensure that pensions tax relief remains fair, affordable and sustainable.

7.2 The level of the standard LTA reduced from £1.5 million to £1.25 million from the 2014-15 tax year onwards. In recognition that reducing the LTA created a potential issue for individuals who may have already built up pension savings in the expectation that the LTA would remain at its previous level of £1.5 million, the Government introduced a transitional protection regime 'fixed protection 2014' to support individuals who had already made pension savings decisions based on the current level of the LTA. Individuals with fixed protection 2014 have a personalised LTA of £1.5 million but in return they had to stop contributing to money purchase schemes and cease to accrue new benefits in defined benefit or cash balance schemes.

7.3 Fixed protection 2014 potentially created a 'cliff-edge' for pension savers (and members of defined benefit schemes in particular), as in effect it required individuals to opt out of active membership of their scheme and become a deferred member. IP14 is therefore of particular benefit for those who wanted to continue saving in their pension scheme after 6 April 2014, albeit that they will have a lower LTA than with fixed protection 2014 and will be subject to LTA charges on any additional savings

7.4 In order to monitor compliance with IP14, the instrument being made sets out the information that scheme administrators and individuals must provide in connection with IP14.

- Consolidation

7.5 There are no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 This instrument was subject to consultation as part of the formal consultation 'Pensions Tax Relief – Individual Protection from the Lifetime Allowance Charge' which was published on 10 June 2013. A summary of responses to this consultation was published on 10 December 2013.

8.2 Minor drafting changes have been made to this instrument following the consultation.

9. Guidance

9.1 The guidance will be updated at the next available opportunity after the Regulations come into force to reflect the changes.

10. Impact

10.1 This instrument will impact on business, charities or voluntary bodies where they are a registered pension scheme, as it introduces new reporting requirements for pension scheme administrators in specified circumstances. Further information about this can be found in the Tax Information and Impact Note.

10.2 The impact on the public sector is the same as for other businesses.

10.3 A Tax Information and Impact Note was published on 10 June 2013 and updated on 10 December 2013, and available in *Overview of Legislation in Draft*, published on the GOV.UK website on 10 December 2013. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 This instrument applies to small business.

11.2 This instrument applies in the same way to small businesses as it does to any other business. Because of the nature of information to be provided, it would not be appropriate to have different requirements for small businesses.

12. Monitoring & review

12.1 The policy will be monitored through information collected from HMRC databases, tax returns, receipts and other statistics.

13. Contact

Paul Cottis at HMRC Tel: 03000 564209 or email: pensions.policy@hmrc.gsi.gov.uk , can answer any queries regarding the instrument.

1 Annual exempt amount for 2014-15

(1) For the tax year 2014-15 the amount specified in section 3(2) of TCGA 1992 (annual exempt amount) is replaced with "£11,000".

(2) Accordingly section 3(3) of that Act (indexation of annual exempt amount) does not apply for that tax year.

2 Annual exempt amount for 2015-16

(1) For the tax year 2015-16 and subsequent tax years the amount specified in section 3(2) of TCGA 1992 (annual exempt amount) is replaced with "£11,100".

(2) Section 3(3) of that Act (indexation of annual exempt amount) does not apply in relation to the tax year 2015-16 (but subsection (1) does not override section 3(3) of that Act for subsequent tax years).

EXPLANATORY NOTE

CAPITAL GAINS TAX ANNUAL EXEMPT AMOUNT FOR 2014-15

SUMMARY

1. This clause sets the capital gains tax annual exempt amount for the tax year 2014-15 at £11,000.

DETAILS OF THE CLAUSE

2. Subsection (1) sets the annual exempt amount at £11,000 for 2014-15.

3. Subsection (2) disapplies the indexation provisions for the annual exempt amount for 2014-15.

BACKGROUND NOTE

4. Individuals do not have to pay capital gains tax (CGT) unless their chargeable gains (net of all allowable losses) for a tax year exceed the "annual exempt amount" (AEA) for the year. The AEA is not available to non-domiciled individuals who claim the remittance basis of taxation for the tax year. Personal representatives of deceased persons are entitled to the AEA for the tax year in which the individual dies and the following two tax years. Trustees of settled property are entitled to a fraction of the AEA for an individual. In most cases the fraction is one-half, but a smaller fraction applies in some cases. Trusts for the benefit of certain vulnerable individuals are entitled to the full AEA due to an individual.

5. The AEA is automatically increased by reference to inflation, as measured by the consumer prices index for the 12 months to September in the preceding tax year, rounded up to the next £100. Parliament can override automatic indexation and set a different figure in the Finance Act.

6. The AEA for the tax year 2013-14 is £10,900.

7. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

CAPITAL GAINS TAX ANNUAL EXEMPT AMOUNT FOR 2015-16

SUMMARY

1. This clause sets the capital gains tax annual exempt amount for the tax year 2015-16 at £11,100.

DETAILS OF THE CLAUSE

2. Subsection (1) sets the annual exempt amount at £11,100 for 2015-16 and subsequent tax years.

3. Subsection (2) disapplies the indexation provisions for the annual exempt amount for 2015-16 only. Therefore for tax year 2016-17 onwards the annual exempt amount will be adjusted (if necessary) in accordance with section 3(3) unless Parliament otherwise determines.

BACKGROUND NOTE

4. Individuals do not have to pay capital gains tax (CGT) unless their chargeable gains (net of all allowable losses) for a tax year exceed the "annual exempt amount" (AEA) for the year. The AEA is not available to non-domiciled individuals who claim the remittance basis of taxation for the tax year. Personal representatives of deceased persons are entitled to the AEA for the tax year in which the individual dies and the following two tax years. Trustees of settled property are entitled to a fraction of the AEA for an individual. In most cases the fraction is one-half, but a smaller fraction applies in some cases. Trusts for the benefit of certain vulnerable individuals are entitled to the full AEA due to an individual.

5. The AEA is automatically increased by reference to inflation, as measured by the consumer prices index for the 12 months to September in the preceding tax year, rounded up to the next £100. Parliament can override automatic indexation and set a different figure in the Finance Act.

6. Another clause in this Finance Bill sets the AEA for the tax year 2014-15 at £11,000.

7. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk).

1 Relief on disposal of private residence

(1) TCGA 1992 is amended as follows.

(2) In section 223 (relief on disposal of private residence: amount of relief)—

(a) in subsections (1) and (2)(a), for "36 months" substitute "18 months";

(b) omit subsections (5) and (6);

(c) in subsection (8), omit the "and" after paragraph (aa) and after that paragraph insert—

"(ab) section 225E (disposals by disabled persons or persons in care homes etc), and".

(3) After section 225D insert—

"225E Disposals by disabled persons or persons in care homes etc

(1) This section applies where a gain to which section 222 applies accrues to an individual and—

(a) the conditions in subsection (2) are met, or

(b) the conditions in subsection (3) are met.

(2) The conditions mentioned in subsection (1)(a) are that at the time of the disposal—

(a) the individual is a disabled person or a long-term resident in a care home, and

(b) the individual does not have any other relevant right in relation to a private residence.

(3) The conditions mentioned in subsection (1)(b) are that at the time of the disposal—

(a) the individual's spouse or civil partner is a disabled person or a long-term resident in a care home, and

(b) neither the individual nor the individual's spouse or civil partner has any other relevant right in relation to a private residence.

(4) Where this section applies, the references in section 223(1) and (2)(a) to 18 months are treated as references to 36 months.

(5) An individual is a "long-term resident" in a care home at the time of the disposal if at that time the individual —

(a) is resident there, and

(b) has been resident there, or can reasonably be expected to be resident there, for at least three months.

(6) An individual has "any other relevant right in relation to a private residence" at the time of the disposal if—

(a) at that time—

(i) the individual owns or holds an interest in a dwelling-house or part of a dwelling-house other than that in relation to which the gain accrued, or

(ii) the trustees of a settlement own or hold an interest in a dwelling-house or part of a dwelling-house other than that in relation to which the gain accrued, and the individual is entitled to occupy that dwelling-house or part under the terms of the settlement, and

(b) section 222 would have applied to any gain accruing to the individual or trustees on the disposal at that time of, or of that interest in, that dwelling house or part (or would have applied if a notice under subsection (5) of that section had been given).

(7) In the application of this section in relation to a gain to which section 222 applies by virtue of section 225 (private residence occupied under terms of settlement)—

(a) the reference in subsection (1) of this section to an individual is to the trustees of the settlement;

(b) the references in subsections (2) to (6) of this section to the individual are to the person entitled under the terms of the settlement, as mentioned in section 225.

(8) In this section—

"care home" means an establishment that provides accommodation together with nursing or personal care;

"disabled person" has the meaning given by Schedule 1A to FA 2005."

(4) The amendments made by this section have effect in relation to disposals—

(a) made on or after 6 April 2014, or

(b) made before that date under a contract, unless the conveyance takes place before 6 April 2015.

EXPLANATORY NOTE

TAX RELIEF ON DISPOSAL OF PRIVATE RESIDENCE CAPITAL GAINS

SUMMARY

1. Clause X reduces, in most cases, the period for which an only or main residence qualifies automatically for final period exemption from 36 months to 18 months. The exception to this change applies to individuals who are disabled or in a care home and with no other property on which they can claim private residence relief, who will continue to get the 36 month final period exemption.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the Taxation of Chargeable Gains Act 1992 (TCGA 1992) shall be amended in accordance with the clause.

3. Subsection (2) amends section 223 of TCGA 1992, which provides for the amount of relief from capital gains tax that is available when an individual disposes of an interest in a private residence (a dwelling-house that is, or has at any time in their ownership been, their only or main residence). It reduces the length of the final period of ownership that is always eligible for relief from 36 months to 18 months; removes the ability to amend that period by Treasury order; and makes section 223 subject to a new relief introduced at section 225E.

4. Subsection (3) inserts new section 225E into TCGA 1992.

5. New section 225E provides for a new relief on disposal of a private residence for an individual who is a disabled person or living in a care home at the time of the disposal; enabling them to retain a final period exemption of 36 months. In order to qualify the individual must not have any other residential property on which they can claim private residence relief.

6. New subsection 225E(3) extends relief to the spouse or civil partner of the individual mentioned above.

7. New subsection 225E(7) provides that where the property is held in trust, private residence relief can be given to the trustees for the final 36 months of ownership where the individual occupying the property meets the conditions in section 225E (2) to (6).

BACKGROUND NOTE

8. The final period exemption allows people 18 months to sell a previous only or main residence after moving to a new one without losing private residence relief for the property they are no longer living in.

9. The final period was reduced from 36 months to 18 months as the longer period was being exploited by individuals with more than one property.

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

1 Rate bands for tax years 2015-16, 2016-17 and 2017-18

Section 8 of the IHTA 1984 (indexation) does not have effect by virtue of any difference between the consumer prices index for the month of September in 2014, 2015 or 2016 and the previous September.

EXPLANATORY NOTE

RATE BANDS FOR TAX YEARS 2015-16, 2016-17 AND 2017-18

SUMMARY

1. This clause extends the freeze on the inheritance tax (IHT) nil-rate band at £325,000 until 2017-18.

DETAILS OF THE CLAUSE

2. The clause disapplies section 8 of Inheritance Tax Act 1984 (IHTA) for the tax years 2015-16, 2016-17 and 2017-18. Section 8 applies if the consumer prices index (CPI) for September is higher than it was for the previous September, and provides for an increase in the nil-rate band from the following April by the same percentage as the increase in CPI (rounded up to the nearest £1,000). The effect of the clause is that the nil-rate band is not increased for the years 2015-16 to 2017-18 inclusive.

BACKGROUND NOTE

3. The rates of IHT are set out in the Table in Schedule 1 of IHTA. The IHT nil-rate band is the amount below which no IHT is charged. It is automatically indexed in line with inflation each year unless the Government decides otherwise and has generally increased every year up to 2009-10.

4. Section 8 of Finance Act 2010 set the limit of the nil-rate band at £325,000 for the years 2010-11 to 2014-15 inclusive.

5. At Budget 2013 the Government announced that the nil-rate band would remain frozen until 2017-18. This supersedes previous announcements.

6. If you have any questions about this change, or comments on the legislation, please contact Danka Wigley on 03000 585277 (email: danka.wigley@hmrc.gsi.gov.uk).

1 Inheritance tax: delivery of account and payment of tax

(1) IHTA 1984 is amended as follows.

(2) In section 216(6) (time for delivery of accounts), before paragraph (b) insert—

"(ad) in the case of an account to be delivered by a person within subsection (1)(c) above, before the expiration of the period of six months from the end of the month in which the occasion concerned occurs;".

(3) In section 226 (payment of tax: general rules), after subsection (3B) insert—

"(3C) Tax chargeable under Chapter 3 of Part 3 of this Act on the value transferred by a chargeable transfer, other than any for which the due date is given by subsection (3B) above, is due six months after the end of the month in which the chargeable transfer is made."

(4) In section 233 (interest on unpaid tax)—

(a) in subsection (1)(a), after "transfer" insert "not within paragraph (aa) below and",

(b) after subsection (1)(a) insert—

"(aa) an amount of tax charged under Chapter 3 of Part 3 of this Act on the value transferred by a chargeable transfer remains unpaid after the end of the period of six months beginning with the end of the month in which the chargeable transfer was made, or", and

(c) in subsection (1)(b), for "any other chargeable transfer" substitute "a chargeable transfer not within paragraph (a) or (aa) above".

(5) The amendments made by this section have effect in relation to chargeable transfers made on or after 6 April 2014.

2 Inheritance tax: ten-year anniversary charge

(1) IHTA 1984 is amended as follows.

(2) In section 64 (charge at ten-year anniversary), after subsection (1) insert—

"(1A) For the purposes of subsection (1) above, property held by the trustees of a settlement immediately before a ten-year anniversary is to be regarded as relevant property comprised in the settlement at that time if—

(a) it is income of the settlement,

(b) the income arose before the start of the five years ending immediately before the ten-year anniversary,

(c) the income arose (directly or indirectly) from property comprised in the settlement that, when the income arose, was relevant property, and

(d) when the income arose, no person was beneficially entitled to an interest in possession in the property from which the income arose.

(1B) Where the settlor of a settlement was not domiciled in the United Kingdom at the time the settlement was made, income of the settlement is not to be regarded as relevant property comprised in the settlement as a result of subsection (1A) above so far as the income—

(a) is situated outside the United Kingdom, or

(b) is represented by a holding in an authorised unit trust or a share in an open-ended investment company.

(1C) Income of the settlement is not to be regarded as relevant property comprised in the settlement as a result of subsection (1A) above so far as the income—

(a) is represented by securities issued by the Treasury subject to a condition of the kind mentioned in subsection (2) of section 6 above, and

(b) it is shown that all known persons for whose benefit the settled property or income from it has been or might be applied, or who are or might become beneficially entitled to an interest in possession in it, are persons of a description specified in the condition in question."

(3) In section 66 (rate of ten-yearly charge), after subsection (2) insert—

"(2A) Subsection (2) above does not apply to property which is regarded as relevant property as a result of section 64(1A) (and accordingly that property is charged to tax at the rate given by subsection (1) above)."

(4) The amendments made by this section have effect in relation to occasions on which tax falls to be charged under section 64 of IHTA 1984 on or after 6 April 2014.

EXPLANATORY NOTE

INHERITANCE TAX: DELIVERY OF ACCOUNT AND PAYMENT OF TAX

SUMMARY

1. Clause [X] changes the dates by which trustees must deliver an Inheritance Tax (IHT) account and pay tax due for charges arising under Chapter 3 of Part 3 of IHTA.

DETAILS OF THE CLAUSE

2. Subsection 2 adds a new subsection (ad) to section 216(6) of IHTA. The effect of subsection (ad) is that trustees of settlements on which tax is chargeable under Chapter 3 of Part 3 of IHTA, must deliver the IHT account six months after the end of the month in which the chargeable event occurs.

3. Subsection 3 adds a new subsection (3C) to section 226 of IHTA. The effect of subsection (3C) is that the due date for payment of tax chargeable under Chapter 3 of Part 3 of IHTA 1984, is six months after the end of the month in which the chargeable transfer is made. Subsection (3C) does not affect the provision at section 226(3B) which sets out the payment date where a settlor dies within seven years of a transfer and additional liability arises under Chapter 3 of Part 3 IHTA.

4. Subsection 4 amends section 233 IHTA (interest on unpaid tax) to bring it into line with the new payment date.

5. Subsection 5 provides for the changes to apply to tax charges arising on or after 6 April 2014.

BACKGROUND NOTE

6. The time limits for reporting IHT periodic and exit charges arising under chapter 3 part 3 of IHTA that trustees are accountable for differ from the time limits for paying any IHT due under chapter 3 part 3 IHTA.

7. The time limit for delivering an account is currently 12 months from the end of the month in which the transfer is made or if later, three months from the date when the trustee first becomes liable for the tax.

8. The time limits for paying IHT charges are:

- for chargeable events after 5 April and before 1 October, on 30 April in the following year; and
- for chargeable events after 30 September and before 6 April, six months after the end of the month in which the chargeable event took place.

9. This change aligns and simplifies the filing and payment dates for these charges.

10. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

INHERITANCE TAX: TEN YEAR ANNIVERSARY CHARGE

SUMMARY

1. Clause [X] introduces a new provision to treat income arising in "Relevant Property" trusts which remains undistributed for more than five years as part of the trust capital when calculating the ten year anniversary charge.

DETAILS OF THE CLAUSE

2. Subsection 2 adds new subsections (1A), (1B) and (1C) to section 64 of IHTA. New subsection (1A) sets out the conditions for treating property held by the trustees of a settlement as part of the trust capital when calculating the ten year charge (the deeming rule). Those conditions are that the property is income of the settlement, it arose before the start of the five years ending immediately before the ten year anniversary, it arose from relevant property comprised in the settlement and when the income arose no person was beneficially entitled to an Interest in Possession in the underlying property.

3. New subsection (1B) excludes from the deeming rule (in the case of settlements made by persons not domiciled in the UK) income which arose from relevant property but is at the ten year charge represented by property situated outside the UK or is represented by a holding in an Authorised Unit Trust or Open-Ended Investment Company.

4. New subsection (1C) excludes from the deeming rule income which arose from relevant property but which is reinvested in exempt gilts which would (if properly treated as accumulated income) be excluded property.

5. New subsection (1C)(b) ensures that that exempt gilts within a settlement will only be excluded property where all the beneficiaries who could ever become entitled to capital or income from the settled property meet the necessary condition.

6. Subsection 3 amends section 66 of IHTA and adds new subsection 2A. The effect of the amendment is that income brought within the charge as a result of s 64(1A) is charged to tax at the full rate in section 66(1).

7. Subsection 4 provides for the changes to apply to tax charges arising under section 64 IHTA on or after 6 April 2014.

BACKGROUND NOTE

8. Where income is regularly or formally accumulated there is little doubt about the correct treatment of the accumulations within the calculation of relevant property charges. But it can be different where income remains undistributed for long periods and the trustees have not made any formal accumulation. In such cases there can be uncertainty about how the calculations should be undertaken, resulting in questions to, or correspondence with, HMRC to establish an acceptable treatment.

9. New s64(1A) will treat income that has remained undistributed for more than five years at the date of the ten year anniversary as if it was part of the trust capital for the purposes of the ten year anniversary charge. To avoid the need for trustees to keep very detailed records, tax would be charged on the ten year anniversary at the full rate on any such undistributed income without any proportionate reduction to reflect the period during which the income has been retained.

10. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Termination of life interest and death of life tenant: disabled persons

(1) TCGA 1992 is amended as follows.

(2) In section 72 (termination of life interest on death of person entitled)—

(a) in subsection (1B)(a)(iii), for "within section 89B(1)(c) or (d)" substitute ", within the meaning given by section 89B", and

(b) at the end insert—

"(6) An interest which is a disabled person's interest by virtue of section 89B(1)(a) or (b) of the Inheritance Tax Act 1984 is to be treated as an interest in possession for the purposes of this section."

(3) In section 73(3) (death of life tenant: exclusion of chargeable gain), for "to (5)" substitute "to (6)".

(4) The amendments made by this section have effect in relation to deaths occurring on or after 5 December 2013.

2 Trusts with vulnerable beneficiary: meaning of "disabled person"

(1) Schedule 1A to FA 2005 (meaning of "disabled person") is amended as follows.

(2) In paragraph 1—

(a) for paragraph (c) substitute—

"(c) a person in receipt of a disability living allowance by virtue of entitlement to—

(i) the care component at the highest or middle rate, or

(ii) the mobility component at the higher rate,", and

(b) in paragraph (d), omit "by virtue of entitlement to the daily living component".

(3) In paragraph 3, after "rate" insert ", or to the mobility component at the higher rate,".

(4) In paragraph 4, omit "by virtue of entitlement to the daily living component".

(5) The amendments made by this section have effect—

(a) for the purposes of sections 89, 89A and 89B of IHTA 1984, in relation to property transferred into settlement on or after 6 April 2014, and

(b) for all other purposes, for the tax year 2014-15 and subsequent tax years.

EXPLANATORY NOTE

TERMINATION OF LIFE INTEREST AND DEATH OF LIFE TENANT: DISABLED PERSONS

SUMMARY

1. Clause [1] extends, from 5 December 2013, the capital gains tax (CGT) uplift provisions that apply to property held on trust for the benefit of a vulnerable beneficiary to include trusts for the benefit of a disabled person where the beneficiary has no absolute entitlement to the income of the trust.

DETAILS OF THE CLAUSE

2. Subsection (2)(a) extends section 72(1B)(a)(iii) of the Taxation of Chargeable Gains Act 1992 to include all disabled person's interests as defined by section 89B of the Inheritance Tax Act 1984 within those interests to which section 72(1) applies, in particular sections 89B(1)(a) and (b) that provide for interests where the person with the interest is treated as beneficially entitled to an interest in possession in the trust property. Section 73(2A)(a) applies this extension automatically to section 73 in the same way that it applies for section 72. The effect of this change is to apply the same capital gains tax treatment to property within a vulnerable beneficiary trust for a person with a disability where the beneficiary has no interest in possession in the trust property as is available where the beneficiary does have an interest in possession.

3. Subsection (2)(b) inserts new subsection 72(6), which deems that an interest in possession for the purpose of section 72 includes an interest within the meaning of section 89B(1)(a) or (b) of the Inheritance Tax Act 1984.

4. Subsection (3) amends section 73(3) in order to apply new subsection 72(6) for the purpose of section 73 in the same way that it applies for section 72.

5. Subsection (4) provides for commencement.

BACKGROUND NOTE

6. Section 62 of the Taxation of Chargeable Gains Act (TCGA) 1992 contains provisions concerning CGT on death.

7. They provide that when someone dies there is no deemed disposal on death and, therefore, death is not an occasion of charge to CGT. The assets in a person's free estate are treated as being acquired by personal representatives at their market value at the date of

death. In this way, gains accrued up to the date of death are not subject to double taxation under inheritance tax (IHT) and CGT.

8. Property held on trust is normally subject to IHT at 6 per cent every ten years. As an exception, property held on qualifying trusts for a vulnerable person are taxed to IHT at the normal 40 per cent rate on the death of the vulnerable person as if the property was held by that person rather than the trustees. The exception applies where the person has an interest in possession in the trust property (broadly, an absolute entitlement to the income of the trust). It also applies where the person does not have an interest in possession by deeming that an interest in possession was held.

9. Sections 72 and 73 of the TCGA 1992 contain provisions similar to those in section 62 for property held in a qualifying vulnerable beneficiary trust. However, this is currently restricted to only those trusts where the beneficiary has an actual interest in possession in the trust property. This requirement is distorting decisions on the most appropriate trust structure. The measure extends sections 72 and 73 to include trusts where the vulnerable beneficiary is treated as having an interest in possession.

10. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

TRUSTS WITH VULNERABLE BENEFICIARY: MEANING OF "DISABLED PERSON"

SUMMARY

1. Clause [2] extends from 6 April 2014 the definition of "disabled person" used in relation to trusts with a vulnerable beneficiary to include those in receipt of the mobility component of disability living allowance at the higher rate, or the mobility component of personal independence payment at either the standard or enhanced rate.

DETAILS OF THE CLAUSE

2. Subsection (2)(a) extends that part of the definition of "disabled person" at Schedule 1A to Finance Act 2005 that applies to recipients of disability living allowance to include those in receipt of the mobility component at the higher rate (as well as those in receipt of the care component at the highest or middle rate); and subsection (2)(b) extends that part that applies to recipients of personal independence payment to include those in receipt of the mobility component (as well as those in receipt of the daily living component).

3. Subsections (3) and (4) make consequential amendments to paragraphs 3 and 4 of Schedule 1A to ensure that a person is treated as a disabled person if he or she would be entitled to receive the relevant disability living allowance or personal independence payment were it not for them being resident outside the UK or in a care home, hospital or prison.

4. Subsection (5) provides for commencement.

BACKGROUND NOTE

5. Special tax rules exist for trusts with a disabled beneficiary. The rules:

- reduce 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; and
- ignore the normal charges to inheritance tax for trusts; instead, the property is treated as part of the beneficiary's estate on their death.

6. Finance Act 2013 introduced a common definition of "disabled person" at Schedule 1A to Finance Act 2005.

7. Disability living allowance consists of a care component and a mobility component. The care component is payable at three rates – highest, middle and lowest. The mobility component is payable at two rates – higher and lower. Following the introduction of the Welfare Reform Act 2012, the allowance is being phased out for those of working age.

8. Personal independence payment consists of a daily living component and a mobility component. Both the daily living component and the mobility component are payable at two rates – standard and enhanced.

9. If you have any questions about this change, or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk).

1 Gifts to the nation: estate duty

(1) In Schedule 14 to FA 2012 (gifts to the nation), before paragraph 33 insert—

"32A(1) This paragraph applies where a person ("the donor") makes a qualifying gift of an object in circumstances where, had the donor instead sold the object to an individual at market value, a charge to estate duty would have arisen under section 40 of FA 1930 on the proceeds of sale.

(2) At the time when the gift is made, estate duty becomes chargeable under that section as if the gift were such a sale (subject to any limitation imposed by paragraph 33(2)).

(3) In the application of this paragraph to Northern Ireland, the references to section 40 of FA 1930 are to be read as references to section 2 of the Finance Act (Northern Ireland) 1931."

(2) Subsection (3) applies where a person ("the donor") has, before the day on which this Act is passed, made a qualifying gift of an object in circumstances where, had the donor instead sold the object to an individual at market value, a charge to estate duty would have arisen under section 40 of FA 1930 on the proceeds of sale.

(3) No liability to estate duty under section 40 of FA 1930 arises in respect of the object on or after the day on which this Act is passed.

(4) In subsection (2) "qualifying gift" has the same meaning as in Schedule 14 to FA 2012.

(5) In the application of subsections (2) and (3) to Northern Ireland, the references to section 40 of FA 1930 are to be read as references to section 2 of the Finance Act (Northern Ireland) 1931.

EXPLANATORY NOTE

GIFTS TO THE NATION: ESTATE DUTY

SUMMARY

1. Clause [X] corrects a technical flaw in the legislation and will ensure that the Cultural Gifts Scheme works in line with the publicly stated policy.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces new paragraph 32A to schedule 14 to FA 2012. New paragraph 32A(1) provides that it applies to a gift of an object which, if it had been a sale, would give rise to a charge to estate duty under section 40 of FA 1930. This is to ensure that it catches only objects where there is still latent estate duty.

3. New sub-paragraph 32A(2) provides that estate duty becomes chargeable on such a gift as if it were a sale, subject to the limitation imposed by paragraph 33(2) of Schedule 14, which stipulates that where the rate of tax on the disposal is higher than the maximum rate of inheritance tax the donor will need to only pay the difference.

4 New sub-paragraph 32A(3) applies the new paragraph 32A to Northern Ireland.

5. Subsections 2 and 3 provide for the removal of the latent estate duty liability in cases where objects with the latent liability are gifted under the scheme prior to the date the amendment to the legislation receives Royal Assent. This will avoid any unintended consequences for receiving institutions.

6. Subsection 4 states that a “qualifying gift” referred to in subsection 2 has the same meaning as in Schedule 14 to FA 2012.

7. Subsection 5 applies the provisions in subsections 2 and 3 to Northern Ireland.

BACKGROUND NOTE

8. The Cultural Gifts Scheme was introduced by Schedule 14 to the Finance Act (FA) 2012 and commenced on 1 April 2013 by virtue of the Finance Act 2012, Schedule 14 (Appointed Day) Order 2013.

9. Paragraph 33 of Schedule 14 provides a partial exemption from estate duty on exempt objects which would otherwise have become chargeable under Schedule 5 of the Inheritance Tax Act 1984 on a gift of property under the scheme.

10. The exemption is intended to be limited to the amount that would be chargeable if the rate of tax were the same as the rate of Inheritance Tax, currently 40 per cent. Where the rate of estate duty attached to the exempt object is more than the rate of inheritance tax, the policy intention is that the excess amount should become chargeable.

11. The technical flaw in the existing legislation meant that in some cases the latent estate duty would not have come into charge on a gift, and hence remained with the gifted object. New paragraph 32A ensures that the intended amount of estate duty comes into charge and extinguishes any further liability in the future.

12. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Relief for loan interest: loan to buy interest in close company

(1) Chapter 1 of Part 8 of ITA 2007 (relief for interest payments) is amended as follows.

(2) In section 392 (loan to buy interest in close company), in subsection (4)—

(a) after "section 393—" insert—

""close company" includes a company which—

(a) is resident in an EEA state other than the United Kingdom, and

(b) if it were UK resident, would be a close company,",

(b) in the definition of "close investment-holding company", for "section 34 of CTA 2010" substitute "section 393A".

(3) After section 393 insert—

"393A Close investment-holding companies

(1) For the purposes of sections 392 and 393, a close company ("the candidate company") is a close investment-holding company in an accounting period unless throughout the period it exists wholly or mainly for one or more of the permitted purposes set out in subsection (2).

There is an exception to this rule in subsection (5).

(2) The candidate company exists for a permitted purpose so far as it exists—

(a) for the purpose of carrying on a trade or trades on a commercial basis,

(b) for the purpose of making investments in land, or estates or interests in land, in cases where the land is, or is intended to be, let commercially (see subsection (3)),

(c) for the purpose of holding shares in and securities of, or making loans to, one or more companies each of which—

(i) is a qualifying company, or

(ii) falls within subsection (4),

(d) for the purpose of co-ordinating the administration of two or more qualifying companies,

(e) for the purpose of the making of investments as mentioned in paragraph (b)—

(i) by one or more qualifying companies, or

(ii) by a company which has control of the candidate company, or

(f) for the purpose of a trade or trades carried on on a commercial basis—

(i) by one or more qualifying companies, or
(ii) by a company which has control of the candidate company.

(3) For the purposes of subsection (2)(b), any letting of land is taken to be commercial unless the land is let to—
(a) a person connected with the candidate company ("a connected person"), or
(b) a person who is—
(i) the spouse or civil partner of a connected person,
(ii) a relative of a connected person, or the spouse or civil partner of a relative of a connected person,
(iii) the relative of the spouse or civil partner of a connected person, or
(iv) the spouse or civil partner of a relative of a spouse or civil partner of the connected person.

(4) A company falls within this subsection (see subsection (2)(c)(ii)) if—
(a) it is under the control of the candidate company or of a company which has control of the candidate company, and
(b) it exists wholly or mainly for the purpose of holding shares in or securities of, or of making loans to, one or more qualifying companies.

(5) If a company is wound up and was not a close investment-holding company in the accounting period that ends (by virtue of section 12(2) of CTA 2009) immediately before the winding up starts, the company is not treated for the purposes of sections 392 and 393 as being a close investment-holding company in the subsequent accounting period.

(6) In this section "qualifying company" means a company which—
(a) is under the control of the candidate company or of a company which has control of the candidate company, and
(b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) and (b).

(7) In this section—
"accounting period" has the meaning given by section 1119 of CTA 2010,
"close company" includes a company which—
(a) is resident in an EEA state other than the United Kingdom, and
(b) if it were UK resident, would be a close company,
"control" has the meaning given by section 450 of CTA 2010, and
"relative" means brother, sister, ancestor or lineal descendant."

(4) Accordingly—
(a) in section 383(2)(c), after "close company" insert "etc",
(b) in the italic heading before section 392, after "*close company*" insert "*etc*";
(c) in the heading of section 392, after "**close company**" insert "**etc**".

(5) The amendments made by this section have effect in relation to interest paid in the tax year 2014-15 or any subsequent tax year.

2 Relief for loan interest:loan to buy interest in employee-controlled company

(1) In section 397 of ITA 2007 (eligibility requirements for interest on loans within section 396), for subsection (2)(a) substitute—

"(a) an unquoted company that is resident in the United Kingdom or another EEA state and is not resident outside the European Economic Area, and".

(2) The amendment made by this section has effect in relation to interest paid in the tax year 2014-15 or any subsequent tax year.

EXPLANATORY NOTE

RELIEF FOR LOAN INTEREST: LOAN TO BUY INTEREST IN CLOSE COMPANY

SUMMARY

1. Clause X extends the income tax relief for interest paid on loans to buy an interest in a close company to interest paid by individuals investing in companies which are resident in the European Economic Area (EEA) and would be 'close' if they were resident in the United Kingdom.

2. The measure also adds a new section containing the definition of a 'close investment-holding company'.

DETAILS OF THE CLAUSE

3. Subsection 1 introduces changes to Chapter 1 of Part 8 of the Income Tax Act 2007 (ITA 2007).

4. Subsection 2(a) provides that a 'close company' for the purposes of sections 392 and 393 ITA 2007 includes a company which is resident in an EEA state other than the United Kingdom.

5. Subsection 2(b) changes the reference to the legislation containing the definition of 'close investment-holding company' from section 34 of the Corporation Tax Act 2010 (CTA 2010) to section 393A ITA 2007.

6. Subsection 3 adds new section 393A to ITA 2007. This contains the definition of 'close investment-holding company' that is currently at section 34 CTA 2010.

BACKGROUND NOTE

7. A company is defined as 'close' in Corporation Act 2010 (CTA 2010) if it is controlled by five or fewer participators or any number of directors who are participators, or if more than half the company's assets would be distributed to five or fewer participators or to any number of directors in a winding up. Section 442 CTA 2010 provides that a company is not treated as a close company if it is not UK resident.

8. The change to the definition of a close company for the purposes of this relief has been made to ensure that the legislation is compatible with EU law.

9. The addition of the definition of ‘close investment-holding company’ is made because section 34 CTA 2010 is to be repealed as a result of the adoption of a single rate of corporation tax for companies (other than those with oil and gas ring fence profits) from Financial Year 2015.

10. If you have any questions about this change, or comments on the legislation, please contact Judith Diamond on 03000 585712 (email: judith.diamond@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

RELIEF FOR LOAN INTEREST: LOAN TO BUY INTEREST IN EMPLOYEE-CONTROLLED COMPANY

SUMMARY

1. Clause X extends the income tax relief for interest paid on loans to buy an interest in an employee-controlled company to interest paid by individuals investing in such companies, wherever they are resident in the European Economic Area (EEA).

DETAILS OF THE CLAUSE

2. Subsection 1 replaces subsection 397(2)(a) Income Tax Act 2007 with a new subsection. This provides that interest may be relieved on loans to acquire an interest in unquoted companies that are resident in the United Kingdom or another EEA State and are not resident outside the EEA.

BACKGROUND NOTE

3. This change has been made to ensure that the legislation is compatible with EU law.

4. If you have any questions about this change, or comments on the legislation, please contact Judith Diamond on 03000 586712 (email: judith.diamond@hmrc.gsi.gov.uk).

1 Cars: the appropriate percentage

(1) Chapter 6 of Part 3 of ITEPA 2003 (taxable benefits: cars, vans and related benefits) is amended as follows.

(2) In section 133 (how to determine the appropriate percentage), in subsection (2)—

(a) at the end of paragraph (a) insert "or",

(b) omit paragraph (c) and the "or" before it, and

(c) for "to 141" substitute "and 140".

(3) Section 139 (cars with a $C0_2$ figure: the appropriate percentage) is amended in accordance with subsections (4) to (6).

(4) In subsection (2) —

(a) in paragraph (a) for "5%" substitute "7%",

(b) in paragraph (aa) for "9%" substitute "11%", and

(c) in paragraph (b) for "13%" substitute "15%".

(5) In subsection (3), for "14%" substitute "16%".

(6) In subsection (7), omit paragraph (a) and the "and" after it.

(7) Section 140 (cars without a $C0_2$ figure: the appropriate percentage) is amended in accordance with subsections (8) to (10).

(8) In subsection (2), in the Table —

(a) for "15%" substitute "16%", and

(b) for "25%" substitute "27%".

(9) In subsection (3)(a), for "5%" substitute "7%".

(10) In subsection (5), omit paragraph (a) and the "and" after it.

(11) Omit section 141 (diesel cars: the appropriate percentage).

(12) Section 142 (car first registered before 1st January 1998: the appropriate percentage) is amended in accordance with subsections (13) and (14).

(13) In subsection (2), in the Table —

(a) for "15%" substitute "16%",

(b) for "22%" substitute "27%", and

(c) for "32%" substitute "37%".

(14) In subsection (3), for "32%" substitute "37%".

(15) In section 170(4) (power to reduce value of appropriate percentage by regulations), for the words "to 141" substitute "and 140".

(16) In consequence, section 23(4) and (5)(b) of FA 2013 is repealed.

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

EXPLANATORY NOTE

INCOME TAX: COMPANY CARS – THE APPROPRIATE PERCENTAGE

SUMMARY

1. This clause relates to taxable benefits on company cars. With effect from 6 April 2016, it modifies the appropriate percentage bands and carbon dioxide (CO_2) emissions threshold by revising appropriate percentages, including that for the relevant threshold. It also repeals the supplementary appropriate percentage for diesel engined cars.

2. This clause also increases the appropriate percentages for cars registered before 1998 and those otherwise without a registered CO_2 emission.

DETAILS OF THE CLAUSE

3. Subsection (1) introduces changes to Chapter 6 of Part 3 of ITEPA 2003 (taxable benefits: cars, vans and related benefits). Subsection (2) amends section 133 ITEPA which sets out the legislative references for finding the appropriate percentage, and removes the reference to diesel cars to which section 141 applies (relating to the diesel supplement).

4. Subsection (3) introduces the changes to section 139 ITEPA. Subsection (4) increases the appropriate percentage for cars with a CO_2 emission figure between 0 – 50 grams per kilometre (g/km) from 5 per cent to 7 per cent; for 51 – 75 g/km from 9 per cent to 11 per cent and for 76 – 94 g/km from 13 per cent to 15 per cent. Subsection (5) increases the appropriate percentage of the relevant threshold from 14 per cent to 16 per cent. Subsection (6) removes the reference to diesel cars in section 139(7)(a).

5. Subsection (7) introduces changes to section 140 ITEPA. Subsection (8) increases the appropriate percentage for cars without a CO_2 emissions figure so that engines with a cylinder capacity of 1,400 or less increases from 15 per cent to 16 per cent and those with a cylinder capacity of 1401-2000 increases from 25 per cent to 27 per cent. Subsection (9) increases the appropriate percentage from 5 per cent to 7 per cent for cars which are not, under any circumstances, capable of emitting CO_2 emissions when being driven. Subsection (10) removes the reference to diesel cars in section 140(5).

6. Subsection (11) repeals section 141 ITEPA 2003.

7. Subsection (12) introduces changes to section 142 ITEPA. Subsection (13) amends section 142(2). It increases the appropriate percentage for cars first registered before January 1998 with an internal combustion engine with a cylinder capacity of 1,400 or less from 15 per cent to 16 per cent; from 22 per cent to 27 per cent for cars with a cylinder capacity of 1401 – 2,000 and from 32 per cent to 37 per cent for cars with a cylinder capacity of 2001 or more.

8. Subsection (14) amends section 142(3) and provides an increase for cars without a cylinder capacity from 32 per cent to 37 per cent.

9. Subsections (15) and (16) provide for consequential amendments.

10. Subsection (17) provides that these amendments have effect for the tax year 2016-17 and subsequent tax years.

BACKGROUND NOTE

11. Section 139 ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars with CO_2 emissions. The appropriate percentage multiplied by the list price of the car (adjusted for any taxable accessories) provides the level of chargeable benefit for company car tax for employees and of Class 1A NICs for employers.

12. From 6 April 2016, the graduated table of bands for taxing the benefit of a company car will provide for a two percentage point increase for each band, starting at 7 per cent for cars emitting 0-50 grams of CO_2 per kilometre to a maximum of 37 per cent for cars emitting 200 grams of CO_2 per kilometre or more.

13. Section 140 ITEPA sets out the basis for calculating the appropriate percentage for cars without CO_2 emissions and all but the higher band (which was increased in section 23(8) of the Finance Act 2013) have also been increased.

14. Section 141 ITEPA 2003 sets out the diesel supplement. From 6 April 2016, the 3 percentage point diesel supplement set out in section 141 ITEPA will be repealed, so that diesel cars will be subject to the same level of tax as petrol cars.

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

16. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy team at employmentincome.policy@hmrc.gsi.gov.uk.

1 Taxable benefits: cars, vans and related benefits

(1) In section 114 of ITEPA 2003 (cars, vans and related benefits), omit subsection (3) (which prevents a charge by virtue of Chapter 6 of Part 3 of that Act where an amount constitutes earnings by virtue of any other provision).

(2) The amendment made by this section has effect for the tax year 2014-15 and subsequent tax years.

EXPLANATORY NOTE

INCOME TAX: COMPANY CARS AND VANS – REPEAL OF SECTION 114(3) INCOME TAX (EARNINGS AND PENSIONS) ACT (ITEPA) 2003

SUMMARY

1. Clause X relates to taxable benefits on company cars and vans. It will repeal section 114(3) ITEPA 2003 to ensure that the full amount of car or van benefit is subject to tax with effect from 6 April 2014

DETAILS OF THE CLAUSE

2. Subsection 1 removes section 114(3) ITEPA 2003, which will ensure that the cash equivalent of the benefit for a car or van made available for private use will still be treated as earnings from the employment even if it would also fall to be earnings by virtue of any other provision.

BACKGROUND NOTE

3. Section 114(3) ITEPA 2003 provides that Chapter 6 of Part 3 of ITEPA 2003 (Taxable Benefits: Cars, Vans and related benefits) does not apply if the cash equivalent of the benefit of a company car or van made available for private use constitutes earnings from the employment by virtue of any other provision. This could allow an individual to pay less tax on their car or van benefit than the Government originally intended and have a negative impact on Exchequer revenue.

4. From 6 April 2014, section 114(3) ITEPA 2003 will be repealed for the tax year 2014-15 and subsequent tax years. This supports the Government's policy of the full amount of car or van benefit being subject to tax and protects Exchequer revenue. Protection from double taxation is already provided by other provisions in the Act.

5. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy team at employmentincome.policy@hmrc.gsi.gov.uk.

1 Cars and vans: payments for private use

(1) In section 144 of ITEPA 2003 (deduction for payments for private use: cars), for subsection (1)(b) substitute—

"(b) pays that amount in that year."

(2) In section 158 of that Act (reduction for payments for private use: vans), for subsection (1)(b) substitute—

"(b) pays that amount in that year."

(3) The amendments made by this section have effect for the tax year 2014-15 and subsequent tax years.

EXPLANATORY NOTE

INCOME TAX – COMPANY CARS AND VANS – PAYMENTS FOR PRIVATE USE OF A COMPANY CAR AND VAN

SUMMARY

1. This clause relates to taxable benefits on company cars and vans. With effect from 6 April 2014, any payment which an employee is required to make for the private use of a car or van needs to be made before the end of the tax year in which the private use was undertaken. Such private use payments can reduce the employee's tax liability on a car or van benefit.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 144 (1)(b) of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to provide for a reduction in the cash equivalent of the benefit of a car if, in a tax year, an employee pays in full the contributions required as a condition of that car being available for private use in that year.

3. Subsection (2) amends section 158 (1)(b) ITEPA 2003 to provide for a reduction in the cash equivalent of the benefit of a van if, in a tax year, an employee pays in full, the contributions required as a condition of that van being available for private use in that year.

4. Subsection (3) provides that these amendments have effect for the tax year 2014-15 and subsequent tax years.

BACKGROUND NOTE

5. This clause aligns the legislation with the Government's policy intention that any private use payment needs to be made in the tax year in which private use was undertaken. This clause also ensures that if appropriate the full amount of tax is payable on a car or van benefit.

6. Section 144(1) ITEPA 2003 provides for an employee to reduce their tax liability on a car benefit if the employee makes payment for private use of the car.

7. Section 158(1) ITEPA 2003 provides for a similar tax liability reduction if payment for private use of a company van is made by an employee.

8. From 6 April 2014, sections 144(1) and 158(1) ITEPA 2003 will be amended to provide for a reduction in an employee's tax liability on a company car or van benefit only if

payments for private use of a company car or van are made in the tax year in which the private use was undertaken.

9. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy team at employmentincome.policy@hmrc.gsi.gov.uk.

1 Charge for financial year 2015

Corporation tax is charged for the financial year 2015.

2 Small profits rate and fractions for financial year 2014

(1) For the financial year 2014 the small profits rate is—
  (a) 20% on profits of companies other than ring fence profits, and
  (b) 19% on ring fence profits of companies.

(2) For the purposes of Part 3 of CTA 2010, for that year—
  (a) the standard fraction is 1/400th, 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).

3 Rates for ring fence profits and abolition of small profits rate for non-ring fence profits

Schedule 1—
  (a) sets the corporation tax rates for ring fence profits for the financial year 2015 and future years, and
  (b) contains provision about the abolition of the small profits rate for profits other than ring fence profits.

SCHEDULE 1 Section 3

CORPORATION TAX RATES

PART 1

ABOLITION OF SMALL PROFITS RATE FOR NON-RING FENCE PROFITS

1 CTA 2010 is amended as follows.

2 In section 1 (overview of Act), in subsection (2)—
(a) for "Parts 3" substitute "Parts 4", and
(b) omit paragraph (a).

3 For section 3 (corporation tax rates) substitute—

"3 Corporation tax rates

(1) Corporation tax is charged at the rate set by Parliament for the financial year as the main rate.

(2) Subsection (1) is subject to any provision of the Corporation Tax Acts which provides for corporation tax to be charged at a different rate."

4 Omit Part 3 (companies with small profits).

5 (1) Part 8 (oil activities) is amended as follows.

(2) In section 270 (overview of Part 8), after subsection (3) insert—

"(3A) Chapter 3A makes provision about the rates at which corporation tax is charged on ring fence profits."

(3) After Chapter 3 insert—

"CHAPTER 3A

RATES AT WHICH CORPORATION TAX IS CHARGED ON RING FENCE PROFITS

The rates

279A Corporation tax rates on ring fence profits

(1) Corporation tax is charged on ring fence profits at the main ring fence profits rate.

(2) But subsection (3) provides for tax to be charged at the small ring fence profits rate instead of the main ring fence profits rate in certain circumstances.

(3) Corporation tax is charged at the small ring fence profits rate on a company's ring fence profits of an accounting period if—
(a) the company is UK resident in the accounting period, and

(b) its augmented profits of the accounting period do not exceed the lower limit.

(4) In this Act—

"the main ring fence profits rate" means 30%, and

"the small ring fence profits rate" means 19%.

Marginal relief

279B Company with only ring fence profits

(1) This section applies if—

(a) a company is UK resident in an accounting period,

(b) its augmented profits of the accounting period—

(i) exceed the lower limit, but

(ii) do not exceed the upper limit, and

(c) its augmented profits of that period consist exclusively of ring fence profits.

(2) The corporation tax charged on the company's taxable total profits of the accounting period is reduced by an amount equal to—

$$R \times (U - A) \times \left(\frac{N}{A}\right)$$

where—

R is the marginal relief fraction,

U is the upper limit,

A is the amount of the augmented profits, and

N is the amount of the taxable total profits.

(3) In this Chapter "the marginal relief fraction" means 11/400ths.

279C Company with ring fence profits and other profits

(1) This section applies if—

(a) a company is UK resident in an accounting period,

(b) its augmented profits of the accounting period—

(i) exceed the lower limit, but

(ii) do not exceed the upper limit, and

(c) its augmented profits of that period consist of both ring fence profits and other profits.

(2) The corporation tax charged on the company's taxable total profits of the accounting period is reduced by the sum equal to the marginal relief fraction of the ring fence amount.

279D The ring fence amount

(1) In section 279C "the ring fence amount" means the amount given by the formula—

$$(UR - AR) \times \left(\frac{NR}{AR}\right)$$

(2) In this section—

UR is the amount given by multiplying the upper limit by—

$$\frac{AR}{A}$$

AR is the total amount of any ring fence profits that form part of the augmented profits of the accounting period,

NR is the total amount of any ring fence profits that form part of the taxable total profits of the accounting period, and

A is the amount of the augmented profits of the accounting period.

The lower limit and the upper limit

279E The lower limit and the upper limit

(1) This section gives the meaning in this Chapter of "the lower limit" and "the upper limit" in relation to an accounting period of a company ("A").

(2) If no company is a related 51% group company of A in the accounting period—

(a) the lower limit is £300,000, and

(b) the upper limit is £1,500,000.

(3) If one or more companies are related 51% group companies of A in the accounting period—

(a) the lower limit is—

$$\frac{£300{,}000}{(1 + N)}$$

and

(b) the upper limit is—

$$\frac{£1{,}500{,}000}{(1 + N)}$$

where N is the number of those related 51% group companies.

(4) For an accounting period of less than 12 months the lower limit and the upper limit are proportionately reduced.

Related 51% group companies

279F "Related 51% group company"

(1) For the purposes of this Chapter a company ("B") is a related 51% group company of another company ("A") in an accounting period if for any part of the accounting period—

(a) A is a 51% subsidiary of B,

(b) B is a 51% subsidiary of A, or

(c) both A and B are 51% subsidiaries of the same company.

(2) The rule in subsection (1) applies to each of two or more related 51% group companies even if they are related 51% group companies for different parts of the accounting period.

(3) But a related 51% group company is ignored for the purposes of this section if—

(a) it has not carried on a trade or business at any time in the accounting period, or

(b) it was a related 51% group company for part only of the accounting period and has not carried on a trade or business at any time in that part of the accounting period.

(4) Subsection (3) is subject to subsections (5) to (9).

(5) Subsection (6) applies if a company carries on a business of making investments in an accounting period and throughout the period the company—

(a) carries on no trade,

(b) has one or more 51% subsidiaries, and

(c) is a passive company.

(6) The company is treated for the purposes of subsection (3) as not carrying on a business at any time in the accounting period.

(7) A company is a passive company throughout an accounting period only if the following requirements are met—

(a) it has no assets in that period, other than shares in companies which are its 51% subsidiaries,

(b) no income arises to it in that period other than dividends,

(c) if income arises to it in that period in the form of dividends—

(i) the redistribution condition is met (see subsection (8)), and

(ii) the dividends are franked investment income received by it,

(d) no chargeable gains accrue to it in that period,

(e) no expenses of management of the business mentioned in subsection (5) are referable to that period, and

(f) no qualifying charitable donations are deductible from the company's total profits of that period.

(8) The redistribution condition is that—

(a) the company pays dividends to one or more of its shareholders in the accounting period, and

(b) the total amount paid in the form of those dividends is at least equal to the amount of the income arising to the company in the form of dividends in that period.

(9) If income arises to a company in an accounting period in the form of a dividend and the requirement in subsection (7)(c) is met in respect of the income—

(a) neither the dividend nor any asset representing it is treated as an asset of the company in that accounting period for the purposes of subsection (7)(a), and

(b) no right of the company to receive the dividend is treated as an asset of the company for the purposes of subsection (7)(a) in that period or any earlier accounting period.

Augmented profits

279G "Augmented profits"

(1) For the purposes of this Chapter a company's augmented profits of an accounting period are—
  (a) the company's taxable total profits of that period, plus
  (b) any franked investment income received by the company that is not excluded by subsection (2).

(2) This subsection excludes any franked investment income which the company ("the receiving company") receives from a company which is—
  (a) a 51% subsidiary of—
    (i) the receiving company, or
    (ii) a company of which the receiving company is a 51% subsidiary, or
  (b) a trading company or relevant holding company that is a quasi-subsidiary of the receiving company.

(3) For the purposes of subsection (2)(b) a company is a quasi-subsidiary of the receiving company if—
  (a) it is owned by a consortium of which the receiving company is a member,
  (b) it is not a 75% subsidiary of any company, and
  (c) no arrangements of any kind (whether in writing or not) exist by virtue of which it could become a 75% subsidiary of any company.

279H Interpretation of section 279G(2) and (3)

(1) For the purposes of section 279G(2)(a), a company ("A") is a 51% subsidiary of another company ("B") only at times when—
  (a) B would be beneficially entitled to more than 50% of any profits available for distribution to equity holders of A, and
  (b) B would be beneficially entitled to more than 50% of any assets of A available for distribution to its equity holders on a winding up.

(2) The requirement in subsection (1) is in addition to the requirements of section 1154(2) (meaning of 51% subsidiary).

(3) In determining for the purposes of section 279G(2)(a) whether or not a company is a 51% subsidiary of another company ("C"), C is treated as not being the owner of share capital if—
  (a) it owns the share capital indirectly,
  (b) the share capital is owned directly by a company ("D"), and
  (c) a profit on the sale of the shares would be a trading receipt for D.

(4) In section 279G(2)(b) and this section—
  "trading company" means a company whose business consists wholly or mainly of carrying on a trade or trades, and

"relevant holding company" means a company whose business consists wholly or mainly of holding shares in or securities of trading companies that are its 90% subsidiaries.

(5) For the purposes of section 279G(3), a company is owned by a consortium if at least 75% of the company's ordinary share capital is beneficially owned by two or more companies each of which—

(a) beneficially own at least 5% of that capital,

(b) would be beneficially entitled to at least 5% of any profits available for distribution to equity holders of the company, and

(c) would be beneficially entitled to at least 5% of any asset of the company available for distribution to its equity holders on a winding up.

(6) The companies meeting those conditions are called the members of the consortium.

(7) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsections (1) and (5) as it applies for the purposes of section 151(4)(a) and (b)."

PART 2

AMENDMENTS CONSEQUENTIAL ON PART 1 OF THIS SCHEDULE

Finance Act 1998

6 In Schedule 18 to FA 1998 (company tax returns, assessments and related matters), in paragraph 8 (calculation of tax payable), in subsection (1), for "section 19, 20 or 21 of the Corporation Tax Act 2010 (marginal relief for companies with small profits)" substitute "Chapter 3A of Part 8 of the Corporation Tax Act 2010 (marginal relief for companies with small ring fence profits etc)".

Finance Act 2000

7 In Schedule 22 to FA 2000 (tonnage tax), in paragraph 57 (exclusion of relief or set-off against tax liability), in sub-paragraph (6), for paragraph (a) substitute—

"(a) any reduction under Chapter 3A of Part 8 of CTA 2010 (marginal relief for companies with small ring fence profits), or".

Capital Allowances Act 2001

8 In section 99 of CAA 2001 (long-life assets: the monetary limit)—

(a) in subsection (4)—

(i) for "If, in a chargeable period, a company has one or more associated companies" substitute "In the case of a company ("C"), if, in a chargeable period, one or more companies are related 51% group companies of C", and

(ii) for "number of associated" substitute "number of related 51% group", and

(b) omit subsection (5).

9 In Part 2 of Schedule 1 to that Act (defined expressions), at the appropriate place insert—

"related 51% group company	section 279F of CTA 2010 (as applied by 1119 of that Act)."

Corporation Tax Act 2009

10 In section 104N of CTA 2009 (payment of R&D expenditure credit) in subsection (3), in the definition of "*Amount A*", in paragraph (b), after "main rate" insert "(or, in the case of ring fence profits, the main ring fence profits rate").

11 In section 1114 of that Act (calculation of total R&D aid for the purposes of the cap), after "aid is calculated" insert "(or, in the case of a ring fence trade (within the meaning of section 277 of CTA 2010) the main ring fence profits rate at that time)".

12 In Schedule 4 to that Act (index of defined expressions), at the appropriate place, insert—

"main ring fence profits rate	section 279A(4) (as applied by 1119 of CTA 2010)".

Corporation Tax Act 2010

13 (1) Chapter 3 of Part 8A of CTA 2010 (profits arising from the exploitation of patents etc: relevant IP profits) is amended as follow.

(2) In section 357CL (companies eligible to elect for small claims treatment)—

(a) in subsection (5) for "the company has no associated company" substitute "no other company is a related 51% group company of the company",

(b) in subsection (6)—

(i) for "the company has one or more associated companies" substitute "one or more other companies are related 51% group companies of the company," and

(ii) for "those associated" substitute "those related 51% group", and

(c) omit subsection (9).

(3) In section 357CM (small claims amount)—

(a) in subsection (5) for "the company has no associated company" substitute "no other company is a related 51% group company of the company",

(b) in subsection (6)—

(i) for "the company has one or more associated companies" substitute "one or more other companies are related 51% group companies of the company," and

(ii) for "those associated" substitute "those related 51% group", and

(c) omit subsection (8).

14 (1) Part 12 of CTA 2010 (real estate investment trusts) is amended as follows.

(2) In section 534 (tax treatment of profits), omit subsection (3).

(3) In section 535 (tax treatment of gains), omit subsection (6).

(4) In section 543 (profit: financing-cost ratio), omit subsection (5).

(5) In section 551 (tax consequences of distribution to holder of excessive rights), omit subsection (6).

(6) In section 552 ("the section 552 amount"), in subsection (2), for "rate of corporation tax mentioned in section 534(3) (rate determined without reference to sections 18 to 23)" substitute "main rate of corporation tax".

(7) In section 564 (breach of condition as to distribution of profits), omit subsection (4).

15 (1) Part 13 of CTA 2010 (other special types of company etc) is amended as follows.

(2) In section 614 (open-ended investment companies: applicable corporation tax rate), omit "(and sections 18 and 19 (relief for companies with small profits) do not apply)".

(3) In section 618 (authorised unit trusts: applicable corporation tax rate), omit "(and sections 18 and 19 (relief for companies with small profits) do not apply)".

(4) In section 627 (companies in liquidation etc: meaning of "rate of corporation tax" in case of companies with small profits)—

(a) for subsections (1) and (2) substitute—

"(1) This section applies if corporation tax is chargeable on ring fence profits of a company for a financial year.

(2) References in this Chapter to the "main rate of corporation tax", so far as relating to those profits, are to be taken—

(a) if corporation tax is to be charged on those profits at the main ring fence profits rate, as references to that rate;

(b) if corporation tax is to be charged on those profits at the small ring fence profits rate, as references to that rate;

(c) if corporation tax on those profits is to be reduced by reference to the marginal relief fraction within the meaning of Chapter 3A of Part 8 (see sections 279B and 279C), as including references to the marginal relief fraction (and with references to a rate being "fixed" or "proposed" read accordingly as references

to the marginal relief fraction concerned being fixed or proposed)."

(b) accordingly, in the heading for the section, for "**small profits**" substitute "**ring fence profits**".

(5) In section 628 (company in liquidation: corporation tax rates), for "the rate of corporation tax" (in each place it occurs) substitute "the main rate of corporation tax".

(6) In section 630 (company in administration: corporation tax rates), for "the rate of corporation tax" (in each place it occurs) substitute "the main rate of corporation tax".

16 In section 1119 of CTA 2010 (Corporation Tax Acts definitions), at the appropriate places insert—

""main ring fence profits rate" has the meaning given by section 279A(4),", and

""related 51% group company" is to be read in accordance with section 279F,".

17 (1) Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.

(2) Insert the following entries at the appropriate places—

"the main ring fence profits rate	section 279A(4) (as applied by section 1119)"
"the marginal relief fraction (in Chapter 3A of Part 8)	section 279B(3)"
"related 51% group company	section 279F (as applied by section 1119)"
"the small ring fence profits rate	section 279A(4)"

(3) Omit the entries for—

"associated company (in Part 3)";

"close investment holding company (in Part 3)";

"the ring fence fraction (in Part 3)";

"the small profits rate";

"the standard fraction (in Part 3)".

(4) In the entry for "augmented profits (in Part 3)"—
  (a) in the first column for "Part 3" substitute "Chapter 3A of Part 8", and
  (b) in the second column, for "32" substitute "279G".

(5) In the entry for "the lower limit (in Part 3)"—
  (a) in the first column for "Part 3" substitute "Chapter 3A of Part 8", and
  (b) in the second column for "24" substitute "279E".

(6) In the entry for "the upper limit (in Part 3)"—
  (a) in the first column for "Part 3" substitute "Chapter 3A of Part 8", and
  (b) in the second column for "24" substitute "279E".

Finance Act 2012

18 In section 102 of FA 2012 (policy holders' rate of tax on policyholders' share of I-E profit), omit subsection (5).

Finance Act 2013

19 In section 6 of FA 2013 (main rate for financial year 2015)—
  (a) in subsection (1) for "the rate" substitute "the main rate",
  (b) in that subsection, omit "on profits of companies other than ring fence profits", and
  (c) omit subsection (2).

20 In Schedule 25 to FA 2013, omit paragraph 19.

PART 3

COMMENCEMENT AND TRANSITIONAL PROVISION

21 (1) The amendments made by paragraphs 8, 9 and 13 have effect in relation to accounting periods beginning on or after 1 April 2015.

(2) Accordingly—
  (a) despite the repeal of Part 3 of CTA 2010 by paragraph 4 of this Schedule, sections 25 to 30 of that Act (interpretation of references to associated companies) continue to apply for the purposes of section 99 of CAA 2001, and sections 357CL and 357CM of CTA 2010, in relation to accounting periods beginning before but ending on or after 1 April 2015, and
  (b) in relation to the application of sections 25 to 30 of CTA 2010 for those purposes, paragraph 22(2) of this Schedule is to be ignored.

22 (1) The other amendments made by this Schedule have effect for the financial year 2015 and subsequent financial years.

(2) In the case of an accounting period (a "straddling period")—
  (a) beginning before 1 April 2015, and
  (b) ending on or after that date,

the repealed small profit provisions and the new ring-fence small profit provisions apply as if the different parts of the straddling period falling in the different financial years were separate accounting periods.

(3) For this purpose—

"the repealed small profit provisions" means Part 3 of CTA 2010,

"the new ring-fence small profit provisions" means sections 279A(3) and 279B to 279H".

(4) For the purposes of sub-paragraph (2) all necessary apportionments are to be made between the two separate accounting periods.

EXPLANATORY NOTE

CORPORATION TAX: CHARGE FOR FINANCIAL YEAR 2015

SUMMARY

1. Clause X charges corporation tax (CT) for the financial year beginning 1 April 2015.

DETAILS OF THE CLAUSE

2. Clause X charges CT for the financial year beginning 1 April 2015.

BACKGROUND NOTE

3. Parliament charges CT for each financial year. This clause charges CT for the financial year beginning 1 April 2015. The rate of CT for the financial year 2015 was set at 20 per cent in section 6 (1) Finance Act 2013.

4. If you have any questions about this change, or comments on the legislation, please contact Clare Dunne on 03000 585 961 (email:clare.e.dunne@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

CORPORATION TAX: SMALL PROFITS RATE AND FRACTIONS FOR FINANCIAL YEAR 2014

SUMMARY

1. Clause X sets the small profits rate of corporation tax (CT) for the financial year beginning 1 April 2014 at 20% for all profits apart from "ring fence profits" of North Sea oil companies, where the rate is set at 19%. Additionally, it sets the fraction used in calculating marginal relief from the main rate at 1/400 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 2014.

3. Subsection (2) sets the marginal relief standard and ring fence fractions.

BACKGROUND NOTE

4. Companies with profits up to £300,000 pay CT at the small profits rate.

5. Companies with profits between £300,000 and £1,500,000 (the lower and upper limits) benefit from marginal relief.

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 at 21 per cent	£105,000
Minus 1/400 of £1,000,000*	£2,500
Tax payable	£102,500

*£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 at 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 Clare Dunne on 03000 585961 (email: clare.e.dunne@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

CORPORATION TAX: ABOLITION OF SMALL PROFITS RATE FOR NON-RING FENCE PROFITS AND THE SETTING OF RATES FOR RING FENCE PROFITS

SUMMARY

1. Clause X and Schedule Y abolish the small profits rate of corporation tax (CT) for companies with profits other than ring fence profits and set the rates of CT and the marginal relief fraction for ring fence profits for the financial year 2015 onwards.

DETAILS OF THE SCHEDULE

Part 1

2. Part 1 makes changes to the Corporation Tax Act (CTA) 2010. Paragraph 1 introduces the changes.

3. Paragraph 2 makes minor changes to section 1 CTA 2010, (overview of the Act.)

4. Paragraph 3 amends section 3 CTA 2010 to remove the reference to the small profits rate of CT.

5. Paragraph 4 repeals Part 3 CTA 2010, (companies with small profits.) Part 3 previously contained the rules for computing marginal relief.

6. Paragraph 5 inserts Chapter 3A in Part 8 CTA 2010 (oil activities). Chapter 3A includes new sections 279A to 279H CTA 2010 and makes provision for the rates of CT chargeable on ring fence profits and marginal relief.

7. New section 279A provides for the rates of tax charged on ring fence profits. Where the augmented profits of the company exceed a lower limit of £300,000, CT on ring fence profits is charged at the main ring fence profits rate of 30 per cent. Where the augmented profits do not exceed this limit, CT on ring fence profits is charged at the small ring fence profits rate of 19 per cent.

8. New sections 279B to 279H provide for the calculation of marginal relief where the augmented profits of a company with ring fence profits exceed the lower limit of £300,000 but do not exceed an upper limit of £1,500,000.

9. New section 279B states how relief is calculated for companies with only ring fence profits and sets the marginal relief fraction at 11/400.

10. New sections 279C and 279D set out how relief is calculated where a company has ring fence and other profits.

11. New section 279E sets the lower limit at £300,000 and the upper limit at £1,500,000. Where the company has one or more "related 51% group companies", the upper and lower limits are divided by the number of "related 51% group companies" plus 1.

12. New section 279F defines a "related 51% group company" for the purposes of determining the amount by which the upper and lower limits are divided. This replaces the associated companies rules previously in Part 3 CTA 2010. Subsection (1) defines a "related 51% group company" by reference to a "51% subsidiary" which is itself defined for corporation tax purposes by section 1119 CTA 2010. Subsections (2) and (3) retain some of the rules from the associated companies legislation in Part 3 CTA 2010. Subsection (2) covers a situation where 2 or more companies are "related 51% group companies" for different parts of the accounting period, and subsection (3) excludes dormant companies from the definition. Subsections (4) to (9) expand on the types of company that are excluded under subsection 3.

13. New sections 279G and 279H define "augmented profits" for the purposes of determining whether the upper or lower limits have been exceeded.

Part 2

14. Part 2 makes changes to legislation consequential on Part 1 of the Schedule. Most of the changes are minor, ensuring that references to marginal relief and rates of CT are omitted or amended to apply only to ring fence profits where appropriate. For example:

- Paragraph 6 amends paragraph 8 subsection (1) Schedule 18 FA 1998 (company tax returns, assessments and related matters) so that references to sections 19, 20 and 21 CTA 2010 (marginal relief for companies with small profits) are replaced by Chapter 3A Part 8 CTA 2010 (rates at which CT is charged on ring fence profits.)

- Paragraph 15 subparagraphs (1) to (3) amend sections 614 and 618 CTA 2010 (authorised investment funds) so that the references to sections 18 and 19 CTA 2010 (marginal relief for companies with small profits) are omitted. Authorised investment funds cannot have ring fence profits and marginal relief will no longer be due; and,

15. Paragraphs 8 and 13 contain more significant amendments arising through replacement of the previous associated companies rules with the "related 51% group company" legislation in new section 279F. Paragraph 8 amends section 99 Capital Allowances Act (CAA) 2001 so that the "related 51% group company" rules are used to determine the amount of the monetary limit in computing capital allowances on long life assets. Paragraph 13 amends sections 357CL and 357CM CTA 2010 so that the "related 51% group company" rules are used to determine the profit limit for companies electing for small claims treatment under the Patent Box legislation.

Part 3

16. Part 3 makes commencement and transitional provisions.

17. Paragraph 21 provides that changes relating to the Capital Allowances Act and the Patent Box legislation will apply for accounting periods beginning on or after 1 April 2015.

18. Paragraph 22 provides that all other changes will apply with effect from the financial year 2015 onwards.

BACKGROUND NOTE

19. This measure makes changes to legislation to unify the rate of corporation tax chargeable on a company's profits (other than oil and gas ring fence profits) from the Financial Year 2015. The rate of tax is to be known as "the main rate".

20. Corporation tax will continue to be charged at two rates on ring fence profits (to be renamed "the main ring fence profits rate" and "the small ring fence profits rate"). The legislation relating to these rates and marginal relief has been moved to new Chapter 3A within Part 8 CTA 2010 that contains the Oil Activities legislation.

21. The new legislation changes the way in which the marginal relief fraction and ring fence rates of tax are set. Currently, the rates are set by Parliament for each financial year through a provision in the Finance Bill. From Financial Year 2015, the ring fence rates and fraction will be fixed in Chapter 3A of Part 8 CTA 2010. "The main rate" of corporation tax will continue to be set by Parliament for each financial year.

22. The anti-fragmentation rules within the legislation for computing marginal relief (now applicable only to ring fence profits) have been simplified by replacing the associated companies rules (previously in Part 3 CTA 2010) with a "related 51% group companies test". The upper limit of £1,500,000 and lower limit of £300,000 will now be divided amongst the claimant company and its "related 51% group companies", the latter being based on the definition of a 51% subsidiary in section 1119 CTA 2010.

23. The associated companies anti-fragmentation rules were also used in the long life assets legislation (section 99 of the Capital Allowances Act (CAA) 2001) and the legislation covering the small claims treatment in the Patent Box regime (sections 357CL and 357CM CTA 2010). These rules have also been replaced by the "related 51% group companies" test.

24. If you have any questions about this change, or comments on the legislation, please contact Clare Dunne on 03000 585961 (email: clare.e.dunne@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2014 No.

CORPORATION TAX

The Corporation Tax (Instalment Payments) (Amendment) Regulations 2014

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Regulations in exercise of the powers conferred by sections [59E(1), (2)(a) and (5)(b)] of the Taxes Management Act 1970(**a**).

Citation and commencement

1.—(1) These Regulations may be cited as the Corporation Tax (Instalment Payments) (Amendment) Regulations 2014 and come into force on […….].

(2) These Regulations have effect in relation to accounting periods beginning on or after 1st April 2015.

Amendment of the Corporation Tax (Instalment Payments) Regulations 1998

2. The Corporation Tax (Instalment Payments) Regulations 1998(**b**) are amended as follows.

Amendment of regulation 2

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (2) for the words from "company's" to the end substitute—

"company's—

(a) adjusted taxable total profits of that period, plus

(b) any franked investment income received by the company that is not excluded income."

(3) After paragraph (2) insert—

"(2A) In paragraph (2)—

(a) a company's "adjusted taxable total profits" of a period are what would have been the company's taxable total profits of the period in the absence of sections 1(2A), 2B and 8(4A) of TCGA 1992 and section 2(2A) of CTA 2009 (certain gains on relevant high value disposals by companies etc chargeable to capital gains tax not corporation tax), and

(**a**) 1970 c. 9; section 59E was inserted by section 30 of the Finance Act 1998 (c. 36). None of the amendments to section 59E are relevant to sections [59E(1), 59E(2)(a) or 59E(5)].

(**b**) S.I. 1998/3175, amended by 2011/1785, there are other amending instruments but none is relevant.

(b) "excluded income" is franked investment income which is excluded by section 279G(2) of CTA 2010(**a**)."

Amendment of regulation 3

4.—(1) Regulation 3 (large companies) is amended as follows.

(2) In paragraph (1) for the words from "the" to the end substitute "£1,500,000".

(3) In paragraph (5)—

(a) for the words from "Sections" (where it first appears) to "limits" substitute "Sections [279E and 279F] of CTA 2010 (the lower and the upper limit and "related 51% group company") shall apply so as to reduce the amounts specified in paragraphs (1) and (3)(a) in accordance with those sections as they apply to reduce the upper and lower limits specified in section [279E(2)] of CTA 2010".

(b) in sub-paragraph (a)—

(i) for "associated" substitute "related 51% group", and

(ii) for "24(3)" substitute "[279E(3)]".

(4) Omit paragraph (8).

Name
Name
[....] 2014 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) ("the principal Regulations") following changes to simplify tax legislation as a result of the unification of corporation tax rates. The principal Regulations provide that a large company's liability to corporation tax for an accounting period is due and payable in instalments.

Regulation 1 deals with citation, commencement and effect.

Regulation 3 amends regulation 2 which defines the terms used to substitute the reference to the definition of "augmented profits" in section 32 of Corporation Tax Act 2010 (which has been repealed) with a new term, "adjusted taxable total profits", in a new regulation 2(2A).

Regulation 4 amends regulation 3 which defines a large company to insert the profit limit, omit references to repealed terms and insert a reference to "related 51% group company" (a term inserted by the simplification measures in Finance Act 2014).

[A Tax Information and Impact Note covering this instrument was published on [……] and is available on the HMRC website at http://www.hmrc.gov.uk/the library/tiins.htm. [it remains an accurate summary of the impacts that apply to this instrument.]]

(**a**) Section 279G was inserted by the Finance Act 2014 (c. *).

EXPLANATORY MEMORANDUM TO

THE CORPORATION TAX (INSTALMENT PAYMENTS) (AMENDMENT) REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

[This memorandum contains information for the Select Committee on Statutory Instruments.]

2. Purpose of the instrument

2.1 These Regulations amend the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) ("the principal Regulations") the purpose of which is to provide for collection of corporation tax by instalments.

2.2 These Regulations amend regulations 2 and 3 of the principal Regulations so that references to definitions in the Corporation Tax Act 2010 ("CTA 2010") that will be repealed as a result of the unification of tax rates are replaced by new, simplified definitions.

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

3.1 None

4. Legislative Context

4.1 Under section 59D Taxes Management Act 1970 ("TMA 1970"), corporation tax is due and payable nine months and one day after the expiry of an accounting period. However, the principal Regulations provide that companies that are defined as large are required to pay corporation tax in instalments that fall due before that date.

4.2 Regulation 3 of the principal Regulations defines a large company for this purpose, and in doing so uses definitions included in Part 3 CTA 2010 that makes provision for companies with small profits and marginal relief.

4.3 As a result of the unification of corporation tax rates for the financial year 2015 onwards, small profits rate and marginal relief will no longer apply to companies other than those with oil and gas ring fence profits. Part 3 CTA 2010 will be repealed, and the legislation rewritten in Chapter 3A Part 8 CTA 2010 (oil activities.)

4.4 These Regulations amend the principal Regulations to replace the repealed definitions, and where appropriate, use the rewritten, simplified definitions in Part 8 CTA 2010.

4.5 The changes will apply to accounting periods beginning on or after 1 April 2015.

5. Territorial Extent and Application

5.1This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 At Budget 2013, the Government announced that a single unified rate of corporation tax of 20 per cent will apply from 1 April 2015 to profits other than oil and gas ring fence profits.

7.2 Consequently, Part 3 CTA 2010 that includes the legislation for companies with small profits and marginal relief will be repealed and the legislation rewritten to new Chapter 3A Part 8 CTA 2010 that includes the oil activities legislation.

7.3 The principal Regulations previously used some of the definitions included within Part 3 CTA 2010, and are therefore amended by these Regulations to replace or where appropriate use the rewritten definitions in Chapter 3A Part 8 CTA 2010. The changes are as follows:

- 7.3.1 The insertion of a monetary profits limit of £1,500,000 to replace the "upper limit" (also £1,500,000) previously defined in Part 3 CTA 2010 and used to determine if a company is large and therefore within the scope of the principal Regulations.
- 7.3.2 The replacement of references to "associated companies" with references to "related 51 per cent group companies" used to ensure the £1,500,000 limit is shared between related companies, the new "related 51 per cent group" definition has been written in Part 8 CTA 2010 and is simpler to apply than the "associated companies" definition.
- 7.3.3 The insertion of a definition of "profits" to replace the definition of "augmented profits" previously included in Part 3 CTA 2010 and used for the purposes of applying the £1,500,000 limit.

7.4 The changes will apply to accounting periods beginning on or after 1 April 2015.

7.5 There are no plans to consolidate the principal Regulations.

8. Consultation outcome

8.1 [The Regulations will be published on the HMRC website alongside related draft primary legislation for a period of 12 weeks.]

9. Guidance

9.1 The Company Taxation Manual (published on the HMRC website) and other relevant guidance will be updated to include the above changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is expected to be negligible.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2013 alongside related draft Finance Bill legislation and available in *Overview of Legislation in Draft*, published on the GOV.UK website on 10 December 2013. [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

The measure will be kept under review through regular communication with affected taxpayer groups.

13. Contact

Clare Dunne at HMRC can answer any queries regarding the instrument.
Tel: 03000 585 961
email: clare.e.dunne@hmrc.gsi.gov.uk

1 The Code of Practice on Taxation for Banks: HMRC to publish reports

(1) No later than the end of the calendar year in which a reporting period ends, the Commissioners for Her Majesty's Revenue and Customs must publish a report on the operation during the period of the Code of Practice on Taxation for Banks as published by the Commissioners on 31 May 2013 ("the Code").

(2) If the Commissioners determine that a group or entity which was a participating group or entity (see section 2) during some or all of a reporting period breached the Code at a time during the period, the Commissioners may name the group or entity in a report under this section.
This subsection is subject to section 3.

(3) If—
(a) the Commissioners determine that there has been a breach of the Code, but
(b) it was not reasonably practicable for information relating to the breach to be included in the report for the reporting period in which the breach occurred,
the information may be included in the first subsequent report in which it is reasonably practicable for the information to be included.

(4) The report for a reporting period must list—
(a) the groups or entities which were participating groups or entities during some or all of the reporting period,
(b) the groups or entities appearing to the Commissioners—
(i) not to be covered by paragraph (a), and
(ii) to be groups or entities in relation to which the bank levy is charged in a case where the chargeable period ends in the reporting period (or would be charged in such a case if it is assumed that any period of account beginning before or in, but ending after, the reporting period ends at the end of the reporting period instead), and
(c) the entities appearing to the Commissioners—
(i) not to be covered by paragraph (a) or (b), and
(ii) to be entities which fell within subsection (2)(b) or (c) of section 991 of ITA 2007 (subject to subsection (3) of that section) during some or all of the reporting period.

(5) In a case where the bank levy is (or would be) charged in relation to a relevant non-banking group (as defined in paragraph 11 of Schedule 19 to FA 2011), any list prepared under subsection (4)(b) is to refer to the group only so far as it consists (or would consist) of—
(a) relevant UK banking sub-groups (as defined in paragraph 19(5) of that Schedule), and
(b) so far as not covered by paragraph (a)—

(i) UK resident banks (as defined in paragraph 80 of that Schedule), and

(ii) relevant foreign banks (as defined in paragraph 78 of that Schedule).

(6) For the purposes of subsection (4)(b)(ii) it does not matter if the amount of the bank levy is (or would be) nil in the case of a group or entity.

(7) The first "reporting period" is the period beginning with 5 December 2013 and ending with 31 March 2015.

(8) After that, each year beginning with 1 April is a "reporting period".

(9) The report for the first reporting period must list the groups or entities which were participating groups or entities on 5 December 2013.

(10) Subsection (9) does not require the inclusion in the report of any information which has previously been published by the Commissioners, so long as the report makes reference to the previous publication.

(11) If, on or after 31 May 2013, the Commissioners publish a document which states that only Part 1 of the Code is to apply in the case of a group or entity of a specified description, in the case of such a group or entity references to the Code are to be read as references to Part 1 of the Code.

2 The Code of Practice on Taxation for Banks: "participating" groups or entities

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

(2) A group or entity becomes a "participating" group or entity if, on or after 31 May 2013, it notifies the Commissioners in writing that it is unconditionally committed to complying with the Code.

(3) A group or entity ceases to be a "participating" group or entity if it notifies the Commissioners in writing that it is no longer unconditionally committed to complying with the Code.

(4) A group or entity which ceases to be a "participating" group or entity in accordance with subsection (3) becomes a "participating" group or entity again if it gives a further written notice of the kind mentioned in subsection (2) (subject to what follows).

(5) Subsections (6) and (7) apply if a group or entity is named in a report under section 1 under subsection (2) of that section.

(6) If the group or entity is a "participating" group or entity immediately before the publication of the report, it ceases to be so on the publication of the report.

(7) In any case, the group or entity cannot be a "participating" group or entity after the publication of the report unless and until—

(a) it gives the Commissioners a further written notice of the kind mentioned in subsection (2), and

(b) the Commissioners are satisfied that it is unconditionally committed to complying with the Code.

3 The Code of Practice on Taxation for Banks: operation and breaches of the Code

(1) The Commissioners must—

(a) publish a protocol, to be called "the Governance Protocol", setting out how the Commissioners are going to operate the Code and section 1(2), and

(b) follow the Governance Protocol when operating the Code and section 1(2).

(2) The Governance Protocol must require the Commissioners, before determining for the purposes of section 1(2) whether a group or entity has breached the Code at a time during a reporting period, to commission a person (an "independent reviewer") who is independent of the Commissioners and the group or entity to report on—

(a) whether the group or entity has breached the Code, and

(b) whether the group or entity should be named in a report under section 1 were the Commissioners to determine that the group or entity has breached the Code.

(3) The independent reviewer—

(a) must give the group or entity a reasonable opportunity to make representations about the matters being considered by the independent reviewer,

(b) subject to subsection (8), must have regard to the group or entity's representations and may have regard to any other matter which the independent reviewer considers to be relevant,

(c) must give the group or entity a copy of the independent reviewer's report, and

(d) must otherwise follow the Governance Protocol but only so far as it is relevant to the independent reviewer's functions.

(4) The Governance Protocol may provide that, in the case of any conduct of a group or entity to which subsection (5) applies, the independent reviewer is to assume that the conduct constitutes a breach of the Code and, accordingly, is to report only on the matter mentioned in subsection (2)(b).

(5) This subsection applies to any conduct—

(a) in relation to which there has been given—

(i) an opinion notice under paragraph 11(3)(b) of Schedule 43 to FA 2013 (GAAR advisory panel: opinion that conduct unreasonable) stating the joint opinion of all the members of a sub-panel arranged under paragraph 10 of that Schedule, or

(ii) one or more such notices stating the opinions of at least two members of such a sub-panel, and

(b) in relation to which there has been given a notice under paragraph 12 of that Schedule (HMRC final decision on tax advantage) stating that a tax advantage is to be counteracted.

(6) The Governance Protocol must make provision—

(a) for the Commissioners, in determining whether a group or entity has breached the Code or should be named in a report under section 1—

(i) to have regard to the independent reviewer's report, and

(ii) to give the group or entity a reasonable opportunity to make representations about the matters being considered by the Commissioners,

(b) for the Commissioners to notify the group or entity in writing of their determination,

(c) if the Commissioners' determination is different from the independent reviewer's determination, for the Commissioners to include in the notification of their determination to the group or entity their reasons for making a different determination, and

(d) if the Commissioners determine that the group or entity should be named in a report under section 1, for the Commissioners to hold off including in a report under that section any information relating to the breach of the Code—

(i) until the notification of the determination is given to the group or entity, and

(ii) for at least 90 days after the day on which that notification is given.

(7) The Governance Protocol must make provision for the independent reviewer and the Commissioners, in determining whether a group or entity should be named in a report under section 1, to have regard to—

(a) any action taken by the group or entity to remedy the breach of the Code or otherwise to mitigate its effect, and

(b) any exceptional circumstances which might justify not naming the group or entity.

(8) In determining whether a group or entity has breached the Code or should be named in a report under section 1, the independent reviewer and the Commissioners—

(a) may have regard to any conduct of the group or entity occurring on or after 5 December 2013, but

(b) must not have regard to any conduct of the group or entity occurring before that date or at a time when the group or entity is not a participating group or entity.

(9) Subsection (10) applies if the independent reviewer determines—

(a) that a group or entity has not breached the Code, or

(b) that a group or entity should not be named in a report under section 1.

(10) The Commissioners may make a determination which is different from the independent reviewer's determination only if—

(a) the independent reviewer's determination is flawed when considered in the light of the principles applicable in legal proceedings for judicial review, or

(b) there are other compelling reasons for making a different determination.

(11) If the Commissioners make a different determination in a case where subsection (10) applies—

(a) their reasons notified under subsection (6)(c) must set out (in particular) why the independent reviewer's determination is flawed or (as the case may be) the other compelling reasons,

(b) in any legal proceedings in which an issue arises as to whether it was lawful for them to make the different determination it is for them to

show that it was lawful for them to make the different determination, and

(c) subsection (12) applies in relation to any claim for judicial review of the different determination made by a member of the group or by the entity.

(12) If the claim is made no later than the end of the 90 day period mentioned in subsection (6)(d)(ii)—

(a) it is to be treated as having been made within any applicable time limit (if that would not otherwise be the case),

(b) the court must give permission for the claim to proceed (if the court's permission is required), unless that would lead to multiple claims dealing with the same issues, and

(c) any hearing (including any hearing on appeal) must be held in private, unless (having regard to the risk that holding the hearing in public might undermine to any extent the purpose of the making of the claim) the court is satisfied that there are exceptional circumstances requiring the hearing to be held in public.

(13) If a determination of the Commissioners is different from the independent reviewer's determination, they must mention that fact—

(a) in the report under section 1 for the reporting period in question, or

(b) if it was not reasonably practicable for that fact to be mentioned in that report, in the first subsequent report under section 1 in which it is reasonably practicable for that fact to be mentioned.

(14) In determining for the purposes of section 1(3) or subsection (13)(b) of this section when it is reasonably practicable for any information to be included in a report under section 1, regard must be had (in particular) to the requirements of subsections (1) to (12) of this section.

(15) The Commissioners must disclose to an independent reviewer such information held by them as they consider appropriate to enable the independent reviewer to carry out the independent reviewer's functions.

(16) If the Commissioners disclose information to an independent reviewer under subsection (15), section 18 of CRCA 2005 (confidentiality) applies in relation to the independent reviewer's holding and use of the information as if the independent reviewer were an officer of Revenue and Customs and the independent reviewer's functions were functions of the independent reviewer as such an officer.

4 The Code of Practice on Taxation for Banks: documents relating to the Code

(1) The Commissioners may publish a relevant document, or revoke or modify a relevant document previously published by them, only after—

(a) consultation with such persons as they consider appropriate, and

(b) consideration of any representations made to them in the course of the consultation.

(2) When publishing a relevant document or a modified relevant document or when revoking a relevant document, the Commissioners must also publish—

(a) an account of the representations mentioned in subsection (1)(b), and

(b) their responses to those representations.

(3) In this section "relevant document" means—

(a) the Governance Protocol, or

(b) any document of the kind mentioned in section 1(11).

(4) This section does not apply in relation to the first publication of the Governance Protocol.

(5) This section does not affect any document of the kind mentioned in section 1(11) published before the passing of this Act except where it is to be revoked or modified after the passing of this Act.

EXPLANATORY NOTE

THE CODE OF PRACTICE ON TAXATION FOR BANKS

SUMMARY

1. This measure requires HMRC from 2015 to publish an annual report on the operation of the Code of Practice on Taxation of Banks (the Code).

DETAILS OF THE CLAUSES

2. Clause 1 subsections (1), (2) and (3) provides that HMRC must publish a report on the operation of the Code and if the Commissioners conclude that a group or entity has breached the Code during a reporting period they may name the group or entity. Subsection (3) deals with the circumstance where the Commissioners determine that there has been a breach of the Code and it is impractical to name the group or entity in the report for the period.

3. Clause 1 subsections (4), (5) and (6) sets out those groups and entities that will be listed in the annual report. These are those groups and entities that are chargeable to bank levy, would be chargeable if it were not for the £200 million de minimis exemption, or those groups and entities which meet the definition of a bank in section 991 of Income Taxes Act 2007 other than where the entity is a building or friendly society. In the case of a group or entity in which either there is a UK or foreign bank(s) but where the wider group is a non-banking group, subsection (5) ensures that the annual report will only list the UK or foreign banks or UK banking sub-groups and not the wider group.

4. Clause 2 subsections (1) and (2) define 'participating groups or entities' for the purposes of clause 1.

5. Clause 2 subsections (3) and (4) set out what participating groups or entities must do if they no longer want to be participating groups or entities, or if they wish to be so again.

6. Clause 2 subsections (5), (6) and (7) set what happens where a participating group or entity is named in an annual report and what it must do subsequently to become a participating group or entity in a later report.

7. Clause 3 subsections (1), (2), and (3) provide that the Commissioners will publish and follow a governance protocol in relation to the Code, and that before they reach a decision to name a bank they must appoint an independent reviewer. The independent reviewer must take into account any representations by the group or entity and provide a copy of the report to the group or entity concerned. The identity of the independent reviewer has yet to be decided but will be a person of suitable stature who is independent of both HMRC and the group or entity such as for example a retired high court judge.

8. Clause 3 subsections (4) and (5) provide that where the group or entity has received a GAAR advisory panel opinion notice(s) the independent reviewer will only be required to report upon whether the group or entity should be named in a report.

9. Clause 3 subsections (6), (7) and (8) set out the procedure for and matters that the Commissioners must take into account when deciding to name a group pr entity in an annual report.

10. Clause 3 subsections (9), (10) and (11) set out the grounds on which the Commissioners may reach a different determination than that of the independent reviewer and, where the group or entity decides to judicially review the Commissioners determination, the onus will be the Commissioners to show that they acted reasonably in reaching their determination.

11. Clause 3 subsection (12) sets out the time limit for making a claim to judicial review and provides that unless the Court is satisfied that there are exceptional circumstances which would warrant a public hearing, the judicial review in subsection (11) will be held in private.

12. Clause 3 subsection (13), (14), (15) and (16) set out what the Commissioners must include in an annual report where they have reached a different determination than the independent reviewer and the timing of that report. Subsections (15) and (16) set out the information that the Commissioners must disclose to the independent reviewer and the basis on which the independent reviewer can use that information.

13. Clause 4 sets out that changes to any document published by HMRC in relation to the Code must be consulted upon and HMRC must take account of any consultation responses. This does not apply to the first publication of the governance protocol on 5 December 2014 or any documents published before Royal Assent to Finance Bill 2014.

BACKGROUND NOTE

14. The Code was introduced in 2009. The names of the top 15 banks that had adopted the Code were published in November 2010. The Code is one element of the Government's anti-avoidance strategy and is designed to change the attitudes and behaviour of banks towards avoidance given their unique position as potential users, promoters and funders of tax avoidance.

15. The Code describes the approach expected of banks with regard to governance, tax planning and engagement with HMRC. It aims to encourage banks, building societies and organisations providing banking services operating in the UK to adopt best practice in relation to their tax affairs.

16. If you have any questions about this change, or comments on the legislation, please contact Fiona Hay on 03000 585 882 (email: fiona.hay@hmrc.gsi.gov.uk).

1 Bank levy: rates from 1 January 2014

(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 "0.065%" substitute "0.078%", and

(b) for "0.130%" substitute "0.156%".

(3) In paragraph 7 (special provision for chargeable periods falling wholly or partly before 1 January 2013)—

(a) in sub-paragraph (1) for "2013" substitute "2014",

(b) in sub-paragraph (2), in the first column of the table in the substituted Step 7, for "Any time on or after 1 January 2013" substitute "1 January 2013 to 31 December 2013", and

(c) at the end of that table add—

"Any time on or after 1 January 2014	0.078%	0.156%";

and in the italic heading immediately before paragraph 7, for "*2013*" substitute "*2014*".

(4) Section 203 of FA 2013 (bank levy rates from 1 January 2014) is repealed.

(5) The amendments made by subsections (2) to (4) are treated as having come into force on 1 January 2014 (and accordingly the section 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 2014, 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 2014

SUMMARY

1. Clause [X] amends the rate at which the bank levy is charged from 1 January 2014 onwards.

DETAILS OF THE CLAUSE

2. Subsection (2) increases the bank levy rates from 1 January 2014.

3. Subsection (3) introduces into the table of rates at paragraph 7(2), Schedule 19 to Finance Act 2013 the new bank levy rates for the period 1 January 2014 onwards.

4. Subsection (4) removes section 203 of FA 2013 which contained the previous rates applicable from 1 January 2014 (old rates).

5. Subsection (5) provides that the new rate changes made by subsections (2) to (4) are treated as having come into force on 1 January 2014. As a consequence of this, section 203 of FA 2013 is treated as never having come into force.

6. Subsections (6) to (12) provide transitional provisions for collecting the additional amounts of bank levy that arise from the introduction of the new rates. Where an instalment payment in respect of a chargeable period ending on or after 1 January 2014 is due before the date of Royal Assent to Finance Bill 2014, the first instalment for the same chargeable period due after Royal Assent is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-Royal Assent instalment and what would have been due if the post Royal Assent rates had been applied. If there is no instalment for the same chargeable period due after Royal Assent then a further instalment, equal to the adjustment amount, becomes due 30 days after Royal Assent.

7. Subsection (13) provides definitions of terms used in this clause.

BACKGROUND NOTE

8. 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.

9. 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.

10. 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).

11. If you have any questions about this change, or comments on the legislation, please contact Anthony Fawcett on 03000 585911 (email: anthony.c.fawcett@hmrc.gsi.gov.uk).

1 The bank levy

Schedule 1 contains provision about the bank levy.

SCHEDULE 1

Section 1

THE BANK LEVY

Introduction

1 Schedule 19 to FA 2011 (the bank levy) is amended in accordance with this Schedule.

High quality liquid assets etc

2 In paragraph 15 (chargeable equity and liabilities of a UK banking group or a building society group)—

(a) in sub-paragraph (2)(c), for "finally," substitute "finally (subject to sub-paragraph (6))", and

(b) for sub-paragraph (6) substitute—

"(6) Where any amount ("A") within sub-paragraph (2)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

3 In paragraph 17 (chargeable equity and liabilities of foreign banking groups)—

(a) in sub-paragraph (6)(c), for "finally," substitute "finally (subject to sub-paragraph (16))",

(b) in sub-paragraph (12)(c), for "finally," substitute "finally (subject to sub-paragraph (16))", and

(c) for sub-paragraph (16) substitute—

"(16) Where any amount ("A") within sub-paragraph (6)(c) or (12)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

4 In paragraph 19 (chargeable equity and liabilities of a non-banking group)—

(a) in sub-paragraph (6)(c), for "finally," substitute "finally (subject to sub-paragraph (16))",

(b) in sub-paragraph (12)(c), for "finally," substitute "finally (subject to sub-paragraph (16))", and

(c) for sub-paragraph (16) substitute—

"(16) Where an amount ("A") within sub-paragraph (6)(c) or (12)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

5 In paragraph 21 (chargeable equity and liabilities of a UK banking group or a building society group)—

(a) in sub-paragraph (2)(c), for "finally," substitute "finally (subject to sub-paragraph (6))", and

(b) for sub-paragraph (6) substitute—

"(6) Where an amount ("A") within sub-paragraph (2)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

6 In paragraph 27 (chargeable equity and liabilities of a UK banking group or a building society group)—

(a) in sub-paragraph (2)(c), for "finally," substitute "finally (subject to sub-paragraph (6))", and

(b) for sub-paragraph (6) substitute—

"(6) Where an amount ("A") within sub-paragraph (2)(c) is used to reduce short term liabilities, the amount of the reduction is determined as if A were an amount equal to half of A."

7 The amendments made by paragraphs 2 to 6 have effect in relation to chargeable periods ending on or after 1 January 2015.

Protected deposits

8 (1) Paragraph 29 ("excluded" equity and liabilities: protected deposits) is amended as follows.

(2) Omit sub-paragraphs (4) to (6).

(3) In sub-paragraph (8) omit ", and sub-paragraphs (4), (5) and (6) so far as relating to a scheme within sub-paragraph (2),".

(4) In sub-paragraph (9) omit ", and sub-paragraphs (4), (5) and (6) so far as relating to a scheme within sub-paragraph (3),".

(5) The amendments made by this paragraph have effect for chargeable periods ending on or after 1 January 2015.

Tier one capital equity and liabilities

9 (1) Paragraph 30 ("excluded" equity and liabilities: tier one capital equity and liabilities) is amended as follows.

(2) For sub-paragraph (2) substitute—

"(2) "Tier one capital equity and liabilities" means, in relation to an entity or group of entities, so much of the entity or group's equity and liabilities as is tier one capital within the meaning of Article 25 of the Capital Requirements Regulation (taking account of the transitional provisions in Part Ten of that Regulation).

(3) For the purposes of sub-paragraph (2), the Capital Requirements Regulation is to be treated as applying, in relation to all entities and groups of entities, as if—

(a) to the extent it would not otherwise be the case, the Prudential Regulation Authority were the competent authority in relation to those entities and groups,

(b) the only determinations made, and discretions exercised, by the Prudential Regulation Authority for the purposes of the Capital Requirement Regulation were those published by it in accordance with that Regulation, and

(c) those entities and groups (to the extent that it would not otherwise be the case) were subject to the provisions of the PRA Handbook immediately before 1 January 2014.

(4) "The Capital Requirements Regulation" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms."

(3) The amendment made by this paragraph has effect in relation to chargeable periods ending on or after 1 January 2014.

Liabilities representing QCP margin in relation to trades executed under clearing agreements

10 (1) After paragraph 38 insert—

"38A(1) Liabilities are excluded if they represent cash collateral provided as QCP margin in relation to a trade executed or to be executed under a client clearing agreement.

(2) Cash collateral is provided as "QCP margin" if, and to the extent that—

(a) it exceeds the fair value of the instrument to which the trade relates, and

(b) it corresponds to either—

(i) an asset held in respect of the qualifying central counterparty which represents cash collateral provided to that qualifying central counterparty, or

(ii) cash collateral provided to the qualifying central counterparty which has the effect of reducing a liability of the clearing member to the qualifying central counterparty.

(3) In this paragraph—

"clearing member", in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Regulation,

"client" has the meaning given by Article 2(15) of the EMIR Regulation,

"client clearing agreement" means a contract between a clearing member of a qualifying central counterparty and a client, relating to the clearing of transactions with the qualifying central counterparty,

"the EMIR Regulation" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories,

"qualifying central counterparty" means a central counterparty that has been either authorised or recognised under the EMIR Regulation,

"trade" means a transaction relating to the sale and purchase of a financial instrument."

(2) The amendment made by this paragraph has effect in relation to chargeable periods ending on or after 1 January 2014.

Certain liabilities deemed short term liabilities

11 (1) After paragraph 76 insert—

"76A(1) Liabilities under derivative contracts are never "long term" (and are therefore always short term).

(2) In this paragraph "derivative contract" has the meaning given by international accounting standards."

(2) In paragraph 75 (liabilities not required to be repaid within 12 months etc are long term liabilities), after sub-paragraph (2) insert—

"(3) This paragraph is subject to paragraph 76A."

(3) In paragraph 77 (which relates to the calculation of "UK allocated equity and liabilities"), for "76" substitute "76A".

(4) The amendments made by this paragraph have effect for chargeable periods ending on or after 1 January 2015.

Amendments consequential on regulatory changes

12 In paragraph 81 (power to make consequential amendments), in sub-paragraph (1), omit the "or" at the end of paragraph (b), and after paragraph (c) insert ", or

(d) any regulatory requirement, or change to any regulatory requirement, imposed by EU legislation, or by or under any Act (whenever adopted, enacted or made)."

Transitional provision

13 (1) This paragraph applies where—

(a) an amount of the bank levy is treated as if it were an amount of corporation tax chargeable on an entity ("E") for an accounting period of E,

(b) the chargeable period in respect of which the amount of the bank levy is charged falls (or partly falls) on or after 1 January 2014, and

(c) under the Instalment Payment Regulations, one or more instalment payments, in respect of the total liability of E for the accounting period, were treated as becoming due and payable before the commencement date ("pre-commencement instalment payments").

(2) Paragraphs 9 and 10 of this Schedule are to be ignored for the purpose of determining the amount of any pre-commencement instalment payment.

(3) If there is at least one instalment payment, in respect of the total liability of E for the accounting period, which under the Instalment Payment Regulations is treated as becoming due and payable on or after the commencement date ("post-commencement instalment payments"), the

amount of that instalment payment, or the first of them, is to be increased by the adjustment amount.

(4) If there are no post-commencement instalment payments, a further instalment payment, in respect of the total liability of E for the accounting period, of an amount equal to the adjustment amount is to be treated as becoming due and payable at the end of the period of 30 days beginning with the commencement date.

(5) "The adjustment amount" is the difference between—

(a) the aggregate amount of the pre-commencement instalments determined in accordance with sub-paragraph (2), and

(b) the aggregate amount of those instalment payments determined ignoring sub-paragraph (2) (and so taking account of paragraphs 9 and 10).

(6) In the Instalment Payment Regulations—

(a) in regulations 6(1)(a), 7(2), 8(1)(a) and (2)(a), 9(5), 10(1), 11(1) and 13, references to regulation 4A, 4B, 4C, 4D, 5, 5A or 5B of those Regulations are to be read as including a reference to sub-paragraphs (1) to (5) above (and in regulation 7(2) "the regulation in question", and in regulation 8(2) "that regulation", are to be read accordingly), and

(b) in regulation 9(3), the reference to those Regulations is to be read as including a reference to sub-paragraphs (1) to (5) above.

(7) In section 59D of TMA 1970 (general rule as to when corporation tax is due and payable), in subsection (5), the reference to section 59E is to be read as including a reference to sub-paragraphs (1) to (6) above.

(8) In this paragraph—

"the chargeable period" is to be construed in accordance with paragraph 4 or (as the case may be) 5 of Schedule 19 to FA 2011;

"the commencement date" means the day on which this Act is passed;

"the Instalment Payment Regulations" means the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175);

and references to the total liability of E for an accounting period are to be construed in accordance with regulation 2(3) of the Instalment Payment Regulations.

EXPLANATORY NOTE

THE BANK LEVY

SUMMARY

1. This Schedule introduces changes to the bank levy arising from a review of the operational efficiency of the levy.

DETAILS OF THE SCHEDULE

2. Paragraphs 2 -7 remove the existing rules in paragraphs 15, 17, 19, 21 and 27, Schedule 19 Finance Act 2011 that require items that qualify as High Quality Liquid Assets to be deducted firstly from long term liabilities. This rule is replaced by a new rule, which restricts the reduction in respect of items that qualify as High Quality Liquid Assets to half, where they are set against short term liabilities.

3. Paragraph 8 amends the rule for calculating protected deposits. It removes the provisions in paragraph 29(4) – (6), Schedule 19, Finance Act 2011 which allow protected deposits to be calculated by reference to the amount of deposit, or other amount, on which the deposit protection fee or premium is calculated.

4. Paragraph 9(2) replaces the existing definition of Tier 1 capital at paragraph 30(2), Schedule 19, Finance Act 2011 with a new definition of Tier 1 capital based upon Article 25 of the Capital Resources Directive ("CRR") including the transitional provisions in Part 10. This ensures that the bank levy definition of equity and liabilities that are excluded as Tier 1 capital remains aligned with the regulatory definition. Paragraph 9(2) also introduces new paragraph 30(3).

5. New paragraph 30(3)(a) ensures that when calculating Tier 1 capital equity and liabilities, that for the purposes of the CRR the Prudential Regulation Authority ("PRA") is the competent authority in all cases.

6. New paragraph 30(3)(b) ensures that when calculating Tier 1 capital equity and liabilities, the only determinations and discretions that can be taken into account are those that have been published in accordance with the requirements in the CRR. Any determination and discretions that are not published cannot be taken into account when calculating Tier 1 capital equity and liabilities.

7. New paragraph 30(3)(c) provides that the CRR will apply as if all entities and groups were subject to the PRA handbook before 1 January 2014, ensuring that the transitional rules within the CRR that apply to the "old" PRA Handbook rules can be applied fully.

8. As part of the regulatory reform agenda, there is a drive to introduce central clearing of derivatives and securities via regulated central counterparties. Paragraph 10 introduces new paragraph 38A which excludes liabilities that arise on banks' balance sheets in respect of collateral provided as Qualifying Central Counterparty ("QCP") margin that banks have passed on to a central counterparty, authorised or recognised under European Markets Infrastructure Regulations.

9. New paragraph 38A(2) determines the amount that can be excluded as QCP margin. It provides that QCP margin is the cash collateral that exceeds the fair value of the underlying traded instrument, and relates to an asset (or reduced liability) arising from collateral passed on to the QCP.

10. Paragraph 11 prevents derivative contract liabilities from being long term for bank levy purposes. As a result any un-netted derivative contract liabilities will be deemed to be short term.

11. Paragraph 12 widens the scope of the power at paragraph 81, Schedule 19, Finance Act 2011, so that it can be used to make secondary regulations where new regulatory requirements are introduced by any EU or other domestic legislation.

12. Paragraph 13 provides transitional provisions for collecting additional amounts of bank levy that may arise from the bank levy review changes that have effect from 1 January 2014 (Tier 1 regulatory capital definition and client clearing exclusion). Where an instalment payment in respect of a chargeable period ending on or after 1 January 2014 is due before the date of Royal Assent to Finance Bill 2014, the first instalment for the same chargeable period due after Royal Assent is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-Royal Assent instalment and what would have been due if the post Royal Assent rates had been applied. If there is no instalment for the same chargeable period due after Royal Assent then a further instalment, equal to the adjustment amount, becomes due 30 days after Royal Assent.

BACKGROUND NOTE

13. The Government announced when it introduced the bank levy that it would review the design of the levy in 2013. A consultation document was published on 4 July 2013 setting out various areas where the Government sought views. The consultation closed on 26 September 2013. A consultation response document was published on 10 December 2013 and is available on the GOV.UK website.

14. The changes above arise as a result of this consultation and will be introduced in Finance Bill 2014.

15. If you have any questions about this change, or comments on the legislation, please contact Anthony Fawcett on 03000 585911 (email: anthony.c.fawcett@hmrc.gsi.gov.uk).

1 Supplementary charge: onshore allowance

Schedule 1 contains provision about the reduction of adjusted ring fence profits by means of an onshore allowance.

SCHEDULES

SCHEDULE 1

Section 1

SUPPLEMENTARY CHARGE: ONSHORE ALLOWANCE

PART 1

AMENDMENTS OF PART 8 OF CTA 2010

1 Part 8 of CTA 2010 (oil activities) is amended as follows.

Onshore allowance

2 After Chapter 7 insert—

"CHAPTER 8

SUPPLEMENTARY CHARGE: ONSHORE ALLOWANCE

Introduction

357ZA Overview

This Chapter sets out how relief for certain capital expenditure incurred in the course of onshore oil-related activities is given by way of reduction of a company's adjusted ring-fence profits, and includes provision about—

(a) the need for allowance held for a site to be activated by relevant income from the same site in order for the allowance to be available for reducing adjusted ring-fence profits,

(b) elections by a company to transfer allowance between different sites in which it is a licensee (see section 357ZN), and

(c) mandatory transfers of allowance where shares in the equity in a licensed area are disposed of (see sections 357ZT to 357ZV and the related provisions in sections 357ZO to 357ZS).

357ZB "Onshore oil-related activities"

(1) "Onshore oil-related activities" means activities of a company which are carried on onshore and—

(a) fall within any of subsections (1) to (4) of section 357ZC, or

(b) consist of the acquisition, enjoyment or exploitation of oil rights.

(2) Activities of a company are carried on "onshore" if they are authorised—

(a) under a landward licence under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act 1934, or

(b) under a licence under the Petroleum (Production) Act (Northern Ireland) 1964.

(3) In subsection (2)(a), "landward licence" means a licence in respect of an area which falls within the definition of "landward area" in the regulations pursuant to which the licence was applied for.

357ZC The activities

(1) Activities of a company in searching for oil or causing such searching to be carried out for the company.

(2) Activities of a company in extracting oil, or causing oil to be extracted for it, under rights which—

(a) authorise the extraction, and

(b) are held by it or by a company associated with it.

(3) Activities of a company in transporting, or causing to be transported for it, oil extracted under rights which—

(a) authorise the extraction, and

(b) are held as mentioned in subsection (2)(b),

but only if the transportation meets the condition in subsection (5).

(4) Activities of the company in effecting, or causing to be effected for it, the initial treatment or initial storage of oil won from any site under rights which—

(a) authorise its extraction, and

(b) are held as mentioned in subsection (2)(b).

(5) The condition mentioned in subsection (3) is that the transportation is to a place at which the seller in a sale at arm's length could reasonably be expected to deliver it (or, if there is more than one such place, the one nearest to the place of extraction).

(6) In this section "initial storage"—

(a) means, in relation to oil won from a site, the storage of a quantity of oil won from the site not exceeding 10 times the relevant share of the maximum daily production rate of oil for the site as planned or achieved (whichever is greater), but

(b) does not include the matters excluded by paragraphs (a) to (c) of the definition of "initial storage" in section 12(1) of OTA 1975;

and in this subsection "the relevant share" means a share proportionate to the company's share of oil won from the site concerned.

(7) In this section "initial treatment" has the meaning given by section 12(1) of OTA 1975; but for this purpose that definition is to be read as if the references in it to an oil field were to a site.

357ZD "Site"

In this Chapter "site" (except in the expression "drilling and extraction site") means—

(a) a drilling and extraction site that is not used in connection with any oil field, or

(b) an oil field (whether or not one or more drilling and extraction sites are used in connection with it).

Onshore allowance

357ZE Generation of onshore allowance

(1) Subsection (2) applies where a company incurs any relievable capital expenditure in relation to a qualifying site.

(2) The company is to hold an amount of allowance equal to 75% of the amount of the expenditure.

(3) "Qualifying site" means a site whose development (in whole or in part) is authorised for the first time on or after 5 December 2013.

(4) Capital expenditure incurred by a company is "relievable" only if, and so far as—

(a) it is incurred in the course of onshore oil-related activities (see section 357ZB), and

(b) neither of the disqualifying conditions is met at the beginning of the day on which the expenditure is incurred (see section 357ZF).

(5) Allowance held under this Chapter is called "onshore allowance".

(6) Onshore allowance is said in this Chapter to be "generated" at the time when the capital expenditure is incurred (see section 357ZZ).

(7) Onshore allowance is referred to in this Chapter as being generated—

(a) "by" the company concerned,

(b) "at" the site concerned.

(8) Where capital expenditure is incurred only partly in the course of onshore oil-related activities, or the onshore oil-related activities in the course of which capital expenditure is incurred are carried on only partly in relation to a particular site, the expenditure is to be attributed to the site concerned on a just and reasonable basis.

(9) In this section, references to authorisation of development of a site—

(a) in the case of a site which is an oil field, are to be read in accordance with section 351;

(b) in the case of a drilling and extraction site, are to be read in accordance with section 357ZY.

357ZF Disqualifying conditions for section 357ZE(4)(b)

(1) The first disqualifying condition is that production from the site is expected to exceed 7,000,000 tonnes.

(2) The second disqualifying condition is that production from the site has exceeded 7,000,000 tonnes.

(3) For the purposes of this section 1,100 cubic metres of gas at a temperature of 15 degrees celsius and pressure of one atmosphere is to be counted as equivalent to one tonne.

357ZG Expenditure not related to an established site

(1) A company may make an election under this section in relation to capital expenditure incurred by it in the course of onshore oil-related activities if the appropriate condition is met.

(2) The appropriate condition is that at the time of the election no site can be identified as a site in relation to which the expenditure has been incurred.

(3) An election under this section must specify—
(a) the expenditure in question,
(b) a site ("the specified site") every part of which is, or is part of, an area in which the company is a licensee, and
(c) an accounting period of the company ("the specified accounting period").

(4) An election under this section may not be made before the beginning of the fourth accounting period of the company after that in which the expenditure is incurred.

(5) Where a company makes an election under this section in relation to an amount of expenditure, that amount is treated for the purposes of this Chapter as incurred by the company—
(a) in relation to the specified site, and
(b) at the beginning of the specified accounting period.

Reduction of adjusted ring fence profits

357ZH Reduction of adjusted ring fence profits

(1) A company's adjusted ring fence profits for an accounting period are to be reduced by the cumulative total amount of activated allowance for the accounting period (but are not to be reduced below zero).

(2) In relation to a company and an accounting period, the "cumulative total amount of activated allowance" is—

$$A + C$$

where—

A is the total of any amounts of activated allowance the company has, for any sites, for the accounting period (see section 357ZK(2)) or for reference periods within the accounting period (see section 357ZQ(1)), and

C is any amount carried forward to the period under section 357ZI.

357ZI Carrying forward of activated allowance

(1) This section applies where, in the case of a company and an accounting period—

(a) the cumulative total amount of activated allowance (see section 357ZH(2)), is greater than

(b) the adjusted ring fence profits.

(2) The difference is carried forward to the next accounting period.

357ZJ Companies with both field allowances and onshore allowance

(1) This section applies where a company's adjusted ring fence profits for an accounting period are reducible both—

(a) under section 333(1) (by the amount of the company's pool of field allowances for the period), and

(b) under section 357ZH(1) (by the cumulative total amount of activated allowance for the period).

(2) The company may choose the order in which the different allowances are to be used.

(3) If the company chooses to apply section 333(1) first, then—

(a) Chapter 7 and this Chapter are to be ignored in calculating the "adjusted ring fence profits" in accordance with section 357, and

(b) if section 357ZH(1) is also applied: this Chapter, but not Chapter 7, is to be ignored in calculating the adjusted ring fence profits in accordance with section 357ZZA.

(4) If the company chooses to apply section 357ZH(1) first, then—

(a) this Chapter and Chapter 7 are to be ignored in calculating the adjusted ring fence profits in accordance with section 357ZZA, and

(b) if section 333(1) is also applied: Chapter 7, but not this Chapter, is to be ignored in calculating the "adjusted ring fence profits" in accordance with section 357.

Activated and unactivated allowance: basic calculation rules

357ZK Activation of allowance: no change of equity share

(1) This section applies where—

(a) a company is a licensee in a licensed area for the whole or part ("the licensed part") of an accounting period,

(b) the company's share of the equity in the site is the same throughout the accounting period or, as the case requires, throughout the licensed part of the accounting period,

(c) the licensed area is or contains a site,

(d) the company holds, for the accounting period and the site, a closing balance of unactivated allowance (see section 357ZL) that is greater than zero, and

(e) the company has relevant income from the site for the accounting period.

(2) The amount of activated allowance the company has for that accounting period and that site is the smaller of—

(a) the closing balance of unactivated allowance held for the accounting period and the site;

(b) the company's relevant income for that accounting period from that site.

(3) "Relevant income", in relation to a site and an accounting period of a company means production income of the company from any oil extraction activities carried on at the site that is taken into account in calculating the company's adjusted ring fence profits for the accounting period.

357ZL The closing balance of unactivated allowance for an accounting period

The closing balance of unactivated allowance held by a company for an accounting period and a site is—

$$P + Q - R$$

where—

P is the amount of onshore allowance generated by the company in the accounting period at the site (including any amount treated under section 357ZN(7) or 357ZV(1) as generated by the company in that accounting period at that site);

Q is any amount carried forward from an immediately preceding accounting period under 357ZM(3) or from an immediately preceding reference period under section 357ZR;

R is any amount deducted in accordance with section 357ZS(1) (reduction of allowance if equity disposed of).

357ZM Carrying forward of unactivated allowance

(1) This section applies where X is greater than Y in the case of an accounting period of a company and a site, where—

X is the closing balance of unactivated allowance for the accounting period and the site;

Y is the company's relevant income for the accounting period from that site.

(2) An amount equal to the difference between X and Y is treated as onshore allowance held by the company for that site for the next accounting period (and is treated as held with effect from the beginning of that period).

Transfer of allowances between sites

357ZN Transfer of allowances between sites

(1) This section applies if a company has, with respect to a site, an amount ("N") of onshore allowance available to carry forward to an accounting period—

(a) under section 357ZM(2), or

(b) by virtue of section 357ZR(3).

(2) The company may elect to transfer the whole or part of that amount to another site ("site B"), if the appropriate conditions are met.

(3) The appropriate conditions are that—

(a) every part of site B is, or is part of, an area in which the company is a licensee, and

(b) the election is made no earlier than the beginning of the fourth accounting period of the company after that in which the allowance was generated.

(4) For the purposes of subsection (3)(b), a company may regard an amount of onshore allowance held by it for a site as generated in a particular accounting period if the amount does not exceed—

$$A - T$$

where—

A is the amount of onshore allowance generated in that accounting period for that site;

T is the total amount of onshore allowance generated in that period for that site that has already been transferred under this section.

(5) An election must specify—

(a) the amount of onshore allowance to be transferred;

(b) the site at which it was generated;

(c) the site to which it is transferred;

(d) the accounting period in which it was generated.

(6) Where a company makes an election under subsection (2), then—

(a) if the company elects to transfer the whole of N, no amount is available to be carried forward under section 357ZM(2) or (as the case may be) by virtue of section 357ZR(3);

(b) if the company elects to transfer only part of N, the amount available to be carried forward as mentioned in subsection (1) is reduced by the amount transferred.

(7) Where an amount of onshore allowance is transferred to a site as a result of an election, this Chapter has effect as if the allowance is generated at that site at the beginning of the accounting period following that in which the election is made.

Changes in equity share: activation of allowance

357ZO Introduction to sections 357ZP to 357ZS

(1) Sections 357ZP to 357ZS apply to a company in respect of an accounting period and a licensed area that is or contains a site, if the following conditions are met—

(a) the company is a licensee in the licensed area for the whole, or for part, of the accounting period;

(b) the company has different shares (greater than zero) of the equity in the licensed area at different times during the accounting period.

(2) In a case where a company has three or more different shares of the equity in a licensed area during a particular day, sections 357ZP to 357ZS (in particular provisions relating to the beginning or end of a day) have effect subject to the necessary modifications.

357ZP Reference periods

(1) For the purposes of sections 357ZQ to 357ZS, the accounting period, or (if the company is not a licensee for the whole of the accounting period) the part or parts of the accounting period for which the company is a licensee, are to be divided into reference periods (each of which "belongs to" the site concerned).

(2) A reference period is a period of consecutive days that meets the following conditions—

(a) at the beginning of each day in the period, the company is a licensee in the licensed area;

(b) at the beginning of each day in the period, the company's share of the equity in the field is the same;

(c) each day in the period falls within the accounting period.

357ZQ Activation of allowance: reference periods

(1) The amount (if any) of activated allowance that a company has with respect to a site for a reference period is the smaller of the following—

(a) the company's relevant income from the site in the reference period;

(b) the total amount of unactivated allowance that is attributable to the reference period and the site (see section 357ZS).

(2) The company's relevant income from the site in the reference period is—

$$I \times \frac{R}{L}$$

where—

I is the company's relevant income from the site in the whole of the accounting period;

R is the number of days in the reference period;

L is the number of days in the accounting period for which the company is a licensee in the licensed area concerned.

357ZR Carry-forward of unactivated allowance from a reference period

(1) If, in the case of a reference period (RP1) of a company, the amount mentioned in subsection (1)(b) of section 357ZQ exceeds the amount mentioned in subsection (1)(a) of that section, an amount equal to the difference between those amounts is treated as onshore allowance held by the company for the site concerned for the next period.

(2) If RP1 is immediately followed by another reference period of the company (belonging to the same site), "the next period" means that reference period.

(3) If subsection (2) does not apply, "the next period" means the next accounting period of the company.

357ZS Unactivated amounts attributable to a reference period

(1) For the purposes of section 357ZQ(1)(b), the total amount of unactivated allowance attributable to a reference period and a site is—

$$P + Q - R$$

where—

P is the amount of allowance generated by the company in the reference period at the site (including any amount treated under section 357ZN(7) or 357ZV(1) as generated by the company in that accounting period at that site);

Q is the amount given by subsection (2) or (3);

R is any amount to be deducted under section 357ZU(1) in respect of a disposal of the whole or part of the company's share of the equity in a licensed area that is or contains the site.

(2) Where the reference period is not immediately preceded by another reference period but is preceded by an accounting period of the company, Q is equal to the amount (if any) that is to be carried forward from that preceding accounting period under section 357ZM(2).

(3) Where the reference period is immediately preceded by another reference period ("the preceding reference period") then Q is equal to the amount carried forward by virtue of section 357ZR(2).

Transfers of allowance on disposal of equity share

357ZT Introduction to sections 357ZU and 357ZV

(1) Sections 357ZU and 357ZV apply where a company ("the transferor")—

(a) disposes of the whole or part of its share of the equity in a licensed area that is or contains a site;

(b) immediately before the disposal holds (unactivated) onshore allowance for the site concerned.

(2) Each company to which a share of the equity is disposed of is referred to in section 357ZV as "a transferee".

357ZU Reduction of allowance if equity disposed of

(1) The following amount is to be deducted, in accordance with section 357ZS(1), in calculating the total amount of unactivated allowance attributable to a reference period and a site—

$$F \times \frac{E1 - E2}{E1}$$

where—

F is the pre-transfer total of unactivated allowance for the reference period that ends with the day on which the disposal is made;

E1 is the transferor's share of the equity in the licensed area immediately before the disposal;

E2 is the transferor's share of the equity in the licensed area immediately after the disposal.

(2) The "pre-transfer total of unactivated allowance" for a reference period is—

$$P + Q$$

where P and Q are the same as in section 357ZS.

357ZV Acquisition of allowance if equity acquired

(1) A transferee is treated as generating at the site concerned, at the beginning of the reference period or accounting period of the transferee that begins with, or because of, the disposal, onshore allowance of the amount given by subsection (2).

(2) The amount is—

$$R \times \frac{E3}{E1 - E2}$$

where—

R is the amount determined for the purposes of the deduction under section 357ZU(1);

E3 is the share of equity in the licensed area that the transferee has acquired from the transferor;

E1 and E2 are the same as in section 357ZU.

Miscellaneous

357ZW Adjustments

(1) This section applies if there is any alteration in a company's adjusted ring fence profits for an accounting period after this Chapter has effect in relation to the profits.

(2) Any necessary adjustments to the operation of this Chapter (whether in relation to the profits or otherwise) are to be made (including any necessary adjustments to the effect of section 357ZH on the profits or to the calculation of the amount to be carried forward under section 357ZI).

357ZX Orders

(1) The Treasury may by order substitute a different percentage for the percentage that is at any time specified in section 357ZE(2) (calculation of allowance as a percentage of capital expenditure).

(2) The Treasury may by order amend the number that is at any time specified in section 357ZF(1) or (2) (cap on production, or estimated production, at a site for the purposes of onshore allowance).

(3) An order under subsection (1) or (2) may include transitional provision.

Interpretation

357ZY "Authorisation of development": drilling and extraction sites

(1) References in this Chapter to authorisation of development of a site are to be interpreted as follows in relation to a drilling and extraction site that is situated in, or used in connection with, a licensed area.

(2) The references are to be read as references to a national authority—

(a) granting a licensee consent for development of the licensed area,

(b) serving on a licensee a programme of development for the licensed area, or

(c) approving a programme of development for the licensed area.

(3) References in subsection (2) to a "licensee" are to a licensee in the licensed area mentioned in subsection (1).

(4) In this section—

"consent for development", in relation to a licensed area, does not include consent which is limited to the purpose of testing the characteristics of an oil-bearing area;

"development", in relation to a licensed area, means winning oil from the licensed area otherwise than in the course of searching for oil or drilling wells;

"national authority" means—

(a) the Secretary of State, or

(b) a Northern Ireland Department.

357ZZ When capital expenditure is incurred

Section 5 of the Capital Allowances Act 2001 (when capital expenditure is incurred) applies for the purposes of this Chapter as for the purposes of that Act.

357ZZA Other definitions

In this Chapter (except where otherwise specified)—

"adjusted ring fence profits", in relation to a company and an accounting period, means the adjusted ring fence profits that would (if this Chapter were ignored) be taken into account in calculating the supplementary charge on the company under section 330(1) for the accounting period (but see also section 357ZJ);

"cumulative total amount of activated allowance" has the meaning given by section 357ZH(2);

"licence" has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act);

"licensed area" has the same meaning as in Part 1 of OTA 1975;

"licensee" has the same meaning as in Part 1 of OTA 1975;

"onshore allowance" has the meaning given by 357ZE(5);

"relevant income", in relation to an onshore site and an accounting period, has the meaning given by section 357ZK(3);

"site" has the meaning given by section 357ZD."

Restriction of field allowance to offshore fields

3 (1) Section 352 (meaning of "qualifying oil field) is amended as follows.

(2) Renumber section 352 as subsection (1) of section 352.

(3) In section 352(1) (as renumbered), after "an oil field" insert ", other than an onshore field,".

(4) After subsection (1) insert—

"(2) An oil field is an "onshore field" for the purposes of subsection (1) if—

(a) the authorisation day is on or after 5 December 2013, and

(b) on the authorisation day every part of the oil field is, or is part of, an onshore licensed area;

but see the transitional provisions in paragraph 8 of Schedule 1.

(3) A licensed area is an "onshore licensed area" if it falls within the definition of "landward area" in the regulations pursuant to which the application for the licence was made."

Minor and consequential amendments

4 In section 270 (overview of Part), after subsection (7) insert—

"(7A) Chapter 8 makes provision about the reduction of supplementary charge by an allowance for capital expenditure incurred in the course of onshore oil-related activities."

5 In section 333 (reduction of adjusted ring fence profits)—

(a) in subsection (1), after "reduced" insert "(but not below zero)";

(b) omit subsection (2).

6 In section 357 (definitions for Chapter 7), in the definition of "adjusted ring fence profits", at the end insert "; but see also section 357ZJ (companies with allowances under Chapter 8 as well as this Chapter)".

PART 2

COMMENCEMENT AND TRANSITIONAL PROVISION

Commencement of onshore allowance

7 (1) The amendments made by paragraphs 2 and 4 to 6 have effect in relation to capital expenditure incurred on or after 5 December 2013.

(2) The amendments made by paragraph 3 have effect in relation to any accounting period of a company in which a post-commencement authorisation day falls.

(3) In sub-paragraph (2) "post-commencement authorisation day" means an authorisation day (as defined for Chapter 7 of Part 8 of CTA 2010) that is 5 December 2013 or a later day.

(4) Section 5 of the Capital Allowances Act 2001 (when capital expenditure is incurred) applies for the purposes of this paragraph as for the purposes of that Act.

Option to defer commencement

8 (1) This paragraph applies in relation to any oil field whose development (in whole or in part) is authorised for the first time on or after 5 December 2013 but before 1 January 2015.

(2) At any time before 1 January 2015, the companies that are licensees in the oil field may jointly elect that the law is to have effect in relation to each of those companies as if the date specified in—

(a) section 352(2)(a) of CTA 2010 (as inserted by paragraph 3(4) of this Schedule),

(b) section 357ZE(3) of CTA 2010 (as inserted by paragraph 2 of this Schedule), and

(c) paragraph 7(3),

were 1 January 2015.

(3) Expressions used in this paragraph and in Chapter 7 of CTA 2010 have the same meaning in this paragraph as in that Chapter.

Introduction to paragraphs 10 and 11

9 (1) Paragraphs 10 and 11 apply where a company has an accounting period (the "straddling accounting period") that begins before and ends on or after commencement day.

(2) In paragraphs 10 and 11 "commencement day" means—

(a) 5 December 2013 (except where paragraph (b) applies);

(b) 31 December 2014, in relation to a company that makes an election under paragraph 8.

(3) Expressions used in paragraph 9 or 10 and in Chapter 8 of CTA 2010 (as inserted by paragraph 2) have the same meaning in the paragraph concerned as in that Chapter.

10 (1) The amount (if any) by which the company's adjusted ring fence profits for the straddling accounting period are reduced under section 357ZH of CTA 2010 (as inserted by paragraph 2) cannot exceed the appropriate proportion of those profits.

(2) Section 357ZI (carrying forward of activated allowance) applies in relation to the company and the accounting period as if the reference in subsection (1)(b) of that section to the adjusted ring fence profits were to the appropriate proportion of those profits.

(3) The "appropriate proportion" of the company's adjusted ring fence profits for the straddling accounting period is—

$$\frac{D}{Y} \times N$$

where—

D is the number of days in the straddling accounting period that fall on or after commencement day;

Y is the number of days in the straddling accounting period;

N is the amount of the company's adjusted ring fence profits for the accounting period.

(4) If the basis of apportionment in sub-paragraph (3) would work unjustly or unreasonably in the company's case, the company may elect for its adjusted ring fence profits to be apportioned on another basis that is just and reasonable and specified in the election.

11 (1) For the purpose of determining the amount of activated allowance the company has with respect to any site—

(a) for the straddling accounting period (see section 357ZK of CTA 2010, as inserted by paragraph 2), or

(b) for a reference period that is part of the straddling accounting period (see section 357ZQ of CTA 2010, as so inserted),

the company's relevant income from the field in the whole accounting period is taken to be the appropriate proportion of the actual amount of that relevant income.

(2) Accordingly, in relation to the company, the straddling accounting period and the site in question, section 357ZM of CTA 2010 (carrying forward of unactivated allowance) has effect as if Y in subsection (1) of that section were defined as the appropriate proportion of the company's relevant income for the straddling accounting period from that site.

(3) The "appropriate proportion" of the company's relevant income from a site in the whole straddling accounting period is—

$$\frac{D}{Y} \times I$$

where—

D is the number of days in the straddling accounting period that fall on or after commencement day;

Y is the number of days in the straddling accounting period;

I is the amount of the company's relevant income from the site in the whole straddling accounting period.

(4) If the basis of apportionment in sub-paragraph (3) would work unjustly or unreasonably in the company's case, the company may elect for its adjusted ring fence profits to be apportioned on another basis that is just and reasonable and specified in the election.

EXPLANATORY NOTE

SUPPLEMENTARY CHARGE: ONSHORE ALLOWANCE

SUMMARY

1. Clause X and Schedule Y introduce a new allowance, which will remove an amount equal to 75 per cent of capital expenditure incurred by a company in relation to an onshore site from its adjusted ring fence profits for the purposes of supplementary charge (SC).

DETAILS OF THE SCHEDULE

PART 1

AMENDMENTS TO PART 8 OF CTA 2010

2. Paragraph 1 provides that the Schedule amends Part 8 of Corporation Taxes Act 2010.

3. Paragraph 2 inserts after Chapter 7 a new Chapter 8 entitled "Supplementary Charge: Onshore Allowance" which makes provision for a new allowance (reducing the Supplementary Charge) for capital expenditure on "on-shore oil-related activities".

4. New section 357ZA provides an overview of new Chapter 8. It explains that relief is given by way of an allowance for capital expenditure incurred on onshore oil-related activities, said allowance operating by way of reducing a company's adjusted-ring fence profits for the purpose of the Supplementary Charge; that the new allowance is activated by relevant income in relation to a site; that allowances are transferred on disposal of a licence interest; and that a company may elect to transfer allowances between different sites for which it holds a licence.

5. New Section 357ZB defines "Onshore oil-related activities".

6. New Section 357ZC defines "activities".

7. New Section 357ZD defines what is meant by "site".

8. New Section 357ZE explains how onshore allowance is generated, including that an amount of "relievable capital expenditure" (as defined by reference to activities in the course of which it is incurred, and disqualifying conditions) generates an allowance of 75 per cent of that amount, and that allowance is generated in relation to a "qualifying site". There is also provision for cases where, in relation to a qualifying site, relievable capital expenditure is incurred there only partly in the course of onshore oil-related activities, or is incurred only partly in relation to the site; in that case the expenditure is to be apportioned to that site on a just and reasonable basis.

9. New section 357ZF defines the conditions which disqualify capital expenditure from being "relievable capital expenditure".

10. New section 357ZG provides for how a company is to treat capital expenditure incurred before a site is established.

11. New Section 357ZH provides for a company's adjusted ring fence profits for an accounting period to be reduced (but not below zero) by the total amount of activated allowances held by the company in that period.

12. New Section 357ZI provides that a company's unused activated allowances are carried forward to the next accounting period.

13. New Section 357ZJ provides that where a company holds both field allowances and onshore allowances it may choose the order in which the allowances are to be used.

14. New Section 357ZK provides, in the case where during an accounting period a company's share of the equity in the site remains unchanged, that a company is to have activated allowances no greater than the relevant income from that site. "Relevant income" is also defined in this section.

15. New Section 357ZL provides for the calculation of the closing balance of unactivated allowances held by a company for an accounting period.

16. New Section 357ZM provides that an amount equal to the a company's closing balance of unactivated allowances, less relevant income for the period, is to be carried forward to the next accounting period.

17. New Section 357ZN provides that, where a company has an interest in a licence for more than one site, it may elect for the whole or part of its unactivated allowances in one site to be transferred to another site.

18. New Section 357ZO introduces new sections 357ZP to 357ZS, which provide for the case where a company's share of the equity in a licensed area changes in any one accounting period. In summary, those provisions introduce a reference period to identify those parts of the accounting period for which the company is a licensee, and make provision for the activation of allowance for those reference periods.

19. New Section 357ZP defines a "reference period".

20. New Section 357ZQ provides for the calculation of a company's activated allowance in any reference period.

21. New Section 357ZR provides that the unactivated allowance in a reference period is carried forward to the next period (being either a reference period or an accounting period).

22. New Section 357ZS provides for the calculation of the amount of total unactivated allowances attributable to a reference amount and a site.

23. New Section 357ZT introduces new sections 357ZU and 357ZV which apply where a company holds unactivated allowances and disposes of some or all of its equity interest in a licensed area.

24. New Section 357ZU provides for the calculation of the amount to be deducted from a company's unactivated allowances attributable to a reference period and a site following the disposal of an equity interest in the licensed area.

25. New Section 357ZV provides for the calculation of the amount of unactivated allowance generated by a company for a reference period and in relation to a site following the acquisition of an equity interest in the licensed area.

26. New Section 357ZW provides that any alteration to a company's adjusted ring fence profits is reflected in the operation and calculations of Chapter 8.

27. New Section 357ZX provides that Treasury may by Order make adjustments to the percentage specified at section 357ZE(2) and the also the cap on production specified in section 357ZF.

28. New Section 357ZY explains how references in new Chapter 8 to "authorisation of development: drilling and extraction sites" are to be interpreted.

29. New Section 357ZZ explains when capital expenditure can be said to be incurred for the purposed of new Chapter 8.

30. New Section 357ZZA provides interpretation on definitions for "adjusted ring fence profits", "cumulative total amount of activated allowance", "licence", "licensed area", "licensee", "onshore allowance", "relevant income", and "site".

31. Paragraph 3 of the Schedule makes provision for existing field allowances to be unavailable in respect of fields licensed for onshore activity on or after commencement of Chapter 8.

32. Paragraphs 4 to 6 make minor consequential amendments to Part 8 as follows.

33. Paragraph 4 inserts in section 270 (overview of Part 8) a new subsection (7A) to introduce the onshore allowance.

34. Paragraph 5 amends section 333 (reduction of adjusted ring fence profits) to bring the wording in line with that used for the onshore allowance with regard to field allowances.

35. Paragraph 6 amends the definition of adjusted ring fence profits in section 357 to insert a reference to allowances under Chapter 8.

PART 2

COMMENCEMENT AND TRANSITIONAL PROVISIONS

36. Paragraph 7 provides that the amendments are to have effect in relation to capital expenditure incurred on or after 5 December 2013.

37. Paragraph 8 introduces transitional arrangements for onshore oil fields, allowing a company to elect to defer commencement of the onshore allowance until 1 January 2015.

38. Paragraph 9 introduces arrangements in paragraphs 10 and 11 for accounting periods which straddle the commencement date of 5 December 2013 (or, if applicable, 31 December 2014).

39. Paragraph 10 provides for the apportionment of a company's adjusted ring fence profits in a straddling accounting period according to the number of days falling on or after the commencement day.

40. Paragraph 11 provides for the apportionment of relevant income for determining activated allowance in a straddling accounting period according to the number of days falling on or after the commencement day.

BACKGROUND NOTE

In addition to ring fence corporation tax, oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. The rate of SC is set at 32 per cent.

Field allowances provide relief by reducing the amount of adjusted profits on which SC is due for oil and gas projects which meet certain conditions. Existing field allowances are provided by Part 8, Chapter 7 CTA 2010 and apply to both onshore and offshore projects which satisfy the relevant criteria.

This clause introduces a new allowance, replacing field allowances for on-shore projects.

If you have any questions about this change, or comments on the legislation, please contact Tony Chanter on 03000 589073 (email: tony.chanter@hmrc.gsi.gov.uk).

1 Extended ring fence expenditure supplement for onshore activities

Schedule 1 contains provision about an extended ring fence expenditure supplement in connection with onshore oil-related activities.

SCHEDULE 1 Section 1

EXTENDED RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

1 In Part 8 of CTA 2010 (oil activities), after Chapter 5 insert—

"CHAPTER 5A

EXTENDED RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

Introduction

329A Overview of Chapter

(1) This Chapter entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period, to an additional supplement in respect of—

(a) qualifying pre-commencement onshore expenditure incurred before the date the trade is set up and commenced,

(b) losses incurred in the trade which relate to onshore oil-related activities,

(c) some or all of the supplement allowed in respect of earlier periods under Chapter 5, and

(d) the additional supplement allowed in respect of earlier periods under this Chapter.

(2) Sections 329B to 329H make provision about the application and interpretation of this Chapter.

(3) Sections 329I to 329M make provision about additional supplement in relation to expenditure incurred by the company—

(a) with a view to carrying on a ring fence trade, but

(b) in an accounting period before the company sets up and commences that trade.

(4) Sections 329N to 329T make provision about additional supplement in relation to losses incurred in carrying on the ring fence trade.

(5) There is a limit (of 4) on the number of accounting periods in respect of which a company may claim additional supplement.

(6) In determining the amount of additional supplement allowable, reductions fall to be made in respect of—

(a) disposal receipts in respect of any asset representing qualifying pre-commencement onshore expenditure,

(b) onshore ring fence losses that could be deducted under section 37 (relief for trade losses against total profits) or section 42 (ring fence trades: further extension of period for relief) from ring fence profits of earlier periods,

(c) onshore ring fence losses incurred in earlier periods that fall to be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce profits of succeeding periods,

(d) unrelieved group ring fence profits.

Application and interpretation

329B Qualifying companies

(1) This Chapter applies in relation to any company which—

(a) carries on a ring fence trade, or

(b) is engaged in any activities with a view to carrying on a ring fence trade.

(2) In this Chapter such a company is referred to as a "qualifying company".

329C Onshore and offshore oil-related activities

(1) This section applies for the purposes of this Chapter.

(2) "Onshore oil-related activities" has the same meaning as in Chapter 8 (supplementary charge: onshore allowance) (see section 357ZB).

(3) "Offshore oil-related activities" means oil-related activities that are not onshore oil-related activities.

329D Accounting periods and straddling periods

(1) In this Chapter, in the case of a qualifying company—

"the commencement period" means the accounting period in which the company sets up and commences its ring fence trade,

"post-commencement period" means an accounting period ending on or after 5 December 2013—

(a) which is the commencement period, or

(b) which ends after the commencement period, and

"pre-commencement period" means an accounting period ending—

(a) on or after 5 December 2013, and

(b) before the commencement period.

(2) For the purposes of this Chapter, a company not within the charge to corporation tax which incurs any expenditure is to be treated as having such accounting periods as it would have if—

(a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and

(b) it had started to carry on that trade when it started to carry on the activities in the course of which the expenditure is incurred.

(3) In this Chapter, "straddling period" means an accounting period beginning before and ending on or after 5 December 2013.

329E The relevant percentage

(1) For the purposes of this Chapter, the relevant percentage for an accounting period is 10%.

(2) The Treasury may by order vary the percentage for the time being specified in subsection (1) for such accounting periods as may be specified in the order.

329F Restrictions on accounting periods for which additional supplement may be claimed

(1) A company may claim additional supplement under this Chapter in respect of no more than 4 accounting periods.

(2) The accounting periods in respect of which claims are made need not be consecutive.

(3) The additional supplement under this Chapter—

(a) is additional to any supplement allowed under Chapter 5, but

(b) may only be claimed for accounting periods which fall after 6 accounting periods for which supplement is allowed as a result of claims by the company under Chapter 5.

329G Qualifying pre-commencement onshore expenditure

(1) For the purposes of this Chapter, expenditure is "qualifying pre-commencement onshore expenditure" if it meets Conditions A to D.

(2) Condition A is that the expenditure is incurred on or after 5 December 2013.

(3) Condition B is that the expenditure is incurred in the course of oil extraction activities which are onshore oil-related activities.

(4) Condition C is that the expenditure is incurred by a company with a view to carrying on a ring fence trade, but before the company sets up and commences that ring fence trade.

(5) Condition D is that the expenditure—

(a) is subsequently allowable as a deduction in calculating the profits of the ring fence trade for the commencement period (whether or not any part of it is so allowable for any post-commencement period), or

(b) is relevant R&D expenditure incurred by an SME.

(6) Section 312(6) to (9) apply for the purposes of this section as they apply for the purposes of section 312.

329H Unrelieved group ring fence profits

In this Chapter "unrelieved group ring fence profits" has the same meaning as in Chapter 5 (see sections 313 and 314).

Pre-commencement additional supplement

329I Additional supplement in respect of a pre-commencement accounting period

(1) If—

(a) a qualifying company incurs qualifying pre-commencement onshore expenditure in respect of a ring fence trade, and

(b) the expenditure is incurred before the commencement period,

the company may claim additional supplement under this section ("pre-commencement additional supplement") in respect of one or more pre-commencement periods.

This is subject to section 329F(3)(b).

(2) Any pre-commencement additional supplement allowed on a claim in respect of a pre-commencement period is to be treated as expenditure—

(a) which is incurred by the company in the commencement period, and

(b) which is allowable as a deduction in calculating the profits of the ring fence trade for that period.

(3) The amount of the additional supplement for any pre-commencement period in respect of which a claim under this section is made is the relevant percentage for that period of the reference amount for that period.

(4) Sections 329J to 329M have effect for the purpose of determining the reference amount for the pre-commencement period.

(5) If the pre-commencement period is a period of less than 12 months, the amount of the additional supplement for the period (apart from this subsection) is to be reduced proportionally.

(6) If the pre-commencement period is a straddling period, the amount of the additional supplement is to be reduced (or, if it has already been reduced under subsection (5), further reduced) proportionally so that it reflects the number of days in the straddling period which fall on or after 5 December 2013 as compared to the total number of days in that period.

(7) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made as a claim for the commencement period.

(8) Paragraph 74 of Schedule 18 to FA 1998 (company tax returns etc: time limit for claims for group relief) applies in relation to a claim for pre-commencement supplement as it applies in relation to a claim for group relief.

329J The mixed pool of qualifying pre-commencement onshore expenditure and supplement previously allowed

(1) For the purpose of determining the amount of any pre-commencement additional supplement, a qualifying company is to be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of—

(a) qualifying pre-commencement onshore expenditure,
(b) pre-commencement supplement under Chapter 5, and
(c) pre-commencement additional supplement under this Chapter.

(2) The pool is to be taken to have consisted of—
(a) the company's qualifying pre-commencement onshore expenditure, allocated to the pool for each pre-commencement period in accordance with subsection (3),
(b) the company's pre-commencement supplement under Chapter 5, allocated to the pool in accordance with subsections (4) to (6), and
(c) the company's pre-commencement additional supplement under this Chapter, allocated to the pool in accordance with subsection (7).

(3) To allocate qualifying pre-commencement onshore expenditure to the pool for any pre-commencement period, take the following steps—

Step 1

Count as eligible expenditure for that period so much of the qualifying pre-commencement onshore expenditure mentioned in section 329I(1) as was incurred in that period.

Step 2

Find the total of all the eligible expenditure for that period (amount E).

Step 3

If section 329K (reduction in respect of disposal receipts under CAA 2001) applies, reduce amount E in accordance with that section.

Step 4

If section 329L (reduction in respect of unrelieved group ring fence profits) applies, reduce (or, as the case may be, further reduce) amount E in accordance with that section.

And so much of amount E as remains after making those reductions is to be taken to have been added to the pool in that period.

(4) If any pre-commencement supplement is allowed on a claim under Chapter 5 in respect of a pre-commencement period, the appropriate proportion of that supplement is to be taken to have been added to the pool in that period.

(5) "The appropriate proportion" means—
(a) if, before the end of the pre-commencement period, the company has incurred qualifying pre-commencement expenditure (within the meaning of section 312) on offshore oil-related activities, such proportion of the pre-commencement supplement under Chapter 5 as it is just and reasonable to attribute (directly or indirectly) to the company's qualifying pre-commencement onshore expenditure, and
(b) in any other case, 100%.

(6) In the case of a straddling period—

(a) the appropriate proportion of the pre-commencement supplement allowed on a claim under Chapter 5 in respect of the period is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and

(b) only so much of the appropriate proportion of the supplement as is apportioned to the later period is taken to have been added to the pool under subsection (4).

(7) If any pre-commencement additional supplement is allowed on a claim under this Chapter in respect of a pre-commencement period, the amount of that supplement is to be taken to have been added to the pool in that period.

329K Reduction in respect of disposal receipts under CAA 2001

(1) This section applies in the case of the qualifying company if—

(a) it incurs qualifying pre-commencement onshore expenditure in respect of a ring fence trade in any pre-commencement period,

(b) it would, on the relevant assumption, be entitled to an allowance under any provision of CAA 2001 in respect of that expenditure,

(c) an event occurs in relation to any asset representing the expenditure in any pre-commencement period, and

(d) the event would, on the relevant assumption, require a disposal value to be brought into account under any provision of CAA 2001 for any pre-commencement period.

(2) The relevant assumption is that the company was carrying on the ring fence trade—

(a) when the expenditure was incurred, and

(b) when the event giving rise to the disposal value occurred.

(3) For the purpose of allocating qualifying pre-commencement onshore expenditure to the pool for each pre-commencement period—

(a) find the total amount of the disposal values in the case of all such events (amount D), and

(b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.

(4) Where the asset represented by the qualifying pre-commencement onshore expenditure is a mixed-activities asset, subsection (3) applies as if the disposal value required to be brought into account as mentioned in subsection (1)(d) were such proportion of the actual disposal value as is just and reasonable having regard to that expenditure.

(5) The asset is a "mixed-activities asset" if it also represents expenditure on offshore oil-related activities which is incurred by the company in a pre-commencement period and in respect of which the company would, on the relevant assumption, be entitled to an allowance under any provision of CAA 2001.

329L Reduction in respect of unrelieved group ring fence profits

(1) This section applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.

(2) For the purpose of allocating qualifying pre-commencement onshore expenditure to the pool for that period—

(a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under section 329K ("the amount of the net onshore expenditure"), and

(b) reduce the amount of the net onshore expenditure (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

(3) If the pre-commencement period is a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013 and ended at the same time as the straddling period.

(4) Subsection (5) applies where in the pre-commencement period the company carries on both onshore oil-related activities and off-shore oil related activities.

(5) The sum to be set against the net onshore expenditure under subsection (2)(b) is first to be reduced (but not below nil) by the amount of the company's net offshore expenditure for the period.

(6) "The net offshore expenditure" of the company for the period is determined as follows—

Step 1

Determine the amount of the company's total pre-commencement offshore expenditure incurred in the period.

Step 2

Make any reduction in that amount required by subsection (9).

So much as remains is the net offshore expenditure of the company for the period.

(7) "Pre-commencement offshore expenditure" means expenditure which—

(a) is incurred in the course of oil extraction activities which are offshore oil-related activities, and

(b) meets Conditions A, C and D in section 329G.

(8) Subsection (9) applies if—

(a) the qualifying company incurs pre-commencement offshore expenditure in respect of a ring fence trade in any pre-commencement period,

(b) it would, on the relevant assumption in section 329K, be entitled to an allowance under any provision of CAA 2001 in respect of that expenditure,

(c) an event occurs in relation to any asset representing the expenditure in any pre-commencement period, and

(d) the event would, on that assumption, require a disposal value to be brought into account under any provision of CAA 2001 for any pre-commencement period.

(9) For the purposes of *Step 2* in subsection (6)—

(a) find the total amount of the disposal values in the case of all such events (amount D), and

(b) taking later periods before earlier periods, reduce (but not below nil) the amount of pre-commencement offshore expenditure for any pre-commencement period by setting against it so much of amount D as does not fall to be set against that total for a later pre-commencement period.

(10) Where the asset represented by the pre-commencement offshore expenditure is a mixed-activities asset, subsection (9) applies as if the disposal value required to be brought into account as mentioned in subsection (8)(d) were such proportion of the actual disposal value as is just and reasonable having regard to that expenditure.

(11) The asset is a "mixed-activities asset" if it also represents expenditure on onshore oil-related activities which is incurred by the company in a pre-commencement period and in respect of which the company would, on the relevant assumption, be entitled to an allowance under any provision of CAA 2001.

329M The reference amount for a pre-commencement period

For the purposes of section 329I, the reference amount for a pre-commencement period is the amount in the pool at the end of the period—

(a) after the addition to the pool of any qualifying pre-commencement onshore expenditure allocated to the pool for that period in accordance with section 329J(3), but

(b) before determining, and adding to the pool, the amount of any pre-commencement additional supplement claimed in respect of the period under this Chapter.

Post-commencement additional supplement

329N Supplement in respect of post-commencement period

(1) A qualifying company which incurs an onshore ring fence loss (see section 329P) in any post-commencement period may claim supplement under this section ("post-commencement additional supplement") in respect of—

(a) that period, or

(b) any subsequent accounting period in which it carries on its ring fence trade.

(2) Any post-commencement additional supplement allowed on a claim in respect of a post-commencement period is to be treated for the purposes of the Corporation Tax Acts (other than the post-commencement additional supplement provisions) as if it were a loss—

(a) which is incurred in carrying on the ring fence trade in that period, and

(b) which falls in whole to be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce trading income from the ring fence trade in succeeding accounting periods.

(3) Paragraph 74 of Schedule 18 to FA 1998 (company tax returns etc: time limit for claims for group relief) applies in relation to a claim for post-commencement additional supplement as it applies in relation to a claim for group relief.

(4) In this Chapter "the post-commencement additional supplement provisions" means this section and sections 329O to 329T.

329O Amount of post-commencement additional supplement for a post-commencement period

(1) The amount of the post-commencement additional supplement for any post-commencement period in respect of which a claim under section 329N is made is the relevant percentage for that period of the reference amount for that period.

(2) Sections 329P to 329T have effect for the purpose of determining the reference amount for a post-commencement period.

(3) If the post-commencement period is a period of less than 12 months, the amount of the post-commencement onshore additional supplement for the period (apart from this subsection) is to be reduced proportionally.

(4) If the post-commencement period is a straddling period, the amount of the post-commencement onshore additional supplement for the period is reduced (or, if it has already been reduced under subsection (3), further reduced) proportionally so that it reflects the number of days in the straddling period which fall on or after 5 December 2013 as compared to the total number of days in that period.

329P Onshore ring fence losses

(1) If—

(a) in a post-commencement period ("the period of the loss") a qualifying company carrying on a ring fence trade consisting solely of onshore oil-related activities incurs a loss in the trade, and

(b) some or all of the loss falls to be used under section 45 (carry forward of trade loss against subsequent profits) to reduce trading income from the trade in succeeding accounting periods,

so much of the loss as falls to be so used is an "onshore ring fence loss" of the company.

This is subject to subsection (4).

(2) If—

(a) in a post-commencement period ("the period of the loss") a qualifying company carrying on a ring fence trade consisting of both onshore oil-related activities and offshore oil-related activities incurs a loss in the trade, and

(b) some or all of the loss falls to be used under section 45 (carry forward of trade loss against subsequent profits) to reduce trading income from the trade in succeeding accounting periods,

the appropriate proportion of so much of the loss as falls to be so used is an "onshore ring fence loss" of the company.

This is subject to subsection (4)

(3) "The appropriate proportion" means such proportion as it is just and reasonable to attribute to the company's onshore oil-related activities carried out in the course of its ring fence trade.

(4) In the case of a straddling period—

(a) the amount of the onshore ring fence loss determined under subsection (1) or (2) in respect of the period is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and

(b) only so much of the loss as is apportioned to the later part of the period is an onshore ring fence loss of the company for the straddling period.

(5) In determining for the purposes of the post-commencement additional supplement provisions how much of a loss incurred in a ring fence trade falls to be used as mentioned in subsection (1)(b) or (2)(b), the following assumptions are to be made.

(6) The first assumption is that every claim is made that could be made by the company under section 37 (relief for trade losses against total profits) to deduct losses incurred in the ring fence trade from ring fence profits of earlier post-commencement periods.

(7) The second assumption is that (where appropriate) section 42 (ring fence trades: further extension of period for relief) applies in relation to every such claim under section 37.

(8) This section has effect for the purposes of the post-commencement additional supplement provisions.

329Q The onshore ring fence pool

(1) For the purpose of determining the amount of any post-commencement additional supplement, a qualifying company is to be taken at all times in its post-commencement periods to have a continuing mixed pool (the "onshore ring fence pool") of—

(a) the company's onshore ring fence losses,

(b) post-commencement supplement under Chapter 5,

(c) post-commencement additional supplement under this Chapter.

(2) The onshore ring fence pool continues even if the amount in it is nil.

(3) The onshore ring fence pool consists of—

(a) the company's onshore ring fence losses, allocated to the pool in accordance with subsection (4)(a),

(b) the company's post-commencement supplement allowed under Chapter 5, allocated to the pool in accordance with subsections (4)(b), (5) and (6), and

(c) the company's post-commencement additional supplement allowed under this Chapter, allocated to the pool in accordance with subsection (4)(c).

(4) The allocation to the pool is made as follows—

(a) the amount of an onshore ring fence loss is added to the pool in the period of the loss,

(b) if any post-commencement supplement is allowed on a claim under Chapter 5 in respect of a post-commencement period, the appropriate proportion of the amount of that supplement is added to the pool in that period,

(c) if any post-commencement additional supplement is allowed on a claim under this Chapter in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.

(5) "The appropriate proportion" is—

(a) if the ring fence trade carried on by the company includes, or has at any time included, offshore oil-related activities, such proportion of the supplement as it is just and reasonable to attribute (directly or indirectly) to the company's onshore oil-related activities carried on in the period for which the supplement is allowed or an earlier post-commencement period, and

(b) in any other case, 100%.

(6) In the case of a straddling period—

(a) the appropriate proportion of the post-commencement supplement allowed on a claim under Chapter 5 in respect of the period is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and

(b) only so much of the appropriate proportion of the supplement as is apportioned to the later period is added to the pool under subsection (4)(b).

(7) The amount in the onshore ring fence pool is subject to reductions in accordance with the following provisions of this Chapter.

(8) If a reduction in the amount in the onshore ring fence pool falls to be made in any accounting period, the reduction is made—

(a) after the addition to the pool of—

(i) the amount of any onshore ring fence losses allocated to the pool in that period in accordance with subsection (4)(a), and

(ii) any amount of post-commencement supplement under Chapter 5 claimed in respect of the period allocated to the pool in accordance with subsection (4)(b), but

(b) before determining and adding to the pool under subsection (4)(c) the amount of any post-commencement additional supplement under this Chapter, claimed in respect of the period,

and references to the amount in the pool are to be read accordingly.

329R Reductions in respect of utilised onshore ring fence losses

(1) If one or more losses incurred by a qualifying company in its ring fence trade in a post-commencement period are used under section

45 (carry forward of trade loss against subsequent trade profits) to reduce any profits of a post-commencement period, a reduction is to be made in that period in accordance with this section.

(2) To the extent that the losses used as mentioned in subsection (1) are onshore ring fence losses, the amount in the onshore ring fence pool is to be reduced (but not below nil) by setting against it a sum equal to such amount of those onshore ring fence losses as is so used.

(3) For the purposes of determining the extent to which losses used as mentioned in subsection (1) are onshore ring fence losses, relevant offshore losses are to be treated as so used in priority to onshore ring fence losses.

(4) For this purpose "relevant offshore loss" means so much (if any) of a loss used as mentioned in subsection (1) as is given by—

$$X - Y$$

where—

X is the amount of the loss so used, and

Y is so much of that loss as (ignoring section 329P(4)) is an onshore ring fence loss.

(5) But if the loss is incurred in a straddling period—

(a) the amount of the relevant offshore loss is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and

(b) only so much of the loss as is apportioned to the later part of the period is a relevant offshore loss of the company for the straddling period.

329S Reductions in respect of unrelieved group ring fence profits

(1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions are to be made in that period in accordance with this section.

(2) After making any reductions that fall to be made in accordance with section 329R, the remaining amount in the onshore ring fence pool is to be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

This is subject to subsection (4).

(3) If the post-commencement period is a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013 and ended at the same time as the straddling period.

(4) If the ring fence trade carried on by the company includes, or has at any time included, offshore oil-related activities, the sum to be set against the onshore ring fence pool under subsection (2) is first to be reduced by the notional offshore loss pool.

(5) "The notional offshore loss pool" means—

(a) the sum of the relevant offshore losses (see section 329R(4)) for the post-commencement period mentioned in subsection (1) and earlier post-commencement periods, less

(b) the sum of any amounts treated as used under section 329R(3) and any reductions previously made under subsection (2) of this section.

329T The reference amount for a post-commencement period

For the purposes of section 329O the reference amount for a post-commencement period is so much of the amount in the onshore ring fence pool as remains after making any reductions required by sections 329R and 329S."

2 In section 270 of CTA 2010 (overview of Part 8), after subsection (5) insert—

"(5A) Chapter 5A makes provision about onshore additional ring fence expenditure supplement."

3 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 5 December 2013.

EXPLANATORY NOTE

EXTENSION OF THE RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

SUMMARY

1. Clause X and Schedule Y will extend from six to ten the number of accounting periods for which a company can claim ring fence expenditure supplement (RFES) in relation to qualifying expenditure or losses from onshore oil and gas activity.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts a new chapter after Chapter 5 of Part 8 of Corporation Tax Act 2010 (CTA). New Chapter 5A contains new sections 329A to 329T.

3. New Section 329A provides an overview of the chapter.

4. Subsection (1) explains that the new provisions allow a company which has a ring fence trade to claim additional RFES for a) qualifying pre-trade expenditure, b) onshore losses, c) supplement which they have received in relation to RFES claims made under Chapter 5 CTA 2010, and d) the additional supplement claimed under new Chapter 5A, in respect of onshore oil related activities.

5. Subsection (2) refers to the interpretative provisions at new sections 329B to 329H that apply for the purposes of Chapter 5A.

6. Subsections (3) and (4) explain that provisions about pre-trade expenditure are at new Sections 329I to 329M, and those related to losses are at new Sections 329N to 329T.

7. Subsection (5) explains that a company may only make 4 claims for additional supplement.

8. Subsection (6) sets out the adjustments which need to be made to the qualifying expenditure and losses before the claim for supplement is allowed.

9. New Section 329B defines a “qualifying company”.

10. New Section 329C provides definitions for “onshore oil-related activities” and “offshore oil-related activities”.

11. New Section 329D defines key terms relating to accounting periods, by reference to whether a company commenced its ring fence trade in that accounting period (“the commencement period”), and whether, or not, a company was carrying on a ring fence trade in an accounting period that ended on or after 5 December 2013 (a “post-commencement

period" and a "pre-commencement period" respectively). It also introduces the concept of a "straddling period" as an accounting period straddling 5 December 2013.

12. New Section 329E sets the "relevant percentage" for an accounting period (that is, the rate at which supplement is payable on an amount specified under the Chapter) as 10 per cent and provides that the relevant percentage can be varied by order by the Treasury.

13. New Section 329F provides that a company may make no more than 4 claims for additional supplement, and the claims need not be consecutive, but can only be made after 6 claims allowed under Chapter 5.

14. New Section 329G subsections (1) to (5) define "qualifying pre-commencement onshore expenditure". Subsection (6) specifies that certain existing provisions in Chapter 5 for existing RFES, which contain the definition and rules for research and development expenditure that qualifies for RFES, also apply to section 329G.

15. New Section 329H provides the same definition for "unrelieved group ring fence profits" as is contained in the existing provisions in Chapter 5.

16. New Section 329I is concerned with the availability of additional supplement in respect of a pre-commencement accounting period.

17. Subsection (1) makes provision for a qualifying company to claim additional supplement for pre-commencement onshore expenditure relating to a ring fence trade.

18. Subsection (2) sets out that any additional supplement allowed on a claim made for a pre-commencement period is to be treated as expenditure incurred by the company in the commencement period and allowable as a deduction in calculating profits.

19. Subsection (3) states that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329M, in relation to the "mixed pool" as described by s329J) for that period.

20. Subsection (4) states that the reference amount for the pre-commencement period is calculated in accordance with new sections 329J to 329M.

21. Subsection (5) provides for proportional reduction of the amount of additional supplement where the pre-commencement period is shorter than 12 months.

22. Subsection (6) provides for proportional reduction of the amount of additional supplement where the pre-commencement period is a straddling period.

23. Subsection (7) provides that any claim for pre-commencement supplement must be made as a claim for the commencement period.

24. Subsection (8) specifies that existing provisions on the time limit for claims for group relief apply for claims for pre-commencement additional supplement.

25. New Section 329J makes provision for, and determination of the amount of, a mixed pool of qualifying pre-commencement onshore expenditure and supplement.

26. Subsections (1) and (2) provide that during pre-commencement periods, a company is considered to have had a continuing mixed pool comprising qualifying pre-commencement onshore expenditure, and pre-commencement supplement under new Chapter 5A and Chapter 5, as further described by new subsections (3) to (7).

27. Subsection (3) gives instructions on how to calculate the amount of qualifying pre-commencement onshore expenditure to allocate to the mixed pool for any pre-commencement period.

28. Subsections (4) and (5) provide for any pre-commencement supplement, claimed under Chapter 5, to be allocated to the mixed pool to the extent that it relates to qualifying pre-commencement onshore expenditure, based on the proportion of that supplement attributable, on a just and reasonable basis, to the company's qualifying pre-commencement onshore expenditure ('the appropriate proportion").

29. Subsection (6) concerns claims for pre-commencement supplement made under Chapter 5 in respect of pre-commencement expenditure incurred in a straddling period. In that case pre-commencement supplement claimed under Chapter 5 that is attributable to qualifying pre-commencement onshore expenditure on a just and reasonable basis is to be allocated to the mixed pool, according to the proportion of that expenditure incurred on or after 5 December 2013.

30. Subsection (7) provides for any pre-commencement additional supplement, claimed under Chapter 5A, to be allocated to the mixed pool.

31. New Section 329K provides for reductions to the mixed pool in respect of disposal receipts for expenditure for which allowance would be given under the Capital Allowances Act 2001.

32. New Section 329L provides for reduction to the mixed pool in respect of unrelieved group ring fence profits.

33. Subsection (2) provides for reductions to be made firstly under Section 329K (disposal receipts) before reducing the net onshore expenditure by a sum equal to the unrelieved group ring fence profits.

34. Subsection (3) provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013.

35. Subsections (4) and (5) provide that, in the case where a company carries on both onshore and offshore oil related activities in the pre-commencement period, unrelieved group ring fence profits should be set against "net offshore expenditure" first.

36. Subsection (6) gives instructions for calculating the "net offshore expenditure" of the company for that period.

37. Subsection (7) defines "pre-commencement offshore expenditure".

38. Subsections (8) and (9) provide that where there are disposal receipts relating to expenditure for which allowance would be given under the Capital Allowances Act 2001, representing pre-commencement expenditure used for offshore activities, the amount of pre-commencement offshore expenditure should be reduced by those disposal receipts. It should be set against expenditure incurred in the most recent periods first.

39. Subsections (10) and (11) provide for, in the case of a "mixed-activities asset", only the proportion which is just and reasonable having regard to that expenditure is to be brought to account.

40. New Section 329M defines the reference amount (on which the rate of additional supplement will be calculated under s329I(3)) for a pre-commencement period.

41. New Section 329N is concerned with the availability of additional supplement in respect of a post-commencement period.

42. Subsection (1) provides for a qualifying company to claim additional supplement where it incurs a loss in respect of its onshore ring fence trade in a post-commencement period.

43. Subsection (2) provides that post-commencement additional supplement should be treated as a loss incurred in carrying out the ring fence trade.

44. Subsection (3) specifies that existing provisions on the time limit for claims for group relief apply for claims for post-commencement additional supplement.

45. New Section 329O makes provision for the calculation of the amount of post-commencement additional supplement for a post-commencement period.

46. Subsection (1) provides that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329T in relation to the "onshore ring fence pool" as described by s329Q) for that period.

47. Subsection (2) states that the reference amount for the post-commencement period is to be calculated in accordance with new sections 329P to 329T.

48. Subsection (3) provides for proportional reduction of the amount of additional supplement where the post-commencement period is shorter than 12 months.

49. Subsection (4) provides for further proportional reduction of the amount of additional supplement where the post-commencement period is a straddling period.

50. New Section 329P makes provision for the determination of onshore ring fence losses.

51. Subsection (1) provides that if in a post-commencement period, a company's ring fence trade consists solely of onshore oil-related activities, then so much of the loss incurred as is available to be carried forward under section 45 is the "onshore ring fence loss" of the company.

52. Subsections (2) and (3) provide that where a company incurs a loss and carries on both onshore and offshore activities as part of a ring fence trade in a post-commencement period, only the proportion of that loss that is, on a just and reasonable basis, attributable to the company's onshore oil-related activities in that trade ("the appropriate proportion") is the "onshore ring fence loss" of that company.

53. Subsection (4) provides that in the case of a straddling period, a company's onshore ring fence losses are the portion that, if the whole amount is apportioned according to the number of days falling before, and on and after, 5 December 2013, is apportioned to the later period.

54. Subsections (5) to (7) set out the assumptions to be used in calculating how much of the loss falls to be used under section 45 CTA 2010 for the purposes of sub-section (1)(b) and (2)(b). That is, every claim that could be made under section 37 CTA10 is made, and that section 42 CTA10 applies.

55. New Section 329Q makes provision for, and determination of the amount of the onshore ring fence pool.

56. Subsections (1) to (3) makes provision that during post-commencement periods, a company is considered to have a continuing mixed pool comprising the company's onshore ring fence loses, post-commencement supplement under Chapter 5 and post-commencement additional supplement under Chapter 5A, as further described by new subsections (4) to (8).

57. Subsection (4) sets out how allocations are to be made to the onshore ring fence pool in respect of a) onshore ring fence loss in the period of the loss, b) the "appropriate proportion" of post-commencement supplement allowed under a claim under Chapter 5, and c) any post commencement additional supplement claimed under Chapter 5A.

58. Subsection (5) provides that the "appropriate proportion" of Chapter 5 post-commencement supplement is either 100% of that amount, or, where the company has at any time carried on offshore oil related activities, the proportion attributable, on a just and reasonable basis, to the company's onshore oil related activities in the period of Chapter 5 claim.

59. Subsection (6) concerns claims for post-commencement supplement made under Chapter 5 in respect of losses incurred in a straddling period. In that case the "appropriate proportion" of Chapter 5 post-commencement supplement under new subsections (4) and (5) is proportionately divided between the number of days falling before, and on and after, 5 December 2013, and only the amount apportioned to the later period is added to the onshore pool.

60. Subsections (7) and (8) make provision for the order of making additions to the pool (as provided by section 329Q(4) to (6)) and reductions to it (as provided by sections 329R and 329S).

61. New Section 329R provides for reductions to the onshore ring fence pool to be made in respect of utilised onshore ring fence losses.

62. Subsection (1) provides that losses used under section 45, a reduction is to be made in that period.

63. Subsection (2) provides that the onshore ring fence pool is to be reduced by the amount of losses carried forward under s45 that are onshore ring fence losses.

64. Subsection (3) provides that, in the case where a company carries on both onshore and offshore oil related activities in the post-commencement period, the company's offshore losses are to be used in priority to onshore ring fence losses.

65. Subsection (4) defines "relevant offshore loss".

66. Subsection (5) provides that where the loss is incurred in a straddling period, the amount of the relevant offshore loss is proportionately apportioned to the period falling on or after 5 December 2013.

67. New Section 329S Subsections (1) and (2) provide that the onshore ring fence pool is to be reduced by amounts of unrelieved group ring fence profits, after any reductions to be made for utilised onshore ring fence losses under section 329R.

68. Subsection 3 provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013.

69. Subsection 4 provides that, in the case where a company has at any time carried on offshore oil related activities, the sum to be set against the onshore ring fence pool is reduced by the "notional offshore loss pool".

70. Subsection (5) defines the "notional offshore loss pool".

71. New Section 329T defines the reference amount (on which the rate of additional supplement will be calculated under s329O(1))for a post-commencement period.

72. Paragraph 2 inserts a new subsection after subsection (5) in section 270 of CTA 2010 to make provisions for the new Chapter 5A.

73. Paragraph 3 states that the amendments made by the Schedules have effect on or after 5 December 2013.

BACKGROUND NOTE

74. In addition to corporation tax (CT), oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. For the oil and gas industry, CT is set at 30 per cent for profits of more than £1.5m and 19 per cent (the small profits rate) for profits of more than £300k. The SC is set at 32 per cent.

75. Companies are allowed to set qualifying expenditure against profits for CT purposes. For companies engaged in a trade where it may take some years to show a profit, the value of the expenditure will be reduced by the time they come to be utilised.

76. The oil and gas trade is subject to high start-up costs and a relatively lengthy period of likely unprofitability. RFES currently allows companies inside the oil and gas ring fence to uplift their ring fence losses or, in the period before they are trading, their "qualifying pre-commencement expenditure", by 10 per cent for up to 6 accounting periods to maintain their time value until they can be offset against future profits.

77. The early development of projects for shale gas and other onshore hydrocarbons is expected to have longer payback periods than offshore hydrocarbon projects and to be dominated by companies which do not have existing ring fence profits against which to set their expenditure. Extending the number of accounting periods for which these companies can claim RFES allows them to maintain the value of their expenditure for longer to recognise the extended period before they are able to utilise those amounts.

If you have any questions about this change, or comments on the legislation, please contact Nicola Garrod on 03000 589251 (email: nicola.garrod@hmrc.gsi.gov.uk).

1 Substantial shareholder exemption: oil and gas

(1) In Schedule 7AC to TCGA 1992 (exemption for disposals by companies with substantial shareholding), in paragraph 15A (effect of transfer of trading assets within a group), after sub-paragraph (2) insert—

"(2A) For the purposes of sub-paragraph (2)(b) and (d), "trade" includes oil and gas exploration and appraisal."

(2) The amendment made by this section has effect in relation to disposals on or after the day on which this Act is passed.

EXPLANATORY NOTE

SUBSTANTIAL SHAREHOLDER EXEMPTION: OIL AND GAS

SUMMARY

1. Clause [X] amends Schedule 7AC of the Taxation of Chargeable Gains Act 1992 (TCGA) to extend the scope of the substantial shareholding exemption. A company disposing of a substantial shareholding in a subsidiary will be treated as having owned that shareholding for twelve months prior to disposal (a condition of the exemption), where the subsidiary is using assets for oil and gas exploration and appraisal activity that have been transferred from other group companies.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts new subparagraph (2A) into paragraph 15A Schedule 7AC of the TCGA 1992 and provides that the amendments will take effect for disposals made on or after Royal Assent to Finance Act 2014.

3. New subparagraph (2A) amends the definition of "trade" at subparagraphs (2)(b) and (2)(d) of paragraph 15A to include oil and gas exploration and appraisal. "Oil and gas exploration and appraisal" is defined at section 1134 Corporation Tax Act 2010.

BACKGROUND NOTE

4. The substantial shareholding exemption provides that where a company disposes of shares or an interest in shares that it holds in a second company, the gain is not a chargeable gain, and a loss is not allowable, if certain conditions are met. Those conditions include the substantial shareholding requirement, as set out in paragraph 7 of the Schedule. This requires that, in the period starting two years before the disposal, there is a continuous period of 12 months when the shareholding company holds a "substantial shareholding" in the company whose shares it then disposes of.

5. At paragraph 15A of the Schedule, the rules also provide that as long as the shareholding company holds a substantial shareholding immediately before the disposal, in certain circumstances the company does not need to have held it for a 12 month period within the previous two years. The circumstances concerned are where there has been an earlier transfer of assets used in a trade between members of the same group.

6. If, at the time of the disposal, the company whose shares are being disposed of is using an asset which was transferred to it from another company within the same group of companies, and both companies were using the asset for the purposes of their trades, the period during which the shareholding company is treated as having a substantial shareholding

is extended to include the earlier period when the asset was used by the other company in the capital gains group for the purposes of its trade. This can enable the shareholding company to meet the 12 month requirement at paragraph 7 of the Schedule, even where the disposal is of shares in a company that is newly incorporated, provided that all other requirements for the exemption are met.

7. The substantial shareholding exemption allows companies flexibility in restructuring their business by removing potential tax barriers to that flexibility. This amendment will ensure that the structure of the oil and gas fiscal regime does not prevent E&A companies from benefiting from the amendments made to SSE in Finance Act 2011. It will remove a barrier to the transfer of companies from a group undertaking E&A activity in the oil and gas sector to another group in that sector.

8. If you have any questions about this change, or comments on the legislation, please contact Natalie Reeder on 03000 586574 (email: natalie.reeder@hmrc.gsi.gov.uk).

1 Oil and gas exploration and appraisal: pre-trading reinvestment

(1) In Chapter 2 of Part 6 of TCGA 1992 (oil and mineral industries), after section 198I insert—

"198J Oil and gas exploration and appraisal: pre-trading reinvestment

(1) This section applies if a company which is an E&A company makes a disposal of, or of the company's interest in, relevant E&A assets and that disposal is—

(a) a disposal of, or of an interest in, a UK licence which relates to an undeveloped area, or

(b) a disposal of an asset used in an area covered by a licence under Part 1 of the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964 which authorises the company to undertake E&A activities.

(2) If—

(a) the consideration which the company obtains for the disposal is applied by it, within the permitted reinvestment period, on E&A expenditure at a time when the company is an E&A company, and

(b) the company makes a claim under this subsection in relation to the disposal,

any gain accruing to the company on the disposal is not a chargeable gain.

(3) If part only of the amount or value of the consideration for the disposal is applied as described in subsection (2)(a)—

(a) subsection (2) does not apply, but

(b) subsection (4) applies if all the amount or value of the consideration is so applied except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal.

(4) If the company makes a claim under this subsection in relation to the disposal, the company is to be treated for the purposes of this Act as if the amount of the gain accruing on the disposal were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain).

(5) The incurring of expenditure is within "the permitted reinvestment period" if the expenditure is incurred in the period beginning 12 months before and ending 3 years after the disposal, or at such earlier or later time as the Commissioners for Her Majesty's Revenue and Customs may by notice allow.

(6) Subsections (6), (7), (10) and (11) of section 152 apply for the purposes of this section as they apply for the purposes of section 152, except that—

(a) in subsection (6) the reference to a trade is to be read as a reference to E&A activities, and

(b) in subsection (7) the references to the trade are to be read as references to the E&A activities.

(7) In this section—

"E&A activities" means oil and gas exploration and appraisal in the United Kingdom or an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964;

"E&A company" means a company which carries on E&A activities and does not carry on a ring fence trade (within the meaning of section 277 of CTA 2010);

"E&A expenditure" means expenditure on E&A activities which is treated as such under generally accepted accounting practice;

"relevant E&A assets" means assets which—

(a) are used, and used only, for the purposes of E&A activities carried on by the company throughout the period of ownership, and

(b) are within the classes of assets listed in section 155 (with references to "the trade" in that section being read as references to the E&A activities);

"UK licence" means a licence within the meaning of Part 1 of the Oil Taxation Act 1975;

and a reference to a UK licence which relates to an undeveloped area has the same meaning as in section 194 (see section 196).

198K Provisional application of section 198J

(1) This section applies where a company which is an E&A company for a consideration disposes of, or of an interest in, any assets and declares, in the company's return for the chargeable period in which the disposal takes place—

(a) that the whole or any specified part of the consideration will be applied, within the permitted reinvestment period, on E&A expenditure, and

(b) that the company intends to make a claim under section 198J(2) or (4) in relation to the disposal.

(2) Until the declaration ceases to have effect, section 198J applies as if the expenditure had been incurred and the person had made a claim under that section.

(3) The declaration ceases to have effect as follows—

(a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim under section 198J, on the day on which it is so withdrawn or superseded, and

(b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.

(4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—

(a) are to be made by making or amending assessments or by repayment or discharge of tax, and

(b) are to be so made despite any limitation on the time within which assessments or amendments may be made.

(5) In this section "the relevant day" means the fourth anniversary of the last day of the accounting period in which the disposal took place.

(6) For the purposes of this section—

(a) sections (6), (10) and (11) of section 152 apply as they apply for the purposes of that section, except that in subsection (6) the reference to a trade is to be read as a reference to E&A activities, and

(b) terms used in this section which are defined in section 198J have the meaning given by that section.

198L Expenditure by member of same group

(1) Section 198J applies where—

(a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies (within the meaning of section 170),

(b) the E&A expenditure is by another company which, at the time the expenditure is incurred, is a member of the same group,

(c) that other company is an E&A company, and

(d) the claim under that section is made by both companies,

as if both companies were the same person.

(2) "E&A company" and "E&A expenditure" have the meaning given by section 198J."

(2) The amendment made by this section has effect in relation to disposals made on or after the day on which this Act is passed.

EXPLANATORY NOTE

OIL AND GAS EXPLORATION AND APPRAISAL: PRE-TRADING REINVESTMENT

SUMMARY

1. Clause [X] makes provision for relief from corporation tax on chargeable gains where a company disposes of certain assets that were used by it for the purpose of oil and gas exploration and appraisal (E&A) activities. The relief applies where the proceeds are then reinvested in E&A activities.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts new sections 198J-198L after section 198I of Chapter 2 of Part 6 of Taxation of Chargeable Gains Act 1992 (TCGA).

3. Subsection (2) provides that the provisions inserted by paragraph (1) are to have effect in relation to disposals made on or after Royal Assent to Finance Act 2014.

New section 198J

4. Subsection (1) specifies the assets whose disposal may benefit from the relief. To qualify for the relief, the company making the disposal must be an "E&A company" disposing of "relevant E&A assets", as those terms are defined in subsection (7). Additionally, the assets disposed of must either be used by the company in an area in which it is licensed to carry out E&A activities (also defined in subsection (7)), or be a licence (or licence interest) relating to an undeveloped area.

5. An "E&A company" is a company engaged in E&A activities outside the oil and gas ring fence (see s277 Corporation Tax Act 2010). The definition of "E&A activities" refers to UK or UK continental shelf "oil and gas exploration and appraisal", that term being defined at section 1134 Corporation Tax Act 2010. "Relevant E&A assets" are defined in subsection (7) as assets used solely by the company for E&A activities that are within a class of assets listed in section 155 TCGA 1992.

6. Subsection (2) sets out that the relief will be available only if the disposal proceeds are reinvested on "E&A expenditure" (defined in subsection (7) as expenditure on E&A activities treated as such under generally accepted accounting practice) whilst the company is an E&A company, within the "permitted reinvestment period" as defined in subsection (5); and sets out that the effect of making a claim for relief is that the gain on the disposal will not be chargeable.

7. Subsections (3) and (4) provide that partial relief is available where only part of the proceeds of the disposal has been reinvested as required by subsection (1).

8. Subsection (5) defines "the permitted reinvestment period".

9. Subsection (6) specifies that certain existing provisions under roll-over relief for capital gains, modified as necessary, are to be used for the purpose of apportioning consideration, and so calculating the disposal proceeds that may benefit from the relief, where the assets disposed of have not been used only for E&A activities.

10. Subsection (7) defines key terms used in new sections 198J-198L.

New section 198K

11. Subsections (1) and (2) allow the relief at 198J(2) and (4) to be applied provisionally.

12. Subsections (3) and (5) specify the conditions in which any provisional relief ceases to apply, and subsection (4) specifies the tax adjustments to be made in that event.

13. Subsection (6) replicates as necessary new 198J(6) (apportioning consideration and calculating disposal proceeds where asset disposed of was not used only for E&A activities) for the purposes of provisional application of the relief, and adopts the definitions in new s198J(7).

Section 198L

14. New section 198L allows the disposal and expenditure to be made by different E&A companies within the same capital gains group.

BACKGROUND NOTE

15. Companies are subject to corporation tax (CT) on chargeable gains that arise when they dispose of assets. When the proceeds of a disposal of an asset used for the purposes of a trade are invested in new assets, which are also used only for the purpose of the trade, within certain time limits, sections 152 and 154 TCGA 1992 provide that the chargeable gain is not charged to tax immediately but instead is deducted from the allowable cost of the new assets or, in certain circumstances, is deferred until the sale of the replacement business assets (roll-over relief).

16. For companies with ring fence oil and gas trades, reinvestment relief was introduced as one of a number of measures in Finance Act 2009. Reinvestment relief provides that, in circumstances where disposal proceeds are reinvested in new oil trade assets, and the disposal and acquisition qualify for roll-over relief, chargeable gains will not arise (rather than, as under roll-over relief, being deferred until the sale of the replacement assets).

17. Companies carrying on oil and gas exploration and appraisal activity who have not commenced trading are not eligible for existing reinvestment relief due to the trading requirement for roll-over relief. The new exemption will allow these companies to make

disposals and reinvestments without a chargeable gain arising. This will provide an equivalent to the exemption given by existing reinvestment relief for companies carrying on exploration and appraisal activities who have commenced a trade.

18. If you have any questions about this change, or comments on the legislation, please contact Natalie Reeder on 03000 586574 (email: natalie.reeder@hmrc.gsi.gov.uk).

1 Film tax relief

(1) Chapter 3 of Part 15 of CTA 2009 (film tax relief) is amended as follows.

(2) In section 1198 (UK expenditure), in subsection (1), for "25%" substitute "10%".

(3) In section 1202 (surrendering of loss and amount of film tax credit), for subsections (2) and (3) substitute—

"(2) If the company surrenders the whole or part of that loss, the amount of the film tax credit to which it is entitled for the accounting period is the sum of—

(a) 25% of so much of the loss surrendered as does not exceed the unused 25% band, and

(b) 20% of the remainder of that loss (if any).

(3) "The unused 25% band" means £20 million reduced (but not below zero) by the total amount previously surrendered under subsection (1) (if any)."

(4) The amendments made by this section have effect in relation to films the principal photography of which is not completed before such day as the Treasury may specify by order for the purposes of this section.

(5) The specified day may be before the day on which the order is made, but may not be before 1 April 2014.

(6) The Treasury may by order amend sections 1198(1) and 1202(2) and (3) of CTA 2009 (as amended and inserted by this section) in connection with an application for State aid approval.

(7) In this section "State aid approval" means approval that the provision made by this section, to the extent that it constitutes the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies, is, or would be, compatible with the internal market, within the meaning of Article 107 of that Treaty.

(8) An order under subsection (6) may—

(a) make incidental, supplemental, consequential, transitional or saving provision;

(b) contain provision having effect in relation to films mentioned in subsection (4).

EXPLANATORY NOTE

FILM TAX RELIEF

SUMMARY

1. Clause X introduces changes to the film tax relief. There will be two bands of surrenderable loss, each attracting a different rate of payable tax credit (instead of the rate being determined by whether a film is a limited budget film). The minimum UK spending requirement is also to be changed.

DETAILS OF THE CLAUSE

2. Chapter 3 of Part 15 of Corporation Tax Act 2009 ('CTA') is to be amended as follows, in relation to films whose principal photography is uncompleted before the commencement date of the clause (see subsections (1) and (6)).

3. Subsection (2) provides that UK expenditure requirement at section 1198(1) CTA (minimum UK core expenditure) is reduced from 25 per cent to 10 per cent. UK qualifying production expenditure is that expenditure incurred on filming activities (pre-production, principle photography and post production) which take place within the UK.

4. Section 1202 is amended so that relief on the surrenderable loss is available for at a rate of 25 per cent up to the first £20 million of each production's UK core production expenditure (to a maximum of 80 per cent of the UK core production expenditure) and 20 per cent thereafter (to a maximum of 80 per cent of the UK core production expenditure), for all productions. Previously the rate of 25 per cent only applied to limited budget films i.e. those with qualifying core expenditure up to £20 million.

5. Subsections (6) to (8) also make provision for the amendments to be commenced by Treasury Order. Since commencement is subject to State aid approval from the European Commission, provision is also made for the amended sections to be further amended by secondary legislation in connection with the terms of approval.

BACKGROUND NOTE

6. As announced in Budget 2013 and following consultation over the summer, legislation will be introduced to amend the film tax relief in Finance Bill 2014.

7. Subject to State aid approval, from 1 April 2014 film tax relief will be available for surrenderable losses at a rate of 25 per cent up to the first £20 million of each production's UK core production expenditure (to a maximum of 80 per cent of UK core production expenditure) and 20 per cent thereafter (to a maximum of 80 per cent of the UK core

production expenditure), for all productions. Previously the rate of 25 per cent only applied to limited budget films i.e. those with UK core production expenditure up to £20 million.

8. The minimum UK spending requirement will also change from 25 per cent to 10 per cent. The new rules will not apply to films that complete principal photography before a date to be specified by Treasury Order. A response to the consultation was published on 10 December 2013.

9. If you have any questions about this change, or comments on the legislation, please contact Kerry Pope on 03000 585740 (email: kerry.pope@hmrc.gsi.gov.uk) or Des Ryan on 03000 585895 (email: des.ryan@hmrc.gsi.gov.uk).

1 Tax treatment of financing costs and income

(1) Chapter 10 of Part 7 of TIOPA 2010 (tax treatment of financing costs and income: interpretation) is amended as follows.

(2) In section 345 (meaning of "UK group company" and "relevant group company"), for subsection (7) substitute—

"(7) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) and Chapter 3 of Part 24 of that Act (subsidiaries) apply for the purposes of subsection (6), subject to subsections (8) and (9).

(8) Sections 169 to 182 of CTA 2010 do not apply.

(9) In applying the remaining provisions of those Chapters for the purposes of subsection (6), they are to be read with all modifications necessary to ensure that—

(a) they apply to a company or other body corporate which does not have share capital, and to holders of corresponding ordinary holdings in such a company or body, in a way which corresponds to the way they apply to companies with ordinary share capital and holders of ordinary shares in such companies,

(b) they apply in relation to ownership through an entity (other than a body corporate), or any trust or other arrangement, in a way which corresponds to the way they apply to ownership through a company or other body corporate, and

(c) for the purposes of achieving paragraphs (a) and (b), profits or assets are attributed to holders of corresponding ordinary holdings in entities, trusts or other arrangements in a manner which corresponds to the way profits or assets are attributed to holders of ordinary shares in a company.

(10) In this section "corresponding ordinary holding" in an entity, trust or other arrangement means a holding or interest which provides the holder with economic rights corresponding to those provided by a holding of ordinary shares in a company."

(3) In section 353A (effect of Part 7 on parties to capital market arrangements), in subsection (4), before paragraph (a) insert—

"(za) the conditions that must be met in relation to company A for an election to be made;".

(4) The amendment made by subsection (2) has effect in relation to periods of account of the worldwide group starting on or after 5 December 2013.

EXPLANATORY NOTE

TAX TREATMENT OF FINANCING COSTS AND INCOME

SUMMARY

1. Clause [X] makes amendments to the "worldwide debt cap" (WWDC) legislation which places certain limitations on the deductibility of interest and similar expenses in computing corporation tax where the combined funding expenses of the UK members of a group exceed the funding expenses of the group as a whole. The changes clarify the position in cases where a group includes entities that do not have ordinary share capital. The measure also makes a minor change to the power to make regulations relevant to the potential impact of the provisions on whole business securitisations.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that Chapter 10 of Part 7 of the Taxation (International and Other Provisions) Act 2010 (TIOPA) is amended.

3. Subsection (2) amends subsection 345(7) TIOPA and inserts new subsections 345(8) to 345(10).

4. Amended subsection 345(7) TIOPA allows the meaning of 75per cent subsidiary in subsection 345(6)(a) for the purposes of the WWDC to be determined by reference to the definitions in Chapter 3 of Part 24 of the Corporation Tax Act 2010 (CTA 2010). It also allows for the provisions of Chapter 6 of Part 5 of CTA 2010 to be applied in determining the extent to which the ultimate parent is beneficially entitled to the profits or assets of a UK group company for the purposes of subsections 345(6)(b) or (c). In each case this is subject to the modifications set out in new subsections 345(8) and 345(9). These modifications are designed to have the following overall effects.

5. The definition of a 75 per cent subsidiary is widened, in its application to the WWDC legislation, such that a company without share capital can be a 75per cent subsidiary of the ultimate parent. Also, in dealing with indirect subsidiaries, ownership can be traced through entities that do not have share capital.

6. A UK group company can be a relevant group company, even if it is not a 75per cent subsidiary, where the ultimate parent is beneficially entitled to 75per cent of the profits available for distribution by the company or 75per cent of the net assets available for distribution in a winding up.

7. These changes put it beyond doubt that the ultimate parent's beneficial entitlement to profits or assets can be traced through any intermediate company, entity, trust or arrangement.

8. In particular, new subsection 345(8) TIOPA provides that sections 169 to 182 of CTA 2010 do not apply for the purposes of the WWDC legislation. These provisions, which are primarily designed to ensure that 75per cent subsidiaries with shares carrying variable or complex rights are not artificially included in a group relief group, are not required in the context of the WWDC.

9. One consequence of new subsection 345(9)(a) is that it ensures that a UK group company that does not have ordinary share capital, such as a company limited by guarantee, is capable of being a relevant group company. It introduces the term "corresponding ordinary holding", defined in new subsection 345(10).

10. New subsection 345(9)(b) makes it clear that, in applying the rules in Chapter 6 of Part 5 or Chapter 3 of Part 24 of CTA 2010, ownership or beneficial entitlement to distributable profits can be traced through entities that do not have ordinary share capital in the same way as they might be traced through companies with ordinary share capital.

11. New subsection 345(9)(b) provides that, when ownership or beneficial entitlement is traced in this way, the holders of a "corresponding ordinary holding" (see below) are treated in the same way as holders of ordinary shares. Accordingly, the corporation tax rules which determine the profits and assets of a company available for distribution, and the rules on indirect ownership of shares apply to "corresponding ordinary holdings" in the same manner as they do to holdings of ordinary shares.

12. New subsection 345(10) defines a "corresponding ordinary holding". The key feature of such a holding is that it conveys economic rights corresponding to those conveyed by a holding of ordinary shares, without regard to the legal form of the holding or any instruments that might comprise that holding. For example, a foreign partnership may have different classes of interests: preferred interests that convey rights to only a fixed amount of profit or percentage return on capital and residual interests that convey the rights to a share of the residual profit or surpluses on asset disposals. A holding of residual interests would be considered to be a corresponding ordinary holding, whereas a holding of preferred interests would not.

13. Subsection (3) amends section 353A(4) TIOPA to the effect that regulations made under the section may require company A, a party to a capital market arrangement, to meet certain conditions (such as being required to provide security over its assets) before it is permitted to make an election under regulations made under section 353A.

BACKGROUND NOTE

14. Finance Act 2009 introduced a package of changes to the taxation of companies on their foreign profits. One of these measures limits 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, and is commonly referred to as the worldwide debt cap (WWDC).

15. The rules broadly operate by requiring UK groups to compare their UK financing costs, as calculated under the rules, 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.

16. The WWDC applies to companies that are "relevant group companies" in a "worldwide group". The worldwide group is defined by reference to a group for the purposes of international financial reporting standards. A relevant group company is, broadly, a subsidiary within that group within the charge to UK corporation tax, which is a 75per cent subsidiary of the ultimate parent. This includes the case where the parent has a beneficial entitlement to 75per cent of the profits of that company, or 75per cent of the assets of that company that are available in a winding up.

17. The amendments clarify how the group relief rules are to apply, for the purposes of the WWDC, in the context of a multinational group that may have a complex structure and include a wide range of entities, including companies that do not have ordinary share capital and entities that are not bodies corporate. Such entities may, for example, include a company limited by guarantee. They also ensure that indirect ownership of a company can be traced through intermediate entities without ordinary share capital, and put it beyond doubt that the ultimate parent of a worldwide group may be beneficially entitled to 75per cent of the profits or assets of a UK group company notwithstanding any intermediate entities in the ownership chain that do not have ordinary share capital.

18. At the same time a minor change is made to the regulation making powers relating to the WWDC, to facilitate the making of regulations to enable companies involved in whole business securitisations to remain bankruptcy remote.

19. If you have any questions about this change, or comments on the legislation, please contact Roger Muray on 03000 585376 (email: roger.muray@hmrc.gsi.gov.uk) or Judith Diamond on. 03000 585712 (email: judith.diamond@hmrc.gsi.gov.uk).

1 Changes in company ownership

(1) Part 14 of CTA 2010 (change in company ownership) is amended as follows.

(2) In section 688 (meaning of "significant increase in the amount of a company's capital"), in subsection (2), for paragraph (b) and the "or" before it substitute ", and

(b) is at least 125% of amount A."

(3) In section 723 (changes in indirect ownership), in subsection (1), after "section 724" insert "or 724A".

(4) After section 724 insert—

"724A Disregard of change in parent company

(1) Where a new company ("N") acquires all the issued share capital of another company ("C"), the resulting ownership change is disregarded for the purposes of Chapters 2 to 6 if, immediately after that acquisition ("the acquisition"), N—

(a) possesses all of the voting power in C,

(b) is beneficially entitled to 100% of any profits available for distribution to equity holders of C,

(c) would be beneficially entitled to 100% of any assets of C available for distribution to its equity holders in the event of a winding up of C or in any other circumstances, and

(d) meets the continuity requirements.

(2) "The resulting ownership change" means the change in the ownership of C by reason of Condition A in section 719 being met in relation to the acquisition.

(3) A company is "new" if it has not, before the acquisition—

(a) issued any shares other than subscriber shares, or

(b) begun to carry on, or make preparations for carrying on, any trade or business.

(4) N meets the continuity requirements if, and only if—

(a) the consideration for the acquisition consists only of the issue of shares in N to the shareholders of C,

(b) immediately after the acquisition, each person who immediately before the acquisition was a shareholder of C is a shareholder of N,

(c) immediately after the acquisition, the shares in N are of the same classes as were the shares in C immediately before the acquisition,

(d) immediately after the acquisition, the number of shares of any particular class in N bears to all the shares in N the same proportion as the number of shares of that class in C bore to all the shares in C immediately before the acquisition,

(e) immediately after the acquisition, the proportion of shares of any particular class in N held by any particular shareholder is the same as the proportion of shares of that class in C held by that shareholder immediately before the acquisition,

(f) each shareholder of N immediately after the acquisition has the same entitlement in respect of N's profits (in the event of a

distribution of all N's profits) as that shareholder had in relation to a distribution of C's profits immediately before the acquisition, and

(g) each shareholder of N immediately after the acquisition has the same entitlement, in the event of a winding up of N and any other circumstances, in relation to the assets of N which would then be available for distribution, as the shareholder had immediately before the acquisition in relation to the assets of C which would have been available for distribution in the event of a winding up of C and those other circumstances.

(5) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (1)(b) and (c) as it applies for the purposes of section 151(4)."

(5) In section 726 (interpretation of Chapter), after "acquisition" insert "and shareholder".

(6) The amendments made by this section have effect in relation to any change of ownership which occurs on or after 1 April 2014.

EXPLANATORY NOTE

CHANGES IN COMPANY OWNERSHIP

SUMMARY

1. Clause [X] introduces two changes to Part 14 Corporation Tax Act 2010 (CTA 2010), amending section 688 and introducing a new section (724A). The amendment to section 688 changes the definition of a significant increase in the amount of a company's capital. The new section 724A provides for the disregard of a change of ownership of a company (C) where it is acquired by a new company (N) and, broadly, the shareholders and shares of N after the acquisition are the same as shareholders and shares in C before.

DETAILS OF THE CLAUSE

2. Subsection (2) amends the definition in subsection (2) of section 688 of a significant increase in capital of a company.

3. Subsection (3) amends subsection (1) of section 723 to include a reference to section 724A.

4. Subsection (4) introduces a new section to Part 14. Section 724A disregards a change in parent company for the purposes of Chapters 2 to 6 of Part 14 if the conditions in subsections (1) to (5) of 724A are met.

5. Subsection (5) includes a reference to a shareholder in section 726 (interpretation of Chapter).

6. Subsection 724A(1) provides that a change of ownership of a company (C) is disregarded where a new company (N) acquires all the issued shares of C. The subsection provides for particular conditions in relation to the acquisition of C by N which must be met for the section to apply. These include conditions relating to the voting power of C as well as entitlement to profits and assets of C available for distribution to equity holders. It also provides that the 'continuity requirements' must be met.

7. Subsection 724A(2) defines "the resulting ownership change".

8. Subsection 724A(3) defines a "new" company.

9. Subsection 724A(4) sets out the continuity requirements which are, broadly, concerned that the acquisition of C by N has been by way of a share for share exchange. The first requirement, in subsection (4)(a), is that the consideration for the acquisition consists only of the issue of shares in N to the shareholders of C. The remaining requirements ((4)(b) to (g)) set out various tests requiring a comparison between shareholders in C immediately

before the acquisition with N immediately after. These requirements include tests relating to the shareholders, the classes of shares, the proportion of shares held in each class, the proportion of shares of each class held by each shareholder, and the entitlement of each shareholder in respect of distributions of profits or assets on a winding up.

10. Subsection 724A(5) ensures that Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (1)(b) and (c).

BACKGROUND NOTE

11. These changes have been introduced to bring the change in company ownership rules in Part 14 CTA 2010 in line with modern commercial practice.

12. The threshold for a significant increase in capital for companies with investment business has remained unchanged since 1995. The measure relaxes the threshold limit to reflect the general increase in investment business capital levels since that time.

13. There is also a new disregard from section 719, specifically allowing new holding companies to be inserted at the top of a group without triggering a change of ownership for the purposes of Chapters 2 to 6 of Part 14. There is an existing disregard at section 724 but it only covers the event of an insertion below the group parent.

14. If you have any questions about this change, or comments on the legislation, please contact Julian Ainley on 07833 480776 (email: julian.ainley@hmrc.gsi.gov.uk).

1 Controlled foreign companies: qualifying loan relationships (1)

(1) In Chapter 9 of Part 9A of TIOPA 2010 (controlled foreign companies: qualifying loan relationships) in section 371IH (exclusions from definition of "qualifying loan relationship") after subsection (9) insert—

"(9A) Subsection (9B) applies to a creditor relationship of a CFC if—

(a) a UK connected company has a creditor relationship ("the UK creditor relationship") in relation to which a non-UK resident company connected with the UK connected company is the debtor,

(b) directly or indirectly in connection with the UK creditor relationship, an arrangement ("the relevant arrangement") is made, and

(c) the main purpose, or one of the main purposes, of the relevant arrangement is to secure that—

(i) the relevant UK credits of a UK connected company for a corporation tax accounting period of the company are lower than they would be if the relevant arrangement had not been made, or

(ii) the relevant UK debits of a UK connected company for a corporation tax accounting period of the company are greater than they would be if the relevant arrangement had not been made.

(9B) The CFC's creditor relationship cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, the relevant arrangement.

(9C) In subsection (9A)—

"corporation tax accounting period" means an accounting period for corporation tax purposes,

"relevant UK credits", in relation to a UK connected company, means credits which the company has under Part 5 or 7 of CTA 2009,

"relevant UK debits", in relation to a UK connected company, means debits which the company has under Part 5 or 7 of CTA 2009, and

"UK connected company" means a UK resident company which—

(a) is connected with the CFC, or

(b) was connected with a company with which the CFC is connected."

(2) The amendment made by this section has effect for cases in which the relevant arrangement is made on or after 5 December 2013.

2 Controlled foreign companies: qualifying loan relationships (2)

(1) In Chapter 9 of Part 9A of TIOPA 2010 (controlled foreign companies: qualifying loan relationships) in section 371IH (exclusions from definition of "qualifying loan relationship") in subsection (10)(c) for "wholly or mainly used" substitute "used to any extent (other than a negligible one)".

(2) The amendment made by this section has effect for accounting periods of CFCs beginning on or after 5 December 2013.

(3) The following subsections apply in relation to a qualifying loan relationship of a CFC if—

(a) profits of the qualifying loan relationship ("the relevant profits") would, apart from those subsections, be included in the CFC's qualifying loan relationship profits for an accounting period of the CFC ("the straddling period") which begins before 5 December 2013 but ends on or after that date, and

(b) the creditor relationship in question would not be a qualifying loan relationship for the straddling period were the amendment made by this section to have effect for accounting periods of CFCs beginning before 5 December 2013.

(4) Apportion the relevant profits between the part of the straddling period falling before 5 December 2013 and the part falling on or after that date—

(a) in accordance with section 1172 of CTA 2010 (time basis), or

(b) if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

(5) The relevant profits are to be excluded from the CFC's qualifying loan relationship profits for the straddling period so far as they are apportioned to the part of the straddling period falling on or after 5 December 2013.

EXPLANATORY NOTE

CONTROLLED FOREIGN COMPANIES: QUALIFYING LOAN RELATIONSHIPS

SUMMARY

1. Clause [X} introduces two amendments to the Controlled Foreign Companies (CFC) regime at Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA). Both amendments are to Chapter 9 of Part 9A.

2. The first amendment prevents a CFC's non-trading finance profits benefiting from the partial or full exemption under Chapter 9 if they are connected with an arrangement that has a main purpose of artificially diverting into a CFC non-trading finance profits that are currently received by a UK resident company.

3. The second amendment closes a loophole in an existing rule under Chapter 9 that prevents a creditor relationship of a CFC benefitting from partial or full exemption when third party debt of a non-UK resident group company is repaid and effectively replaced with new UK debt.

4. The amendments will have effect from 5 December 2013.

DETAILS OF THE CLAUSE

5. Clause [X] contains amendments to Part 9A TIOPA.

Part 1

6. Subsection 1 inserts new section 371IH(9A), (9B) and (9C) into section 371IH of Chapter 9.

7. New section 371IH(9A) applies new section 371IH(9B) to a creditor relationship of a CFC if three conditions are met. These are that there must be a loan, made by a connected UK resident company to a connected non-UK resident company; an arrangement is made directly or indirectly in connection with this loan (the relevant arrangement); and the main purpose, or one of the main purposes, of the relevant arrangement is to achieve a reduction in relevant UK credits or increase in relevant UK debits of a UK connected company in comparison to what credits or debits would have been if the relevant arrangement had not been made.

8. New section 371IH(9B) prevents the creditor relationship of a CFC being a qualifying loan relationship under Chapter 9 if it is, or is connected (directly or indirectly) to, a relevant arrangement which falls within new sub-section (9A). The result of this is that the

profits from that creditor relationship of a CFC cannot benefit from the partial or full exemption in Chapter 9 of Part 9A TIOPA.

9. New section 371IH(9C) defines the terms used in new section 371IH(9A) as follows. A "corporation tax accounting period" is an accounting period for corporation tax purposes. "Relevant UK credits" and "relevant UK debits" are defined as the credits and debits which a UK connected company has under the rules in Parts 5 or 7 CTA 2009 (loan relationships and derivative contracts), which include credits and debits to which Part 5 applies by virtue of Part 6 CTA 2009. A "UK connected company" is a UK resident company which is either connected with the CFC, or was connected with a company with which the CFC is connected.

10. Example

A UK parent company has lent £100 million to a US subsidiary company. Interest of £5 million is received annually and subject to corporation tax as part of the profits of the UK parent company. The UK parent company enters into an arrangement in order to transfer the loan made to the US subsidiary to a new CFC in exchange for shares in the CFC. The relevant UK credits of the UK parent company are reduced as a result of the arrangement and it is established that a main purpose of the arrangement made was to achieve this reduction. The arrangement therefore falls within new section 371(IH)(9A). Accordingly, the creditor relationship of the CFC cannot be a qualifying loan relationship by virtue of new section 371(IH)(9B). The profits of £5 million arising in the CFC in respect of its creditor relationship with the US company fall within Chapter 5 CFC charge gateway for non-trading finance profits, but cannot benefit from the partial or full exemption under Chapter 9. The overall effect is that the interest that was previously subject to corporation tax becomes subject to a CFC charge so that there is no change in the amount of UK tax paid.

11. Subsection 2 provides for the commencement of the new rules, stating that new section 371IH(9A), (9B) and (9C) apply to relevant arrangements which are made on or after 5 December 2013.

Part 2

12. Subsection 1 amends section 371IH(10)(c) (exclusions from the definition of qualifying loan relationships), replacing the phrase "wholly or mainly used" with "used to any extent (other than a negligible one)". This sub-section provides that a loan cannot be a qualifying loan relationship where it is used to repay third party debt of a non-UK resident group company and that debt is effectively replaced with new UK debt, as part of an arrangement where one of the main purposes is to obtain a tax advantage for any person. The rule is directed at arrangements that give rise to an increase in debt in the UK whether provided by a UK third party or by a non-UK resident person.

13. In modifying the wording to say "…the relevant loan is *used to any extent (other than a negligible one)* to repay wholly or partly another loan…" it will apply in circumstances where there is a larger intra-group loan, so that the element that is applied to

repay the external debt of the non-UK resident group company is a minority of the total amount of the loan.

14. Subsections 2 to 5 provide for commencement. Subsection 2 states that the amendments to section 371IH(10)(c) will have effect for accounting periods of CFCs beginning on or after 5 December 2013.

15. Subsection 3 stipulates that the modified section 371IH(10)(c) will also apply to accounting periods of the CFC which begin before 5 December 2013, but end on or after that date. Such an accounting period is termed "the straddling period". Sections 3, 4 and 5 apply the amended section 371IH(10)(c) to such periods, so as to exclude the profits arising after 5 December 2013 from the qualifying loan relationship profits of the CFC.

16. Subsection 4(a) provides that any apportionment for qualifying loan relationship profits of accounting periods which straddle 5 December 2013 should be made in accordance with section 1172 of CTA 2010 (an apportionment on a time basis). Where a time basis apportionment produces a result that is unjust or unreasonable, subsection 4(b) provides for apportionment on a just and reasonable basis.

17. Subsection 5 specifies that the profits from the qualifying loan relationships apportioned to the period falling on or after 5 December 2013 are to be excluded from the CFC's qualifying loan relationship profits.

BACKGROUND NOTE

18. The CFC rules at Part 9A TIOPA (introduced in Finance Act 2012) better reflect the way that businesses operate in a global economy whilst maintaining protection against artificial diversion of UK profits. This Schedule amends Chapter 9 of Part 9A in order to ensure the CFC rules operate as intended and continue to protect the UK's corporation tax base.

19. If you have any questions about this change, or comments on the legislation, please contact Paul Croasdale on 03000 585572 (email: paul.croasdale@hmrc.gsi.gov.uk).

1 Business premises renovation allowances

(1) Section 360B of CAA 2001 (business premises renovation allowances: meaning of "qualifying expenditure") is amended in accordance with subsections (2) to (5).

(2) For subsection (1) substitute—

"(1) In this Part "qualifying expenditure" means capital expenditure incurred before the expiry date—

(a) in respect of which conditions A and B are met, and

(b) which is not excluded by subsection (3), (3A) or (3C)."

(3) After subsection (2) insert—

"(2A) Condition A is that the expenditure is incurred on—

(a) the conversion of a qualifying building into qualifying business premises,

(b) the renovation of a qualifying building if it is or will be qualifying business premises, or

(c) repairs to a qualifying building or, where the building is part of a building, to the building of which the qualifying building forms part, to the extent that the repairs are incidental to expenditure within paragraph (a) or (b).

(2B) Condition B is that the expenditure is incurred on—

(a) building works,

(b) architectural or design services,

(c) surveying or engineering services,

(d) planning applications, or

(e) statutory fees or statutory permissions.

(2C) The expenditure does not fail to meet Condition B by reason only that some of it was incurred on matters not within subsection (2B), if the amount incurred on such matters does not exceed 5% of so much of the expenditure as is incurred on building works."

(4) In subsection (3)—

(a) for "not qualifying expenditure" substitute "excluded", and

(b) in paragraph (d), for "a fixture as defined by section 173(1)" substitute "an integral feature (within the meaning of section 33A(5)) or part of such a feature".

(5) After that subsection insert—

"(3A) Expenditure is excluded if, and to the extent that, it exceeds the market value amount for the works, services or other matters to which it relates.

(3B) "The market value amount" means the amount of expenditure which it would have been normal and reasonable to incur on the works, services or other matters—

(a) in the market conditions prevailing when the expenditure was incurred, and

(b) assuming the transaction as a result of which the expenditure was incurred was between persons dealing with each other at arm's length in the open market.

(3C) Expenditure is excluded if the qualifying building was used at any time during the period of 12 months ending with the day on which the expenditure is incurred."

(6) After that section insert—

"360BA Expenditure not treated as qualifying expenditure if delay in carrying out works etc

(1) This section applies where—

(a) (ignoring this section) qualifying expenditure is incurred on works, services or other matters in a chargeable period, and

(b) those works, services or other matters are not completed or provided before the end of the period of 24 months beginning with the date the expenditure was incurred.

(2) The expenditure is to be treated for the purposes of this Part as never having been incurred (unless and until subsection (6) applies).

(3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (2).

(4) If a person who has made a tax return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, the person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.

(5) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.

(6) If, at any time after the end of the period mentioned in subsection (1)(b), those works, services or other matters are completed or provided, the expenditure is to be treated for the purposes of this Part as incurred at that time."

(7) In section 360M of that Act (when balancing adjustments are made), in subsection (4) for "7" substitute "5".

(8) The amendments made by this section have effect—

(a) for income tax purposes, for expenditure incurred on or after 6 April 2014, and

(b) for corporation tax purposes, for expenditure incurred on or after 1 April 2014.

EXPLANATORY NOTE

BUSINESS PREMISES RENOVATION ALLOWANCES

SUMMARY

1. Clause [x] provides for amendments to business premises renovation allowances (BPRA) in order to clarify the expenditure that qualifies for relief. It also reduces the balancing adjustment period from seven to five years.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for changes to be made to Section 360B of the Capital Allowances Act 2001 (CAA). The changes are specified in subsections 2 to 5.

3. Subsection 2 substitutes a new subsection (1). This substitution provides that qualifying expenditure incurred after the commencement date and before 1 April 2017 for corporation tax purposes and 6 April 2017 for income tax purposes must satisfy conditions A and B and not be excluded by subsections (3), (3A) or (3C).

4. Subsection 3 inserts new subsections (2A) to (2C). These require that qualifying expenditure must satisfy Conditions A and B.

5. New subsection (2A) defines expenditure for the purposes of Condition A and is modelled on the existing section 360B(1) CAA with the deletion of “in connection with”.

6. New Subsection (2B) defines expenditure for the purposes of Condition B as:

- Building works, which applies to the cost of labour and materials.
- Architectural and design services, which includes the detailed design of the building and its future layout.
- Surveying or engineering services, which includes services to check the structure of the building or specialists checking for asbestos.
- Planning applications, which cover the costs of obtaining essential planning permissions to alter, for example, a listed building, including legal fees.
- Statutory fees and statutory permissions to include the costs of building regulation fees; obtaining listed building consent; closing roads in order that certain works can be carried out or the costs of obtaining necessary statutory permissions from utilities.

7. New subsection (2C) provides that certain expenditure that meets Condition A but does not fall within Condition B, and is not specifically excluded, may still be qualifying expenditure but is limited to 5 per cent of the expenditure incurred on the building works. This encompasses expenditure incurred on activities in respect of the conversion or

renovation of the qualifying building but not specifically listed in Condition B, such as project management services.

8. Subsection 4 makes various amendments to current subsection (3).

9. Subsection 5 inserts new subsections (3A) to (3C).

10. New subsections (3A) and (3B) provide that expenditure is excluded to the extent that expenditure on the works, services or other matters to which it relates exceeds the normal market value amount.

11. New subsection (3C) provides that expenditure does not qualify for relief before the building has been unused for a period of 12 months.

12. Subsection 6 inserts a new section 360BA. New subsections (1), (2) and (6) provide that where qualifying expenditure has been incurred, the works, services or other matters to which that expenditure relates must be completed within 24 months. If after 24 months those works, services or other matters have not been completed, then the expenditure for those not completed will be treated as never having been incurred. Where those works are eventually provided the expenditure will be treated as being incurred at that time.

13. For example, if a return containing a claim for £100,000 of qualifying expenditure was made and after 24 months only works or services relating to £90,000 has been carried out, then in respect of the remaining £10,000 of expenditure the relevant tax assessments will need to be revised.

14. New subsections (3), (4) and (5) provide for the making of assessments, or amendments to assessments, that may be necessary to give effect to this requirement and provide that a person who has made a tax return, and later becomes aware that it is incorrect must give notice of the required amendments to HM Revenue & Customs (HMRC) within three months of the day on which the person became aware that the return had become incorrect.

15. Subsection 7 amends section 360M(4). This provides that where qualifying expenditure has been incurred on a qualifying building, and a balancing event occurs within seven years a balancing adjustment must be made. This subsection reduces that period to five years.

16. Subsection 8 provides that these amendments take effect for expenditure incurred from 1 April 2014 for the purposes of corporation tax and 6 April 2014 for the purposes of income tax.

BACKGROUND NOTE

17. Capital allowances allow the cost of capital assets to be written off against taxable profits. Not all expenditure qualifies for allowances.

18. BPRA aims to bring long-term vacant business properties in disadvantaged areas back into business use. It does this by providing a 100 per cent capital allowance for the capital costs incurred of renovating, converting or repairing certain business properties that have been unused for at least a year in assisted areas of the United Kingdom. A writing down allowance of 25 per cent on the straight line basis is also available, where the 100 per cent initial allowance is not claimed, or not claimed in full. It therefore offers both an enhanced rate of allowance and a relief for otherwise irrecoverable expenditure.

19. Following an increase in DOTAS (Disclosure of Tax Avoidance Schemes) disclosures, involving BPRA, which appeared to contain features aimed at exploiting the relief in ways that Parliament had not intended, a written ministerial statement by the Exchequer Secretary to the Treasury was published on 18 July 2013, authorising HMRC to conduct a technical review of the BPRA legislation, with a view to making its policy purpose clearer, more certain in its application and at the same time reducing the risk of exploitation. Following the publication of that statement, HMRC published a Technical Note inviting comments on legislative proposals, with a view to introducing new legislation in 2014.

20. Following the responses to the Technical Note this clause clarifies the expenditure eligible for relief. It also requires that where expenditure is incurred for works and services to be carried out over a period of time, or in the future, those works and services must be complete within 24 month to prevent some, or all, the relief given in respect of the expenditure being withdrawn.

21. The legislation presently prevents a balancing adjustment being made if certain balancing events take place more than seven years after the time when the qualifying building was first used or suitable for letting. This period will be reduced to five years.

22. If you have any questions about this change, or comments on the draft legislation, please contact Nick Williams on 03000 585660 (email: nicholas.williams@hmrc.gsi.gov.uk).

1 Mineral extraction allowances

(1) CAA 2001 is amended as follows.

(2) In section 394(2) (meaning of mineral extraction trade), after "deposits" insert "but to the extent only that the profits or gains from that trade are, or (if there were any) would be, chargeable to tax".

(3) In section 399 (expenditure excluded from being qualifying expenditure), after subsection (1) insert—

"(1A) Expenditure incurred by a person for the purposes of a mineral extraction trade is not qualifying expenditure if—

(a) when the expenditure is incurred, the person is carrying on the trade but the trade is not at that time a mineral extraction trade, or

(b) the person has not begun to carry on the trade when the expenditure is incurred and, when the person begins to carry on the trade, the trade is not a mineral extraction trade.

(1B) Section 577(2) (references to commencement etc of a trade) does not apply to subsection (1A)."

(4) In section 160 (expenditure treated as incurred for purposes of mineral extraction trade)—

(a) the existing text becomes subsection (1), and

(b) after that subsection insert—

"(2) Subsection (1) does not apply to expenditure if—

(a) when it is incurred, the person is carrying on the trade but the trade is not at that time a mineral extraction trade, or

(b) when it is incurred, the person has not begun to carry on the trade and, when the person begins to carry on the trade, the trade is not a mineral extraction trade.

(3) Section 577(2) (references to commencement etc of a trade) does not apply to subsection (2)."

(5) For section 161(4)(a) (pre-trading expenditure on plant or machinery for mineral exploration and access), substitute—

"(a) "pre-trading expenditure" means capital expenditure incurred—

(i) before the day on which a person begins to carry on a trade that is a mineral extraction trade, but

(ii) only if there is no prior time when the person carried on that trade and the trade was not a mineral extraction trade,".

(6) After section 161(4) insert—

"(4A) Section 577(2) (references to commencement etc of a trade) does not apply to subsection (4)(a)."

(7) After section 431 (discontinuance of trade) insert—

"431A Foreign permanent establishment exemption

(1) Subsection (2) applies if—

(a) an election under section 18A of CTA 2009 has effect in relation to a company, and

(b) the company carries on any trade which consists of, or includes, the working of a source of mineral deposits.

(2) That trade so far as carried on through one or more permanent establishments outside the United Kingdom is treated for the purposes of this Part as a trade—

(a) separate from any other trade of the company, and

(b) all the profits and gains from which are not, or (if there were any) would not be, chargeable to tax.

431B Disposal value: no allowance/no charge cases

(1) If—

(a) an election under section 18A of CTA 2009 has effect in relation to a company, and

(b) the operation of sections 431A and 421(1)(b)(ii) and (2) requires the company to bring the disposal value of an asset into account,

the disposal value is such an amount as gives rise to neither a balancing allowance nor a balancing charge.

(2) Subsection (1) does not apply if—

(a) the company's qualifying expenditure in respect of the asset exceeds £5 million,

(b) the company has claimed any capital allowance in respect of any of that expenditure, and

(c) the company has, at any time in a relevant accounting period, used the asset otherwise than for the purposes of a permanent establishment outside the United Kingdom.

(3) In subsection (2)(c) "relevant accounting period" means an accounting period ending before, but ending not more than 6 years before, "the relevant day" as defined by section 18F of CTA 2009.

431C Notional allowances

(1) Subsection (2) applies if—

(a) an election under section 18A of CTA 2009 has effect in relation to a company, and

(b) but for section 18A of CTA 2009 and section 431A(2)(b), an allowance under this Part ("the notional allowance") could be claimed under section 3(1) in respect of assets provided for the purposes of a permanent establishment outside the United Kingdom through which business is or has been carried on by the company.

(2) The notional allowance (and any charge in connection with it which would have arisen if the allowance had been claimed) is to be made automatically and reflected in any calculation, for any relevant accounting period of the company, of the profits or losses attributable

to business carried on by the company through such a permanent establishment.

(3) Subsection (4) applies if, at the time an election under section 18A of CTA 2009 takes effect in relation to a company, the company is, by reason of sections 431A and 421(1)(b)(ii) and (2), required to bring into account the disposal value of any asset provided for the purposes of a foreign permanent establishment through which business is or has been carried on by the company.

(4) For the purposes of subsections (1) and (2), the company is treated as having incurred at that time, for the purposes of the trade mentioned in section 431A(2), qualifying expenditure of an amount equal to that disposal value.

(5) In subsection (2) "relevant accounting period" in relation to a company by which an election under section 18A of CTA 2009 is made, means an accounting period of the company to which the election applies (as to which see section 18F of that Act)."

(8) The amendments made by subsections (1) to (6) of this section have effect—

(a) for the purposes of corporation tax, in relation to claims made on or after 1 April 2014, and

(b) for the purposes of income tax, in relation to claims made on or after 6 April 2014,

and in relation to those claims the amendments are treated as always having had effect.

(9) The amendments made by subsection (7) have effect in relation to elections under section 18A of CTA 2009 which start to have effect on or after 1 April 2014.

EXPLANATORY NOTE

MINERAL EXTRACTION ALLOWANCES

SUMMARY

1. Clause [X] introduces legislation relating to the treatment of Mineral Extraction Allowances (MEAs) where the mineral extraction activity enters or ceases to be within the charge to UK tax. It ensures that the treatment of MEAs is certain and consistent between businesses and aligns with the existing principles for plant and machinery allowances. It also confirms that for the purposes of MEAs a mineral extraction trade consists of activity within the charge to UK tax.

DETAILS OF THE CLAUSE

2. Subsections 2 to 6 amend, respectively, sections 394, 399, 160 and 161 of the Capital Allowances Act 2001 (CAA) to confirm that for the purposes of MEAs, a mineral extraction trade consists of activity that is within the charge to UK tax.

3. Subsection 7 inserts a new section 431A CAA to provide for the activity of an exempt foreign permanent establishment (FPE) to be treated as a separate mineral extraction trade for the purposes of MEAs.

4. Subsection 7 inserts a new section 431B CAA which provides transitional rules for MEAs similar to those for plant and machinery allowances. The transitional rules provide that where a disposal value is required to be brought into account this will not, in most cases, give rise to a balancing allowance or a balancing charge when a company elects into FPE exemption. However, for some assets, where the company's qualifying expenditure exceeds £5 million, the normal disposal value will be brought into account for capital allowance purposes.

5. Subsection 7 inserts a new section 431C CAA which provides that notional capital allowances will be given automatically in calculating the profits or losses of the exempt FPE, as if the exempt FPE were within the charge to UK tax.

BACKGROUND NOTE

6. Clause [X] is being introduced following consultation to confirm the treatment of MEAs where the mineral extraction activity enters or ceases to be within the charge to UK tax.

7. There are a number of changes to existing legislation:

- to confirm that for the purposes of MEAs a mineral extraction trade consists of an activity that is within the charge to UK tax;
- to confirm that the activity of an exempt FPE is treated as a separate mineral extraction trade for the purposes of MEAs;
- to align the treatment of MEAs with the existing principles for plant and machinery allowances; and,
- to confirm that notional allowances will be given automatically in calculating the profits or losses of the exempt FPE as if the exempt FPE were within the charge to UK tax.

8. The amendments made by this clause are treated as having come into force from 1 April 2014 for corporation tax and 6 April 2014 for income tax.

9. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 03000 589279 (email: paul.philip@hmrc.gsi.gov.uk).

1 Undertakings for collective investment in transferable securities and alternative investment funds

(1) Section 363A of TIOPA 2010 (residence of offshore funds which are undertakings for collective investment in transferable securities) is amended as follows.

(2) For subsections (1) and (2) substitute—

"(1) This section applies to—

(a) a UCITS which is authorised in a foreign state pursuant to Article 5 of the UCITS Directive, and

(b) an AIF which is authorised or registered in a foreign state, or is not authorised or registered but has its registered office in a foreign state,

unless the UCITS or AIF is an authorised unit trust or resident in the United Kingdom by virtue of section 14 of CTA 2009.

(2) If—

(a) the UCITS or AIF is a body corporate which, under the law of a foreign state, is treated as resident in that state for the purposes of any tax imposed under that law on income, and

(b) (apart from this section) the body corporate would be treated as resident in the United Kingdom for the purposes of any enactment (within the meaning of section 354) relating to income tax, corporation tax, or capital gains tax,

the body corporate is instead to be treated as if it were not resident in the United Kingdom."

(3) In subsection (3), for "offshore fund" substitute "UCITS or AIF".

(4) In subsection (4), for the words after "section" substitute "—

"AIF" has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013,

"authorised unit trust" has the meaning given by section 616 of CTA 2010,

"foreign state" means a State other than the United Kingdom,

"UCITS" means an undertaking for collective investment in transferable securities, and

"the UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council."

(5) Accordingly, in TIOPA 2010—

(a) in section 1 (overview of Act), in subsection (1)(e) after "funds" insert "etc",

(b) in the heading for Part 8, after "FUNDS" insert "ETC", and

(c) for the heading of section 363A substitute "**Residence of undertakings for collective investment in transferable securities and alterative investment funds**".

(6) The amendments made by this section are treated as having come into force on 5 December 2013.

EXPLANATORY NOTE

UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES AND ALTERNATIVE INVESTMENT FUNDS

SUMMARY

1. Clause X extends the application of section 363A Taxation (International and Other Provisions) Act 2010 (TIOPA) to Alternative Investment Funds (AIFs).

DETAILS OF THE CLAUSE

2. Subsection 2 substitutes subsections (1) and (2) of section 363A.

3. New subsection (1) removes the requirement for a fund within the scope of section 363A to come within the definition of an offshore fund at section 355 TIOPA, and extends the application of section 363A to AIFs. As a consequence of those changes, subsection (1) provides that section 363A does not apply to undertakings for collective investment in transferable securities (UCITS) or AIFs that are either authorised unit trusts or are resident by virtue of section 14 Corporation Tax Act (CTA) 2009 (companies incorporated in the United Kingdom).

4. New subsection (2) applies the provisions of existing subsection (2) to entities within the extended scope of section 363A.

5. Subsection (3) replaces the reference in subsection (3) of section 363A to "offshore fund" with "UCITS or AIF", and subsection (4) defines those and other terms used in the clause.

6. Subsection 5 makes various consequential amendments to TIOPA.

7. Subsection 6 provides for the changes, which are wholly relieving, to come into force from 5 December 2013. Entities within the extended scope of amended section 363A will therefore be treated as not resident (as provided by that section) from that date.

BACKGROUND NOTE

8. Currently, section 363A treats offshore funds (as defined at section 355 TIOPA) that are UCITS for the purposes of the UCITS Directive (Directive 2009/65/EC of the European Parliament and of the Council), as not being resident in the United Kingdom if they are resident in another Member State for the purposes of any tax imposed under the law of that State on income.

9. Section 363A was introduced in Finance Act 2011, with effect from 19 July 2011, to maintain the competitiveness of the UK fund management industry following the introduction of the UCITS IV Directive, which provided a “management company passport”. The UCITS IV Directive has the effect, for example, that managing a fund within the scope of section 363A from the UK will not cause the fund to be treated as resident in the UK as a result of central management and control being deemed to be located here.

10. The amendments made by this clause follow the announcement of the UK’s Investment Management Strategy (IMS) at Budget 2013. The IMS included a range of measures to improve the competitive position of the UK investment management industry.

11. A consultation document entitled ‘Residence of Offshore Funds - extending the scope of Section 363A Taxation (International and Other Provisions) Act 2010’ was published on 22 July 2013 setting out the Government’s proposals. This clause takes account of the two main concerns expressed in responses, as set out in the Tax Information and Impact Note.

12. If you have any questions about this change, or comments on the legislation, please contact Wayne Strangwood on 03000 585493 (email wayne.a.strangwood@hmrc.gsi.gov.uk).

1 Tax consequences of financial sector regulation

(1) Section 221 of FA 2012 (tax consequences of financial sector regulation) is amended as follows.

(2) In subsection (1) after "imposed" insert ", or which appears to the Treasury likely to be imposed,".

(3) After subsection (4) insert—

"(4A) Where regulations under this section make provision about the tax consequences of any regulatory requirement which appears to the Treasury likely to be imposed by any EU legislation or enactment—

(a) the regulations may be made (and, accordingly, may have effect) before the EU legislation or enactment is adopted, passed or made, and

(b) failure after the regulations are made to adopt, pass or make the EU legislation or enactment does not affect the validity of the regulations."

EXPLANATORY NOTE

SECTION 212 FINANCE ACT 2012: INSURERS' SOLVENCY 2 REGULATORY CAPITAL SECURITIES

SUMMARY

1. This measure makes changes to an existing Regulation making power to ensure that it allows further Regulations to be made to deal with the tax consequences of future European Union or UK regulatory requirements. In particular it will allow Regulations to prescribe the tax treatment of insurer's Solvency II compliant instruments issued in advance of agreement to Solvency II.

DETAILS OF THE CLAUSE

2. Clause 1 inserts new subsections (1) and (4A) into section 221 of Finance Act 2012. These ensure that the Regulation making power in section 221 applies to regulatory requirements which are likely to be imposed in the future.

BACKGROUND NOTE

3. UK regulatory authorities may, for financial stability reasons, encourage financial service firms to issue regulatory capital with certain features to comply with future European Union or UK regulatory requirements. The power in s221 Finance Act 2012 allows the Treasury to make Regulations prescribing the tax consequences of regulatory requirements which are in force at the date that the Regulations are made. This change ensures that the power will allow the Treasury to make Regulations in advance of the relevant legislation coming into force.

4. If you have any questions about this change, or comments on the legislation, please contact Fiona Hay on 03000 585882 (email: fiona.hay@hmrc.gsi.gov.uk).

1 Release of debts: stabilisation powers under Banking Act 2009

(1) Section 322 of CTA 2009 (release of debts: cases where credits not required to be brought into account) is amended as follows.

(2) In subsection (2), for "condition A, B or C" substitute "any of conditions A to D".

(3) After subsection (5) insert—

"(5A) Condition D is that the liability is released in consequence of the exercise of a stabilisation power under Part 1 of the Banking Act 2009."

(4) The amendments made by this section have effect in relation to releases of liabilities on or after 26 November 2013.

EXPLANATORY NOTE

RELEASE OF DEBTS: STABILISATION POWERS UNDER BANKING ACT 2009

SUMMARY

1. Clause X modifies the corporation tax rules on loan relationships that apply to cases where credits are not required to be brought into account on the release of debts. The clause adds a further case where a debt is released as a result of the application of any of the stabilisation powers under Part 1 of the Banking Act 2009

DETAILS OF THE CLAUSE

2. Subsections (1) to (3) provide for the loan relationship rules in section 322 of CTA to be amended. Section 322 specifies cases where a debtor company does not have to bring credits into account when a liability to pay an amount under a debtor relationship is released.

3. Subsection (4) provides that this amendment will come into force on 26 November 2013.

BACKGROUND NOTE

4. The rules that apply to loan relationships work on the principle that amounts taxed and relieved as credits and debits under those rules are the profits and losses arising in amounts drawn up in accordance with generally accepted accounting practice. When a debtor company is released from a debt it owes, its profit will be taxable as a loan relationship credit.

5. Section 322 of the Corporation Tax Act 2009 (CTA) exempts a company that is party as debtor to a loan relationship from a credit on the profit arising on the release of that debt if: the debt is accounted for on an amortised cost basis of accounting, the release is not a release of relevant rights, and one of three conditions A, B or C are met. The conditions are that the release is part of a statutory insolvency arrangement, in consideration of shares (or any entitlement to such shares) or the debtor meets one of the insolvency conditions in subsection (6).

6. Section 322 ensures that companies and creditors releasing debt to avoid or manage insolvency are not doubly punished with a tax charge. Resolution by the Bank of England is a new form of such measures. It would be unwise to try and enable the rescue of financial institutions through the exercise of stabilisation powers and then undermine this rescue by levying a tax charge which could, in extreme cases, cause the institution to fail - resulting in the loss of all future possible tax revenues - and pose a threat to wider financial stability.

7. This change was announced during the passage of Financial Services (Banking Reform) Bill on 26 November 2013. It will be applied retrospectively to that date.

8. If you have any questions about this change, or comments on the legislation, please contact Fiona Hay on 03000 585882 (email: fiona.hay@hmrc.gsi.gov.uk) or Mark Lafone on 03000 585613 (email: mark.lafone@hmrc.gsi.gov.uk).

1 Abolition of stamp duty reserve tax on certain dealings in collective investment schemes

(1) Part 2 of Schedule 19 to FA 1999 (which provides for a charge to stamp duty reserve tax on certain dealings with units in unit trusts) is omitted.

(2) Accordingly—

(a) in FA 1986, in section 90(1B), for the second sentence substitute "For these purposes there is a surrender of a unit where—

(a) a person ("P") authorises or requires the trustees or managers of a unit trust scheme to treat P as no longer interested in a unit under the scheme, or

(b) a unit under the unit trust scheme is transferred to the managers of the scheme,

and the unit is a chargeable security.",

(b) in FA 1999, in section 123(3), for "Parts I to III" substitute "Parts I and III",

(c) in FA 2001, omit sections 93 and 94,

(d) in FA 2004, in Schedule 35, omit paragraph 46 and the italic heading before that paragraph,

(e) in FA 2005, omit section 97(3), (4) and (6), and

(f) in FA 2010, in Schedule 6, omit paragraph 15(2).

(3) The amendments made by this section have effect in relation to surrenders made or effected on or after 30 March 2014.

(4) Provision made by regulations under section 98 of FA 1986, section 152 of FA 1995 or section 17 of F(No.2)A 2005 in connection with the coming into force of this section may be made so as to have effect in relation to surrenders made or effected on or after 30 March 2014 (even if the regulations are made after that date).

(5) In subsections (3) and (4) the reference to surrenders is to be read in accordance with paragraph 2 of Schedule 19 to FA 1999.

EXPLANATORY NOTE

ABOLITION OF STAMP DUTY RESERVE TAX ON CERTAIN DEALINGS IN COLLECTIVE INVESTMENT SCHEMES

SUMMARY

1. This measure abolishes the special stamp duty reserve tax (SDRT) charge on UK unit trusts and open-ended investment companies in Part 2 of Schedule 19 to the Finance Act 1999.

DETAILS OF THE CLAUSE

2. Subsection (1) is the substantive repeal of the charging provisions.

3. Subsection (2) makes consequential amendments to primary legislation.

4. Subsection (3) is the commencement provision. The abolition is effective from a Sunday so as to minimise any computational difficulties.

5. Subsection (4) allows consequential amendments to secondary legislation to be made with retrospective effect. This is to allow the amendments to secondary legislation to have the same effective date as the changes to primary legislation.

BACKGROUND NOTE

6. There is a special SDRT charge (known as the “Schedule 19” charge) on UK unit trusts and open-ended investment companies. This is a 0.5 per cent charge on the value of surrenders, by investors, of units or shares in a fund to the fund manager, although this charge may be reduced in two different ways when the amount of tax is calculated. The tax is generally accounted for by the fund manager though ultimately borne by investors.

7. The Government announced at Budget 2013 that the Schedule 19 charge would be abolished in Finance Bill 2014 as part of a package of measures to make the UK more attractive as a domicile for investment funds.

8. If you have any questions about this change, or comments on the legislation, please contact Jeremy Schryber on 03000 585762 (email: jeremy.schryber@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2014 No.

STAMP DUTY RESERVE TAX

The Stamp Duty Reserve Tax (Finance Act 1999, Schedule 19) (Consequential Amendments) Regulations 2014

Made - - - -	*[*] July 2014*
Laid before the House of Commons	*[*] July 2014*
Coming into force - -	*[*] 2014*

The Treasury make the following Regulations in exercise of the powers conferred by section 98 of the Finance Act 1986(**a**), section 152 of the Finance Act 1995(**b**), section 17(3) of the Finance (No.2) Act 2005(**c**) and section [x] of the Finance Act 2014(**d**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Stamp Duty Reserve Tax (Finance Act 1999, Schedule 19) (Consequential Amendments) Regulations 2014 and come into force on [•] 2014.

(2) The amendments provided by these Regulations have effect in relation to any surrender made or effected on or after 30th March 2014.

(3) In paragraph (2) the reference to "surrender" is to be read in accordance with paragraph 2 of Schedule 19 to the Finance Act 1999(**e**) (surrender of units to managers) and in accordance with that paragraph as modified in relation to open-ended investment companies by the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997(**f**).

Amendments to the Stamp Duty Reserve Tax Regulations 1986

2.—(1) The Stamp Duty Reserve Tax Regulations 1986(**g**) are amended as follows.

(2) In regulation 2—

(a) in the definition of "accountable date"—

(i) omit paragraph (d);

(ii) omit the "and" at the end of paragraph (c); and

(iii) insert an "and" at the end of paragraph (b).

(b) in the definition of "accountable person"—

(i) omit paragraphs (f) and (g);

(**a**) 1986 c. 41, as amended by section 95 of the Finance Act 1996 (c. 8).
(**b**) 1995 c. 4, as amended by section 122(4), Schedule 19, paragraph 13 of the Finance Act 1999 (c. 16).
(**c**) 2005 c. 22.
(**d**) 2014 c. [x].
(**e**) 1999 c. 16. Paragraph 2(4) was amended by section 93(2), (6) of the Finance Act 2001 (c. 9). Part 2 of Schedule 19 to the Finance Act 1999 was repealed by section [x] of the Finance Act 2014 (c. [x]).
(**f**) S.I. 1997/1156, amended by S.I. 1999/3261; there are other amending instruments but none is relevant.
(**g**) S.I. 1986/1711; relevant amending instruments are S.I. 1993/3110, 1994/1813, 1997/2430, 1999/2383, 1999/3264, 2009/56.

(ii) omit the "and" at the end of paragraph (e); and

(iii) insert an "and" at the end of paragraph (d).

(c) omit the definitions of—

(i) "authorised corporate director";

(ii) "open-ended investment company;

(iii) "relevant two-week period";

(iv) "surrender";

(v) "unit"; and

(vi) "unit trust scheme".

(3) Omit regulation 2A.

(4) In regulation 3, omit ", or under paragraph 2(1) of Schedule 19 to the Finance Act 1999,".

(5) In regulation 4—

(a) omit the "or" at the end of paragraph (3)(a); and

(b) omit paragraph (3)(b).

(6) Omit regulation 4B.

(7) In regulation 6—

(a) in paragraph (1), omit "or surrender" wherever it occurs;

(b) in paragraph (4), omit "or surrender";

(c) in paragraph (4)(a), for "4, 4A, or 4B" substitute "4 or 4A"; and

(d) in paragraph (6), omit ", and, where appropriate, Part II of Schedule 19 to the Finance Act 1999".

(8) In regulation 7—

(a) at the end of paragraph (a), omit ", or";

(b) omit paragraph (b); and

(c) for "4, 4A or 4B" substitute "4 or 4A".

(9) In regulation 12(3), for "to (4B)" substitute "and (4A)".

(10) In regulation 13—

(a) in paragraph (1)—

(i) omit "or surrender"; and

(ii) for "4, 4A or 4B" substitute "4 or 4A".

(b) in paragraph (2)—

(i) omit "or under paragraph 2(1) of Schedule 19 to the Finance Act 1999,"; and

(ii) for "4, 4A or 4B" substitute "4 or 4A".

(11) In regulation 14(1), omit "or surrender".

(12) In the Table in Part I of the Schedule (which applies the provisions of the Taxes Management Act 1970(**a**) specified in the first column of that Table subject to any modification specified in the second column of that Table)—

(a) in the entries relating to sections 49C and 49F, omit ", and, where appropriate, Part II of Schedule II to the Finance Act 1999";

(b) in the entries relating to sections 93(1)(**b**), 95(1)(a)(**a**) and 99(**b**) for "4, 4A or 4B" substitute "4 or 4A"; and

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(**a**) 1970 c. 9.

(**b**) Section 93(1) was substituted by paragraph 25 of Schedule 19 to the Finance Act 1994 (c. 9).

(c) in the entry relating to section 98(**c**) in the second column of the Table for "4, 4A and 4B" substitute "4 and 4A".

(13) In Part II of the Schedule—

(a) in sections 49C and 49F (as so modified) omit ", and, where appropriate, Part II of Schedule II to the Finance Act 1999";

(b) in sections 93(1), 95(1)(a) and 99 (as so modified) for "4, 4A or 4B" substitute "4 or 4A"; and

(c) in the second column of the Table in section 98 (as so modified) for "4, 4A and 4B" substitute "4 and 4A".

Amendments to the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997

3.—(1) The Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997 are amended as follows.

(2) Omit regulation 4A(2).

Amendments to the Authorised Investment Funds (Tax) Regulations 2006

4.—(1) The Authorised Investment Funds (Tax) Regulations 2006(**d**) are amended as follows.

(2) Omit regulation 14A.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

(**a**) Section 95(1) was amended by section 148 of the Finance Act 1988 (c. 39), section 163(1)(a) of the Finance Act 1989 (c. 26), and paragraph 27 of Schedule 19 to the Finance Act 1994 (c. 9).
(**b**) Section 99 was substituted by section 66 of the Finance Act 1989 (c. 26).
(**c**) Section 98 was amended by section 164 of the Finance Act 1989 (c. 26) and section 68(3) of the Finance Act 1990 (c. 29).
(**d**) S.I. 2006/964, as amended by S.I. 2008/3159. There are other amending instruments but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for consequential amendments to the Stamp Duty Reserve Tax Regulations 1986 (S.I. 1986/1711), the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997 (S.I. 1997/1156) and the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964). The amendments are required as result of the abolition of Stamp Duty Reserve Tax applied to certain dealings in Collective Investment Schemes ("CISs") in Part 2 of Schedule 19 to the Finance Act 1999 ("Schedule 19").

Part 2 of Schedule 19 was repealed by section [x] of the Finance Act 2014 (c. [x]) and has effect for those dealings in CISs made or effected on or after 30th March 2014. Section [x] of the Finance Act 2014 (c. [x]) provides the power for the consequential amendments made by these Regulations to have retrospective effect.

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

EXPLANATORY MEMORANDUM TO

THE STAMP DUTY RESERVE TAX (FINANCE ACT 1999, SCHEDULE 19) (CONSEQUENTIAL AMENDMENTS) REGULATIONS

2014 No. [xxxx]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These regulations make amendments to secondary legislation consequential to the abolition of the charge to stamp duty reserve tax (SDRT) in Part 2 of Schedule 19 to the Finance Act 1999 (the "Schedule 19 charge"). This SDRT charge is on UK unit trusts and UK open ended investment companies (OEICs) when units or shares are surrendered by investors to the managers of the scheme.

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

3.1 None

4. Legislative Context

4.1 A Schedule 19 charge arises when an investor notifies a fund manager that they wish to surrender units or shares in a UK unit trust or UK OEIC.

4.2 The abolition of the Schedule 19 charge was announced at Budget 2013. The Schedule 19 charge is abolished by section [x] of the Finance Act 2014.

4.3 The abolition has effect retrospectively from 30 March 2014. The consequential amendments made by this instrument also have retrospective effect from that date.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why?

7.1 The Schedule 19 charge is only applied to surrenders of interests in UK domiciled unit trusts and OEICs. Since the charge is only applied to UK funds, investors who do not wish to bear the cost of it have the option of investing in funds that are domiciled offshore.

7.2 The Schedule 19 charge is being abolished to improve the competitiveness of UK funds and remove the deterrent to domiciling funds in the UK.

7.3 There are a number of references to the Schedule 19 charge and related legislation in secondary legislation. This instrument makes the amendments needed consequent to the abolition of the Schedule 19 charge.

- Consolidation

7.4 HMRC has no plans to consolidate these regulations with the existing regulations.

8. Consultation outcome

8.1 [To be completed after the consultation.]

9. Guidance

9.1 HMRC will amend the relevant guidance to reflect changes made by these regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Impact Information Note was published on 10 December 2013 alongside the draft Finance Bill 2014 clause and available in *Overview of Legislation in Draft*, published on the GOV.UK website on 10 December 2013.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This instrument will not impose any additional requirements. All sizes of firms, including those employing up to 20 people, will need to be aware of the amendments made to the legislation.

12. Monitoring & review

12.1 There will be no specific monitoring of the effects of this amendment to regulations. The abolition of the Schedule 19 charge will be monitored through regular communication with affected taxpayer groups.

13. Contact

Jeremy Schryber at Her Majesty's Revenue and Customs Tel: 03000 585 762 or email: jeremy.schryber@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Abolition of stamp duty and SDRT: securities admitted to trading on recognised growth markets

Schedule 1 contains provision abolishing stamp duty and stamp duty reserve tax on instruments and transfers of securities traded on recognised growth markets.

SCHEDULE 1

Section 1

ABOLITION OF STAMP DUTY AND SDRT: SECURITIES TRADED ON RECOGNISED GROWTH MARKETS

PART 1

MEANING OF "RECOGNISED GROWTH MARKET" AND "LISTED"

Recognised growth market

1 (1) In this Schedule, "recognised growth market" means a market recognised as a growth market by the Commissioners for Her Majesty's Revenue and Customs for the purposes of this Schedule.

(2) On an application made by a market, the market is to be recognised by the Commissioners as a growth market if, and only if, the Commissioners are satisfied, on the basis of evidence provided by the market, that the market qualifies for recognition.

(3) A market qualifies for recognition at any time ("the relevant time") if it is a recognised stock exchange which meets one or both of the following conditions—

(a) a majority of the companies whose stock or marketable securities are admitted to trading on the market are companies with market capitalisations of less than £170 million;

(b) the Commissioners are satisfied that the admission requirements of the market include provision requiring companies to demonstrate compounded annual growth in gross revenue or employment of at least 20% over the last three periods of account preceding admission ("the pre-admission periods").

(4) In sub-paragraph (3)—

"period of account" of a company means a period for which the company draws up accounts;

"recognised stock exchange" has the meaning given by section 1005(1) of ITA 2007.

(5) For the purposes of sub-paragraph (3)(a) a company's market capitalisation at the relevant time is the average of the closing market capitalisations of the company on the last trading day of each calendar month (or part of a calendar month) in the qualifying period.

(6) "The qualifying period" means whichever is the shorter of—

(a) the last three calendar years preceding the relevant time, or

(b) the period beginning with the day on which the company is admitted to trading on the market and ending at the end of the last calendar year preceding the relevant time.

(7) For the purposes of sub-paragraph (3)(a), a company is to be disregarded if it is admitted to trading on the market in the calendar year in which the relevant time falls.

(8) In the case of a company with a market capitalisation in a currency other than sterling, the closing market capitalisation for the last trading day of any calendar month is to be taken, for the purposes of sub-paragraph (5), to be the sterling equivalent of that capitalisation (calculated by reference to the spot rate of exchange for that last trading day).

(9) For the purposes of sub-paragraph (3)(b), the percentage of the compounded annual growth in gross revenue over the pre-admission periods is calculated by applying the formula—

$$\left(\left(\frac{\mathrm{EV}}{\mathrm{BV}}\right)^{1/3} - 1\right) \times 100$$

where—

"EV" is the company's gross revenue for the last of the pre-admission periods,

"BV" is the company's gross revenue for the period of account immediately preceding the pre-admission periods.

(10) For those purposes, the percentage of the compounded annual growth in employment over the pre-admission periods is calculated by applying the formula—

$$\left(\left(\frac{\mathrm{EV}}{\mathrm{BV}}\right)^{1/3} - 1\right) \times 100$$

where—

"EV" is the number of employees of the company at the end of the last of the pre-admission periods,

"BV" is the number of employees of the company at the end of the period of account immediately preceding the pre-admission periods.

(11) The Treasury may, by regulations—

(a) make provision for the revocation by the Commissioners of a recognition under this paragraph and about the consequences of a revocation;

(b) amend this paragraph so as to add, remove or alter a condition which must be met in relation to a market for it to be recognised by the Commissioners under this paragraph.

(12) Regulations under this paragraph may contain incidental, supplemental, consequential and transitional provision and savings.

(13) The power to make regulations under this paragraph is exercisable by statutory instrument, and any statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the House of Commons.

Listed

2 Section 1005(3) to (5) of ITA 2007 (meaning of "listed" etc) applies in relation to this Schedule as it applies in relation to the Income Tax Acts.

Stamp Act 1891

3 This Part of this Schedule is to be construed as one with the Stamp Act 1891.

Commencement of Part 1 and transitional provision

4 (1) This Part of this Schedule is treated as having come into force on 28 April 2014.

(2) Where, having been satisfied as mentioned in paragraph 1(2), the Commissioners have recognised a market as a growth market in anticipation of the coming into force of this Part, that recognition has effect on and after 28 April 2014 as if it were a recognition under paragraph 1.

PART 2

STAMP DUTY

Main charge

5 Stamp duty is not chargeable under Schedule 13 to FA 1999 (transfers on sale) on instruments relating to stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

Charge in relation to the purchase by a company of its own shares

6 Stamp duty is not chargeable by virtue of section 66(2) of FA 1986 (return relating to company's purchase of own shares treated as instrument of transfer on sale) on returns relating to shares admitted to trading on a recognised growth market but not listed on any market.

Charge in relation to property vested by Act or purchased under statutory power

7 Section 12 of FA 1895 (collection of stamp duty in cases of property vested by Act or purchased under statutory powers) does not apply to stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

Depositary receipts: charge

8 In section 67 of FA 1986 (depositary receipts), after subsection (8) insert—

"(8A) Where an instrument transfers shares or stock or marketable securities admitted to trading on a recognised growth market but not listed on any market, subsections (2) to (5) do not apply and stamp duty is not chargeable on the instrument.

(8B) In subsection (8A) "recognised growth market" and "listed" are to be construed in accordance with Part 1 of Schedule 1 to FA 2014."

Clearance services: charge

9 In section 70 of that Act (clearance services), after subsection (8) insert—

"(8A) Where an instrument transfers shares or stock or marketable securities admitted to trading on a recognised growth market but not listed on any market, subsections (2) to (5) do not apply and stamp duty is not chargeable on the instrument.

(8B) In subsection (8A) "recognised growth market" and "listed" are to be construed in accordance with Part 1 of Schedule 1 to FA 2014."

Charge on transfers of partnership interests

10 (1) Schedule 15 to FA 2003 (SDLT: partnerships) is amended as follows.

(2) In paragraph 31 (stamp duty on transfers of partnership interests: continued application), after "that section)" insert "or in Schedule 1 to the Finance Act 2014 (abolition of stamp duty in relation to certain securities),".

(3) In paragraph 33—

(a) in sub-paragraph (1A), for "stock or marketable" substitute "relevant",

(b) in sub-paragraph (3), for "stock or marketable" substitute "relevant",

(c) in that sub-paragraph omit "that stock and" (in both places),

(d) in sub-paragraph (6), for "stock or" (in each place) substitute "relevant",

(e) in sub-paragraph (7), for "stock or" (in both places) substitute "relevant", and

(f) after sub-paragraph (8) insert—

"(8A) In this paragraph "relevant securities" means stock or marketable securities other than any stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

In this sub-paragraph "recognised growth market" and "listed" are to be construed in accordance with Part 1 of Schedule 1 to FA 2014."

Commencement of Part 2

11 (1) Paragraph 6 has effect in relation to any purchase of shares by a company on or after 28 April 2014.

(2) Paragraph 7 has effect in relation to—

(a) any Act passed on or after 28 April 2014, and

(b) any instrument of transfer pursuant to such an Act executed on or after that date.

(3) Subject to that, this Part of this Schedule has effect in relation to—

(a) any instrument which is executed on or after 28 April 2014 in pursuance of—

(i) an agreement made on or after that date, or

(ii) a conditional agreement made before that date where the condition is satisfied on or after that date, and

(b) any instrument which is not executed in pursuance of a contract and is executed on or after that date.

PART 3

STAMP DUTY RESERVE TAX

"Chargeable securities"

12 In section 99 of FA 1986 (SDRT: interpretation), after subsection (4A) insert—

"(4B) "Chargeable securities" does not include securities falling within paragraph (a), (b) or (c) of subsection (3) which are admitted to trading on a recognised growth market but not listed on that or any other market.

(4C) In subsection (4B), "recognised growth market" and "listed" are to be construed in accordance with Part 1 of Schedule 1 to FA 2014."

Commencement of Part 3

13 This Part has effect in relation to any agreement to transfer securities—

(a) where the agreement is conditional, if the condition is satisfied on or after 28 April 2014, and

(b) in any other case, if the agreement is made on or after that date.

EXPLANATORY NOTE

ABOLITION OF STAMP DUTY AND STAMP DUTY RESERVE TAX (SDRT): SECURITIES TRADED ON RECOGNISED GROWTH MARKETS

SUMMARY

1. Clause X introduces an exemption from stamp duty and Stamp Duty Reserve Tax (SDRT) for transfers of securities admitted to trading on recognised growth markets.

DETAILS OF THE SCHEDULE

2. Part 1 defines what is meant by 'recognised growth market'. Sub-paragraphs (1) and (2) of the Schedule provide that HMRC will be responsible for recognising a market as a growth market on the basis of evidence provided by the market upon application for recognition.

3. Sub-paragraph (3) of Paragraph 1 sets out the criteria for qualification as a recognised growth market. The market must be a recognised stock exchange, where the majority of companies admitted to trading on the market have a market capitalisation of less than £170 million (sub-paragraph (3)(a)), and/or the market's admission criteria require companies to demonstrate a recent record of growth in either gross revenue or employment over the three periods of account immediately preceding the date of the application (sub-paragraph (3)(b)).

4. Sub-paragraph (4) defines 'period of account' and 'recognised stock exchange'.

5. Sub-paragraphs (5) to (8) explain how a company's market capitalisation for the purposes of sub-paragraph (3)(a) is to be calculated.

6. Sub-paragraphs (9) to (10) set out the formula by which compounded annual growth is to be demonstrated for the purposes of sub-paragraph (3)(b).

7. Sub-paragraphs (11) to (13) give the Treasury power, under regulations, to make provision for revocation of a market's recognition, or to amend the rules under which HMRC can recognise a growth market.

8. Paragraph 2 provides that 'listed' means the same in this Schedule as it does in the Income Tax Acts.

9. Paragraph 3 provides that Part 1 of this Schedule is to be construed as one with the Stamp Act 1981.

10. Paragraph 4 provides that Part 1 of the Schedule is treated as coming into force on 28 April 2014 and that where HMRC has formally recognised a market as a growth market before that date, the recognition will have effect from 28 April 2014.

Part 2

Stamp Duty

11. Paragraph 5 exempts from stamp duty transfers of stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

12. Paragraph 6 exempts from stamp duty a purchase of its own shares by a company where the shares are admitted to trading on a recognised growth market but not listed on any market.

13. Paragraph 7 provides that an Act of Parliament that vests stock or marketable securities does not attract stamp duty where the stock or securities are admitted to trading on a recognised growth market but not listed on any market.

14. Paragraphs 8 and 9 remove a stamp duty charge from instruments that transfer, to a depositary receipt regime or clearance service, stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

15. Paragraph 10 amends the rules for transfers of partnership interests in Schedule 15 to Finance Act 2003 to ensure that stamp duty is not chargeable to the extent that the partnership property includes stock or marketable securities admitted to trading on a recognised growth market but not listed on any market.

16. Paragraph 11 brings into force the stamp duty provisions in Paragraphs 5 to 10 with effect from 28 April 2014 but ensures that a transfer executed after 28 April 2014, but pursuant to an agreement made before that date, will not be exempt.

Part 3

Stamp Duty Reserve Tax (SDRT)

17. Paragraph 12 inserts new sub-sections (4B) and (4C) into section 99 Finance Act 1986 and amends the definition of chargeable securities for SDRT purposes to exclude securities admitted to trading on a recognised growth market but not listed on any market.

18. Paragraph 13 brings into force the SDRT changes in Paragraph 12 for agreements to transfer securities that are made, or become unconditional, on or after 28 April 2014.

BACKGROUND NOTE

19. This exemption has been introduced to support the Government’s policy of encouraging growth in smaller companies.

20. Transfers of shares and securities of UK registered companies on sale generally attract stamp duty or SDRT charges at the rate of 0.5 per cent. Stamp duty is charged if the transfer is effected by the execution of a written instrument. SDRT applies to transfers in respect of which no written instrument is executed.

21. The new provisions ensure that transfers of shares and securities admitted to trading on markets specifically designed for smaller companies, or for companies that can demonstrate a sustained record of growth, will no longer attract stamp tax charges.

22. If you have any questions about this change, or comments on the legislation, please contact Anne Berriman on 03000 585901 (email: anne.berriman@hmrc.gsi.gov.uk).

1 Stamp duty land tax: charities relief

Schedule 1 amends Schedule 8 to FA 2003 (stamp duty land tax: charities relief).

SCHEDULES

SCHEDULE 1

Section 1

STAMP DUTY LAND TAX: CHARITIES RELIEF

1 Schedule 8 to FA 2003 (stamp duty land tax: charities relief) is amended as follows.

2 In paragraph 1—

(a) in sub-paragraph (2) (first condition for charities relief), omit the words from "that is" to the end;

(b) after sub-paragraph (3) insert—

"(3A) For the purposes of this Schedule, a charity ("C") holds a chargeable interest for qualifying charitable purposes if it holds it—

(a) for use in furtherance of the charitable purposes of C or another charity, or

(b) as an investment from which the profits are applied to the charitable purposes of C."

3 After paragraph 3 insert—

"Joint purchasers: partial relief

3A (1) Sub-paragraphs (3) to (5) apply in any case where—

(a) there are two or more purchasers under a land transaction,

(b) the purchasers acquire the subject-matter of the transaction as tenants in common (or, in Scotland, as owners in common),

(c) at least one of them is, and at least one of them is not, a qualifying charity, and

(d) no purchaser enters into the transaction for the purpose of the avoidance of tax under this Part (whether by that purchaser or another person).

(2) A charity ("C") that is a purchaser under a land transaction is a "qualifying charity" in relation to the transaction if C intends to hold its undivided share of the subject-matter of the transaction for qualifying charitable purposes.

(3) The tax chargeable in respect of the transaction is reduced by the amount of the relief under sub-paragraph (4).

(4) The relief is equal to the relevant proportion of the tax that would have been chargeable in respect of the transaction without this Schedule.

(5) The "relevant proportion", in the case of a qualifying charity, is the lower of P1 and P2, where—

P1 is the proportion of the subject-matter of the transaction that is acquired by the qualifying charities (or the qualifying charity if there is just one) under the transaction;

P2 is the proportion of the chargeable consideration for the transaction that is given by the qualifying charities (or the qualifying charity).

Withdrawal of relief given under paragraph 3A

3B (1) This paragraph applies where—

(a) relief has been given under paragraph 3A in respect of a transaction ("the relevant transaction"),

(b) a disqualifying event occurs in relation to a qualifying charity ("C") which was a purchaser under the transaction, and

(c) the disqualifying event occurs in the circumstances required by sub-paragraphs (2) and (3).

(2) The disqualifying event must occur—

(a) before the end of the period of 3 years beginning with the effective date of the transaction, or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

(3) At the time of the disqualifying event C must hold a chargeable interest that—

(a) was acquired by C under the relevant transaction, or

(b) is derived from an interest so acquired.

(4) There is a "disqualifying event" in relation to C if —

(a) C ceases to be established for charitable purposes only, or

(b) the chargeable interest acquired by C under the transaction, or any interest or right derived from that interest, is used or held by C otherwise than for qualifying charitable purposes.

(5) C's portion of the relief mentioned in sub-paragraph (1)(a), or an appropriate proportion of C's portion of that relief, is withdrawn and tax is chargeable in accordance with this paragraph.

(6) The amount chargeable is equal to C's portion of the relief or, as the case may be, the appropriate proportion of C's portion of the relief.

(7) C's portion of the relief depends on whether P1 or P2 was lower in the calculation under paragraph 3A(5).

(8) If P1 was lower, C's portion of the relief is equal to—

$$\frac{p1}{P1} \times R$$

where—
p1 is the proportion of the subject-matter of the transaction that was acquired by C under the transaction;
P1 is the proportion of the subject-matter of the transaction that was acquired by all the qualifying charities that were purchasers under the transaction (in aggregate);
R is the amount of the relief.

(9) If P2 was lower, C's portion of the relief is equal to—

$$\frac{p2}{P2} \times R$$

where—
p2 is the proportion of chargeable consideration for the transaction that was given by C;
P2 is the proportion of the chargeable consideration for the transaction that was given by all the qualifying charities that were purchasers under the transaction (in aggregate);
R is the amount of the relief.

(10) In sub-paragraphs (5) and (6) "appropriate proportion" means an appropriate proportion having regard to—
(a) what was acquired by C under the relevant transaction and what is held by C at the time of the disqualifying event, and
(b) the extent to which what is held by C at that time becomes used or held for purposes other than qualifying charitable purposes.

Partial relief: charity not fully meeting the "qualifying charity" condition

3C (1) This paragraph applies where—
(a) a charity ("C") is one of two or more purchasers acquiring the subject-matter of a land transaction ("the relevant transaction") as tenants in common (or, in Scotland, as owners in common),
(b) C is not a qualifying charity in relation to the transaction,
(c) paragraph 3A(3) to (5) would apply if C were a qualifying charity, and
(d) C intends to hold the greater part of its undivided share of the subject-matter of the transaction for qualifying charitable purposes.

(2) In such a case—
(a) paragraph 3A has effect as if C were a qualifying charity, but
(b) for the purposes of paragraph 3B (withdrawal of relief under paragraph 3A) "disqualifying event" includes any additional disqualifying transaction.

(3) The following are "additional disqualifying transactions" if they are not made in furtherance of the charitable purposes of C—

(a) any transfer by C of a major interest in the whole or any part of the chargeable interest acquired by C under the relevant transaction;

(b) any grant by C at a premium of a low-rental lease of the whole or any part of that chargeable interest.

(4) Paragraph 3(3) (meaning of "at a premium" and "low-rental") applies for the purposes of sub-paragraph (3)(b) as it applies for the purposes of paragraph 3(2)(b)(ii).

(5) In relation to a transaction that, by virtue of this paragraph, is a disqualifying event for the purposes of paragraph 3B—

(a) the date of the event for those purposes is the effective date of the transaction;

(b) paragraph 3B has effect with the modifications in sub-paragraph (6).

(6) The modifications to paragraph 3B are—

(a) in sub-paragraph (3), for "At the time of" substitute "Immediately before";

(b) in sub-paragraph (10)(a), for "at the time of" substitute "immediately before and immediately after";

(c) omit sub-paragraph (10)(b)."

4 In paragraph 4(3) (charitable trusts)—

(a) in paragraph (a), for the words from "references" to "are to" substitute "references in paragraph 1(3A) to the charitable purposes of C are to those of";

(b) in paragraph (b), for "reference" substitute "references" and for "is" substitute ", and to C in paragraph 3B(4)(a), are";

(c) in paragraph (c) for the words from "reference" to "is" substitute "references in paragraphs 3(2)(b) and 3C(3) to the charitable purposes of C are".

5 The amendments made by this section have effect in relation to any transaction of which the effective date (within the meaning of Part 4 of FA 2003) is on or after the day on which this Act is passed.

EXPLANATORY NOTE

STAMP DUTY LAND TAX: CHARITIES RELIEF

SUMMARY

1. Clause [X] and Schedule [Y] introduce amendments to Schedule 8 of the Finance Act 2003 (FA2003) to make it clear that partial relief is available where a charity purchases land jointly, as tenants in common, with a person who does not have charitable status.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts new sub-paragraph (3A) into paragraph 1 of Schedule 8, which defines "qualifying charitable purposes" for the purposes of the schedule as being:

a. for use in furtherance of the charitable purposes of the charity or another charity; or
b. as an investment the profits of which are applied to the charitable purposes of the charity.

3. Paragraph 3 inserts new paragraphs 3A, 3B and 3C into Schedule 8.

4. New paragraph 3A provides for partial relief for joint purchasers.

5. Sub-paragraph 1 provides that sub-paragraphs 3 to 5 apply where –

a. there are two or more purchasers under a land transaction;
b. the purchasers acquire the land as tenants in common (or, in Scotland, owners in common);
c. at least one of the purchasers is a qualifying charity and at least one is not; and
d. the transaction is not being entered into for the avoidance of SDLT, by any of the purchasers or any other person.

6. Sub-paragraph 2 defines a "qualifying charity" as a charity which intends to hold its share in the property for qualifying charitable purposes.

7. Sub-paragraph 3 provides for partial relief to be available by reducing the SDLT due on the transaction by the amount of relief provided for under sub-paragraph (4).

8. Sub-paragraph 4 provides that the relief available is equal to the "relevant proportion" of the tax that would otherwise have been chargeable on the transaction.

9. Sub-paragraph 5 defines the relevant proportion as the lower of:

a. the proportion of the land that is acquired by the qualifying charity or charities; and
b. the proportion of the chargeable consideration for the transaction that is given by the charity or charities.

10. New paragraph 3B provides for withdrawal of the relief given under paragraph 3A.

11. Sub-paragraph 1 provides that paragraph 3B applies where relief has been given under paragraph 3A and a disqualifying event occurs.

12. Sub-paragraph 2 defines a "disqualifying event" as:

a. the charity ceasing to be established for charitable purposes, or
b. the share in the property held by the charity, or any interest derived from it, being used or held by the charity for non-charitable purposes.

13. Sub-paragraph 3 provides that a disqualifying event must occur before the end of three years from the effective date of the transaction or in pursuance of, or in connection with, arrangements that were made before the end of that three year period.

14. Sub-paragraph 4 provides that, at the time of the disqualifying event, the charity must hold a chargeable interest in, or an interest derived from, the land that was acquired under the original transaction.

15. Sub-paragraph 5 provides that the relief under paragraph 3A, or an appropriate proportion of it, is withdrawn, and tax becomes chargeable.

16. Sub-paragraph 6 provides that the amount of tax chargeable, in respect of a charity, is the amount of relief given under paragraph 3A, or an appropriate portion of that relief.

17. Sub-paragraph 7 provides that the amount of tax chargeable is dependant on whether the relief given under paragraph 3A(5) was based on P1 or P2.

18. Sub-paragraph 8 sets out how to calculate the charity's proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P1 (the proportion of the land acquired by the charities). This is:

$$\frac{p1}{P1} \times R$$

where –
p1 is the proportion of the land that was acquired by the charity;
P1 is the total proportion of the land acquired by all the qualifying charities; and
R is the amount of the relief.

19. Sub-paragraph 9 sets out how to calculate the charity's proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P2 (the proportion of the chargeable consideration given by the charities). This is:

$$\frac{p2}{P2} \times R$$

where –
p2 is the proportion of the chargeable consideration given by the charity;
P2 is the total proportion of the land acquired by all the qualifying charities; and
R is the amount of the relief.

20. Sub-paragraph 10 provides that in determining the appropriate proportions, as referred to in sub-paragraphs (5) and (6), account must be taken of –

a. what the charity acquired and what it held at the time of the disqualifying event; and
b. the extent to which what is held by the charity at the time of the disqualifying event is used or held for non-charitable purposes.

21. New paragraph 3C allows for relief to be available where the charity does not fully meet the "qualifying charity" condition.

22. Sub-paragraph 1 provides that paragraph 3C applies where –

a. a charity is acquiring land jointly as tenants in common (or, in Scotland, owners in common) with a non-charity purchaser;
b. the charity does not meet the qualifying charity condition in relation to the land,
c. partial relief would apply if that condition were met, and
d. the charity intends to hold the greater part of its share in the property for qualifying charitable purposes.

23. Sub-paragraph 2 provides that in such a case paragraph 3A applies but that, for the purposes of withdrawal of the relief under paragraph 3B, "additional disqualifying events" apply.

24. Sub-paragraph 3 defines "additional disqualifying transactions" as –

a. any transfer by the charity of a major interest in the whole or any part of its share in the property; and
b. any grant by the charity at a premium of a low-rental lease if the whole or any part of its share in the property.

25. Sub-paragraph 4 imports the definitions of "at a premium" and "low-rental" from paragraph 3(3).

26. Sub-paragraph 5 provides that for the purposes of paragraph 3B the date of the disqualifying event is the effective date of the transaction.

27. Sub-paragraph 6 sets out some modifications that apply to paragraph 3B in its application to an additional disqualifying event.

28. Paragraph 4 makes consequential amendments to paragraph 4 of Schedule 8.

29. Paragraph 5 provides that the amendments made by paragraphs 1 to 4 will have effect for transactions with an effective date on or after the date on which Finance Bill 2014 receives Royal Assent.

BACKGROUND NOTE

30. These changes are being made as a result of the Court of Appeal judgement in the cases of The Trustees of the Pollen Estate Company Limited and Kings College London v HM Revenue and Customs. The Court ruled that, where a charity purchased property jointly, as tenants in common, with a non-charity purchaser, relief from SDLT is available on the charity's share of the property.

31. Amending the legislation to provide for partial relief will provide clarity for taxpayers on how partial relief will apply. In addition, to ensure that that the availability of partial relief cannot be exploited to avoid SDLT, the SDLT relief that the charity can claim will be restricted to the lower of:

- the percentage share which the charity holds in the property; and
- the percentage of the purchase price paid by the charity for its share in the property.

32. If you have any questions about these changes, or comments on the legislation, please contact Jane Ewart on 03000 585790 (email: jane.ewart1@hmrc.gsi.gov.uk).

1 Temporary statutory effect of House of Commons resolution

(1) Section 50 of FA 1973 (temporary statutory effect of House of Commons resolution affecting stamp duties) is amended as follows.

(2) In subsection (2), for paragraph (c) (and the "and" after it) substitute—

"(c) the dissolution of Parliament;

(ca) the prorogation of Parliament in a case where subsection (2B) does not apply; and".

(3) In that subsection, in paragraph (d), for "six" substitute "seven".

(4) After that subsection insert—

"(2A) Subsection (2B) applies where Parliament is prorogued at the end of a session if—

(a) during the session a Bill containing provisions to the same effect as the resolution is read a second time by the House or a Bill is amended (whether by the House or a Committee of the House or a Public Bill Committee) so as to include such provisions,

(b) the Standing Orders or Sessional Orders of the House provide, or during the session the House orders, that proceedings on the Bill not completed before the end of the session shall be resumed in the next session, and

(c) proceedings on the Bill are not completed during the session.

(2B) A resolution shall cease to have statutory effect under this section if, during the period of thirty sitting days beginning with the first sitting day of the next session, no Bill containing provisions to the same effect as the resolution is presented to the House.

(2C) In subsection (2B) "sitting day" means a day on which the House sits.

(2D) Where a Bill is amended as mentioned in subsection (2A)(a), it does not matter for the purposes of subsection (2A)(b) if the House orders as mentioned in subsection (2A)(b) before the amendment to the Bill is made."

EXPLANATORY NOTE

TEMPORARY STATUTORY EFFECT OF HOUSE OF COMMONS RESOLUTION

SUMMARY

1. Clause [X] amends section 50 Finance Act 1973 (FA 1973) to ensure that, following the change to spring to spring parliamentary sessions, it will remain effective and continue to enable the Government to vary or abolish stamp duty on a provisional basis.

DETAILS OF THE CLAUSE

2. Subsection 3 substitutes a new section 50(2)(d) FA 1973, which provides that a resolution can have statutory effect for a maximum period of seven months.

3. Subsection 4 inserts new sub-sections (2A) to (2D) to section 50 FA 1973. The effect is that, if Parliament is prorogued at the end of a session, a resolution will cease to have statutory effect; unless proceedings on a Bill containing an equivalent provision, which have begun but have not been completed, are to be resumed in the next session, and re-introduced in the first thirty sitting days.

4. New sub-section (2A) provides that new sub-section (2B) will apply where Parliament is prorogued at the end of a session and lists at (a) to (c), the specific circumstances.

5. New sub-section (2B) allows a resolution to retain its statutory effect, provided a Bill containing equivalent provisions is presented to the House within the first thirty sitting days of the next session.

6. New sub-section (2C) defines ‘sitting day’.

7. New sub-section (2D) makes it clear that if a Bill has been amended as envisaged in new sub-section (2A)(a), it does not matter if an order to resume the proceedings in the next session, is made before the amendment.

BACKGROUND NOTE

8. Section 50 FA 1973 provides temporary statutory effect to House of Commons resolutions for stamp duty. The principal practical application of this is to allow the Government to vary or abolish stamp duty on a provisional basis between the Budget and the enactment of the Finance Bill.

9. Under current legislation, such a resolution will fall if Parliament is prorogued. This became an issue when the Government moved to spring to spring parliamentary sessions, as

it is now more likely that Parliament will be prorogued in May, between Budget Day and Royal Assent to the Finance Bill.

10. These changes will ensure that a resolution for stamp duty will remain effective until replaced by an Act of Parliament. It will bring the provisions regarding resolutions for stamp duty into line with the changes made for other taxes in the Provisional Collection of Taxes Act 1968 by Finance Act 2011.

11. If you have any questions about this change, or comments on the legislation, please contact Anne Berriman on 03000 585901 (email: anne.berriman@hmrc.gsi.gov.uk).

1 Community amateur sports clubs

(1) Part 6 of CTA 2010 (charitable donations relief: payments to charity) is amended in accordance with subsections (2) to (7).

(2) In section 189 (relief for charitable donations), in subsection (5), after "subject to" insert "Chapter 2A of this Part,".

(3) In section 192 (conditions as to repayment), in subsection (6), omit the "and" at the end of paragraph (a) and after that paragraph insert—

"(aa) the repayment is not non-qualifying expenditure for the purposes of Chapter 9 of Part 13 (see section 661(5)), and".

(4) In section 200 (company wholly owned by a charity), after subsection (4) insert—

"(4A) In the case of a charity which is a registered club, ordinary share capital of a company is treated as owned by a charity if the charity beneficially owns that share capital."

(5) In section 202 (meaning of "charity"), before paragraph (b) insert—

"(aa) a registered club,".

(6) After that section insert—

"202A"Registered club"

In this Chapter "registered club" has the meaning given by section 658(6) (clubs registered as community amateur sports clubs)."

(7) After Chapter 2 insert—

"CHAPTER 2A

PAYMENTS TO COMMUNITY AMATEUR SPORTS CLUBS: ANTI-ABUSE

202B Restriction on relief for payments to community amateur sports clubs

(1) Subsection (2) applies if—

(a) one or more qualifying payments are made by a company to a registered club ("the club") in an accounting period ("the current period"),

(b) the company is wholly owned, or controlled, by the club or by a number of charities which include the club, for all or part of that period, and

(c) inflated member-related expenditure is incurred by the company in that period.

(2) For the purposes of section 189 (relief for qualifying charitable donations), the total amount of those qualifying payments is treated as

reduced (but not below nil) by the total amount of that inflated member-related expenditure.

(3) Subsection (4) applies, if—

(a) the total amount of that expenditure exceeds the total amount of those payments, and

(b) the company made one or more qualifying payments to the club in an earlier accounting period ending not more than 6 years before the end of the current period.

(4) For the purposes of section 189, the total amount of the qualifying payments made in the earlier accounting period is treated as reduced (but not below nil) by the amount of the excess.

(5) If subsection (3)(b) applies in relation to more than one earlier accounting period—

(a) subsection (4) applies to treat amounts paid in later accounting periods as reduced in priority to amounts paid in earlier ones (until the excess is exhausted or all amounts have been reduced to nil), and

(b) in applying subsection (4) in relation to an accounting period, the reference to the excess is to be read as a reference to so much of it as exceeds the total amount of qualifying payments which, under that subsection, have previously been reduced to nil by the excess.

(6) For the purposes of subsections (3) and (4), a reference to the total amount of qualifying payments made in an earlier accounting period is to the total amount of those payments after—

(a) any reduction under subsection (2), and

(b) any previous reduction under subsection (4).

(7) Such adjustments must be made (whether by way of the making of assessments or otherwise) as may be required in consequence of subsections (4) to (6).

(8) Section 200 (company wholly owned by a charity) applies for the purposes of this section.

(9) For the purposes of this section, the club controls the company if it has the power to secure—

(a) by means of the holding of shares or the possession of voting power in relation to the company or any other company, or

(b) as a result of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with the club's wishes.

(10) For the purposes of this section two or more charities (including the club) control the company if, acting together, they have the power to secure, as mentioned in paragraph (a) or (b) of subsection (9), that the affairs of the company are conducted in accordance with the wishes of those charities.

(11) In this section—

"charity" has the same meaning as in Chapter 2,

"qualifying payment" means a qualifying payment for the purposes of Chapter 2, and

"registered club" has the same meaning as in Chapter 2,

and any reference to a member of the club includes a reference to a person connected with a member of the club.

202C "Inflated member-related expenditure"

(1) This section applies for the purposes of section 202B.

(2) "Inflated member-related expenditure" means—

(a) employment expenditure incurred in respect of the employment of a member of the club, by the company, where that employment is otherwise than on an arm's length basis, or

(b) expenditure incurred on a supply of goods and services to the club by—

(i) a member of the club, or

(ii) a member-controlled body,

otherwise than on an arm's length basis.

(3) But if the features of an employment or supply which cause it to be otherwise than on an arm's length basis, when taken together, are more advantageous to the company than if the employment or supply had been on an arm's length basis, any expenditure incurred in respect of the employment or on the supply is not inflated member-related expenditure.

(4) A company is "member-controlled" if a member of the club has (or two or more members acting together have) the power to secure—

(a) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or

(b) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the company are conducted in accordance with the wishes of the member (or, as the case may be, members).

(5) A partnership is "member-controlled" if a member of the club has or two or more members acting together have the right to a share of more than half the assets, or of more than half the income, of the partnership.

(6) In this section any reference to a member of the club includes a reference to a person connected with a member of the club.

(7) For the purposes of subsection (2)(a), the Treasury may by order specify—

(a) descriptions of expenditure which is to be treated as employment expenditure incurred in respect of the employment of a member of a club;

(b) descriptions of expenditure which is not to be so treated."

(8) Chapter 9 of Part 13 of that Act (other special types of company: community amateur sports clubs) is amended in accordance with subsections (9) to (12).

(9) After section 661D (but before the italic heading) insert—

"661E Tax treatment of gifts of money from companies

If a registered club receives a gift of a sum of money from a company which is not a charity, the gift is treated as an amount in respect of which the registered club is chargeable to corporation tax, under the charge to corporation tax on income.

But this is subject to section 664 (exemption for interest, gift aid income and gifts from companies)."

(10) In section 664 (exemption for interest and gift aid income)—

(a) in subsection (1), omit the "and" after paragraph (a) and after paragraph (b) insert ", and

(c) its company gift income for that period,",

(b) in that subsection, for "and gift aid income" substitute ", gift aid income and company gift income", and

(c) in subsection (3), after "this section—" insert—

""company gift income", in relation to a club, means gifts of money made to the club by companies which are not charities,".

(11) In section 665A (claims in relation to interest and gift aid income), in subsection (1)(b) for "and gift aid" substitute ", gift aid and company gift".

(12) Accordingly—

(a) in the italic heading before section 661D, omit "*qualifying for gift aid relief*",

(b) in the heading for section 664, for "**and gift aid**" substitute "**, gift aid and company gift**"

(c) in the heading for section 665A, for "**and gift aid**" substitute "**, gift aid and company gift**".

(13) The amendments made by this section have effect in relation to payments made on or after 1 April 2014.

(14) But the amendments made by subsections (1) to (7) are to be ignored for the purposes of section 199 of CTA 2010 (payment attributed to earlier accounting period) if the claim mentioned in subsection (1)(c) of that section is in respect of an accounting period ending before 1 April 2014.

(15) The earlier accounting periods mentioned in section 202B(3) of CTA 2010 (see subsection (7) of this section) do not include any accounting period ending before 1 April 2014.

EXPLANATORY NOTE

CORPORATE GIFT AID FOR COMMUNITY AMATEUR SPORTS CLUBS

SUMMARY

1. This clause introduces a new tax relief for the donation of company profits to Community Amateur Sports Clubs (CASCs). In substance, the measure would put the tax treatment of donation of company profits to CASCs on a par with donation of company profits to charity, known as Corporate Gift Aid for charities. An anti-abuse rule is inserted in Part 6 of the Corporation Act 2010.

DETAILS OF THE CLAUSE

General provisions

2. Subsection (1) introduces amendments to Part 6 (charitable donations relief) of the Corporation Taxes Act (CTA) 2010, the main provision covering gift aid tax relief of gifts of company profits to charities.

3. Subsection (2) amends section 189 (relief for qualifying charitable donations) to ensure relief for qualifying donations to CASCs is subject to the anti-abuse provisions in new Chapter 2A.

4. Subsection (3) amends section 192 (condition as to repayment), which applies where a subsidiary company makes a payment to its parent charity before the exact amount of its profits is known. Subsection (3) of clause 1 ensures that a repayment by a CASC of any excess payment to its subsidiary to adjust the company's taxable profits to nil will not be treated as non-qualifying expenditure. Non-qualifying expenditure of a CASC may be chargeable to tax under the provisions of section 666 (exemptions reduced if non-qualifying expenditure incurred) of CTA 2010.

5. Subsection (4) amends section 200 of CTA 2010, which sets out the conditions for a company to be regarded as wholly owned by a charity, by inserting new subsection (4A) which makes provision for CASCs with ordinary share capital.

6. Subsection (5) amends the meaning of 'charity' in section 202 for the purposes of Chapter 2, to include `registered clubs` as entities which qualify as charities. This enables the donation of money to CASCs by companies to rank as `qualifying payments` for company Gift Aid purposes.

7. Subsection (6) inserts new section 202A, which applies the definition of a `registered club` given by section 658(6) of CTA 2010 to Chapter 2 of Part 6. A 'registered club' is commonly known as a 'CASC'.

Anti-abuse provisions

8. Subsection (7) inserts new Chapter 2A, which provides new anti-abuse provisions aimed at discouraging abuse of companies owned or controlled by CASCs.

9. New section 202B (1) (restriction on relief for payments to community amateur sports clubs) sets the conditions where the new anti-abuse provision would apply and introduces the concept of 'inflated member-related expenditure', which is defined at new section 202C.

10. Where a company, which is owned or controlled by a CASC, incurs inflated member-related expenditure, new section 202B (2) reduces (but not below nil) the amount of a qualifying payment by the company to its parent CASC that qualifies for tax relief. The amount of the reduction is the total amount of the inflated member-related expenditure or, if less, the amount of the qualifying payment. The effect of this provision is to bring back into the charge to corporation tax the amount of the inflated member-related expenditure.

11. New section 202B (3)-(7) deals with the situation where the amount of inflated member-related expenditure referred to in new section 202B (2) is greater than the qualifying payment made in the same accounting period. In that case any excess inflated member-related expenditure can be carried back to adjust qualifying payments in earlier years for up to six years. The excess expenditure is set off against qualifying payments made by the company starting from the latest year and working back.

12. The commencement provision at subsection (15) of clause 1 prevents adjustments being made in accounting periods ending before the general commencement given by subsection (13).

13. New section 202B (8) to (11) provide a number of definitions for the purposes of new section 202B In particular new subsections (9) and (10) explains when a company is controlled by a club or two or more charities (including the club) for the purposes of the anti-abuse rule.

14. New section 202C (2) defines in paragraphs (a) and (b) the two situations in which expenditure incurred by a company is `inflated member-related expenditure`.

15. The situation in paragraph (a) is that expenditure on the employment of a member of the club by the company is not at arm's length. New section 202C (7) enables HM Treasury to provide, by Order, what counts as 'employment-related' expenditure for this purpose.

16. The situation in paragraph (b) is that expenditure on the supply of goods and services to the club by a member or member-controlled body is not on an arm's length basis.

17. New section 202C(3) provides that where the expenditure, taken as a whole, is beneficial to the company rather than to the third party then that expenditure will not fall within the definition of 'inflated member-related expenditure'.

18. New section 202C (4) and (5) explain the meaning of `member-controlled` for the purpose of section 202C (2).

19. New section 202C (6) provides that a reference to a member of the club includes a reference to a person connected to a member.

Donations from companies to CASCs

20. Subsection (8) introduces amendments to Chapter 9 of Part 13 (community amateur sports clubs) to include donations from companies within the tax relief provisions for CASCs.

21. Subsections (9) and (10) set the tax treatment of gifts of money to CASCs by companies. Subsection (9) inserts new section 661E, which brings gifts of money by companies into the charge to corporation tax. Subsection (10) amends section 664 (exemption for interest and gift aid income) to relieve a gift of money by a company, referred to as 'company gift income', from the charge to corporation tax so long as the payment is used for qualifying purposes.

22. Subsections (11) and (12) make consequential amendments to reflect the changes brought about by this clause.

23. Subsection (13) provides that the amendments made in this clause have effect in relation to payments made on or after 1 April 2014.

24. Subsection (14) provides that the amendments enabling corporate gift aid for CASCs are to be ignored for the purposes of section 199 (payment attributed to earlier period) where the company makes a claim for the payment to be treated as a qualifying payment for an earlier accounting period ending before 1 April 2014. This prevents a company attributing a qualifying payment made under the new provisions to an accounting period ending before 1 April 2014.

25. Subsection (15) provides that the restriction on relief for payments to CASCs in earlier accounting periods under new section 202B (3) (where there is 'inflated member-related expenditure') does not apply in respect of accounting periods ending before 1 April 2014.

BACKGROUND NOTE

26. This clause extends the scope of tax relief available to companies that give money to CASCs allowing them to foster greater involvement in community sporting activity.

27. The clause includes anti-abuse provisions to deter CASC members from obtaining a financial advantage from a company owned by a CASC. The anti-abuse provisions hinge on the new concept of `inflated member-related expenditure`. The following examples show how this concept operates.

Example 1

28. A company, owned and controlled by a CASC buys supplies from one CASC member and rents property from another. Both of the payments are more than what would be expected under an arm's length arrangement. As a result CASC members benefit financially to the detriment of the company and its parent sports club.

29. In the Accounting Period Ended [APE] 31.01.16, the subsidiary incurred total costs of £37,500 and £12,500 for the supply of sporting equipment and rent, respectively.

30. In respect of the same APE the subsidiary made a qualifying gift of its entire net profit of £75,000 to the CASC.

31. Because neither of the arrangements was at arm's length the value of the qualifying gift would be reduced by £50,000 (37,500 + £12,500).

32. Accordingly, the subsidiary would become liable to pay corporation tax in respect of an APE 31.01.16 profit of £50,000, rather than nil, despite the company donating its entire net profit to the CASC.

Example 2

33. A contract agreed between a CASC controlled company and a CASC member provides for two supplies for a total figure of £100,000. An arm's length transaction would have cost £25,000 for each supply It is impossible to know how the £100,000 is allocated to each supply in this case therefore, the whole of the £100000 will be treated as Inflated Member Related Expenditure.

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

CONTENTS

PART 1

BETTING AND GAMING DUTIES

CHAPTER 1

GENERAL BETTING DUTY

The duty

1 General betting duty

A duty of excise, to be known as general betting duty, is charged in accordance with this Chapter.

General and spread bets

2 Bookmakers: general bets

(1) General betting duty is charged on a bet made by a person with a bookmaker if—

(a) the person who makes the bet (whether as principal or agent) does so while present at a place in the United Kingdom where the bookmaker carries on the business of receiving or negotiating bets, or

(b) the person who makes the bet as principal is a UK person and the bet is not an excluded bet.

(2) Subsection (1) does not apply to—

(a) an on-course bet;

(b) a spread bet;

(c) a bet made by way of pool betting.

(3) The amount of duty charged in respect of bets made with a bookmaker in an accounting period is 15% of the bookmaker's net stake receipts for that period.

3 Bookmakers: spread bets

(1) General betting duty is charged on a spread bet made with a bookmaker who is in the United Kingdom.

(2) A bet is a spread bet if it constitutes a contract the making or accepting of which is a regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000.

(3) The amount of duty charged under subsection (1) in respect of spread bets made with a bookmaker in an accounting period is—

(a) 3% of the amount of the bookmaker's net stake receipts in respect of financial spread bets for that period (if any), plus

(b) 10% of the amount of the bookmaker's net stake receipts in respect of other spread bets for that period (if any).

(4) A "financial spread bet" is a spread bet the subject of which is a financial matter.

(5) The Commissioners may by order provide that a specified matter—

(a) is to be treated as a financial matter for the purpose of subsection (4), or

(b) is not to be treated as a financial matter for that purpose.

4 Net stake receipts

(1) For the purposes of a charge under a provision of section 2 or 3 in respect of the class of bets to which the provision applies, the amount of a bookmaker's net stake receipts for an accounting period is X minus Y, where—

(a) X is the aggregate of amounts which fall due to the bookmaker in the accounting period in respect of bets of that class made with the bookmaker, and

(b) Y is the aggregate of amounts paid by the bookmaker in that period by way of winnings to persons who made bets of that class with the bookmaker (irrespective of when the bets were made or determined).

(2) Where—

(a) a person makes a bet other than a spread bet, and

(b) the sum which the person will lose if unsuccessful is known when the bet is made,

that sum is to be treated for the purposes of subsection (1)(a) as falling due when the bet is made (irrespective of when it is actually paid or required to be paid).

(3) Where the amount of a bookmaker's net stake receipts is zero or a negative amount, it is to be disregarded for the purposes of sections 2 and 3 except as provided for by section 5.

(4) In calculating an amount due to a bookmaker in respect of a bet, no deduction is to be made in respect of—

(a) any other benefit secured by the person who makes the bet as a result of paying the money,

(b) a person's expenses, whether in paying duty or otherwise, or

(c) any other matter.

(5) Where a person makes a bet in pursuance of an offer which permits the person to pay nothing or less than the amount which the person would have been required to pay without the offer, the person is to be treated for the purposes of this section as being due to pay that amount—

(a) to the person with whom the bet is made, and

(b) at the time when the bet is made.

(6) For the purpose of subsection (1)(b)—

(a) the reference to paying an amount to a person includes a reference to holding it in an account for the person if the person is notified that the amount is being held for the person in the account and that the person is entitled to withdraw it on demand,

(b) the return of a stake is to be treated as a payment by way of winnings, and

(c) only payments of money are to be taken into account.

(7) [Retained winnings.]

5 Relief for losses

(1) This section applies where the amount of a bookmaker's net stake receipts for an accounting period in respect of a class of bets (calculated in accordance with section 4(1)) is a negative amount.

(2) That amount is to be carried forward to the following accounting period and, to the extent that it does not exceed it, deducted from the amount of the bookmaker's net stake receipts in respect of the same class of bets for that period.

(3) If the amount of those net stake receipts for that following accounting period—

(a) is not a positive amount, or

(b) is less than the amount carried forward,

the amount carried forward or, as the case may be, the balance of it is to be treated for the purposes of this section as if it were a negative amount of net stake receipts for that period in respect of the same class of bets.

6 Bet-brokers

(1) This section applies where—

(a) one person (the "bettor") makes a bet with another person (the "bet-taker") using facilities provided in the course of a business, other than a betting exchange business, by a third person (the "bet-broker"), or

(b) one person (the "bet-broker") in the course of a business makes a bet with another person (the "bet-taker") as the agent of a third person (the "bettor") (whether the bettor is a disclosed principal or an undisclosed principal).

(2) For the purposes of sections 2 to 5—

(a) the bet is to be treated as if it were made separately by the bettor with the bet-broker and by the bet-broker with the bet-taker,

(b) the bet-broker is to be treated as a bookmaker in respect of the bet,

(c) the aggregate of amounts due to be paid by the bettor in respect of the bet is to be treated as being due separately to the bet-broker and to the bet-taker (and any amount due to be paid by the bet-broker to the bet-taker is to be disregarded), and

(d) a sum paid by the bet-taker by way of winnings in respect of the bet is to be treated as having been paid separately by the bet-taker and by the bet-broker at that time and for that purpose (and any sum paid by the bet-broker is to be disregarded).

(3) Where there is any doubt as to which of two persons is the bettor and which the bet-taker for the purposes of subsection (1)(a), whichever of the two was the first to use the facilities of the bet-broker to offer the bet is to be treated as the bet-taker.

(4) In this section "betting exchange business" means a business such as is mentioned in section 14(1).

Pool betting on horse and dog races

7 Pool betting on horse and dog races

(1) General betting duty is charged on a bet made by a person with a bookmaker by way of pool betting if the bet is a Chapter 1 pool bet.

(2) A bet is a Chapter 1 pool bet if—

(a) it relates only to horse racing or dog racing,

(b) it is not an on-course bet, and

(c) either—

(i) the person who makes the bet (whether as principal or agent) does so while present at a place in the United Kingdom where the bookmaker carries on the business of receiving or negotiating bets or conducting pool betting operations, or

(ii) the person who makes the bet as principal is a UK person and the bet is not an excluded bet.

(3) General betting duty is charged at the rate of 15% of the bookmaker's profits on Chapter 1 pool bets for an accounting period.

(4) The bookmaker's profits on Chapter 1 pool bets for an accounting period are the aggregate of—

(a) the amount of the bookmaker's profits for the period in respect of such bets that are pooled stake bets (calculated in accordance with section 10), and

(b) the amount of the bookmaker's profits for the period in respect of such pool bets that are ordinary bets (calculated in accordance with section 11), and

(c) the amount of the bookmaker's profits for the period in respect of retained winnings (calculated in accordance with section 12).

8 Pooled stake bets and ordinary bets

(1) A bet made by way of pool betting is a "pooled stake bet" for the purposes of this Chapter if all or any part of the stake money on the bet is assigned by or on behalf of the bookmaker to a fund (a "stake fund") from which winnings are to be paid in respect of pool betting.

(2) A bet made by way of pool betting is an "ordinary bet" for the purposes of this Chapter if it is not a pooled stake bet.

9 Stake money

(1) The stake money on a Chapter 1 pool bet is the aggregate of the amounts which fall due in respect of the bet.

(2) If the stake money falls due to a person other than the bookmaker, it is to be treated for the purposes of this Chapter as falling due to the bookmaker.

(3) Where the sum which the person who makes the bet will lose if unsuccessful is known when the bet is made, that sum is to be treated for the purposes of this section as falling due when the bet is made (irrespective of when it is actually paid or required to be paid).

(4) In calculating the amount falling due in respect of the bet, no deduction is to be made in respect of—

(a) any other benefit secured by the person who makes the bet as a result of paying the money,

(b) a person's expenses, whether in paying duty or otherwise, or

(c) any other matter.

(5) Where the person makes the bet in pursuance of an offer which permits the person to pay nothing or less than the amount which the person would have been required to pay without the offer, the person is to be treated for the purposes of this section as being due to pay that amount—

(a) to the bookmaker with whom the bet is made, and

(b) at the time when the bet is made.

10 Profits on pooled stake bets

(1) Take the following steps to calculate the amount of a bookmaker's profits for an accounting period in respect of Chapter 1 pool bets that are pooled stake bets.

Step 1

Take the aggregate of the stake money falling due to the bookmaker in the accounting period in respect of Chapter 1 pool bets that are pooled stake bets and deduct the aggregate of that stake money that is assigned by or on behalf of the bookmaker to stake funds during the period.

Step 2

If in the accounting period any amount contained in a stake fund to which stake money falling due to the bookmaker in respect of Chapter 1 pool bets has been assigned is used otherwise than to provide winnings to persons who made bets by way of pool betting, multiply each amount so used in the accounting period by the relevant proportion that applies in relation to it.

Step 3

Add the aggregate of the amounts calculated under Step 2 to the amount calculated under Step 1.

Step 4

[Top-up winnings.]

Step 5

Subtract the aggregate of the amounts calculated under Step 4 from the amount calculated under Step 3.

(2) For the purposes of Step 2 the relevant proportion, in relation to any amount contained in a fund which is used otherwise than to provide winnings, is—

(a) if the amount relates to a specific bet, the proportion of that amount that consists of stake money paid to the bookmaker in respect of that bet,

(b) if the amount does not relate to a specific bet but relates to amounts assigned to the fund during a specific period, the proportion of that amount that consists of stake money assigned to the fund by or on behalf of the bookmaker during that period, and

(c) in any other case, the proportion of the total amount contained in the fund immediately before the amount is so used which consists of stake money assigned to the fund by or on behalf of the bookmaker.

(3) Where the calculation under this section of profits for an accounting period produces a negative amount, it is not included in the calculation under section

7(4) for that accounting period but may be carried forward in reduction of the profits calculated under this section for one or more later accounting periods.

11 Profits on ordinary bets

(1) To calculate the amount of a bookmaker's profits for an accounting period in respect of Chapter 1 pool bets that are ordinary bets—

(a) take the aggregate of the stake money falling due to the bookmaker in the accounting period in respect of ordinary bets, and

(b) subtract the aggregate of the expenditure by or on behalf of the bookmaker for the period on winnings in respect of such bets.

(2) Where the calculation under this section of profits for an accounting period produces a negative amount, it is not included in the calculation under section 7(4) for that accounting period but may be carried forward in reduction of the profits calculated under this section for one or more later accounting periods.

12 Profits on retained winnings

(1) The amount of a bookmaker's profits for an accounting period in respect of retained winnings is the aggregate of the amounts which—

(a) by virtue of being credited to a person's account led to a reduction in the amount of the bookmaker's profits calculated for any accounting period under section 10 or 11,

(b) have not been withdrawn by the person whose account was credited, and

(c) the person has, in the accounting period, ceased to be entitled to withdraw from the account.

(2) The Commissioners may direct that subsection (1) is not to apply in a specified case or class of cases.

13 Expenditure on winnings

(1) Subsections (2) to (4) apply for the purpose of calculating expenditure on winnings in a calculation under section 10 or 11, but have effect subject to any regulations under subsection (5).

(2) Expenditure on winnings includes expenditure on an amount held in an account for a person if the person is notified that the amount is being held for the person in the account and that the person is entitled to withdraw it on demand.

(3) The return of a stake is to be treated as expenditure on winnings.

(4) Only payments of money are to be taken into account.

(5) The Commissioners may by regulations make provision as to when expenditure on winnings is to be treated as incurred for the purposes of a calculation under section 10 or 11.

Exchanges

14 Betting exchanges

(1) This section applies where—
  (a) one person makes a bet with another person using facilities provided by a third person in the course of a business, and
  (b) that business is one that does not involve the provision of premises for use by persons making or taking bets.

(2) General betting duty is charged on the amounts ("commission charges") that any party to the bet who is a UK person is charged, whether by deduction from winnings or otherwise, for using those facilities.

(3) No deductions are allowed from commission charges.

(4) The amount of duty charged under this section in respect of bets determined in an accounting period is 15% of the commission charges relating to those bets.

(5) Where a person arranges for facilities relating to a bet to be provided by another person, the facilities are to be treated for the purposes of this section (and section 15(4) so far as relating to this section) as provided by the person who makes the arrangements instead of by the person who provides the facilities.

(6) For the purposes of this section it does not matter—
  (a) whether the bet is made in the United Kingdom or elsewhere;
  (b) whether the facilities are in the United Kingdom or elsewhere.

(7) [Provision of information.]

Supplementary

15 Liability to pay

(1) All general betting duty chargeable in respect of—
  (a) bets made in an accounting period, or
  (b) in the case of duty chargeable under section 14, bets determined in an accounting period,

  becomes due at the end of that period.

(2) In the case of bets made with a bookmaker in an accounting period the general betting duty is to be paid—
  (a) when it becomes due, and
  (b) by the bookmaker.

(3) But general betting duty which is due to be paid by a bookmaker in respect of bets may be recovered from the following persons as if they and the bookmaker were jointly and severally liable to pay the duty—
  (a) the holder of any licence which authorises the provision of facilities for betting by the business in the course of which the bets were made;
  (b) a person responsible for the management of that business;
  (c) where the bookmaker is a company, a director.

(4) In the case of bets made in an accounting period by means of facilities provided by a person as described in section 14 the general betting duty is to be paid—
  (a) when it becomes due, and
  (b) by the person who provides the facilities.

(5) This section is without prejudice to sections 35 and 39 and regulations made under those sections.

CHAPTER 2

POOL BETTING DUTY

16 Pool betting duty

(1) A duty of excise, to be known as pool betting duty, is charged on a bet made by a person with a bookmaker by way of pool betting if the bet is a Chapter 2 pool bet.

(2) A bet is a Chapter 2 pool bet if—
  (a) it is not made wholly in relation to horse racing or dog racing,
  (b) it is not made for community benefit, and
  (c) either—
    (i) the person who makes the bet (whether as principal or agent) does so while present at a place in the United Kingdom where the bookmaker carries on the business of receiving or negotiating bets or conducting pool betting operations, or
    (ii) the person who makes the bet as principal is a UK person and the bet is not an excluded bet.

(3) Pool betting duty is charged at the rate of 15% of the bookmaker's profits on Chapter 2 pool bets for an accounting period.

(4) The bookmaker's profits on Chapter 2 pool bets for an accounting period are the aggregate of—
  (a) the amount of the bookmaker's profits for the period in respect of Chapter 2 pool bets that are pooled stake bets (calculated in accordance with section 19),
  (b) the amount of the bookmaker's profits for the period in respect of Chapter 2 pool bets that are ordinary bets (calculated in accordance with section 20), and
  (c) the amount of the bookmaker's profits for the period in respect of retained winnings (calculated in accordance with section 21).

17 Pooled stake bets and ordinary bets

(1) A bet made by way of pool betting is a "pooled stake bet" for the purposes of this Chapter if all or any part of the stake money on the bet is assigned by or on behalf of the bookmaker to a fund (a "stake fund") from which winnings are to be paid in respect of pool betting.

(2) A bet made by way of pool betting is an "ordinary bet" for the purposes of this Chapter if it is not a pooled stake bet.

18 Stake money

(1) The stake money on a Chapter 2 pool bet is the aggregate of the amounts which fall due in respect of the bet.

(2) If the stake money falls due to a person other than the bookmaker, it is to be treated for the purposes of this Chapter as falling due to the bookmaker.

(3) Any payment that entitles a person to make the bet is, if the person makes the bet, to be treated as an amount falling due in respect of the bet.

(4) All payments made—

(a) for or on account of or in connection with a Chapter 2 pool bet,

(b) in addition to amounts falling due in respect of the bet, and

(c) by the persons making the bet,

are to be treated as amounts due in respect of the bet except in so far as the contrary is proved by the bookmaker whose profits on Chapter 2 pool bets are being calculated.

(5) Subsections (6) and (7) apply for the purposes of subsection (1) but have effect subject to any regulations under subsection (8).

(6) Where—

(a) a person makes a bet, and

(b) the bet relates to a single event, or to two or more events taking place on the same day,

any sum due to the bookmaker in respect of the bet is treated as falling due on the day on which the event or events take place.

(7) Where—

(a) a person makes a bet, and

(b) subsection (6) does not apply,

any sum due to the bookmaker in respect of the bet is treated as falling due when the bet is made.

(8) The Commissioners may by regulations make provision as to when any sum due to the bookmaker in respect of a bet is to be treated as falling due for the purposes of subsection (1).

(9) Provision made by regulations under subsection (8) may not provide for a sum due to the bookmaker in respect of a bet to be treated as falling due—

(a) earlier than when the bet is made, or

(b) later than when the bet is determined.

19 Profits on pooled stake bets

(1) Take the following steps to calculate the amount of a bookmaker's profits for an accounting period in respect of Chapter 2 pool bets that are pooled stake bets.

Step 1

Take the aggregate of the stake money falling due to the bookmaker in the accounting period in respect of Chapter 2 pool bets that are pooled stake bets and deduct the aggregate of that stake money that is assigned by or on behalf of the bookmaker to stake funds during the period.

Step 2

If in the accounting period any amount contained in a stake fund to which stake money falling due to the bookmaker in respect of Chapter 2 pool bets has been assigned is used otherwise than to pay winnings to persons who made bets by way of pool betting, multiply each amount so used in the accounting period by the relevant proportion that applies in relation to it.

Step 3

Add the aggregate of the amounts calculated under Step 2 to the amount calculated under Step 1.

Step 4

[Top-up winnings.]

Step 5

Subtract the aggregate of the amounts calculated under Step 4 from the amount calculated under Step 3.

(2) For the purposes of Step 2 the relevant proportion, in relation to any amount contained in a relevant fund which is used otherwise than to provide winnings, is—

(a) if the amount relates to a specific bet, the proportion of that amount that consists of stake money paid to the bookmaker in respect of that bet,

(b) if the amount does not relate to a specific bet but relates to amounts assigned to the fund during a specific period, the proportion of that amount that consists of stake money assigned to the fund by or on behalf of the bookmaker during that period, and

(c) in any other case, the proportion of the total amount contained in the fund immediately before the amount is so used which consists of stake money assigned to the fund by or on behalf of the bookmaker.

(3) Where the calculation under this section of profits for an accounting period produces a negative amount, it is not included in the calculation under section 16(4) for that accounting period but may be carried forward in reduction of the profits calculated under this section for one or more later accounting periods.

20 Profits on ordinary bets

(1) To calculate the amount of a bookmaker's profits for an accounting period in respect of Chapter 2 pool bets that are ordinary bets—

(a) take the aggregate of the stake money falling due to the bookmaker in the accounting period in respect of ordinary bets, and

(b) subtract the aggregate of the expenditure by or on behalf of the bookmaker for the period on winnings in respect of such bets.

(2) Where the calculation under this section of profits for an accounting period produces a negative amount, it is not included in the calculation under section 16(4) for that accounting period but may be carried forward in reduction of the profits calculated under this section for one or more later accounting periods.

21 Profits on retained winnings

(1) The amount of a bookmaker's profits for an accounting period in respect of retained winnings is the aggregate of the amounts which—

(a) by virtue of being credited to a person's account led to a reduction in the amount of the bookmaker's profits calculated for any accounting period under section 19 or 20,

(b) have not been withdrawn by the person whose account was credited, and

(c) the person has, in the accounting period, ceased to be entitled to withdraw from the account.

(2) The Commissioners may direct that subsection (1) is not to apply in a specified case or class of cases.

22 Expenditure on winnings

(1) Subsections (2) to (5) apply for the purpose of calculating expenditure on winnings in a calculation under section 19 or 20, but have effect subject to any regulations under subsection (6).

(2) Expenditure on winnings includes expenditure on an amount held in an account for a person if the person is notified that the amount is being held for the person in the account and that the person is entitled to withdraw it on demand.

(3) The return of a stake is to be treated as expenditure on winnings.

(4) Only payments of money are to be taken into account.

(5) Expenditure on winnings in respect of a bet for which no stake money fell due is to be ignored.

(6) The Commissioners may by regulations make provision as to when expenditure on winnings is to be treated as incurred for the purposes of a calculation under section 19 or 20.

23 Payment and recovery

(1) Pool betting duty charged on a bookmaker's profits on Chapter 2 pool bets for an accounting period—

(a) becomes due at the end of the period,

(b) is to be paid by the bookmaker, and

(c) subject to any regulations under section 35 or 39, is to be paid when it becomes due.

(2) Pool betting duty that is due to be paid may be recovered from the following persons as if they were jointly and severally liable to pay the duty—

(a) the bookmaker,

(b) a person responsible for the management of any business in the course of which any bets have been made that are Chapter 2 pool bets for the purposes of the calculation of the amount of a bookmaker's profits on Chapter 2 pool bets for any accounting period;

(c) a person responsible for the management of any totalisator used for the purposes of any such business;

(d) where a person within any of paragraphs (a) to (c) is a company, a director.

24 Bets made for community benefit

(1) For the purposes of this Part (but subject to any direction under subsection (3)), a bet is made "for community benefit" if—

(a) the promoter of the betting concerned is a community society or is bound to pay all benefits accruing from the betting to such a society, and

(b) the person making the bet knows, when making it, that the purpose of the betting is to benefit such a society.

(2) In the case of a bet made by means of a totalisator, the reference in subsection (1) to the promoter of the betting concerned is a reference to the operator.

(3) The Commissioners may direct that any bet specified by the direction, or of a description so specified, is not a bet made for community benefit.

(4) The power conferred by subsection (3) may not be exercised unless the Commissioners consider that an unreasonably large part of the amounts paid in respect of the bets concerned will, or may, be applied otherwise than—

(a) in the payment of winnings, or

(b) for the benefit of a community society.

(5) In this section "community society" means—

(a) a society established and conducted for charitable purposes only, or

(b) a society established and conducted wholly or mainly for the support of athletic sports or athletic games and not established or conducted for purposes of private or commercial gain.

(6) In this section "society" includes any club, institution, organisation or association of persons, by whatever name called.

CHAPTER 3

REMOTE GAMING DUTY

25 Remote gaming duty

(1) A duty of excise, to be known as remote gaming duty, is charged on a UK person's participation in remote gaming under arrangements (whether or not enforceable) between the UK person and another person (a "gaming provider").

(2) Remote gaming duty is chargeable at the rate of 15% of the gaming provider's remote gaming profits for an accounting period.

(3) The gaming provider's remote gaming profits for an accounting period are the aggregate of—

(a) the amount of the provider's profits for the period in respect of pooled prize gaming (calculated in accordance with section 28),

(b) the amount of the provider's profits for the period in respect of ordinary gaming (calculated in accordance with section 29), and

(c) the amount of the provider's profits for the period in respect of retained prizes (calculated in accordance with section 30).

(4) "Remote gaming" is gaming in which persons participate by the use of—

(a) the internet,

(b) telephone,

(c) television,

(d) radio, or

(e) any other kind of electronic or other technology for facilitating communication.

(5) The Treasury may by order amend the definition of "remote gaming" in subsection (4).

26 Pooled prize gaming and ordinary gaming

(1) Remote gaming in which a UK person participates is "pooled prize gaming" if all or any part of the gaming payment is assigned by or on behalf of the gaming provider to a fund (a "gaming prize fund") from which prizes are to be provided to participants in the gaming.

(2) Remote gaming in which a UK person participates is "ordinary gaming" if it is not pooled prize gaming.

27 Gaming payments

(1) Where a UK person participates in remote gaming, the "gaming payment" is the aggregate of—

(a) any amount that entitles the person to participate in the gaming, and

(b) any other amount payable for or on account of or in connection with the person's participation in the gaming.

(2) If the gaming payment is made to a person other than the gaming provider, it is to be treated for the purposes of this Chapter as made to the gaming provider.

(3) If the gaming payment has not been made at the time when the UK person begins to participate in the remote gaming to which it relates, it is to be treated for the purposes of this Chapter as being made at that time.

(4) The Treasury may by order provide that where a person relies on an offer which waives a gaming payment or permits payment of less than the amount which would have been required to be paid without the offer, the person is to be treated for the purposes of this Chapter as having paid that amount.

28 Profits on pooled prize gaming

(1) Take the following steps to calculate the amount of a gaming provider's remote gaming profits for an accounting period in respect of pooled prize gaming.

Step 1

Take the aggregate of the gaming payments made to the provider in the accounting period in respect of pooled prize gaming and deduct the aggregate of those payments that are assigned by or on behalf of the provider to gaming prize funds during the period.

Step 2

If in the accounting period any amount contained in a gaming prize fund to which gaming payments have been assigned by or on behalf of the provider is used otherwise than to provide prizes to participators in pooled prize gaming, multiply each amount so used in the accounting period by the relevant proportion that applies in relation to it.

Step 3

Add the aggregate of the amounts calculated under Step 2 to the amount calculated under Step 1.

Step 4

[Top-up prizes.]

Step 5

Subtract the aggregate of the amounts calculated under Step 4 from the amount calculated under Step 3.

(2) For the purposes of Step 2 the relevant proportion, in relation to any amount contained in a fund which is used otherwise than to provide prizes to participators in pooled prize gaming, is—

(a) if the amount relates to a specific game of chance, the proportion of that amount that consists of gaming payments made to the provider in respect of that game,

(b) if the amount does not relate to a specific game of chance but relates to amounts assigned to the fund during a specific period, the proportion of that amount that consists of gaming payments assigned to the fund by or on behalf of the provider during that period, and

(c) in any other case, the proportion of the total amount contained in the fund immediately before the amount is so used which consists of gaming payments assigned to the fund by or on behalf of the provider.

(3) Where the calculation under this section of profits for an accounting period produces a negative amount, it is not included in the calculation under section 25(3) for that accounting period but may be carried forward in reduction of the profits calculated under this section for one or more later accounting periods.

29 Profits on ordinary gaming

(1) To calculate the amount of a gaming provider's remote gaming profits for an accounting period in respect of ordinary gaming—

(a) take the aggregate of the gaming payments made to the provider in the accounting period in respect of ordinary gaming, and

(b) subtract the aggregate of the provider's expenditure for the period on prizes in respect of such gaming.

(2) The amount of the gaming provider's expenditure on prizes for an accounting period in respect of ordinary gaming is the aggregate of the value of prizes provided by or on behalf of the provider in that period which have been won (at any time) by UK persons participating in ordinary gaming.

(3) Where the calculation under this section of profits for an accounting period produces a negative amount, it is not included in the calculation under section 25(3) for that accounting period but may be carried forward in reduction of the profits calculated under this section for one or more later accounting periods.

30 Profits on retained prizes

(1) The amount of a gaming provider's profits for an accounting period in respect of retained prizes is the aggregate of the amounts which—

(a) by virtue of being credited to a person's account led to a reduction in the amount of the provider's profits calculated for any accounting period under section 28 or 29,

(b) have not been withdrawn by the person whose account was credited, and

(c) the person has, in the accounting period, ceased to be entitled to withdraw from the account.

(2) The Commissioners may direct that subsection (1) is not to apply in a specified case or class of cases.

31 Prizes

(1) A reference in section 28 or 29 to providing a prize to a person includes a reference to crediting money to an account if the person is notified that—

(a) the money is being held in the account, and

(b) the person is entitled to withdraw it on demand.

(2) Where the account of a person participating in gaming is credited otherwise than as described in subsection (1), the credit is to be treated for the purposes of sections 28 and 29 as the provision of a prize; but the Commissioners may direct that this subsection is not to apply in a specified case or class of cases.

(3) The return of all or part of a gaming payment is to be treated for the purposes of sections 28 and 29 as the provision of a prize.

(4) Where a prize is obtained by or on behalf of a gaming provider from a person not connected with the person who obtains the prize, the cost to the person who obtains the prize is to be treated as the expenditure on the prize for the purposes of sections 28 and 29.

(5) Where a prize is a voucher which—

(a) may be used in place of money as whole or partial payment for benefits of a specified kind obtained from a specified person,

(b) specifies an amount as the sum or maximum sum in place of which the voucher may be used, and

(c) does not fall within subsection (4),

the specified amount is the value of the voucher for the purposes of sections 28 and 29.

(6) Where a prize is a voucher (whether or not it falls within subsection (4)) no expenditure is to be treated as having been incurred on the prize for the purposes of sections 28 and 29 if—

(a) it does not satisfy subsection (5)(a) and (b), or

(b) its use as described in subsection (5)(a) is subject to a specified restriction, condition or limitation which may make the value of the voucher to the recipient significantly less than the amount mentioned in subsection (5)(b).

(7) In the case of a prize which is neither money nor a voucher and which does not fall within subsection (4), the expenditure on the prize for the purposes of sections 28 and 29 is—

(a) the amount which the prize would cost if obtained from a person not connected with the person who provides it, or

(b) where no amount can reasonably be determined in accordance with paragraph (a), nil.

(8) For the purposes of this section—

(a) a reference to connection between two persons is to be construed in accordance with section 1122 of CTA 2010 (connected persons), and

(b) an amount paid by way of value added tax on the acquisition of a thing is to be treated as part of its cost (irrespective of whether or not the amount is taken into account for the purpose of a credit or refund).

32 Exemptions

(1) Remote gaming duty is not charged on participation by a UK person in remote gaming if—
  (a) the arrangements between the UK person and the gaming provider are not entered into in or from the United Kingdom, and
  (b) the facilities used to participate in the gaming are not capable of being used in or from the United Kingdom.

(2) Remote gaming duty is not charged on participation by a UK person in remote gaming if and in so far as the remote gaming—
  (a) is charged with another gambling tax, or
  (b) would be charged with another gambling tax but for an express exception.

(3) Subsection (2)(b)—
  (a) does not prevent remote gaming duty being charged where the remote gaming in question is the playing of bingo which is not licensed bingo (as to the meaning of which terms see section 20C of the Betting and Gaming Duties Act 1981), and
  (b) does not apply in cases where the other gambling tax is machine games duty.

(4) In this section "gambling tax" means—
  (a) machine games duty,
  (b) bingo duty,
  (c) gaming duty,
  (d) general betting duty,
  (e) lottery duty, and
  (f) pool betting duty.

(5) The Treasury may by order—
  (a) confer an exemption from remote gaming duty, or
  (b) remove or vary (whether or not by textual amendment) an exemption under this section.

(6) In calculating a gaming provider's remote gaming profits for an accounting period, no account is to be taken of gaming payments, assignments of amounts to a pool or expenditure on prizes if, or in so far as, they relate to remote gaming to which an exemption applies by or under this section.

33 Liability to pay

(1) A gaming provider is liable for any remote gaming duty charged on the provider's remote gaming profits for an accounting period.

(2) If the gaming provider is a body corporate, the provider and the provider's directors are jointly and severally liable for any remote gaming duty charged on the provider's remote gaming profits for an accounting period.

(3) Remote gaming duty which is charged on the gaming provider's remote gaming profits for an accounting period may be recovered from the holder of a remote operating licence for the business in the course of which the gaming took place as if the holder of the licence and the provider were jointly and severally liable to pay the duty.

34 Review and appeal

(1) Sections 13A to 16 of FA 1994 (review and appeal) apply in relation to liability to pay remote gaming duty as they apply to the decisions mentioned in section 13A(2)(a) to (h) of that Act.

(2) Sections 13A to 16 of that Act also apply to the decisions listed in subsection (3).

(3) Those decisions are—

(a) a decision to direct that section 31(2) is not to apply in a specified case,

(b) a decision relating to remote gaming duty under regulations by virtue of section 36(3), and

(c) a decision to refuse an agreement relating to a person's liability to remote gaming duty under section 37(3).

(4) A decision of a kind specified in subsection (3) is to be treated as an ancillary matter for the purposes of sections 14 to 16 of FA 1994.

CHAPTER 4

GENERAL

Administration

35 Administration

(1) The Commissioners are responsible for the collection and management of general betting duty, pool betting duty and remote gaming duty.

(2) General betting duty, pool betting duty and remote gaming duty are to be accounted for by such persons, and accounted for and paid at such times and in such manner, as may be required by or under regulations made by the Commissioners.

(3) The Commissioners may make regulations providing for any matter for which provision appears to them to be necessary for the administration or enforcement of, or for the protection of the revenue from, general betting duty, pool betting duty and remote gaming duty.

(4) Nothing in sections 36 to 40 affects the generality of the powers conferred by this section.

36 Registration

(1) The Commissioners must maintain the following registers—

(a) a register of persons who carry on a general betting business,

(b) a register of persons who carry on a pool betting business, and

(c) a register of persons who enter into arrangements which may make them liable for remote gaming duty.

(2) A person may not carry on a general betting business or a pool betting business, or enter into arrangements mentioned in subsection (1)(c), without being registered in the appropriate register.

(3) The Commissioners may make regulations about registration; in particular, the regulations may include provision about—

(a) the procedure for applying for registration (including provision requiring applications to be made electronically);
(b) the timing of applications;
(c) the information to be provided;
(d) notification of changes;
(e) de-registration;
(f) re-registration after a person ceases to be registered.

(4) The regulations may require a person registered under this section to give notice to the Commissioners before applying for a remote operating licence.

(5) The regulations may permit the Commissioners to impose conditions or requirements on persons registered under this section.

(6) In the case of a person of a description specified in the regulations, the regulations may, in particular, permit the Commissioners to require the appointment of a United Kingdom representative with responsibility for one or both of the following—

(a) making returns in respect of general betting duty, pool betting duty or remote gaming duty;
(b) discharging liability to general betting duty, pool betting duty or remote gaming duty.

(7) The regulations may include provision for the registration of groups of persons; and may provide for the modification of provisions of this Part in their application to groups.

(8) The modifications may, for example, include a modification ensuring that each member of a group will be jointly and severally liable for the duty payable by any member of the group.

(9) In this section—

"general betting business" means a business the carrying on of which involves, or may involve, any sums becoming payable by the person carrying on the business by way of general betting duty, or would or might involve such sums becoming so payable if on-course bets were not excluded from that duty;

"pool betting business" means a business the carrying on of which involves, or may involve, any sums becoming payable by the person carrying on the business by way of pool betting duty, or would or might involve such sums becoming so payable if receipts from bets made for community benefit (as defined by section 24) were not excluded from that duty.

37 Accounting period

(1) For the purposes of this Part—

(a) a period of 3 consecutive months is an accounting period, but

(b) the Commissioners may by regulations provide for some other period specified in, or determined in accordance with, the regulations to be an accounting period.

(2) The first day of an accounting period is such day as the Commissioners may direct.

(3) The Commissioners may agree with a person to make either or both of the following changes for the purposes of that person's liability to general betting duty, pool betting duty or remote gaming duty—

(a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods;

(b) to begin accounting periods on days other than those applying by virtue of subsection (2).

(4) The Commissioners may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where—

(a) a person becomes or ceases to be registered, or

(b) an agreement under subsection (3) begins or ends.

(5) A direction under this section may apply generally or only to a particular case or class of case.

38 Returns

(1) The Commissioners may make regulations requiring returns to be made to the Commissioners in respect of general betting duty, pool betting duty and remote gaming duty.

(2) The regulations may, in particular, make provision about—

(a) liability to make a return,

(b) timing,

(c) form,

(d) content,

(e) method of making (including provision requiring returns to be made electronically),

(f) declarations,

(g) authentication, and

(h) when a return is to be treated as made.

39 Payment

(1) The Commissioners may by regulations make provision about payment of general betting duty, pool betting duty and remote gaming duty.

(2) The regulations may, in particular, make provision about—

(a) timing (including provision requiring payments to be made on account),

(b) instalments,

(c) methods of payment (including provision requiring payments to be made electronically),

(d) when payment is to be treated as made, and

(e) the process and effect of assessments by the Commissioners of amounts due.

(3) Subject to regulations under section 35 and this section, section 12 of the Finance Act 1994 (assessment) applies in relation to liability to pay general betting duty, pool betting duty and remote gaming duty.

40 Information and records

The Commissioners may by regulations require the provision to such persons, or display in such manner, of such information or records as the regulations may specify—

(a) by persons engaging or proposing to engage in any activity by reason of which they are or may be or become liable for general betting duty, pool betting duty or remote gaming duty (or would be or might be or become liable to general betting duty if on-course bets were not excluded), and

(b) by persons providing facilities for another to engage in such an activity or entering into any transaction in the course of any such activity.

41 Stake funds and pooled prize funds

(1) The Treasury may by order make provision as to—

(a) the circumstances in which the stake money on a bet is, or is not, to be treated for the purposes of Chapters 1 and 2 as assigned to a stake fund, and

(b) the circumstances in which gaming payments are, or are not, to be treated for the purposes of Chapter 3 as assigned to a gaming prize fund.

(2) The Commissioners may by notice make provision about stake funds and gaming prize funds, and the notice may (in particular) make provision—

(a) as to how such funds are to be held,

(b) requiring information relating to such funds to be recorded by persons responsible for them, and

(c) requiring such information to be provided to the Commissioners.

(3) A notice under subsection (2) may be revised or replaced.

(4) [Sanction for failure to comply.]

Security and enforcement

42 Security for payment

(1) The Commissioners may by notice given to a registrable person require the person to give security, or further security, for the payment of any general betting duty, pool betting duty or remote gaming duty for which the person is or may become liable.

(2) The Commissioners may give such a notice only if they consider—

(a) that there is a serious risk that the duty will not be paid, or

(b) that the person usually lives in or, if a body corporate, is legally constituted in a country or territory with which the United Kingdom

does not have satisfactory arrangements for the enforcement of liabilities.

(3) The notice must specify—
(a) the amount of security or further security to be given, and
(b) the manner in which, and the date by which, the security or further security is to be given.

(4) That date must not be less than 30 days after the date when the notice is given.

(5) Any requirement imposed by the notice has no effect at any time when—
(a) the registrable person is entitled under Chapter 2 of Part 1 of FA 1994 to require a review of, or to bring an appeal against, the decision to give the notice,
(b) an appeal may ordinarily be brought against a decision on such an appeal, or
(c) proceedings on such a review, appeal or further appeal, are in progress.

(6) A person is a "registrable person" for the purposes of this section and section 43 if the person—
(a) is, or is required to be, registered under section 36, or
(b) has applied for registration under that section.

43 Security for payment: review and appeal

(1) A decision to give a notice under section 42(1) is to be treated as a relevant decision for the purposes of sections 15A and 15C to 16 of FA 1994 (customs and excise reviews and appeals) and, accordingly, the notice must include an offer of a review of the decision under section 15A of FA 1994.

(2) Only the registrable person may bring an appeal under section 16 of FA 1994 as applied by subsection (1).

(3) The decision appealed against is to be treated for the purposes of that section as a decision as to an ancillary matter.

(4) [Provision of security before review or appeal can proceed.]

(5) Such amendments to the notice as are necessary to give effect to any decision on a review, appeal or further appeal must be made by whichever of the following is appropriate in the case in question—
(a) the Commissioners,
(b) the appeal tribunal, and
(c) the court which has determined an appeal from the appeal tribunal.

(6) In this section "appeal tribunal" has the same meaning as in Chapter 2 of Part 1 of FA 1994.

44 Offence of failing to provide security

(1) A person who is, or is required to be, registered under section 36 is guilty of an offence if the person—
(a) is required to give security or further security by a notice under section 42, and
(b) does not comply with that requirement.

(2) A person guilty of an offence under this section is liable, on summary conviction, to a fine [of amount].

45 Enforcement

(1) Contravention of a provision made by or by virtue of section 33, 36 or 38 so far as relating to remote gaming duty—
  (a) is conduct to which section 9 of FA 1994 applies (penalties), and
  (b) attracts daily penalties under that section.

(2) A person who is knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of remote gaming duty commits an offence.

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to—
  (a) a fine of—
    (i) [amount], or
    (ii) if greater, three times the duty which is unpaid or the payment of which is sought to be avoided,
  (b) imprisonment for a term not exceeding six months, or
  (c) both.

(4) A person guilty of an offence under subsection (2) is liable on conviction on indictment to—
  (a) a fine of any amount,
  (b) imprisonment for a term not exceeding seven years, or
  (c) both.

(5) [Provision for enforcement: general betting duty and pool betting duty.]

46 Suspension and revocation of remote operating licences

Schedule 1 makes provision about the suspension and revocation of remote operating licences.

Offences and evidence

47 Offences by bodies corporate

Where an offence under this Part is committed by a body corporate, every person who at the date of the commission of the offence is a director, general manager, secretary or other similar officer of the body corporate (or purporting to act in such a capacity) is also guilty of the offence unless—
  (a) the offence is committed without the person's consent or connivance, and
  (b) the person has exercised all such diligence to prevent its commission as the person ought to have exercised, having regard to the nature of the person's functions in that capacity and to all the circumstances.

48 Protection of officers

Where an officer takes any action in pursuance of instructions of the Commissioners given in connection with the enforcement of the enactments

relating to general betting duty or remote gaming duty and, apart from the provisions of this section, the officer would in taking that action be committing an offence under the enactments relating to betting or gaming, the officer is not guilty of that offence.

49 Evidence by certificate, etc

(1) A certificate of the Commissioners—

(a) that any notice required by or under this Part to be given to them had or had not been given at any date,

(b) that any registration required by or under this Part had or had not been effected at any date,

(c) that any return required by or under this Part had not been made at any date, or

(d) that any duty shown as due in any return made in pursuance of this Part or in any assessment made under section 12 of FA 1994 had not been paid at any date,

is sufficient evidence of that fact until the contrary is proved.

(2) A photograph of any document furnished to the Commissioners for the purposes of this Part and certified by them to be such a photograph is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

(3) Any document purporting to be a certificate under subsection (1) or (2) is to be treated to be such a certificate until the contrary is proved.

50 Facilities capable of being used in United Kingdom: burden of proof

(1) This section applies where, in civil proceedings in any court or tribunal, it is necessary to determine whether the facilities used to make a bet or to participate in remote gaming were capable of being used in or from the United Kingdom.

(2) The burden of proof lies on any person claiming that the facilities were not capable of being so used.

Definitions

51 Betting

(1) In this Part "bet" does not include any bet made or stake hazarded in the course of, or incidentally to, any gaming.

(2) For the purposes of pool betting duty, "bet" does not include the taking of a ticket or chance in a lottery.

(3) Where payments are made for the chance of winning any money or money's worth on terms under which the persons making the payments have a power of selection that may (directly or indirectly) determine the winner, those payments are (subject to subsection (1)) to be treated as bets for the purposes of pool betting duty even if the power is not exercised.

(4) Where any payment entitles a person to take part in a transaction that is, on the person's part only, not a bet made by way of pool betting by reason of the

person not in fact making any stake as if the transaction were such a bet, the transaction is to be treated as such a bet for the purposes of pool betting duty (and section 18(4) applies to any such payment).

52 Pool betting

(1) For the purposes of this Part, a bet is to be treated as being made by way of pool betting unless it is a bet at fixed odds.

(2) In particular, bets are to be treated as being made by way of pool betting wherever a number of persons make bets—

(a) on terms that the winnings of such of those persons as are winners are to be, or to be a share of, or to be determined by reference to, the stake money paid or agreed to be paid by those persons, whether the bets are made by means of a totalisator, or by filling up and returning coupons or other printed or written forms, or in any other way,

(b) on terms that the winnings of such of those persons as are winners are to be, or are to include, an amount (not determined by reference to the stake money paid or agreed to be paid by those persons) which is divisible in any proportions among such of those persons as are winners, or

(c) on the basis that the winners or their winnings are, to any extent, to be at the discretion of the promoter or some other person.

(3) Where a person carries on a business of receiving or negotiating bets and there is or has been issued in connection with that business any advertisement or other publication calculated to encourage in persons making bets of any description with or through the person a belief that the bets are made on the basis mentioned in subsection (2)(c), then any bets of that description subsequently made with or through the person in the course of that business are to be treated for the purposes of this section as being made on that basis.

53 Fixed odds

(1) A bet is at fixed odds for the purposes of this Part only if, when making the bet, each of the persons making it knows or can know the amount the person will win, except in so far as that amount is to depend on—

(a) the result of the event or events betted on,

(b) any such event taking place or producing a result,

(c) the numbers taking part in any such event,

(d) the starting prices or totalisator odds for any such event, or

(e) the time when the person's bet is received by any person with or through whom it is made.

(2) A bet made with or through a person carrying on a business of receiving or negotiating bets and made in the course of that business is not a bet at fixed odds for the purposes of this Part if the winnings of the person by whom it is made consist or may consist wholly or in part of something other than money.

(3) In this section—

"starting prices" means, in relation to any event, the odds ruling at the scene of the event immediately before the start, and

"totalisator odds" means the odds paid on bets made—

(a) by means of a totalisator, and

(b) at the scene of the event to which the bets relate.

54 UK person

(1) In this Part "UK person" means—
  (a) an individual who usually lives in the United Kingdom, or
  (b) a body corporate which is legally constituted in the United Kingdom.

(2) The Treasury may by order—
  (a) amend the definition of "UK person" in subsection (1),
  (b) make provision as to the cases in which a person is, or is not, a UK person for the purposes of this Act, and
  (c) make provision about bets made, and arrangements to participate in remote gaming entered into, by bodies of persons unincorporate.

(3) The Commissioners may by notice published by them—
  (a) specify steps that must be taken in order to determine whether a person making a bet or entering into arrangements to participate in remote gaming is a UK person,
  (b) specify who must take those steps,
  (c) specify circumstances in which a person making a bet or entering into arrangements to participate in remote gaming is to be treated as a UK person because of a failure to produce sufficient evidence to the contrary, and
  (d) specify circumstances in which a person making a bet or entering into arrangements to participate in remote gaming is to be treated as not being a UK person on the basis of evidence of a description specified in the notice.

(4) A notice under subsection (3) may be revised or replaced.

55 On-course betting and excluded betting

(1) A bet is an on-course bet for the purposes of this Part if it—
  (a) is made by a person present at a horse or dog race meeting or by a bookmaker,
  (b) is not made through an agent of an individual making the bet or though an intermediary, and
  (c) is made—
    (i) with a bookmaker present at the meeting, or
    (ii) by means of a totalisator situated in the United Kingdom, using facilities provided at the meeting by or by arrangement with the person operating the totalisator.

(2) A bet is an excluded bet for the purposes of this Part if—
  (a) it is not made in or from the United Kingdom, and
  (b) the facilities used to receive or negotiate the bet or (in the case of pool betting) to conduct the pool betting operations are not capable of being used in or from the United Kingdom.

(3) The Treasury may by order amend subsection (2).

56 Gaming

(1) In this Part—

(a) "gaming" means playing a game of chance for a prize, and

(b) "game of chance" has the meaning given by section 6(2) of the Gambling Act 2005.

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

(a) "playing a game of chance" is to be read in accordance with section 6(3) of that Act, and

(b) "prize" does not include the opportunity to play the game again.

57 Other definitions

In this Part—

"bookmaker" means a person who—

(a) carries on the business of receiving or negotiating bets or conducting pool betting operations (whether as principal or agent and whether regularly or not), or

(b) holds himself or herself out or permits himself or herself to be held out, in the course of a business, as a person within paragraph (a);

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"operator", in relation to bets made by means of a totalisator, means the person who, as principal, operates the totalisator;

"promoter", in relation to any betting, means the person to whom the persons making the bets look for the payment of their winnings, if any;

"remote operating licence" has the same meaning as in the Gambling Act 2005 (see section 67 of that Act);

"winnings", in relation to any betting, includes winnings of any kind, and references to amount and to payment in relation to winnings are to be read accordingly.

Supplementary

58 Amounts not in sterling

(1) If any amount of stake money, gaming payment, winnings or prize is in a currency or method of payment other than sterling, it is to be treated for the purposes of this Part as being the equivalent amount in sterling.

(2) The equivalent amount in sterling, in relation to any day, is to be determined by reference to—

(a) the London closing exchange rate for the previous day, or

(b) if no such rate exists, the rate specified in or determined in accordance with a notice published by the Commissioners.

(3) A notice published under subsection (2)(b) may be revised or replaced.

59 Effect of imposition of duties

The imposition by this Part of general betting duty, pool betting duty, or remote gaming duty does not make lawful anything which is unlawful apart from this Part.

60 Orders and regulations

(1) This section applies to orders and regulations under this Part.

(2) Orders and regulations—
- (a) may make provision which applies generally or only for specified cases or purposes,
- (b) may make different provision for different cases or purposes,
- (c) may include incidental, consequential, transitional or transitory provision,
- (d) may confer a discretion on the Commissioners, and
- (e) may make provision by reference to things specified in a notice published by the Commissioners in accordance with the regulations or order (and not withdrawn by a subsequent notice).

(3) Orders and regulations are to be made by statutory instrument.

(4) A statutory instrument containing an order or regulations is subject to annulment in pursuance of a resolution of the House of Commons.

(5) But the following provisions of this section apply instead of subsection (4) in the case of—
- (a) an order under section 32(5) which has the effect of adding to the class of activities in respect of which remote gaming duty is chargeable;
- (b) an order under section 41(1) which has the effect of increasing the amount of duty that is chargeable in any case;
- (c) an order under section 54(2) which has the effect of adding to the class of persons falling within the definition of "UK person";
- (d) an order under section 55(3).

(6) In such a case—
- (a) the statutory instrument containing the order must be laid before the House of Commons, and
- (b) the order ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, it is approved by a resolution of the House of Commons.

(7) In reckoning the 28-day period, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or
- (b) the House of Commons is adjourned for more than 4 days.

(8) An order ceasing to have effect by virtue of subsection (6)(b) does not affect—
- (a) anything previously done under the order, or
- (b) the making of a new order.

61 Consequential amendments and repeals

Schedule 2 contains consequential amendments and repeals.

62 Transitional provision

Schedule 3 contains transitional provision.

63 Commencement

This Part has effect in relation to accounting periods beginning on or after 1 December 2014.

SCHEDULES

SCHEDULE 1

Section 46

SUSPENSION AND REVOCATION OF REMOTE OPERATING LICENCES

Breach notice

1 (1) The Commissioners may give a breach notice to the holder of a remote operating licence if it appears to them that there has been a breach of—

(a) a requirement to be registered under this Part in respect of an activity authorised by the licence,

(b) any conditions or requirements relating to registration under this Part in respect of such an activity,

(c) a requirement to pay general betting duty, pool betting duty or remote gaming duty in respect of such an activity, or

(d) a requirement imposed in respect of such an activity by a notice given under section 42 (requirement to provide security or further security).

(2) The breach notice must specify—

(a) the breach,

(b) the action that must be taken in order to remedy the breach, and

(c) the period (which must be at least 90 days) within which the action must be taken.

(3) The Commissioners may by regulations—

(a) make provision as to cases in which a breach notice may or may not be given (including provision amending this paragraph);

(b) amend sub-paragraph (2)(c) by substituting for the period for the time being specified there a different period.

Final notice

2 (1) If it appears to the Commissioners that the breach has not been remedied in full within the period specified in the breach notice, they may give the holder of the remote operating licence a final notice.

(2) The final notice must—

(a) specify the breach and the extent to which it has not been remedied since the breach notice was given,

(b) specify the period within which a review may be required or appeal brought, and

(c) state that (unless the breach is remedied and subject to the outcome of any review, appeal or further appeal) the Commissioners will

direct the Gambling Commission to suspend the remote operating licence after the end of the period.

(3) The decision to give the final notice is to be treated as a relevant decision for the purposes of sections 15A and 15C to 16 of FA 1994 (customs and excise reviews and appeals) and, accordingly, the final notice must include an offer of a review of the decision under section 15A of that Act.

(4) Only the holder of the remote operating licence may bring an appeal under section 16 of FA 1994 as applied by sub-paragraph (3).

Direction to suspend remote operating licence

3 (1) After the review request period has ended, the Commissioners may direct the Gambling Commission to suspend the remote operating licence if the breach specified in the final notice has not been remedied in full to the satisfaction of the Commissioners.

(2) But if the Commissioners have been required to review the decision, or an appeal has been brought against the decision, a direction may be given under sub-paragraph (1) only if—

(a) the decision to give the final notice has been upheld (in whole or in part) and the period within which any appeal or further appeal may ordinarily be brought has ended,

(b) the proceedings on the review, appeal or any further appeal have been abandoned, withdrawn or discontinued, or

(c) the proceedings on the review, appeal or any further appeal are in progress but—

(i) the holder of the remote operating licence is a non-EU person,

(ii) the breach was a failure to pay an amount of general betting duty, pool betting duty or remote gaming duty, and

(iii) the holder of the licence has not given to the Commissioners such security as appears to them adequate for the payment of the amount of duty that remains due.

(3) A direction under this paragraph may include provision directing the Gambling Commission as to how it is to exercise its powers under section 118(4) of the Gambling Act 2005 (time and duration of suspension and saving and transitional provision).

(4) In this paragraph—

"non-EU person" means a person who—

(a) in the case of an individual, is not usually resident in a member state of the European Union,

(b) in the case of a body corporate, does not have an established place of business in a member state of the European Union, and

(c) in any other case, does not include an individual who is usually resident in a member state of the European Union;

"the review request period" means the period of 30 days beginning with the date of the final notice, subject to any extension given under section 15D of FA 1994.

Reinstatement of remote operating licence

4 (1) The Commissioners may direct the Gambling Commission to reinstate a remote operating licence suspended pursuant to a direction under paragraph 3 if they are satisfied that—

(a) the breach specified in the final notice has been remedied in full,

(b) there are no other grounds on which a breach notice could be given in respect of the licence, and

(c) the holder of the licence has given to the Commissioners any security requested by them for the payment of amounts of general betting duty, pool betting duty and remote gaming duty likely to be due in future in respect of any activity authorised by the licence.

(2) [Right of review and appeal for licence holder against refusal by Commissioners to direct reinstatement.]

(3) An appeal tribunal may direct the Gambling Commission to reinstate a remote operating licence suspended pursuant to a direction under paragraph 3 if the tribunal gives permission to appeal against a decision to give a final notice under section 16(1F) of FA 1994 (appeal out of time).

(4) The reinstatement of a remote operating licence pursuant to a direction given under sub-paragraph (3) does not prevent the Commissioners from giving a further direction under paragraph 3(1) in reliance on the final notice if—

(a) the decision to give the notice is upheld (in whole or in part) in the proceedings on the appeal or any further appeal, or the proceedings on the appeal or any further appeal have been abandoned, withdrawn or discontinued, and

(b) the period during which any further appeal may ordinarily be brought has ended without an appeal being brought.

(5) In this paragraph "appeal tribunal" has the same meaning as in Chapter 2 of Part 1 of FA 1994.

Revocation of remote operating licence

5 (1) The Commissioners may direct the Gambling Commission to revoke a remote operating licence suspended pursuant to a direction under paragraph 3 if the breach specified in the final notice has not been remedied in full to the satisfaction of the Commissioners within the period of 6 months beginning with the day on which the direction under paragraph 3 was given.

(2) A direction under this paragraph may include provision directing the Gambling Commission how it is to exercise its powers under section 119(4) of the Gambling Act 2005 (time of revocation and saving and transitional provision).

(3) [Right of review and appeal for licence holder against revocation.]

[Consent requirement for grant of new remote operating licence

6 Provision requiring consent of Commissioners in certain cases.]

Supplementary

7 (1) A notice under this Schedule—
(a) must be in writing, and
(b) may specify more than one breach.

(2) The fact that a breach notice specifying one or more breaches has been given to the holder of a remote operating licence does not prevent a breach notice specifying other breaches being given to the holder of the licence.

8 References in this Schedule to the holder of a remote operating licence are to the person to whom the licence is or was issued.

SCHEDULE 2

Section 61

PART 1: CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

BGDA 1981

1 The following provisions of BGDA 1981 are omitted—
(a) sections 1 to 12 (general betting duty and pool betting duty),
(b) sections 26A to 26M (remote gaming duty), and
(c) Schedules A1, 1 and 4B (double taxation relief and betting duties).

PART 2

OTHER AMENDMENTS

Customs and Excise Management Act 1979

2 CEMA 1979 is amended as follows.

3 (1) In CEMA 1979, section 1(1) (interpretation) is amended as follows.

(2) In the definition of "the revenue trade provisions of the customs and excise Acts", after paragraph (f) insert—
"(g) the provisions of Part 1 of the Finance Act 2014;".

(3) In paragraph (a)(ic) of the definition of "revenue trader", for "the Betting and Gaming Duties Act 1981 (see section 33(1))" substitute "Part 1 of the Finance Act 2014 (see section 56)".

Finance Act 1994

4 In section 12 of the Finance Act 1994 (assessments to excise duty), in subsection (2)(c)—
(a) omit "1 or", and
(b) after "2012" insert "or Part 1 of the Finance Act 2014".

Finance Act 2008

5 (1) The Table in paragraph 1 of Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing) is amended as follows.

(2) For the entries relating to general betting duty and pool betting duty substitute—

"General betting duty	Obligation to register under section 36(2) of FA 2014 (registration of general betting business).
Pool betting duty	Obligation to register under section 36(2) of FA 2014 (registration of pool betting business)."

(3) For the entry relating to remote gaming duty substitute—

"Remote gaming duty	Obligation to register under section 36(2) of FA 2014 (registration of persons who enter into arrangements which may make them liable for remote gaming duty)."

SCHEDULE 3

Section 62

PART 1: TRANSITIONAL PROVISION

Existing notifications, permits and registrations

1 Provision for conversion of notifications, permits and registrations under BGDA 1981 into registrations under this Part.

EXPLANATORY NOTE

BETTING AND GAMING DUTIES

SUMMARY

1. Clauses [X] and Schedules [Y]makes provision for changing the scope of general betting duty, pool betting duty and remote gaming duty so that they are charged on a place of consumption basis. It replaces the taxing, administration and enforcement provisions for these duties in the Betting and Gaming Duties Act 1981.

DETAILS OF THE CLAUSE

Part [1] – Betting and gaming duties

Chapter [1] General betting duty

2. Chapter [1] contains clauses [1] to [15] which make provision for general betting duty.

3. Clause[2]charges general betting duty on bets made with a bookmaker by a UK person, or by any person at a place in the United Kingdom where bets are taken, subject to exclusions and specified exemptions. Excluded bets are defined at clause 55.

4. Clause [3] defines a spread bet and charges general betting duty on a spread bet that is made with a bookmaker who is in the UK. It provides for financial spread bets to be charged at 3 per cent of a bookmaker's net stake receipts, all other spread bets to be charged at 10 per cent and allows HM Revenue & Customs (HMRC) to provide by secondary legislation whether a bet is or is not to be treated as a financial spread bet.

5. Clause [4] describes the net stake receipts against which a bookmaker's duty liability is calculated for each class of bet as the total amount due to him for bets made with him in that accounting period, minus the total amount of winnings paid out by him in that period i.e. (stakes due - winnings paid).

6. Subsection [4(2)] provides that for bets other than spread bets, the bookmaker must account for stakes when the bet is made regardless of whether the money has actually been received.

7. Subsection [4(3)] provides that no general betting duty will be charged if a bookmaker's net stake receipts is zero or a negative amount, but any negative amount may be carried forward to offset future liabilities under clause 5.

8. Subsection [4(4)] prevents a bookmaker from making any deductions to reduce the value of dutiable stakes and subsection [4(5)] provides that where a bookmaker offers free or

cut price bets, the full notional value of the stake will be deemed to be due to the bookmaker at the time the bet is made.

9. Subsection [4(6)] expands on subsection [4(1)(b)] and provides that the calculation of amounts paid as winnings shall include the payment of winnings to a customer's account, and also allows for the return of customers' stakes to be regarded as winnings. In either case only payments of money can be taken into consideration: non-monetary prizes cannot be used to reduce the net stake receipts.

10. Clause [5] provides that if a bookmaker has negative net stake receipts (i.e. makes a loss) for any class of bets in one accounting period, that negative amount can be carried forward to reduce future liabilities for that class of bets until it is spent.

11. Clause [6] provides that where a person (a "bet-broker") provides facilities in the course of a business (other than a betting exchange under clause [14]) that allows a "bettor" to make bets with a "bet taker", or acts as an agent for the bettor, the bet-broker will be treated as a bookmaker and will have the same liability as the bet taker to account for duty on those bets.

12. Clause [7] defines certain pool bets on horse or dog racing that are made by a UK person, or by a person at a place in the United Kingdom where bets are taken, as "Chapter 1 pool bets" that will be charged with general betting duty on the bookmaker's profits under clauses [10 to 12].

13. Clause [9] provides for stakes on Chapter 1 pool bets to be treated as falling due when the bet is made regardless of whether the money has actually been received and prevents a bookmaker from making any deductions to reduce the value of dutiable stakes. Where a bookmaker offers free or cut price bets, the full notional value of the stake will be deemed to be due to the bookmaker at the time the bet is made.

14. Clause [10] makes provision for a bookmaker to calculate his profit from pooled bets by making an equitable apportionment between dutiable and non-dutiable stakes on a staged basis.

15. Clause [11] describes the profits on ordinary bets as the stakes due minus winnings paid out in an accounting period. If this results in a loss, that negative amount can be carried forward to reduce future liabilities for ordinary bets.

16. Clause [12] provides that if any money has been assigned as winnings, but the customer has not, and is not entitled to, withdraw it, that amount will be treated as retained profits on which duty will be charged.

17. Clause [13] provides that the calculation of expenditure on winnings shall include the payment of winnings to a customer's account, and also allows for the return of customers' stakes to be regarded as winnings. In either case only payments of money can be used to reduce the net stake receipts.

18. Clause [14] defines a betting exchange as a business that allows one person to make a bet with another person but does not provide premises for use by those persons, and provides that general betting duty will be due on any commissions charged by the betting exchange to a UK person.

19. Clause [15] provides that all general betting duty that is chargeable shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.

Chapter 2 Pool betting duty

Chapter 2 contains clauses [16] to [24] which make provision for pool betting duty.

20. Clause [16] defines certain pool bets, subject to exclusions and specified exemptions, that are made by a UK person, or by a person at a place in the United Kingdom where bets are taken, as "Chapter 2 pool bets" that will be charged with pool betting duty on the bookmaker's profits.

21. Clause [18] provides that any amounts that are paid in connection with a Chapter 2 pool bet, or that entitle a person to make a Chapter 2 pool bet, will be treated as stakes unless the bookmaker can prove otherwise. Stakes will be treated as falling due either when the bet is made or, in certain circumstances, on the day of the event being bet on.

22. Clause [19] makes provision for a bookmaker to calculate his profit from pooled stake bets by making an equitable apportionment between dutiable and non-dutiable stakes on a staged basis.

23. Clause [20] describes the profits on Chapter 2 bets that are ordinary bets on which duty is charged. These are the stakes due minus winnings paid out in an accounting period. If this results in a loss, that negative amount can be carried forward to reduce future liabilities for ordinary bets.

24. Clause [21] provides that if any money has been assigned as winnings, but the customer has not, and is not entitled to, withdraw it, that amount will be treated as retained profits on which duty will be charged.

25. Clause [22] provides that the calculation of expenditure on winnings shall include the payment of winnings to a customer's account, and also allows for the return of customers' stakes to be regarded as winnings. In either case only payments of money can be used to reduce the net stake receipts.

26. Clause [23] provides that all pool betting duty that is chargeable on Chapter 2 pool bets shall become due at the end of the accounting period, and describes the persons by whom the duty is to be paid and from whom it may be recovered.

27. Clause [24] describes the circumstances under which a pool bet may be regarded as a bet made "for community benefit". Such bets are excluded from any liability to pool betting duty under clause 16, above.

Chapter 3 Remote gaming duty

28. Chapter 3 contains clauses [25] to [34] which make provision for remote gaming duty.

29. Clause [25] defines "remote gaming" and imposes a charge to duty on a UK person's participation in remote gaming. The amount of duty is calculated by reference to the profits described at clauses [28 to 30], below.

30. Clause [27] provides that any amounts that are paid in connection with, or that entitle a UK person to participate in, remote gaming will be treated as a "gaming payment". Payments will be treated being made no later than the time when a person begins to participate in the gaming, and, by means of secondary legislation, where a provider offers free or cut-price gaming, the Treasury may require full notional value to be taken into account.

31. Clause [28] makes provision for a gaming provider to calculate his profit from pooled prize gaming by making an equitable apportionment between dutiable and non-dutiable payments on a staged basis.

32. Clause [29] describes the profits from ordinary gaming on which duty is charged. These are the gaming payments made minus winnings paid out in an accounting period. If this results in a loss, that negative amount can be carried forward to reduce future liabilities for ordinary gaming.

33. Clause [30] provides that if any money has been assigned as winnings, but the customer has not, and is not entitled to, withdraw it, that amount will be treated as retained profits on which duty will be charged.

34. Clause [31] provides that the calculation of expenditure on prizes shall include the payment of winnings to a customer's account, and also allows for the return of any part of customers' gaming payments to be regarded as an expenditure on prizes. This clause further provides valuation provisions in respect of non-money prizes.

35. Clause [32] specifies the circumstances under which remote gaming duty will not apply and provides for additional exemptions to be granted, or existing exemptions to be amended through secondary legislation.

36. Clause [33] describes the persons who are liable for the duty, and those from whom it may be recovered.

37. Clause [34] provides that certain decisions in relation to remote gaming duty are appealable matters under the review and appeal provisions of the Finance Act 1994.

Chapter [4] General

38. Chapter [4] contains clauses [35] to [63] which make provision relating to administrative matters, security and enforcement, offences and evidence, definitions and supplementary matters.

39. Clause [35] provides that the Commissioners are responsible for the collection and management of general betting duty, pool betting duty and remote gaming duty. Commissioners' regulations may: require the manner and time in which the duties are to be accounted for and paid, and; provide as appears necessary for the administration, enforcement of and protection of revenue from the duties.

40. Clause [36] provides for registration for the duties. The Commissioners must keep registers, those carrying on relevant businesses or entering into relevant arrangements may not do so without registering and the Commissioners may make regulations about registration. Inter alia, these regulations may provide that: the Commissioners can, in specified circumstances require the appointment of a United Kingdom representative responsible for making returns and/ or discharging liability, and; for the registration of groups including that group members are jointly and severally liable for each others' liabilities for the duties.

41. Clause [37] provides that an accounting period is three consecutive months or another period as provided for by Commissioners' regulations. The first day of an accounting period is as directed by the Commissioners. With the agreement of the Commissioners, a person may have accounting periods longer or shorter than three months and/ or periods may begin on days other than that specified in the Commissioners' direction on the matter. The Commissioners may make transitional arrangements by direction.

42. Clause [38] provides for Commissioners' regulations about returns for the duties.

43. Clause [39] provides for Commissioners' regulations about payment of the duties and that, subject to these regulations, section 12 of the Finance Act 1994 applies in relation to assessments to duty.

43. Clause [40] provides for Commissioners' regulations about the provision and display of information and records.

44. Clause [41] provides for a Treasury Order about when stake money/ gaming payments are or are not treated as assigned to a stake fund/ gaming prize fund. The Commissioners may, by notice, make provision about stake funds and gaming prize funds.

45. Clause [42] provides that the Commissioners, may by notice, require a registrable person to give security or further security in the following circumstances: there is a serious risk that the duty will not be paid, or: the person is in a country or territory with which the United Kingdom does not have satisfactory arrangements for the enforcement of liabilities. The person has at least 30 days from the date of the notice to give security and the notice has no effect if it is under review or appeal.

46. Clause [43] provides for the review and appeal of a Commissioners' notice requiring a person to give security or further security.

47. Clause [44] provides that a person who does not comply with a notice requiring them to give security is guilty of a summary offence.

48. Clause [45] provides for a penalty under section 9 of the Finance Act 1994 in the case of non payment of remote gaming duty or failure to register correctly or to make a correct return. Fraudulent evasion is an offence and provision is made in respect of penalties for such an offence.

Clause [46 and Schedule 1] Suspension and Revocation of Remote Operating Licences

49. Schedule [1] sets out the process under which the Commission may direct the Gambling Commission to revoke a person's Remote Operating Licence. The process may be begun where the person: is required to register for a duty but has not done so; does not comply with conditions or requirements relating to registration; has not paid a duty, or; is required to give security but has not done so. The Commissioners' decision is subject to review and appeal; following the review and appeal procedures in Finance Act 1994. Provision is made for a Remote Operating Licence to be suspended as a stage before final revocation – a suspended licence may be reinstated if, for example, the Commissioners' decision to seek revocation is upheld at one stage in the appeal process but overturned at a subsequent stage.

50. Clause [47] provides that an offence committed by a body corporate is also committed by any officer of that body corporate (except in certain circumstances).

51. Clause [48] prevents HMRC officers from committing offences in the course of enforcing these duties under the instructions of the Commissioners.

52. Clause [49] provides for the circumstances in which a Commissioners' certificate that something has or has not happened, constitutes evidence of that occurrence until the contrary is proved, and that copies of documents certified by the Commissioners as such are admissible in proceedings.

53. Clause [50] provides that, in proceedings, on the question of whether relevant gambling facilities were capable of being used in or from the United Kingdom, the burden of proof lies on the person claiming that the facilities were not capable of being so used.

54. Clauses [51 to 57] define terms used in this Part of the Bill.

55. Clause [58] provides that if an amount of money (stake money, gaming payment etc.) is in a currency other than sterling it must be converted into sterling using the London closing exchange rate for the previous day. If such an exchange rate does not exist, the rate to be used is that as set out in a Commissioners' notice.

56. Clause [59] provides that this Part does not cause anything unlawful to be lawful (except insofar as the Part makes specific provision).

Clause [61 and Schedule 2] Consequential amendments and repeals

57. Schedule 2 contains consequential amendments to other Acts that flow from this new legislation.

Clause [62 and Schedule 3] Transitional provision

58. Schedule [3] [contains transitional provisions].

59. Clause [63] provides that this Part has effect in relation to accounting periods beginning on or after 1 December 2014.

BACKGROUND NOTE

60. These amendments have been made to ensure that general betting duty, pool betting duty and remote gaming duty will be charged in relation to transactions made with bookmakers or remote gaming providers by UK persons, or on premises in the UK.

61. If you have any questions about this change, or comments on the legislation, please contact Brian O'Kane on 03000 588011 (email: brian.okane@hmrc.gsi.gov.uk).

1 Six month licence: tractive units

(1) In section 3 of VERA 1994 (duration of licences), for subsection (2) substitute—

"(2) A vehicle licence may be taken out for a vehicle for a period of six months running from the beginning of the month in which the licence first has effect if—

(a) the annual rate of vehicle excise duty in respect of the vehicle exceeds £50, or

(b) the vehicle is one to which the annual rate of vehicle excise duty specified in paragraph 11C(2)(a) of Schedule 1 applies (tractive units: special cases)."

(2) The amendment made by this section has effect in relation to licences taken out on or after 1 April 2014.

2 Vehicles subject to HGV road user levy: amount of 6 month licence

(1) Section 4 of VERA 1994 (amount of duty) is amended as follows.

(2) In subsection (2), for "Where" substitute "Subject to subsection (2A), where".

(3) After subsection (2) insert—

"(2A) In the case of a vehicle which is charged to HGV road user levy, the reference in subsection (2) to fifty-five per cent is to be read as a reference to fifty per cent."

(4) The amendments made by this section have effect in relation to licences taken out on or after 1 April 2014.

3 VED rates: vehicles with exceptional loads, rigid goods vehicles and tractive units

(1) Schedule 1 to VERA 1994 (annual rates of duty) is amended as follows.

(2) In paragraph 6(2A)(a) (vehicles used for exceptional loads which do not satisfy reduced pollution requirements), for "£2,585" substitute "£1,585".

(3) In paragraph 9 (rigid goods vehicles which do not satisfy reduced pollution

requirements), for the table in sub-paragraph (1) substitute—

"Revenue weight of vehicle		*Rate*		
(1)	*(2)*	*(3)*	*(4)*	*(5)*
Exceeding	*Not exceeding*	*Two axle vehicle*	*Three axle vehicle*	*Four or more axle vehicle*
kgs	*kgs*	£	£	£
3,500	7,500	165	165	165
7,500	11,999	200	200	200
11,999	14,000	95	95	95
14,000	15,000	105	95	95
15,000	19,000	300	95	95
19,000	21,000	300	125	95
21,000	23,000	300	210	95
23,000	25,000	300	300	210
25,000	27,000	300	300	300
27,000	44,000	300	300	560"

(4) In paragraph 9(3) (rigid goods vehicles over 44,000 kgs which do not satisfy the reduced pollution requirements), for "£2,585" substitute "£1,585".

(5) For the italic heading immediately before paragraph 9 substitute "*Rigid goods vehicles exceeding 3,500 kgs revenue weight*".

(6) In paragraph 11(1) (tractive units which do not satisfy reduced pollution requirements)—

(a) for "table" substitute "tables", and

(b) for the table substitute—

"TABLE 1

TRACTIVE UNIT WITH TWO AXLES

Revenue weight of vehicle		*Rate*		
(1)	*(2)*	*(3)*	*(4)*	*(5)*
Exceeding	*Not exceeding*	*Any no of semi-trailer axles*	*2 or more semi-trailer axles*	*3 or more semi-trailer axles*
kgs	*kgs*	£	£	£
3,500	11,999	165	165	165
11,999	22,000	80	80	80
22,000	23,000	84	80	80
23,000	25,000	151	80	80
25,000	26,000	265	100	80
26,000	28,000	265	146	80
28,000	31,000	300	300	80
31,000	33,000	560	560	210
33,000	34,000	560	609	210
34,000	38,000	690	690	560
38,000	44,000	850	850	850

TABLE 2

TRACTIVE UNIT WITH THREE OR MORE AXLES

Revenue weight of vehicle		*Rate*		
(1)	*(2)*	*(3)*	*(4)*	*(5)*
Exceeding	*Not exceeding*	*Any no of semi-trailer axles*	*2 or more semi-trailer axles*	*3 or more semi-trailer axles*
kgs	*kgs*	£	£	£
3,500	11,999	165	165	165
11,999	25,000	80	80	80
25,000	26,000	100	80	80

Revenue weight of vehicle		*Rate*		
(1)	*(2)*	*(3)*	*(4)*	*(5)*
Exceeding	*Not exceeding*	*Any no of semi-trailer axles*	*2 or more semi-trailer axles*	*3 or more semi-trailer axles*
kgs	*kgs*	£	£	£
26,000	28,000	146	80	80
28,000	29,000	210	80	80
29,000	31,000	289	80	80
31,000	33,000	560	210	80
33,000	34,000	609	300	80
34,000	36,000	609	300	210
36,000	38,000	690	560	300
38,000	44,000	850	850	560"

(7) In paragraph 11(3) (tractive units above 44,000 kgs which do not satisfy reduced pollution requirements), for "£2,585" substitute "£1,585".

(8) In paragraph 11C(2) (tractive units: special cases)—
(a) omit "Subject to paragraph 11D,", and
(b) in paragraph (a), for "£650" substitute "£10".

(9) Omit paragraph 11D (vehicles without road friendly suspension) and the italic heading before it.

(10) The amendments made by this section have effect in relation to licences taken out on or after 1 April 2014.

4 VED rates: rigid goods vehicle with trailers

(1) For paragraph 10 of Schedule 1 to VERA 1994 (supplement to annual rate of duty for rigid goods vehicle with trailer), substitute—

"10 (1) This paragraph applies to relevant rigid goods vehicles.

(2) A "relevant rigid goods vehicle" is a rigid goods vehicle which—
(a) has a revenue weight exceeding 11,999 kgs,
(b) is not a vehicle falling within paragraph 9(2), and
(c) is used for drawing a trailer which has a plated gross weight exceeding 4,000 kgs and when so drawn is used for the conveyance of goods or burden.

(3) The annual rate of vehicle excise duty applicable to a relevant rigid goods vehicle is to be determined in accordance with the following tables by reference to—
(a) whether or not the vehicle has road-friendly suspension,

(b) the number of axles on the vehicle,

(c) the appropriate HGV road user levy band for the vehicle (see column (1) in the tables),

(d) the plated gross weight of the trailer (see columns (2) and (3) in the tables), and

(e) the total of the revenue weight for the vehicle and the plated gross weight of the trailer (the "total weight") (see columns (4) and (5) in the tables).

(4) For the purposes of this paragraph a vehicle does not have road-friendly suspension if any driving axle of the vehicle has neither —

(a) an air suspension (that is, a suspension system in which at least 75% of the spring effect is caused by an air spring), nor

(b) a suspension which is regarded as being equivalent to an air suspension for the purposes under Annex II of Council Directive 96/53/EC.

(5) The "appropriate HGV road user levy band" in relation to a vehicle means the band into which the vehicle falls for the purposes of calculating the rate of HGV road user levy that is charged in respect of the vehicle (see Schedule 1 to the HGV Road User Levy Act 2013).

(6) The tables are arranged as follows—

(a) table 1 applies to relevant rigid goods vehicles with road-friendly suspension on which there are 2 axles;

(b) table 2 applies to relevant rigid goods vehicles with road-friendly suspension on which there are 3 axles;

(c) table 3 applies to relevant rigid goods vehicles with road-friendly suspension on which there are 4 or more axles;

(d) table 4 applies to relevant rigid goods vehicles which do not have road-friendly suspension and on which there are 2 axles;

(e) table 5 applies to relevant rigid goods vehicles which do not have road-friendly suspension and on which there are 3 axles;

(f) table 6 applies to relevant rigid goods vehicles which do not have road-friendly suspension and on which there are 4 or more axles.

TABLE 1

Vehicles with road-friendly suspension and 2 axles

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
B(T)	4,000	12000	-	27,000	230
B(T)	12,000	-	-	33,000	295
B(T)	12,000	-	33,000	36,000	401
B(T)	12,000	-	36,000	38,000	319
B(T)	12,000	-	38,000	40,000	444
D(T)	4,000	12,000	-	30,000	365
D(T)	12,000	-	-	38,000	430
D(T)	12,000	-	38,000	40,000	444

TABLE 2

Vehicles with road-friendly suspension and 3 axles

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
B(T)	4,000	12,000	-	33,000	230
B(T)	12,000	-	-	38,000	295
B(T)	12,000	-	38,000	40,000	392
B(T)	12,000	-	40,000	44,000	295

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
C(T)	4,000	12,000	-	35,000	305
C(T)	12,000	-	-	38,000	370
C(T)	12,000	-	38,000	40,000	392
C(T)	12,000	-	40,000	44,000	370
D(T)	4,000	10,000	-	33,000	365
D(T)	4,000	10,000	33,000	36,000	401
D(T)	10,000	12,000	-	38,000	365
D(T)	12,000	-	-	44,000	430

TABLE 3

Vehicles with road-friendly suspension and 4 or more axles

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
B(T)	4,000	12,000	-	35,000	230
B(T)	12,000	-	-	44,000	295
C(T)	4,000	12,000	-	37,000	305
C(T)	12,000	-	-	44,000	370
D(T)	4,000	12,000	-	39,000	365
D(T)	12,000	-	-	44,000	430
E(T)	4,000	12,000	-	44,000	535

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
E(T)	12,000	-	-	44,000	600

TABLE 4

Vehicles without road-friendly suspension with 2 axles

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
B(T)	4,000	12000	-	27,000	230
B(T)	12,000	-	-	31,000	295
B(T)	12,000	-	31,000	33,000	401
B(T)	12,000	-	33,000	36,000	609
B(T)	12,000	-	36,000	38,000	444
B(T)	12,000	-	38,000	40,000	604
D(T)	4,000	12,000	-	30,000	365
D(T)	12,000	-	-	33,000	430
D(T)	12,000	-	33,000	36,000	609
D(T)	12,000	-	36,000	38,000	444
D(T)	12,000	-	38,000	40,000	604

TABLE 5

Vehicles without road-friendly suspension with 3 axles

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
B(T)	4,000	10,000	-	29,000	230
B(T)	4,000	10,000	29,000	31,000	289
B(T)	10,000	12,000	-	33,000	230
B(T)	12,000	-	-	36,000	295
B(T)	12,000	-	36,000	38,000	392
B(T)	12,000	-	38,000	40,000	542
C(T)	4,000	10,000	-	31,000	305
C(T)	4,000	10,000	31,000	33,000	401
C(T)	10,000	12,000	-	35,000	305
C(T)	12,000	-	-	36,000	370
C(T)	12,000	-	36,000	38,000	392
C(T)	12,000	-	38,000	40,000	542
D(T)	4,000	10,000	-	31,000	365
D(T)	4,000	10,000	31,000	33,000	401
D(T)	4,000	10,000	33,000	35,000	609
D(T)	10,000	12,000	-	36,000	365
D(T)	10,000	12,000	36,000	37,000	392
D(T)	12,000	-	-	38,000	430
D(T)	12,000	-	38,000	40,000	542

TABLE 6

Vehicles without road-friendly suspension with 4 or more axles

Appropriate HGV road user levy band	*Plated gross weight of trailer*		*Total weight*		*Rate*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
	Exceeding (kgs)	*Not exceeding (kgs)*	*Exceeding (kgs)*	*Not exceeding (kgs)*	£
B(T)	4,000	12,000	-	35,000	230
B(T)	12,000	-	-	40,000	295
C(T)	4,000	12,000	-	37,000	305
C(T)	12,000	-	-	40,000	370
D(T)	4,000	10,000	-	36,000	365
D(T)	4,000	10,000	36,000	37,000	444
D(T)	10,000	12,000	-	39,000	365
D(T)	12,000	-	-	40,000	430
E(T)	4,000	10,000	-	38,000	535
E(T)	4,000	10,000	38,000	40,000	604
E(T)	10,000	12,000	-	40,000	535

(7) The annual rate of vehicle excise duty for a relevant rigid goods vehicle which does not fall within any of tables 1 to 6 is—

(a) £1,585, where the total weight exceeds 44,000 kgs;

(b) £609, in all other cases."

(2) In paragraph 2(2) of Schedule 1 to the HGV Road User Levy Act 2013, for "within paragraph 10" substitute "which is a relevant rigid goods vehicle within the meaning of paragraph 10".

(3) The amendment made by subsection (1) has effect in relation to licences taken out on or after 1 April 2014.

(4) The amendment made by subsection (2) is treated as having come into force force on 1 April 2014.

5 HGV road user levy: rates tables

(1) In Schedule 1 to the HGV Road User Levy Act 2013 (rates of HGV road user

levy), for Tables 2 to 5 substitute—

"TABLE 2: RIGID GOODS VEHICLE

Revenue weight of vehicle		*2 axle vehicle*	*3 axle vehicle*	*4 or more axle vehicle*
More than	*Not more than*			
kgs	*kgs*	*Band*	*Band*	*Band*
11,999	15,000	B	B	B
15,000	21,000	D	B	B
21,000	23,000	D	C	B
23,000	25,000	D	D	C
25,000	27,000	D	D	D
27,000	44,000	D	D	E

TABLE 3: RIGID GOODS VEHICLE WITH TRAILER OVER 4,000 KGS

Revenue weight of vehicle		*2 axle vehicle*	*3 axle vehicle*	*4 or more axle vehicle*
More than	*Not more than*			
kgs	*kgs*	*Band*	*Band*	*Band*
11,999	15,000	B(T)	B(T)	B(T)
15,000	21,000	D(T)	B(T)	B(T)
21,000	23,000	E(T)	C(T)	B(T)
23,000	25,000	E(T)	D(T)	C(T)
25,000	27,000	E(T)	D(T)	D(T)
27,000	44,000	E(T)	E(T)	E(T)

TABLE 4: TRACTIVE UNITS WITH TWO AXLES

Revenue weight of tractive vehicle		*Any no of semi-trailer axles*	*2 or more semi-trailer axles*	*3 or more semi-trailer axles*
More than	*Not more than*			
kgs	*kgs*	*Band*	*Band*	*Band*
11,999	25,000	A	A	A
25,000	28,000	C	A	A
28,000	31,000	D	D	A
31,000	34,000	E	E	C
34,000	38,000	F	F	E
38,000	44,000	G	G	G

TABLE 5: TRACTIVE UNIT WITH THREE OR MORE AXLES

Revenue weight of tractive vehicle		*Any no of semi-trailer axles*	*2 or more semi-trailer axles*	*3 or more semi-trailer axles*
More than	*Not more than*			
kgs	*kgs*	*Band*	*Band*	*Band*
11,999	28,000	A	A	A
28,000	31,000	C	A	A
31,000	33,000	E	C	A
33,000	34,000	E	D	A
34,000	36,000	E	D	C
36,000	38,000	F	E	D
38,000	44,000	G	G	E”

(2) The amendment made by this section is treated as having come into force on 1 April 2014.

1 Abolition of reduced VED rates for vehicles satisfying reduced pollution requirements

Schedule 1 contains provision abolishing the reduced rates of vehicle excise duty for vehicles satisfying reduced pollution requirements.

SCHEDULES

SCHEDULE 1

Section 1

ABOLITION OF REDUCED RATES FOR VEHICLES SATISFYING REDUCED POLLUTION REQUIREMENTS

PART 1

AMENDMENTS OF VERA 1994

1 VERA 1994 is amended as follows.

2 Omit section 61B (certificates as to reduced pollution).

3 In consequence of the amendment made by paragraph 2—

(a) in section 45 (false declarations etc), in subsections (3A) and (3B) omit "or 61B",

(b) in Schedule 1 (annual rates of duty)—

(i) in paragraph 3(6) omit paragraph (a) and the "and" following it,

(ii) in paragraph 4(7) omit paragraph (a) and the "and" following it,

(iii) in paragraph 5(6) omit paragraph (a) and the "and" following it, and

(iv) in paragraph 7(3) omit paragraph (a) and the "and" following it, and

(c) in paragraph 22 of Schedule 2 (exempt vehicles: vehicle testing etc)—

(i) in sub-paragraph (1)(a) for ", a vehicle weight test or a reduced pollution test" substitute "or a vehicle weight test",

(ii) in sub-paragraph (2) omit "a reduced pollution test or",

(iii) in sub-paragraph (2A), in both places it occurs, omit "or a reduced pollution test",

(iv) in sub-paragraph (3) omit ", or a reduced pollution test,",

(v) omit sub-paragraph (6AA),

(vi) in sub-paragraph (6B) for ", a vehicle weight test or a reduced pollution test" substitute "or a vehicle weight test", and

(vii) in sub-paragraphs (8) and (9) omit paragraph (d) and the "or" following paragraph (c).

4 In paragraph 3 of Schedule 1 (annual rates of duty: buses)—

(a) in sub-paragraph (1) omit "with respect to which the reduced pollution requirements are not satisfied", and

(b) omit sub-paragraph (1A).

5 In paragraph 6 of Schedule 1 (annual rates of duty: vehicles used for exceptional loads), in sub-paragraph (2A)—

(a) in paragraph (a) omit "in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied,",

(b) omit the "and" following paragraph (a), and

(c) omit paragraph (b).

6 In paragraph 7 of Schedule 1 (annual rates of duty: haulage vehicles), for sub-paragraph (3A) substitute—

"(3A) The rate referred to in sub-paragraph (1)(b) is £350."

7 Omit paragraphs 9A and 9B of Schedule 1.

8 Omit paragraphs 11A and 11B of Schedule 1.

9 In paragraph 11C of Schedule 1 (annual rates of duty: tractive units), in sub-paragraph (2)—

(a) in paragraph (a) omit "in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied,", and

(b) omit paragraph (b).

10 In consequence of the amendments made by paragraphs 4 to 9—

(a) in section 13 (trade licences: duration and amount of duty) omit subsection (7)(a) and the "and" following it,

(b) in section 13 (trade licences: duration and amount of duty) as set out in paragraph 8(1) of Schedule 4 of VERA 1994 to have effect on and after a day appointed by order, omit subsection (7)(a) and the "and" following it,

(c) in section 15 (vehicles becoming chargeable to duty at a higher rate), omit subsection (2A),

(d) in paragraph 9 of Schedule 1 (annual rates of duty: rigid goods vehicles)—

(i) in sub-paragraph (1), omit "is not a vehicle with respect to which the reduced pollution requirements are satisfied and which",

(ii) omit sub-paragraph (3)(a), and

(iii) in sub-paragraph (4), omit paragraph (a) and the "and" following it, and

(e) in paragraph 11 of Schedule 1 (annual rates of duty: tractive units)—

(i) in sub-paragraph (1), omit "is not a vehicle with respect to which the reduced pollution requirements are satisfied and which",

(ii) omit sub-paragraph (3)(a), and

(iii) in sub-paragraph (4), omit paragraph (a) and the "and" following it.

PART 2

COMMENCEMENT

Introduction

11 This Part of this Schedule makes provision for the coming into force of the amendments made by Part 1.

Licences taken out on or after 1 April 2014

12 In the case of a rigid goods vehicle or tractive unit—

(a) which has a revenue weight of not less than 12,000 kgs, and

(b) which satisfies the reduced pollution requirements for the purposes of VERA 1994,

the amendments made by paragraphs 7 to 10 have effect in relation to licences taken out on or after 1 April 2014.

Licences taken out on or after 1 April 2016

13 In the case of the vehicles described in paragraph 14 the amendments made by paragraphs 4 to 10 have effect in relation to licences taken out on or after 1 April 2016.

14 Those vehicles are—

(a) a bus, exceptional load vehicle or haulage vehicle which satisfies the reduced pollution requirements for the purposes of VERA 1994 because paragraph 4 of Schedule 2 to the Regulations applies to the vehicle as result of it falling within item 1 or 2 of Table 1 or any of items 1 to 3 of Table 2 in that paragraph (or being taken to be a vehicle falling within item 1 of Table 1 or Table 2 as a result of paragraph 5 of that Schedule), and

(b) a rigid goods vehicle or tractive unit—

(i) which has a revenue weight below 12,000 kgs, and

(ii) which satisfies the reduced pollution requirements for the purposes of VERA 1994 because paragraph 4 of Schedule 2 to the Regulations applies to the vehicle as result of it falling within item 1 or 2 of Table 1 or any of items 1 to 3 of Table 2 in that paragraph (or being taken to be a vehicle falling within item 1 of Table 1 or Table 2 as a result of paragraph 5 of that Schedule).

Licences taken out on or after 1 January 2017

15 In the case of the vehicles described in paragraphs 16 and 17 the amendments made by paragraphs 4 to 10 have effect in relation to licences taken out on or after 1 January 2017.

16 A bus, exceptional load vehicle or haulage vehicle which satisfies the reduced pollution requirements for the purposes of VERA 1994 because—

(a) paragraph 4 of Schedule 2 to the Regulations applies to the vehicle as result of it falling within item 3 or 4 of Table 1 or item 4 of Table 2 in that paragraph,

(b) paragraph 4A of Schedule 2 to the Regulations applies to the vehicle as result of it meeting the requirements of paragraph 4B of that Schedule, or

(c) paragraph 4C of Schedule 2 to the Regulations applies to the vehicle as result of it meeting the requirements of paragraph 4D of that Schedule.

17 (1) A rigid goods vehicle or tractive unit—

(a) which has a revenue weight below 12,000 kgs, and

(b) which satisfies the reduced pollution requirements for the purposes of VERA 1994 for any of the reasons in sub-paragraph (2).

(2) Those reasons are—

(a) paragraph 4 of Schedule 2 to the Regulations applies to the vehicle as result of it falling within item 3 or 4 of Table 1 or item 4 of Table 2 in that paragraph,

(b) paragraph 4A of Schedule 2 to the Regulations applies to the vehicle as result of it meeting the requirements of paragraph 4B of that Schedule, or

(c) paragraph 4C of Schedule 2 to the Regulations applies to the vehicle as result of it meeting the requirements of paragraph 4D of that Schedule.

I January 2017

18 The amendments made by paragraphs 2 and 3 come into force on 1 January 2017.

Interpretation

19 In this Schedule—

"bus" has the same meaning as in paragraph 3(2) of Schedule 1 to VERA 1994;

"exceptional load vehicle" is a vehicle to which paragraph 6 of Schedule 1 to VERA 1994 applies by reason of falling within sub-paragraph (1) of that paragraph;

"haulage vehicle" has the same meaning as in paragraph 7(2) of Schedule 1 to VERA 1994;

"the Regulations" means the Road Vehicles (Registration and Licensing) Regulations 2002 (S.I. 2002/2742);

"rigid goods vehicle" and "tractive unit" have the same meaning as in VERA 1994.

1 Definition of "revenue weight"

(1) VERA 1994 is amended as follows.

(2) In section 60A (revenue weight), in subsection (9)(b)—

(a) for "at which" substitute "which must not be equalled or exceeded in order for", and

(b) for "may lawfully" substitute "to lawfully".

(3) In section 61 (vehicle weights)—

(a) in subsection (1)(b), after "not be" insert "equalled or", and

(b) in subsection (2), after "not be" insert "equalled or".

(4) The amendments made by this section have effect in relation to licences taken out on or after 1 April 2014.

EXPLANATORY NOTE

SIX MONTH LICENCE: TRACTIVE UNITS

SUMMARY

1. Clause [X] makes a six month vehicle licence available to combined transport goods vehicles, even though their annual rate of Vehicle Excise Duty (VED) will be below the £50 threshold that otherwise determines availability. This change is by amendment of the Vehicle Excise and Registration Act 1994 (VERA) with effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) maintains the availability of a six month vehicle licence where the applicable annual rate of VED exceeds £50, and introduces a new circumstance where a six month licence is available.

3. The new circumstance is if the vehicle is one that is used for the transportation of goods between European Union member States where part of that transport is in the United Kingdom and those goods are substantially transported by rail from the railhead that is nearest to the point of origin. Such a vehicle does not have to have an annual rate of VED in excess of £50 to qualify for a six month vehicle licence.

BACKGROUND NOTE

4. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

5. Other related changes to reduce and restructure VED rates are being made in clauses [A, B and C]. Clause [X] sets an annual rate of £10 for goods vehicles for which part of the carried goods' journey is made by rail.

6. If you have any questions about these changes, or comments on the legislation, please contact Andy West on 0207 270 4697 (email: andy.west@hmtreasury.gov.uk).

EXPLANATORY NOTE

VED RATES: VEHICLES WITH EXCEPTIONAL LOADS, RIGID GOODS VEHICLES AND TRACTIVE UNITS

SUMMARY

1. Clause [X] provides for changes to certain rates of vehicle excise duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (2) reduces the rate of VED for a vehicle used to carry or draw a trailer carrying an exceptional load.

3. Subsections (3) and (4) maintain the rates of VED for rigid goods vehicles weighing less than 12,000kg and reduces the rates of VED for such vehicles weighing 12,000kg or more including reducing the applicable rate for such vehicles weighing in excess of 44,000kg.

4. Subsections (6) and (7) maintain the rates of VED for tractive units to which semi-trailers may be attached that weigh less than 12,000kg, and reduces the rates of VED for such vehicles weighing 12,000kg or more including reducing the applicable rate for such vehicles weighing in excess of 44,000kg.

5. Subsection (8) reduces the rate of VED for tractive units to which semi-trailers may be attached when these are used for the transportation of goods between European Union member States where part of that transport is in the United Kingdom and those goods are substantially transported by rail from the railhead that is nearest to the point of origin.

6. Subsection (9) removes the rates of VED for certain vehicles without road friendly suspension which were introduced to Schedule 1 of VERA through Section 22 of Finance Act 2011.

BACKGROUND NOTE

7. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK. Other related changes to reduce and restructure VED rates are being made in clauses [A, B & C].

8. If you have any questions about these changes, or comments on the legislation, please Andy West on 0207 270 4697 (email: andy.west@hmtreasury.gov.uk).

EXPLANATORY NOTE

VED RATES: RIGID GOODS VEHICLE WITH TRAILERS

SUMMARY

1. Clause [X] provides for changes to certain rates of vehicle excise duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (2) introduces tables which set rates of VED for rigid goods vehicles that draw trailers when such trailers may weigh 4,000kg or more and the vehicle 12,000kg or more. This includes a rate which is applicable where a vehicle does not fall within the tables introduced by the subsection or where it weighs in excess of 44,000kg.

3. Rates for these vehicles are to be determined by reference to the following new factors: the presence of road-friendly suspension on the vehicle; how many axles the vehicle has; the vehicle's HGV road user levy banding; the trailer's plated gross weight; and the total of that weight and the vehicle's revenue weight.

4. Subsection (3) makes a consequential amendment to paragraph 2(2) of schedule 1 of the HGV Road User Levy Act 2013 to refer to the new definition of relevant rigid goods vehicle which is being introduced by subsection 2.

BACKGROUND NOTE

5. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and in the case of rigid goods vehicles that draw trailers only those drawing trailers weighing 4,000kg or more. It is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK. Other related changes to reduce and restructure VED rates are being made in clauses [A, B and C].

6. If you have any questions about these changes, or comments on the legislation, please contact Andy West on 0207 270 4697 (email: andy.west@hmtreasury.gov.uk).

EXPLANATORY NOTE

HGV ROAD USER LEVY: RATES TABLES

SUMMARY

1. Clause [X] revises the rates tables in schedule 1 of the HGV Road User Levy Act 2013 to also include rates of Levy which are applicable to goods vehicles that are in weight categories which are in excess of permitted maximum operating weights.

DETAILS OF THE CLAUSE

2. Subsection (2) introduces revised tables to the HGV Road User Levy Act 2013. These will allow the Levy to be collected from certain categories of goods vehicle weighing 12,000kg or more when these vehicles operate in excess of permitted maximum operating weights.

3. The applicable categories of goods vehicle are: 2 axle rigid and 3 axle rigid goods vehicles, and the same types of vehicle that draw trailers when such trailers weigh 4,000kg or more; as well as tractive units that draw semi-trailers consisting with any number of axles, or with two or more axles.

BACKGROUND NOTE

4. HGV Road User Levy rates will begin to take effect from 1 April 2014. The Levy is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

5. Operators of UK licensed tractive units are able to gain operational flexibility by licensing these vehicles to draw semi-trailers with any number of axles or two or more axles or three or more axles.

6. Vehicles that are in weight categories which are in excess of permitted maximum operating weights will remain liable to tax.

7. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates. These changes are being made in clauses [A, B & C].

8. If you have any questions about these changes, or comments on the legislation, please contact Andy West on 0207 270 4697 (email: andy.west@hmtreasury.gov.uk).

EXPLANATORY NOTE

ABOLITION OF REDUCED VED RATES FOR VEHICLES SATISFYING REDUCED POLLUTION REQUIREMENTS

SUMMARY

1. Clause [X] introduces Schedule [Y] to set the dates from which the availability of reduced rates of Vehicle Excise Duty (VED) for reduced pollution buses and goods vehicles cease by amendment of the Vehicle Excise and Registration Act 1994 (VERA).

DETAILS OF THE SCHEDULE

2. Paragraphs 2 and 3 abolish the procedure for accrediting buses and goods vehicles as meeting reduced pollution requirements and, consequentially, delete all references to the procedure in VERA.

3. Paragraphs 4, 5 and 6 abolish the reduced rates of VED for reduced pollution buses, vehicles used for exceptional loads and haulage vehicles.

4. Paragraphs 7, 8, 9 and 10 abolish the reduced rates of VED for reduced pollution rigid goods vehicles and reduced pollution tractive units.

5. Paragraph 12 sets 1 April 2014 as the date from which reduced rates of VED cease to be available to goods vehicles that meet the reduced pollution requirements and which are inside the HGV Road User Levy.

6. Paragraphs 13 and 14 set 1 April 2016 as the date from which reduced rates of VED cease to be available to buses, vehicles used for exceptional loads, haulage vehicles and other goods vehicles that weigh less than 12,000kg and are outside of the HGV Road User Levy which meet the Euro I, Euro II and Euro III reduced pollution requirements.

7. Paragraphs 15, 16 and 17 set 1 January 2017 as the date from which reduced rates of VED cease to be available to buses, vehicles used for exceptional loads, haulage vehicles and other goods vehicles that weigh less than 12,000kg and are outside of the HGV Road User Levy which meet the Euro IV, Euro V and Euro VI reduced pollution requirements.

BACKGROUND NOTE

8. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK.

9. Goods vehicles and buses have qualified for reduced rates of VED when achieving reduced pollution requirements early, ahead of the mandatory adoption of those standards. Reduced rates first became available in 1999.

10. Other related changes to reduce and restructure VED rates are being made in clauses [A, B & C].

11. If you have any questions about these changes, or comments on the legislation, please contact Andy West on 0207 270 4697 (email: andy.west@hmtreasury.gov.uk).

EXPLANATORY NOTE

DEFINITION OF "REVENUE WEIGHT"

SUMMARY

1. Clause [X] amends the definition of vehicle weight in the Vehicle Excise and Registration Act 1994 (VERA), consequent to revised secondary legislation specifying that goods vehicle operating weights are up to, but do not include the exact weight displayed on the plate affixed to a vehicle or a trailer.

DETAILS OF THE CLAUSE

2. Subsection (2) provides that the confirmed maximum weight of a vehicle, for the purpose of defining the vehicle's revenue weight, is determined if it has a plated gross weight or a plated train weight and meets the conditions introduced to VERA by the subsection.

3. Subsection (3) provides that a reference in VERA to the plated gross weight of a goods vehicle or trailer is a reference to the maximum gross weight which may not be equalled or exceeded.

BACKGROUND NOTE

4. VED rates for goods vehicles licensed in the United Kingdom are being reduced and restructured to offset the cost of HGV Road User Levy rates which will begin to take effect from 1 April 2014. To ensure that the cost of the Levy can be offset to the greatest extent, the Road Vehicles (Construction and Use) Regulations 1986 are being amended. This will mean that a goods vehicle with a plated weight will be able to be loaded up to but not including that weight. For example, a vehicle plated at 21,000kg will be able to be loaded to around 20,999.99kg. This clause aligns VERA with that change.

5. The Levy only applies to goods vehicles weighing 12,000kg or more, and is intended to introduce a fairer arrangement for UK hauliers by ensuring that foreign hauliers pay to use roads in the UK. Other related changes to reduce and restructure VED rates are being made in clauses [A, B & C].

6. If you have any questions about these changes, or comments on the legislation, please contact Andy West on 0207 270 4697 (email: andy.west@hmtreasury.gov.uk).

1 Vehicle excise and registration: other provisions

Schedule 1 contains other provisions relating to vehicle excise and registration.

SCHEDULES

SCHEDULE 1

Section 1

AMENDMENTS TO THE VEHICLE EXCISE AND REGISTRATION ACT 1994

1 VERA 1994 is amended as follows.

2 In section 7 (issue of vehicle licences), omit subsections (6) and (7).

3 (1) Section 7A (supplement payable on vehicle ceasing to be appropriately covered) is amended as follows.

(2) In subsection (1B)—
(a) omit "or in respect of", and
(b) omit from "unless" to the end.

(3) Omit subsection (1C).

4 Omit section 10 (transfer of vehicle licences).

5 In section 19 (rebates)—
(a) omit subsection (6)(a), and
(b) in subsection (7), for "and the licence is not surrendered on the making of the application, it" substitute "the licence".

6 In section 22 (registration regulations)—
(a) omit subsection (2A)(c), and
(b) omit subsection (4).

7 In section 29 (penalty for keeping unlicensed vehicle)—
(a) in subsection (4) omit from "unless" to the end, and
(b) omit subsection (5).

8 In section 31 (relevant period for purposes of section 30), in subsection (7)(a), omit "surrender or".

9 In section 31A (offence by registered keeper where vehicle unlicensed)—
(a) in subsection (4) omit from "unless" to the end, and
(b) omit subsection (5).

10 In section 31B (exceptions to section 31A), in subsection (9)(a)(i), omit "surrender or".

11 In section 31C (penalties for offences under section 31A), in subsection (7)(a) omit "surrender or".

12 (1) Section 33 (offence of not exhibiting licence) is amended as follows.

(2) In subsection (1)—

(a) omit the "and" following paragraph (a),

(b) after that paragraph insert—

"(aa) the vehicle is not a vehicle for which a vehicle licence is in force, and", and

(c) in paragraph (b), for "licence for, or in respect of," substitute "trade licence in respect of".

(3) Omit subsection (1A).

(4) In subsection (2), omit "or (1A)".

(5) In subsection (3)—

(a) for "Subsections (1) and (1A)" substitute "Subsection (1)",

(b) in paragraph (a), for "have" substitute "has", and

(c) in paragraph (b) for "are" substitute "is".

(6) In subsection (4), for "licence which is for, or in respect of," substitute "trade licence which is in respect of".

(7) Omit subsection (5).

(8) In the heading, after "exhibiting" insert "trade".

13 (1) Section 33A (not exhibiting licence: period of grace) is amended as follows.

(2) For subsection (1) substitute—

"(1) A person is not guilty of an offence under section 33 by using or keeping a vehicle on a public road during any of the following periods.

Renewal etc.

The period of 14 days following the time when a trade licence 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 trade licence in respect of the vehicle to run from that time has been received before that time.

Replacement

The period beginning with the time when a trade licence that is in force in respect of the vehicle is delivered to the Secretary of State with an application for a replacement trade licence, and ending with the time when the replacement licence is obtained."

14 Omit section 35 (failure to return licence).

15 (1) Section 35A (dishonoured cheques) is amended as follows.

(2) After subsection (2) insert—

"(2A) For the purposes of subsection (1)(a), a relevant requirement in the case of a notice relating to a vehicle licence is a requirement to pay the amount specified in subsection (4)."

(3) In subsection (3), after "relevant requirement" insert "in the case of a notice relating to a trade licence".

(4) In subsection (4), for "subsection (3)(b)" substitute "subsections (2A) and (3)(b)".

(5) In subsection (6)(b), for "subsection (7)" substitute "subsection (6A) (where the requirement relates to a vehicle licence) or subsection (7) (where the requirement relates to a trade licence)".

(6) After subsection (6) insert—

"(6A) In the case of a requirement in a notice relating to a vehicle licence, those times are—

(a) the end of the month in which the notice under section 19A(2)(b) or 19B(2)(c) or the further notice under section 19A(3)(d), 19B(3)(d) or 19B(5)(f) was sent,

(b) the date on which the licence was due to expire, and

(c) the end of the month preceding that in which there first had effect a new vehicle licence for the vehicle in question."

(7) In subsection (7)—

(a) for "vehicle licence" (in the first place it occurs) substitute "trade licence",

(b) at the end of paragraph (b) insert "and",

(c) omit the "and" following paragraph (c), and

(d) omit paragraph (d) and the words following it.

16 (1) Section 36 (dishonoured cheques: additional liability) is amended as follows.

(2) In subsection (4)(b), for "subsection (4A)" substitute "subsection (4ZA) (where the requirement relates to a vehicle licence) or subsection (4A) (where the requirement relates to a trade licence)".

(3) After subsection (4) insert—

"(4ZA) In the case of a vehicle licence, those times are—

(a) the end of the month in which the relevant notice was sent,

(b) the date on which the licence was due to expire, and

(c) the end of the month preceding that in which there first had effect a new licence for the vehicle in question.

(4ZB) In subsection (4ZA)(a), the "relevant notice" is the notice under section 19A(2)(b) or 19B(2)(c) or the further notice under section 19A(3)(d), 19B(3)(d) or 19B(5)(f) which contained the relevant requirement which was not complied with, resulting in the conviction of an offence under section 35A."

(4) In subsection (4A)—

(a) for "vehicle licence" substitute "trade licence",

(b) at the end of paragraph (b) insert "and",

(c) omit the "and" following paragraph (c), and

(d) omit paragraph (d) and the words following it.

(5) In subsection (6)(b), for "section 35A(3)(b)" substitute "section 35A(2A) or (3)(b)".

17 In section 44 (forgery and fraud), in subsection (2), omit paragraphs (a) and (c).

18 In section 58 (fees prescribed by regulations) omit "7(6)(b),".

19 The amendments made by this Schedule come into force on 1 October 2014.

1 Payment of vehicle excise duty by direct debit

(1) VERA 1994 is amended as follows.

(2) In section 4 (amount of duty) for subsections (1) to (2A) substitute—

"(1) Where a vehicle licence for a vehicle of any description is taken out for a period of 12 months, vehicle excise duty is to be paid on the licence—

(a) at the annual rate of duty applicable to vehicles of that description, or

(b) if the duty is to be paid by more than one instalment pursuant to an agreement under section 19B, at a rate equal to 105% of that annual rate.

(2) Subject to subsection (2A), where a vehicle licence for a vehicle of any description is taken out for a period of 6 months, vehicle excise duty is to be paid on the licence—

(a) at a rate equal to 55% of the annual rate of duty applicable to vehicles of that description, or

(b) if the duty is to be paid by direct debit pursuant to an agreement under section 19B, at a rate equal to 52.5% of that annual rate.

(2A) In the case of a vehicle which is charged to HGV road user levy, the reference in subsection (2)(a) to 55% is to be read as a reference to 50%."

(3) In section 13 (trade licences: duration and amount of duty)—

(a) in subsection (3), after "calendar year" insert "("the applicable annual rate"),

(b) after subsection (3) insert—

"(3A) Where a trade licence is taken out for a calendar year and the duty is to be paid by more than one instalment pursuant to an agreement under section 19B, the rate of duty is 105% of the applicable annual rate.",

(c) for subsection (4) substitute—

"(4) The rate of duty applicable to a trade licence taken out for a period of 6 months is—

(a) 55% of the applicable annual rate for a corresponding trade licence taken out for a calendar year, or

(b) if the duty is to be paid by direct debit pursuant to an agreement under section 19B, 52.5% of that applicable annual rate.",

(d) in subsection (5)(a), for "rate applicable to the" substitute "applicable annual rate for a", and

(e) in subsection (6), for "subsection (4)" substitute "subsection (3A), (4)".

(4) In section 13 (trade licences: duration and amount of duty) as set out in paragraph 8(1) of Schedule 4 of VERA 1994 to have effect on and after a day appointed by order—

(a) in subsection (4), after "twelve months" insert "("the applicable annual rate"),

(b) after subsection (4) insert—

"(4A) Where a trade licence is taken out for a period of 12 months and the duty is to be paid by more than one instalment pursuant to an agreement under section 19B, the rate of duty is 105% of the applicable annual rate.",

(c) for subsection (5) substitute—

"(5) The rate of duty applicable to a trade licence taken out for a period of 6 months is—

(a) 55% of the applicable annual rate for a corresponding trade licence taken out for 12 months, or

(b) if the duty is to be paid by direct debit pursuant to an agreement under section 19B, 52.5% of that applicable annual rate.", and

(d) in subsection (6), for "subsection (5)" substitute "subsection (4A) or (5)".

(5) In section 19A (payment by cheque)—

(a) in subsection (2)(b) omit "by post", and

(b) in subsection (3)(b) and (d) omit "by post".

(6) In section 19B (issue of licences before payment of duty)—

(a) after subsection (1) insert—

"(1A) An agreement to pay the duty payable on a vehicle licence or a trade licence may provide—

(a) for the duty to be paid by instalments,

(b) that if any of paragraphs (a) to (f) of section 19(3) apply in relation to the vehicle for which the licence was issued, for the licence to cease to be in force from the time specified in the agreement and for any instalments falling after that time no longer to be due, and

(c) for any instalments falling after the surrender of a trade licence under section 14(2) no longer to be due.", and

(b) in subsection (2)(c) omit "by post",

(c) in subsection (3)(b) and (d) omit "by post", and

(d) after subsection (3) insert—

"(4) But subsections (2) and (3) do not apply in a case where the agreement under subsection (1) provides for the duty payable to be paid by more than one instalment (and for this case see subsection (5)).

(5) In a case where—

(a) a vehicle licence or a trade licence is issued to a person in accordance with subsection (1),

(b) the duty payable on the licence is not received by the Secretary of State in accordance with the agreement,

(c) the agreement provides for the duty payable to be paid by more than one instalment,

(d) the Secretary of State sends a notice to the person requiring the person to secure that the duty payable on the licence (both in respect of instalments which have fallen due and in respect of future instalments) is paid within the period specified in the notice, and

(e) the requirement in the notice is not complied with, and

(f) the Secretary of State sends a further notice to the person informing that person that the licence is void from the time specified in the notice,

the licence is to be void from the time specified."

(7) In section 35A (dishonoured cheques)—

(a) in subsection (1)(a), for "or 19B(3)(d)" substitute ", 19B(3)(d) or 19B(5)(f)",

(b) after subsection (7) insert—

"(8) In a case where a notice is sent as mentioned in section 19B(5)(f) the amounts specified in subsections (2)(b) and (4) are to be calculated on the basis of the rates described in section 4(1)(b) or 13(3A) (whichever is relevant).", and

(c) in the heading, for "Dishonoured cheques" substitute "Failed payments".

(8) In section 36 (dishonoured cheques: additional liability)—

(a) after subsection (6) insert—

"(7) In a case where a notice is sent as mentioned in section 19B(5)(f) the amount specified in subsection (2) is to be calculated on the basis of the rates described in section 4(1)(b) or 13(3A) (whichever is relevant).", and

(b) in the heading, for "Dishonoured cheques" substitute "Failed payments".

(9) The amendments made by this section come into force on 1 October 2014.

EXPLANATORY NOTE

VEHICLE EXCISE AND REGISTRATION: OTHER PROVISIONS

SUMMARY

1. Clause [X] introduces Schedule [Y] which makes amendments to the Vehicle Excise and Registration Act 1994 (VERA) which are required as a consequence of the Driver and Vehicle Licensing Agency's intention to no longer issued paper based vehicle licences or nil licences. These amendments to VERA will be followed by changes to secondary legislation which will remove the requirement for vehicle licences and nil licences to be displayed in the vehicles to which they relate.

DETAILS OF THE SCHEDULE

2. Paragraph (2) amends section 7 of VERA to remove a regulation making power which may be used to provide for the return of a vehicle licence when the vehicle licence has been damaged, become illegible or is lost or stolen. It also removes a requirement for a weight to be shown on a vehicle licence in respect of goods vehicles where a licence is issued at a rate of duty applicable to a lower weight than the vehicle's actual weight.

3. Paragraphs (3), (4), (7) and (9) amend sections 7A, 10, 29 and 31A respectively of VERA so that it will no longer be possible to transfer the benefit of a vehicle licence when there is a change of registered keeper. As a consequence of this, where there is a new registered keeper he/she will be obliged to take out a new vehicle licence when the vehicle to which the vehicle licence relates is transferred to him/her. The reason for now preventing vehicle licences being transferred from registered keeper to registered keeper is to avoid a new registered keeper unknowingly keeping an unlicensed vehicle. For example, in the absence of a paper licence a vehicle may be purchased supposedly with the benefit of a vehicle licence. The new keeper would believe that the vehicle was licensed, but the former keeper could apply for a refund of VED without the knowledge of the new keeper resulting on the new keeper having an unlicensed vehicle.

4. Paragraph (5) amends section 19 so that when an application is made for a rebate of VED it will not be a condition of the application that the vehicle licence is surrendered. Section 19 is also amended so that a vehicle licence ceases to be in force when an application for a rebate is made.

5. Paragraphs (8), (10) and (11) amends the sections 31, 31B and 31C respectively of VERA as a consequence of the amendments to section 19.

6. Paragraph (12) amends section 33 so that there is no longer an offence of failing to display a vehicle licence or nil licence on a vehicle which is used or kept on a public road. It continues to be an offence not to exhibit a trade licence.

7. Paragraph (13) amends section 33A so that the 14 day period of grace for not exhibiting a newly issued vehicle licence or nil licence no longer applies. The grace periods which are applicable to trade licences will still apply.

8. Paragraph (14) repeals section 35 of VERA. This section provided for an offence where a person knowingly failed to comply with section 10(3) of VERA. However, section 10(3) was repealed by Finance Act 2008. Therefore, this section is no longer required.

9. Paragraph (15) amends section 35A so that it contains separate provisions for trade licences and separate provisions for vehicles licences specifying what happens where payment for VED fails and a notice is served which voids the licence. In relation to vehicle licences the notice will no longer require the vehicle licence to be returned and instead the notice will only require payment of a sum in respect of the amount of VED which should have been paid. The period of time used to calculate the sum due has been amended. There are no substantive changes to section 35A in relation to trade licences.

10. Paragraph (16) amends section 36 so that it contains separate provisions for trade licences and separate provisions for vehicle licences setting out how the amount which may be payable where a court order is made under this section is calculated. The period of time used to calculate the sum due in relation to vehicle licences has been amended.

11. Paragraphs (17) amends section 44 to remove the offence of forging, fraudulently altering, using, or lending a vehicle licence or nil licence or fraudulently allowing a vehicle licence or nil licence to be used by another person.

12. Paragraph (21) provides that the amendments made by the Schedule come into force on 1 October 2014.

BACKGROUND NOTE

13. Currently, a paper based vehicle licence or a nil licence is issued by the Driver and Vehicle Licensing Agency (DVLA) or the Post Office following a successful application to license a vehicle. Historically, this has provided a visual aid for demonstrating the payment of VED and helped aid the identification of unlicensed vehicles.

14. There is now an increased reliance on the electronic vehicle register maintained by the DVLA as proof that VED has been paid and a vehicle is licensed or alternatively that a nil licence is in force. Largely due to electronic enforcement, motorists are better informed of their responsibility to ensure that their vehicles are continuously licensed. Enforcement from the record has helped to improve compliance with non-payment of VED running at a historical low. Current estimate of VED evasion is 0.6 per cent which implies VED is a very compliant tax.

15. The benefits of a paper vehicle licence and nil licence have become redundant over time, as the DVLA and police now rely on DVLA's electronic vehicle register and use tools like Automatic Number Plate Recognition to ensure that vehicles are correctly licensed and that VED has been paid. The Government now believes that the requirement to display a paper licence is redundant.

16. Various provisions in VERA were drafted on the basis of there being paper based vehicle licences and nil licences so now need to be amended.

17. The requirement to display vehicle licences and nil licences is contained in the Road Vehicles (Registration and Licensing) Regulations 2002. Amendments to the Road Vehicles (Registration and Licensing) Regulations 2002 are intended to be made which will remove the requirement to display vehicle licences and nil licences.

18. 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).

EXPLANATORY NOTE

PAYMENT OF VEHICLE EXCISE DUTY BY DIRECT DEBIT

SUMMARY

1. Clause [X] allows vehicle excise duty (VED) to be paid by direct debit instalments with effect from 1 October 2014 and sets out what is the consequence of defaulting on payment.

DETAILS OF THE CLAUSE

2. Subsection (2) provides for a new higher rate of VED where a 12-month vehicle licence is taken out and paid for by direct debit in one more than one instalment. Where a 12-month vehicle licence is paid by more than one instalment, the rate of VED is 105 per cent of the applicable annual rate for that vehicle.

3. The rate of VED that will apply to six-month vehicle licences paid for by means other than direct debit is 55per cent of the annual rate of duty applicable to that vehicle. Where a six-month licence is paid for by direct debit, the rate is 52.5 per cent of the applicable annual rate for that vehicle.

4. Subsections (3) and (4) provide for a new higher rate of VED when a trade licence is taken out for a calendar year and paid by more than one instalment by direct debit. Where a 12-month trade licence is paid by more than one instalment, the rate of VED is 105 per cent of the applicable annual rate for that vehicle.

5. Where a six-month trade licence is taken out the rate of VED is 52.5 per cent of the applicable annual rate, where payment is by direct debit.

6. Subsection (5) provides for payment of VED to be made by instalments. In addition, it allows for the liability of the instalments to cease following a notification that the vehicle has been stolen, destroyed, application for nil licence, a Statutory Off Road Notification has been made, the vehicle has been disposed of or the vehicle has been exported.

7. Subsection (5) introduces a new provision where a person defaults on an agreement to pay monthly. Where a person defaults the Secretary of State will send a notice requesting payment of the outstanding value of VED. Failure to comply with this notice will result in a further notice being sent advising the person that the licence is void from a time specified in the notice.

8. Subsection (8) provides for the amendments made by this section to come into force on 1 October 2014.

BACKGROUND NOTE

9. These provisions enable the Driver and Vehicle Licensing Agency (DVLA) to collect VED via direct debit monthly should motorists wish to pay by direct debit. Currently VED can be paid by cash, cheque and credit or debit cards but none of these payment methods allow the cost of VED to be spread.

10. Motorists will be able to pay VED via direct debit in an annual, one-off payment or 12 equal monthly payments. Paying for VED by direct debit does not alter the fact that a new licence may only be taken out provided the customer has a valid MOT in place.

11. At present, paying for a six-month vehicle licence costs 55per cent of the applicable annual rate for that vehicle. This will reduce to 52.5per cent if the payment is made by direct debit. Where a 12-month licence is paid by monthly instalments, the cost of the vehicle licence will be 105per cent of the applicable annual rate for that vehicle.

12. 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: carbon price support rates for 2014-15 and 2015-16

(1) Paragraph 42A of Schedule 6 to FA 2000 (climate change levy: carbon price support rates) is amended as follows.

(2) In the table in sub-paragraph (3), as substituted by paragraph 23 of Schedule 42 to FA 2013, for "£0.85489 per gigajoule" substitute "£0.81906 per gigajoule".

(3) The amendment made by subsection (2) has effect in relation to supplies treated as taking place on or after 1 April 2014.

(4) In the table in sub-paragraph (3), as substituted by paragraph 24 of Schedule 42 to FA 2013, for "£1.62534 per gigajoule" substitute "£1.56860 per gigajoule".

(5) The amendment made by subsection (4) has effect in relation to supplies treated as taking place on or after 1 April 2015.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: CARBON PRICE SUPPORT RATES FOR 2014-15 AND 2015-16

SUMMARY

1. This measure amends the carbon price support (CPS) rates of climate change levy (CCL) for coal and other solid fossil fuels with effect from 1 April 2014 and 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for Paragraph 42A of Schedule 6 to FA 2000 which sets out the CPS rates of CCL to be amended.

3. Subsection (2) provides a revised CPS rate for coal, lignite, coke and semi-coke of coal and lignite, and petroleum coke and subsection (3) provides for this amendment to be effective from 1 April 2014.

4. Subsection (4) provides a revised CPS rate for the same types of coal and other solid fossil fuels referred to in paragraph 3 above and subsection (5) provides for this amendment to be effective from 1 April 2015.

BACKGROUND NOTE

5. The CPS rates of CCL are legislated two years in advance based on a rate per tonne of carbon set for that year by the Government. An error in published data resulted in the CPS rate for coal and other solid fossil fuels being set too high for 2014-15 and 2015-16 when the rates were legislated in Finance Act 2013. This measure corrects these rates, bringing them into line with the rate per tonne of carbon, and ensuring that they are proportionate with the CPS rates on other taxable commodities.

6. If you have any questions about this change, or comments on the legislation, please contact Tim Smith on 03000 585475 (email: timothy.smith@hmrc.gsi.gov.uk).

1 Climate change levy: exemptions for mineralogical and metallurgical processes etc

Schedule 1 makes provision in relation to climate change levy.

SCHEDULES

SCHEDULE 1

Section 1

CLIMATE CHANGE LEVY: EXEMPTIONS FOR MINERALOGICAL AND METALLURGICAL PROCESSES ETC

1 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

2 After paragraph 12 insert—

"Exemption: mineralogical and metallurgical processes

12A (1) A supply of a taxable commodity to a person is exempt from the levy if the commodity is to be used by the person in a mineralogical or metallurgical process.

(2) "Mineralogical process" has the same meaning as in Article 2(4)(b) of Council Directive 2003/96/EC of 27 October 2003 (which relates to the taxation of energy products and electricity).

(3) "Metallurgical process" means a process of any of the following descriptions.

(4) The descriptions are—

(a) a process falling within Division 24 of NACE Rev 2 and, for this purpose, Group 24.1 is to be taken to include the production of ingots and other primary forms from scrap (but not the breaking-up of scrap);

(b) a process falling within Group 25.5 of NACE Rev 2, except a process involving sheet metal;

(c) a process falling within Group 25.6 of NACE Rev 2 which is—

(i) plating, anodising etc of metals;

(ii) heat treatment of metals;

(iii) deburring, sandblasting, tumbling and cleaning of metals.

In this sub-paragraph "NACE Rev 2" is as set out in Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 (relating to the statistical classification of economic activities) and is to be read in accordance with any Explanatory Notes published by the Statistical Office of the European Communities from time to time.

(5) The Treasury may by regulations amend sub-paragraph (4) so as to add, remove or modify a description."

3 In paragraph 13 (exemption: supplies to producers of commodities other than electricity) in sub-paragraph (b)—

(a) after paragraph (iid) insert "or", and

(b) omit paragraph (iv) and the "or" before it.

4 (1) Paragraph 42 (amount payable by way of levy) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (a) omit "or a supply for use in scrap metal recycling",

(b) omit paragraph (d), and

(c) in the Table, in the heading for column 2, omit "*or a supply for use in scrap metal recycling*".

(3) Omit sub-paragraph (1ZA).

5 Omit paragraph 43A (supplies for use in scrap metal recycling) and the cross-heading before it.

6 In paragraph 43B (supplies for use in scrap metal recycling etc: deemed supply) in sub-paragraph (1)(b) omit sub-paragraph (i).

7 In paragraph 62 (tax credits) in sub-paragraph (1) omit paragraphs (ca) and (cb).

8 In paragraph 101 (civil penalties: incorrect certificates) in sub-paragraph (2)(a)—

(a) in sub-paragraph (ii) after "12," insert "12A,",

(b) after sub-paragraph (ii) insert "or", and

(c) omit sub-paragraph (iiia) and the "or" after it.

9 (1) Paragraph 146 (regulations and orders) is amended as follows.

(2) In sub-paragraphs (2)(b) and (3) omit "Parliament".

(3) After sub-paragraph (3) insert—

"(3A) A statutory instrument that contains (whether alone or with other provision) regulations under paragraph 12A(5) that—

(a) remove a description, or

(b) modify a desciption so as to narrow its scope,

shall not be made unless a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons."

10 (1) The Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) are amended as follows.

(2) In regulation 2 (general interpretation) in paragraph (1) omit ", recycling lower-rate part", "a recycling lower-rate supply or" and the definition of "recycling lower-rate supply".

(3) In regulation 8 (records which a registrable person is obliged to keep) in paragraph (c)(ii) omit "recycling lower-rate supply or a".

(4) In regulation 11 (other tax credits: entitlement) in paragraph (1)—

(a) in sub-paragraph (c) omit "a recycling lower-rate supply or" (in both places), and

(b) omit sub-paragraph (ca).

(5) In regulation 12 (tax credits: general) in paragraph (1) omit ", recycling lower-rate supplies".

(6) In regulation 33 (special rules for certain supplies)—
(a) in the heading omit "**, recycling lower-rate supplies**", and
(b) in the text omit ", recycling lower-rate supplies".

(7) In the title of Part 3 omit ", RECYCLING LOWER-RATE".

(8) In regulation 34 (supplier certificates) in paragraph (1)(a) after "12 (transport)," insert "12A (mineralogical and metallurgical processes),".

(9) In regulation 35 (supplier certificates)—
(a) in paragraph (1) omit "a recycling lower-rate or",
(b) in paragraph (2)(a) omit paragraph (ii) and the "or" before it, and
(c) in paragraph (3) omit "or is for use in scrap metal recycling".

(10) Schedule 1 (certification etc) is amended as follows.

(11) In the title omit ", RECYCLING LOWER-RATE".

(12) In paragraph 2—
(a) in the formula omit "+0.8L",
(b) in the definition of "M", after paragraph (b) insert—
"(ba) paragraph 12A—mineralogical and metallurgical processes;", and
(c) omit the definition of "0.8L".

(13) In paragraph 3(1) omit "recycling lower-rate and".

(14) In paragraph 5(7) omit "Supplies for use in scrap metal recycling and".

(15) In paragraph 6(1)—
(a) in paragraph (c) omit "a recycling lower-rate supply or" (in both places), and
(b) omit paragraph (ca).

(16) The amendments made by sub-paragraphs (8) and (12)(b) are to be treated as having been made by the Commissioners for Her Majesty's Revenue and Customs in exercise of the power conferred by paragraph 22 of Schedule 6 to FA 2000 (regulations giving effect to exemptions).

11 (1) Schedule 1 to the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005 (S.I. 2005/1715) is amended as follows.

(2) In paragraph 1 omit "Aluminium" and "Copper".

(3) In paragraph 2 for the words from "Gold" to "platinum group metal alloys and" substitute "The electrolytic dissolution of".

(4) Omit paragraphs 5, 17, 18 to 24, 26 to 28, 32, 34, 36 and 37.

(5) The amendments made by this paragraph are to be treated as having been made by the Treasury in exercise of the power conferred by paragraph 18(2) of Schedule 6 to FA 2000 (exemption for supply not used as fuel).

12 (1) The amendments made by this Schedule (apart from paragraph 9(2)) have effect as follows.

(2) In relation to supplies of gas or electricity, they have effect in relation to gas or electricity actually supplied on or after 1 April 2014.

(3) In relation to any other supplies, they have effect in relation to supplies treated as taking place on or after 1 April 2014.

EXPLANATORY NOTE

CLIMATE CHANGE LEVY: EXEMPTION FOR METALLURGICAL AND MINERALOGICAL PROCESSES

SUMMARY

1. Clause [X] amends Schedule 6 (Schedule 6) to the Finance Act 2000 to introduce a new exemption from climate change levy (CCL) for the energy used in mineralogical and metallurgical processes and remove certain existing reliefs from CCL which will be superseded by the new exemption, all from 1 April 2014.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts a new paragraph 12A into Schedule 6. Sub-paragraph 12A(1) exempts CCL taxable commodities used in mineralogical and metallurgical processes. Sub-paragraph 12A(2) defines a mineralogical process by reference to Article 2(4)(b) of Council Directive 2003/96/EC of 27 October 2003, which deals with the taxation of energy products. Sub-paragraphs 12A(3) and (4) define a metallurgical process as a process falling within Division 24 and Groups 25.5 and 25.6 of the NACE Codes Revision 2. Sub-paragraph 12A(5) provides that the Treasury may amend sub-paragraph 4 by regulation.

3. Paragraphs 3, 4, 5, 6, and 7 omit paragraphs 42(1ZA), 43A, 43B(1)(b)(i), 62(1)(ca) and (cb) and 101(2)(a)(iiia) of Schedule 6 to remove references to the exemption from CCL for taxable commodities used in scrap metal recycling, which is superseded by the new exemption for mineralogical and metallurgical processes. The paragraphs also make a number of consequential amendments.

4. Paragraph 8 inserts new sub-paragraph (3A) into paragraph 146 of Schedule 6 to require that any regulations made under new paragraph 12A(5) that removes an exemption in paragraph 12A or narrows its scope are made under the draft affirmative procedure. It also makes amendments to paragraph 146(2) and (3) so that draft instruments that are to be approved only by the House of Commons have to be laid before that House only, and not Parliament.

5. Paragraph 9 makes consequential amendments to the Climate Change Levy (General) Regulations 2001 (SI 2001/838) ('the general regulations') to remove various references to the lower rate for scrap metal recycling. Sub-paragraph (8) adds a reference to new paragraph 12A of Schedule 6 into regulation 34 of the general regulations requiring that those carrying out mineralogical and metallurgical processes submit certificates to the energy supplier. Sub-paragraph (12) amends the CCL relief formula in Schedule 1 to the general regulations to take account of the removal of the lower rate for scrap metal recycling and the addition of the new exemptions for mineralogical and metallurgical processes. Sub-paragraph (16) provides that that the changes to sub-paragraphs (8) and (12) are to be treated as having

been made under the power given to the Commissioners for Her Majesty's Revenue and Customs under paragraph 22 of Schedule 6.

6. Paragraph 10 makes amendments to Schedule 1 to the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005 (SI 2005/1715) to remove various metals and associated provisions from the fuel use exemption as taxable commodities used to produce these metals will become exempt under the metallurgical exemption. It also provides that the amendments are to be treated as having been made by the Treasury under the power given to it by paragraph 18(2) of Schedule 6.

7. Paragraph 11 sets out the commencement provisions.

BACKGROUND NOTE

8. The Government announced at Budget 2013 that it would exempt from the CCL the energy used in mineralogical and metallurgical processes, from 1 April 2014 and that it would seek views from industry after the Budget to inform the draft legislation.

9. The CCL was introduced on 1 April 2001. It taxes electricity, natural gas, solid fuels and liquid petroleum gas when used as fuels. Its purpose is to encourage energy efficiency.

10. The new exemption will ensure the UK's tax treatment of these highly energy intensive processes is in line with tax treatments elsewhere in the European Union (EU), thereby reducing any distortion of competition.

11. The NACE codes are the EU system of classifying economic activity; they are widely used in data gathering and statistical reporting.

12. Certain existing reliefs from CCL will be become redundant as they will be covered by the new exemption. This includes the lower rate for taxable commodities used in scrap metal recycling and taxable commodities used in certain fuel uses. As a result, these superseded reliefs will be removed at the same time the new exemption for mineralogical and metallurgical processes comes into force.

13. If you have any questions about this change, or comments on the legislation, please contact Andy Jameson on 03000 586082 (email: andy.jameson@hmrc.gsi.gov.uk).

1 VAT: special schemes

Schedule 1 contains provision about the supply of electronic services, broadcasting services and telecommunication services.

2 VAT: place of belonging of certain bodies corporate

(1) Section 9 of VATA 1994 (place where supplier or recipient of services belongs) is amended as follows.

(2) In subsection (5), for the words from "belonging" to the end substitute "belonging—

(a) in the country in which the person's usual place of residence is (except in the case of a body corporate);

(b) in the case of a body corporate, in the country in which the place where it is established is."

(3) For subsection (6) substitute—

"(6) The reference in subsection (5)(b) to the place where a body corporate "is established" is to be read in accordance with Article 13a of Implementing Regulation (EU) No 282/2011 (which is inserted by Council Implementing Regulation (EU) No 1042/2013)."

(4) The amendments made by this section have effect in relation to supplies made on or after 1 January 2015.

3 Supply of services through agents

(1) Section 47 of VATA 1994 (agents) is amended as follows.

(2) In subsection (3), after "services" insert ", other than electronically supplied services and telecommunication services,".

(3) After subsection (3) insert—

"(4) Where electronically supplied services or telecommunication services are supplied through an agent, the supply is to be treated both as a supply to the agent and as a supply by the agent.

(5) For the purposes of subsection (4) "agent" means a person ("A") who acts in A's own name but on behalf of another person within the meaning of Article 28 of Council Directive 2006/112/EC on the common system of value added tax.

(6) In this section "electronically supplied services" and "telecommunication services" have the same meaning as in Schedule 4A (see paragraph 9(3) and (4) and paragraph 8(2) of that Schedule)."

(4) The amendments made by this section have effect in relation to supplies made on or after 1 January 2015.

SCHEDULES

SCHEDULE 1

Section 1

SUPPLIES OF ELECTRONIC, BROADCASTING AND TELECOMMUNICATION SERVICES: SPECIAL ACCOUNTING SCHEMES

PART 1

UNION SCHEME

New Union scheme for accounting for VAT on certain supplies

1 After Schedule 3B to VATA 1994 insert—

"SCHEDULE 3BA

ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES: UNION SCHEME

PART 1

INTRODUCTION

Overview

1 In this Schedule—

(a) Parts 2 and 3 establish a special accounting scheme (called the "Union scheme") which may be used by certain persons established in the United Kingdom who make supplies of electronically supplied, telecommunication or broadcasting services that are treated as made in other member States;

(b) Part 4 is about persons participating in schemes in other member States that correspond to the Union scheme;

(c) Part 5 is about appeals;

(d) Part 6 contains definitions for the Schedule.

Meaning of "scheme services"

2 (1) In this Schedule "scheme services" means electronically supplied services, broadcasting services or telecommunication services.

(2) In sub-paragraph (1)—

"broadcasting services" means radio and television broadcasting services;

"electronically supplied services" has the same meaning as in Schedule 4A (see paragraph 9(3) and (4) of that Schedule);

"telecommunication services" has the same meaning as in Schedule 4A (see paragraph 8(2) of that Schedule).

PART 2

REGISTRATION UNDER UNION SCHEME

The register

3 Persons registered under the scheme provided for by this Schedule ("the Union scheme") are to be registered in a single register kept by the Commissioners for the purposes of the scheme.

Persons who may be registered

4 (1) A person ("P") may register under the Union scheme if all the following conditions are met—

(a) P makes or intends to make one or more qualifying supplies of scheme services in the course of a business that P carries on;

(b) either P's business is established in the United Kingdom or, (if P's business is not established in any member State) P has a fixed establishment in the United Kingdom;

(c) P is not barred from registering by sub-paragraph (3), by Article 369a(2) of Directive 2006/112/EC or by any provision of the Implementing Regulation;

(d) P is registered under Schedule 1.

(2) A supply of scheme services is a "qualifying supply of scheme services" if the following conditions are met.

1. The recipient of the services must belong in a member State other than the United Kingdom and must not be a relevant business person.

2. P must not have a fixed establishment in the member State in which the recipient belongs.

(3) A person may not be registered under the Union scheme if the person is a participant in a non-UK special scheme (see paragraph 14).

Becoming registered

5 (1) The Commissioners must register under the Union scheme any person who—

(a) satisfies them that the requirements for registration are met, and

(b) makes a request in accordance with this paragraph (a "registration request").

(2) A registration request made by a person ("P") must state—

(a) P's name;

(b) P's postal address;
(c) P's electronic addresses (including any websites).

(3) A registration request made by P must also state—
(a) whether or not P has begun to make qualifying supplies of scheme services, and
(b) (if applicable) the date on which P began to do so.

(4) A registration request made by P must also state—
(a) whether or not P has previously been identified under a non-UK special scheme, and
(b) (if applicable) the date on which the person was first identified under the scheme concerned.

(5) A registration request—
(a) must contain any further information that the Commissioners may by regulations require;
(b) must be made by such electronic means, and in such manner, as the Commissioners may direct or may by regulations require.

Notification of changes etc

6 (1) A person ("P") registered under the Union scheme must inform the Commissioners of the date when P first makes qualifying supplies of scheme services (unless P has already given the Commissioners the information mentioned in paragraph 5(3)(b)).

(2) That information, and any information a person is required to give under Article 57h of the Implementing Regulation (notification of certain changes), must be communicated by such electronic means and in such manner as the Commissioners may direct or may by regulations require.

Cancellation of registration

7 The Commissioners must cancel the registration under the Union scheme of a person ("P") if—
(a) P notifies them that P has ceased to make, or no longer intends to make, supplies of scheme services;
(b) they otherwise determine that P has ceased to make, or no longer intends to make, supplies of scheme services;
(c) P notifies them that P has ceased to satisfy any of the other conditions for registration in paragraph 4(1),
(d) they otherwise determine that P has ceased to satisfy any of those conditions, or
(e) they determine that P has persistently failed to comply with P's obligations under this Schedule or the Implementing Regulation.

PART 3

UNION SCHEME: LIABILITY, RETURNS, PAYMENT ETC

Liability to pay non-UK VAT to Commissioners

8 (1) This paragraph applies where a person—
(a) makes a qualifying supply of scheme services, and
(b) is registered under the Union scheme when the supply is made.

(2) The person is liable to pay to the Commissioners the gross amount of VAT on the supply.

(3) The reference in sub-paragraph (2) to the gross amount of VAT on the supply is to what would be the amount of VAT charged on the supply, in accordance with the law of the member State in which the supply is treated as made, if the person were not entitled to deduct VAT pursuant to Article 168 of Directive 2006/112/EC.

Union scheme returns

9 (1) A person who is or has been registered under the Union scheme must submit a return (a "Union scheme return") to the Commissioners for each reporting period.

(2) Each calendar quarter for the whole or part of which a person is registered under the Union scheme is a "reporting period" in the case of that person.

Union scheme returns: further requirements

10 (1) A Union scheme return is to be made out in sterling.

(2) Any conversion from one currency into another for the purposes of sub-paragraph (1) is to be made using the exchange rates published by the European Central Bank—
(a) for the last day of the reporting period to which the Union scheme return relates, or
(b) if no such rate is published for that day, for the next day for which such a rate is published.

(3) A Union scheme return—
(a) must be submitted to the Commissioners within the 20 days after the last day of the reporting period to which it relates;
(b) must be submitted by such electronic means, and in such manner, as the Commissioners may direct or may by regulations require.

Payment

11 (1) A person who is required to submit a Union scheme return must pay, by the deadline for submitting the return, the amounts required in accordance with paragraph 8 in respect of qualifying

supplies of scheme services made in the reporting period to which the return relates.

(2) A payment under this paragraph must be made in such manner as the Commissioners may direct or may by regulations require.

Availability of records

12 (1) A person who is registered under the Union scheme must make available to the Commissioners, on request, any obligatory records the person is keeping of transactions entered into by the person while registered under the scheme.

(2) The records must be made available by electronic means.

(3) In sub-paragraph (1) "obligatory records" means records kept in accordance with an obligation imposed in accordance with Article 369k of Directive 2006/112/EC.

Amounts required to be paid to other member States

13 Section 44 of the Commissioners for Revenue and Customs Act 2005 (requirement to pay receipts into the Consolidated Fund) does not apply to any money received for or on account of VAT that is required to be paid to another member State under Article 46 of Council Regulation No 904/2010.

PART 4

PERSONS REGISTERED UNDER NON-UK SPECIAL SCHEMES

Meaning of "non-UK special scheme"

14 (1) In this Schedule "non-UK special scheme" means any provision of the law of a member State other than the United Kingdom which implements Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC.

(2) In relation to a non-UK special scheme, references to the "administering member State" are to the member State under whose law the scheme is established.

Exemption from requirement to register under this Act

15 (1) A participant in a non-UK special scheme is not required to be registered under this Act by virtue of making supplies of scheme services in respect of which the person is required to make returns under that scheme.

(2) Sub-paragraph (1) overrides any contrary provision in this Act.

(3) Where a person—

(a) is required to make returns under a non-UK special scheme in respect of supplies of scheme services that are treated as made by that person in the United Kingdom, and

(b) is not registered under this Act,

it is to be assumed, in determining whether or not VAT is due under this Act on those supplies, that the person is registered under this Act.

Scheme participant not treated as taxable person in relation to supplies of scheme services

16 (1) So far as any provision of, or made under, this Act would otherwise impose an obligation on a person ("P") in connection with the making by P of relevant supplies, P is to be treated as not being a taxable person for the purposes of that provision.

(2) In sub-paragraph (1) "relevant supplies" means supplies of scheme services made while P is—

(a) a participant in a non-UK special scheme, and

(b) registered, or required to be registered, under this Act.

(3) The Commissioners may by regulations specify cases in relation to which sub-paragraph (1) is not to apply.

De-registration

17 (1) Sub-paragraph (2) applies where a person ("P") who is registered under Schedule 1A—

(a) satisfies the Commissioners that P intends to apply for identification under a non-UK special scheme, and

(b) asks the Commissioners to cancel P's registration under Schedule 1A.

(2) The Commissioners may cancel P's registration under Schedule 1A with effect from—

(a) the day on which the request is made, or

(b) a later date agreed between P and the Commissioners.

Interest in certain cases of official error

18 (1) Section 78 (interest in certain cases of official error) applies as follows in relation to a case where, due to an error on the part of the Commissioners—

(a) a person has accounted under a non-UK special scheme for an amount by way of UK VAT that was not UK VAT due from the person, and as a result the Commissioners are liable under section 80(2A) to pay (or repay) an amount to the person, or

(b) (in a case not falling within paragraph (a)), a person has paid, in accordance with an obligation under a non-UK special scheme, an amount by way of UK VAT that was not UK VAT due from the person and which the Commissioners are in consequence liable to repay to the person.

(2) Section 78 has effect as if the condition in section 78(1)(a) were met in relation to that person.

(3) In the application of section 78 as a result of this paragraph, section 78(12)(b) is read as providing that any reference in that section to a return is to a return required to be made under a non-UK special scheme.

(4) In this section, and section 78 in its application as a result of this section, "output tax" has the meaning that that expression would have if the reference in section 24(2) to a "taxable person" were to a "person".

Incorrect returns etc: assessments

19 (1) This paragraph applies where a person—

(a) has failed to make a relevant non-UK return, or

(b) has made a relevant non-UK return which is incomplete or incorrect.

(2) In this Schedule "non-UK return" means a return required to be made, for any period, under a non-UK special scheme.

(3) In sub-paragraph (1) "relevant non-UK return" means a non-UK return that is required to be made (wholly or partly) in respect of supplies of scheme services that are treated as made in the United Kingdom.

(4) Where this paragraph applies—

(a) section 73(1) (failure to make returns etc), and

(b) section 73(5), (6), (8), (9) and (10) (so far as relating to section 73(1)),

have effect as if the requirement to make the relevant non-UK return had been a requirement under this Act, and as if the period referred to in sub-paragraph (2) were a prescribed accounting period.

(5) References in the following provisions to prescribed accounting periods are to be read accordingly—

(a) section 74(1)(a) (interest on VAT recovered or recoverable by assessment);

(b) section 76(3), (4) and (5) (assessment of amounts due by way of penalty, interest or surcharge);

(c) section 77(1)(a) and (4) (assessment: time limits).

Overpayments: adjustments

20 (1) Sub-paragraph (2) applies where a person ("T")—

(a) has made a non-UK return for a tax period relating wholly or partly to supplies of scheme services treated as made in the United Kingdom,

(b) has accounted to the tax authorities for the administering member State for VAT in respect of those supplies, and

(c) in doing so has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.

(2) If T makes a claim for the tax to be repaid, the Commissioners must repay to T the amount overpaid

(3) For the purposes of sub-paragraph (2), the Commissioners may treat an amendment of the non-UK return that is submitted to the tax authorities for the administering member State and indicates that an amount of VAT has been overpaid as a claim for repayment of that amount.

(4) Sub-paragraph (2) does not require any amount to be repaid except so far as that is required by Article 63 of the Implementing Regulation.

Unjust enrichment

21 (1) The Commissioners are not required to repay an amount under paragraph 20(2) so far as that would unjustly enrich the person concerned.

(2) A special rule (about determining what loss or damage a person has suffered for the purposes of sub-paragraph (1)) applies where—

(a) the Commissioners would, apart from sub-paragraph (1), be required to repay an amount to a person ("the taxpayer"), and

(b) the whole or a part of the amount brought into account as mentioned in paragraph 20(1)(c) has, for practical purposes, been borne by a person other than the taxpayer.

(3) The special rule applies in relation to loss or damage that has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer's case about the operation of any VAT provisions.

(4) The special rule is that the loss or damage is to be disregarded, except up to the quantified amount, in determining—

(a) whether or to what extent repaying an amount to the taxpayer would enrich the taxpayer;

(b) whether or to what extent any enrichment of the taxpayer would be unjust.

(5) In this paragraph—

"the quantified amount" means the amount (if any) which is shown by the taxpayer to be the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions;

"VAT provisions" means the provisions of—

(a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT, or

(b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.

Overpayments: claims

22 (1) This paragraph applies where—

(a) a person ("T") has made a non-UK return for a tax period,

(b) the non-UK return relates wholly or partly to supplies of scheme services treated as made in the United Kingdom,

(c) T has accounted to the tax authorities for the administering member State for VAT in respect of those supplies, and

(d) in doing so T has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.

(2) Where this paragraph applies—

(a) the person is taken to have met the conditions in subsection (1)(a) and (b) of section 80 (credit for, or repayment of, overpaid VAT), and

(b) the reference in section 80(1) to "that amount" is accordingly taken to be a reference to the amount mentioned in sub-paragraph (1)(d).

(3) References in section 80 to prescribed accounting periods are read as references to tax periods so far as is necessary for the purposes of sub-paragraph (2).

(4) No claim under section 80(1) may be made in reliance on this paragraph before the end of the three years beginning with the date on which the person was required to submit a return for the tax period concerned under the non-UK special scheme.

(5) The Commissioners are not required to repay any amount as a result of this paragraph except so far as that is required by Article 63 of the Implementing Regulation.

Interest on UK VAT recovered or recoverable by assessment

23 (1) Sub-paragraph (2) applies in relation to any case where—

(a) an amount assessed under section 73(1) (failure to make returns etc) in reliance on paragraph 19(4) carries interest under section 74(1), or

(b) an amount that could have been assessed under section 73(1) in reliance on paragraph 19(4) carries interest under section 74(2).

(2) The "reckonable date" for the purposes of section 74(1) and (2) is taken to be the latest date on which the non-UK return in question was required to be made (and paragraphs (a) to (c) of section 74(5) are to be ignored accordingly).

Default surcharge: notice of surcharge period

24 (1) A person ("T") who is required to make a relevant non-UK return for a tax period is regarded for the purposes of this paragraph and paragraph 25 as being in default in respect of that period if either—

(a) conditions 1A and 2A are met, or

(b) conditions 1B and 2B are met;

(but see also paragraph 26).

(2) In sub-paragraph (1) "relevant non-UK return" means a non-UK return that is required to be made (wholly or partly) in respect of supplies of scheme services that are treated as made in the United Kingdom.

(3) For the purposes of sub-paragraph (1)(a)—

(a) condition 1A is that the tax authorities for the administering member State have not received the return by the deadline for submitting it;

(b) condition 2A is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the obligation to submit the return.

(4) For the purposes of sub-paragraph (1)(b)—

(a) condition 1B is that, by the deadline for submitting the return, the tax authorities for the administering member State have received the return but have not received the amount of VAT shown on the return as payable by T in respect of the tax period;

(b) condition 2B is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the VAT outstanding.

(5) The Commissioners may serve on a person who is in default in respect of a tax period a notice (a "special surcharge liability notice") specifying a period—

(a) ending on the first anniversary of the last day of that tax period, and

(b) beginning on the date of the notice.

(6) A period specified under sub-paragraph (5) is a "special surcharge period".

(7) If a special surcharge liability notice is served in respect of a tax period which ends at or before the end of an existing surcharge period, the surcharge period specified in that notice must be expressed as a continuation of the existing surcharge period (so that the existing period and its extension are regarded as a single surcharge period).

Further default after service of notice

25 (1) If a person on whom a special surcharge liability notice has been served—

(a) is in default in respect of a tax period ending within the special surcharge period specified in (or extended by) that notice, and

(b) has outstanding special scheme VAT for that tax period,

the person is to be liable to a surcharge of the amount given by sub-paragraph (2).

(2) The surcharge is equal to whichever is the greater of—

(a) £30, and
(b) the specified percentage of the person's outstanding special scheme VAT for the tax period.

(3) The specified percentage depends on whether the tax period is the first, second or third etc in the default period in respect of which the person is in default and has outstanding special scheme VAT, and is—
(a) for the first such tax period, 2%;
(b) for the second such tax period, 5%;
(c) for the third such tax period, 10%;
(d) for each such tax period after the third, 15%.

(4) "Special scheme VAT", in relation to a person, means VAT that the person is liable to pay to the tax authorities for the administering member State under a non-UK scheme in respect of supplies of scheme services treated as made in the United Kingdom.

(5) A person has "outstanding special scheme VAT" for a tax period if some or all of the special scheme VAT for which the person is liable in respect of that period has not been paid by the deadline for the person to submit a non-UK return for that period; (and the amount unpaid is referred to in sub-paragraph (2)(b) as "the person's outstanding special scheme VAT" for the tax period).

Default surcharge: exceptions for reasonable excuse etc

26 (1) A person who would otherwise have been liable to a surcharge under paragraph 25(1) is not to be liable to the surcharge if the person satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—
(a) the non-UK return or, as the case may be, the VAT shown on that return, was despatched at such a time and in such manner that it was reasonable to expect that it would be received by the tax authorities for the administering member State within the appropriate time limit, or
(b) there is a reasonable excuse for the return or the VAT not having been so despatched.

(2) Where sub-paragraph (1) applies to a person—
(a) the person is treated as not having been in default in respect of the tax period in question, and
(b) accordingly, any special surcharge liability notice the service of which depended on that default is regarded as not having been served.

(3) A default is "material" to a surcharge if—
(a) it is the default which gives rise to the surcharge, under paragraph 25(1), or
(b) it is a default which was taken into account in the service of the special surcharge liability notice on which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a tax period ending within the surcharge period specified in or extended by that notice.

(4) A default is left out of account for the purposes of paragraphs 24(5) and 25(1) if—

(a) the conduct by virtue of which the person is in default is also conduct falling within section 69(1) (breaches of regulatory provisions), and

(b) by reason of that conduct the person concerned is assessed to a penalty under that section.

(5) If the Commissioners so direct, a default in respect of a tax period specified in the direction is to be left out of account for the purposes of paragraphs 24(5) and 25(1).

(6) The Commissioners must consult with the Treasury before making a direction under sub-paragraph (5).

(7) Section 71(1) (meaning of "reasonable excuse") applies for the purposes of this paragraph as it applies for the purposes of sections 59 to 70.

Records

27 (1) A person who makes relevant scheme supplies must keep records of the transactions which the person enters into for the purposes of, or in connection with, those supplies.

(2) The records must be sufficiently detailed to enable the Commissioners to determine whether any special scheme return submitted in respect of the supplies is correct.

(3) "Relevant scheme supplies" means supplies of scheme services that are—

(a) made by the person while the person is a participant in a non-UK special scheme, and

(b) treated as made in the United Kingdom.

(4) The records must be made available on request to the Commissioners by electronic means.

(5) Records must be kept for 10 years beginning with the 1 January following the date on which the transaction was entered into.

Penalties for errors: disclosure

28 Where a person corrects a non-UK return in a way that constitutes telling the tax authorities for the administering member State about—

(a) an inaccuracy in the return,

(b) a supply of false information, or

(c) a withholding of information,

the person is regarded as telling HMRC about that for the purposes of paragraph 9 of Schedule 24 to the Finance Act 2007.

Set-offs

29 Where a participant in a non-UK special scheme is liable to pay UK VAT to the tax authorities for the administering member State in

accordance with the scheme, the UK VAT is regarded for the purposes of subsection (6) of section 130 of the Finance Act 2008 (set-off: England, Wales and Northern Ireland) as payable to the Commissioners.

PART 5

APPEALS

30 (1) An appeal lies to a tribunal with respect to any of the following—

(a) a refusal to register a person under the Union scheme;

(b) the cancellation of the registration of any person under the Union scheme;

(c) a refusal to make a repayment under paragraph 20(2) (overpayments: adjustments), or a decision by the Commissioners as to the amount of the repayment due under that provision.

(2) Part 5 (appeals), and any order or regulations under that Part, have effect as if an appeal under this paragraph were an appeal which lies to the tribunal under section 83(1) (but not under any particular paragraph of that subsection).

31 Where the Commissioners have made an assessment under section 73(1) in reliance on paragraph 19(4)—

(a) section 83(1)(p)(i): (appeals against assessments under section 73(1) etc) applies as if the relevant non-UK return were a return under this Act, and

(b) the references in section 84(3) and (5) to the matters mentioned in section 83(1)(p) are to be read accordingly.

PART 6

INTERPRETATION OF SCHEDULE

32 (1) In this Schedule—

"administering member State", in relation to a non-UK special scheme, has the meaning given by paragraph 14(2);

"the Implementing Regulation" means Implementing Regulation (EU) No 282/2011;

"non-UK return" has the meaning given by paragraph 19(2);

"non-UK special scheme" has the meaning given by paragraph 14(1);

"qualifying supply of scheme services" has the meaning given by paragraph 4(2);

"reporting period" is to be read in accordance with paragraph 9(2);

"participant", in relation to a non-UK special scheme, means a person who is identified under that scheme;

"scheme services" has the meaning given by paragraph 2;

"tax period" means a period for which a person is required to make a return under a non-UK special scheme;

"UK VAT" means VAT in respect of supplies of scheme services treated as made in the United Kingdom;

"Union scheme" has the meaning given by paragraph 3;

"Union scheme return" has the meaning given by paragraph 9(1).

(2) In relation to a non-UK special scheme (or a non-UK return), references in this Schedule to "the tax authorities" are to the tax authorities for the member State under whose law the non-UK special scheme is established.

(3) References in this Schedule to a supply of scheme services being "treated as made" in the United Kingdom are to its being treated as made in the United Kingdom by paragraph 15 of Schedule 4A."

Power to amend provisions about the Union scheme

2 In section 3A of VATA 1994 (supply of electronic services in member States: special accounting scheme)—

(a) in subsection (2), after "3B" insert "or 3BA";

(b) in subsection (3), for "Schedule 3B" substitute "Schedules 3B and 3BA".

PART 2

NON-UNION SCHEME: AMENDMENTS OF SCHEDULE 3B TO VATA 1994

Introduction

3 Schedule 3B to VATA 1994 (supply of electronic services in member States: special accounting scheme) is amended in accordance with paragraphs 4 to 24.

Extension of non-Union scheme to broadcasting and telecommunication services

4 For paragraph 3 (qualifying supplies) substitute—

"3 (1) In this Schedule "qualifying supply" means a supply of electronically supplied services, telecommunication services or broadcasting services to a person who—

(a) belongs in the United Kingdom or another member State, and

(b) is not a relevant business person.

(2) In sub-paragraph (1)—

"broadcasting services" means radio and television broadcasting services;

"electronically supplied services" has the same meaning as in Schedule 4A (see paragraph 9(3) and (4) of that Schedule);

"telecommunication services" has the same meaning as in Schedule 4A (see paragraph 8(2) of that Schedule)."

5 For the title substitute—

"ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES: NON-UNION SCHEME".

Associated amendments

6 In paragraph 4 (registration request), for sub-paragraph (5) substitute—

"(5) A registration request—

(a) must contain any further information that the Commissioners may by regulations require;

(b) must be made by such electronic means, and in such manner, as the Commissioners may direct or may by regulations require."

7 Omit paragraph 5 (date on which registration takes effect) and the heading before it.

8 In paragraph 7 (obligation to notify changes)—

(a) omit sub-paragraphs (1) and (2);

(b) in sub-paragraph (3), for "this paragraph" substitute "Article 57h of Implementing Regulation (EU) No 282/2011".

9 In paragraph 8 (cancellation of registration)—

(a) in sub-paragraph (1)(e), after "this Schedule" insert "or Implementing Regulation (EU) No 282/2011.";

(b) omit sub-paragraphs (2) and (3).

10 Omit paragraph 9 (registration after cancellation for persistent default) and the heading before it.

11 In paragraph 10 (liability for VAT)—

(a) in sub-paragraph (3) for "the amount of VAT" substitute "the gross amount of VAT";

(b) in sub-paragraph (4), for the words from "the amount of VAT" to the end substitute "the gross amount of VAT charged on the supply";

(c) in sub-paragraph (5) omit paragraph (b) and the "and" before it;

(d) after sub-paragraph (5) insert—

"(6) References in this paragraph to the gross amount of VAT on a supply are to what would be the amount of VAT charged on the supply, in accordance with the law of the member State in which the supply is treated as made (whether that is the United Kingdom or another member State), if the person were not entitled to deduct VAT pursuant to Article 168 of Directive 2006/112/EC."

12 In paragraph 11 (obligation to submit special accounting returns)—

(a) in sub-paragraph (1), for "Controller" substitute "Commissioners";

(b) omit sub-paragraphs (3) to (7).

13 In paragraph 12 (further obligations with respect to special accounting returns)—

(a) in sub-paragraph (1), for the words from "must" to the end substitute "is to be made out in sterling";

(b) in sub-paragraph (3), for "Controller" substitute "Commissioners".

14 In paragraph 13 (payment of VAT), in sub-paragraph (1), for the words from "at" to "respect of" substitute "by the deadline for submitting the return, pay to the Commissioners the amount of VAT that the person is liable, in accordance with paragraph 10, to pay on qualifying supplies treated as made by the person in".

15 Omit paragraph 16(1) to (4) (understatements and overstatements of UK VAT in a special scheme return).

16 After paragraph 18 insert—

"Interest in certain cases of official error

18A (1) Section 78 (interest in certain cases of official error) applies as follows in relation to a case where, due to an error on the part of the Commissioners—

(a) a person has accounted, under a special scheme, for an amount by way of UK VAT that was not UK VAT due from the person, and as a result the Commissioners are liable under section 80(2A) to pay (or repay) an amount to the person, or

(b) (in a case not falling within paragraph (a)), a person has paid, in accordance with an obligation under a special scheme, an amount by way of UK VAT that was not UK VAT due from the person and which the Commissioners are in consequence liable to repay to the person.

(2) Section 78 has effect as if the condition in section 78(1)(a) were met in relation to that person.

(3) In the application of section 78 as a result of this paragraph, section 78(12)(b) is read as providing that any reference in that section to a return is to a return required to be made under a special accounting scheme.

(4) In this section, and section 78 in its application as a result of this section, "output tax" has the meaning that that expression would have if the reference in section 24(2) to a "taxable person" were to a "person".

Incorrect returns etc: assessments

18B (1) This paragraph applies where a person—

(a) has failed to make a relevant special scheme return, or

(b) has made a special scheme return which is incomplete or incorrect.

(2) In sub-paragraph (1) "relevant special scheme return" means a special scheme return that is required to be made, for any period, wholly or partly in respect of supplies of scheme services that are treated as made in the United Kingdom.

(3) Where this paragraph applies—

(a) section 73(1) (failure to make returns etc), and

(b) section 73(5), (6), (8), (9) and (10) (so far as relating to section 73(1)),

have effect as if the requirement to make the relevant special scheme return had been a requirement under this Act, and as if the period referred to in sub-paragraph (2) were a prescribed accounting period.

(4) References in the following provisions to prescribed accounting periods are to be read accordingly—

(a) section 74(1)(a) (interest on VAT recovered or recoverable by assessment);

(b) section 76(3), (4) and (5) (assessment of amounts due by way of penalty, interest or surcharge);

(c) section 77(1)(a) and (4) (assessment: time limits).

Overpayments: adjustments

18C (1) Sub-paragraph (2) applies where a person ("T")—

(a) has made a special scheme return for a tax period relating wholly or partly to supplies of scheme services treated as made in the United Kingdom,

(b) has accounted to the tax authorities for the administering member State (whether that is the United Kingdom or another member State) for VAT in respect of those supplies, and

(c) in doing so has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.

(2) If T makes a claim for the tax to be repaid, the Commissioners must repay to T the amount overpaid.

(3) For the purposes of sub-paragraph (2), the Commissioners may treat an amendment of the non-UK return that is submitted to the tax authorities for the administering member State and indicates that an amount of VAT has been overpaid as a claim for repayment of that amount.

(4) Sub-paragraph (2) does not require any amount to be repaid except so far as that is required by Article 63 of the Implementing Regulation.

Unjust enrichment

18D (1) The Commissioners are not required to repay an amount under paragraph 18C(2) so far as that would unjustly enrich the person concerned.

(2) A special rule (about determining what loss or damage a person has suffered for the purposes of sub-paragraph (1)) applies where—

(a) the Commissioners would, apart from sub-paragraph (1), be required to repay an amount to a person ("the taxpayer"), and

(b) the whole or a part of the amount brought into account as mentioned in paragraph 18C(1)(c) has, for practical purposes, been borne by a person other than the taxpayer.

(3) The special rule applies in relation to loss or damage that has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer's case about the operation of any VAT provisions.

(4) The special rule is that the loss or damage is to be disregarded, except up to the quantified amount, in determining—

(a) whether or to what extent repaying an amount to the taxpayer would enrich the taxpayer, or

(b) whether or to what extent any enrichment of the taxpayer would be unjust.

(5) In this paragraph—

"the quantified amount" means the amount (if any) which is shown by the taxpayer to be the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions;

"VAT provisions" means the provisions of—

(a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT, or

(b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.

Overpayments: claims

18E (1) This paragraph applies where—

(a) a person ("T") has made a special scheme return for a tax period,

(b) the special scheme return relates wholly or partly to supplies of scheme services treated as made in the United Kingdom,

(c) T has accounted to the tax authorities for the administering member State (whether that is the United Kingdom or another member State) for VAT in respect of those supplies, and

(d) in doing so T has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.

(2) Where this paragraph applies—

(a) the person is taken to have met the conditions in subsection (1)(a) and (b) of section 80 (credit for, or repayment of, overpaid VAT), and

(b) the reference in section 80(1) to "that amount" is accordingly taken to be a reference to the amount mentioned in sub-paragraph (1)(d).

(3) References in section 80 to prescribed accounting periods are read as references to tax periods so far as is necessary for the purposes of sub-paragraph (2).

(4) No claim under section 80(1) may be made in reliance on this paragraph before the end of the three years beginning with the date on which the person was required to submit a special accounting return or a value added tax return for the tax period concerned.

Interest on UK VAT recovered or recoverable by assessment

18F (1) Sub-paragraph (2) applies in relation to any case where—

(a) an amount assessed under section 73(1) (failure to make returns etc) in reliance on paragraph 18B(4) carries interest under section 74(1), or

(b) an amount that could have been assessed under section 73(1) in reliance on paragraph 18B(4) carries interest under section 74(2).

(2) The "reckonable date" for the purposes of section 74(1) and (2) is taken to be the latest date on which the special scheme return in question was required to be made (and paragraphs (a) to (c) of section 74(5) are to be ignored accordingly).

Default surcharge: notice of surcharge period

18G (1) A person ("T") who is required to make a relevant special scheme return for a tax period is regarded for the purposes of this paragraph and paragraph 18H as being in default in respect of that period if either—

(a) conditions 1A and 2A are met, or

(b) conditions 1B and 2B are met;

(but see also paragraph 18I).

(2) In sub-paragraph (1) "relevant special scheme return" means a special scheme return that is required to be made (wholly or partly) in respect of supplies of scheme services that are treated as made in the United Kingdom.

(3) For the purposes of sub-paragraph (1)(a)—

(a) condition 1A is that the tax authorities for the administering member State have not received the return by the deadline for submitting it;

(b) condition 2A is that those tax authorities for the administering member State have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the obligation to submit the return.

(4) For the purposes of sub-paragraph (1)(b)—

(a) condition 1B is that, by the deadline for submitting the return, the tax authorities for the administering member State have received the return but have not received the amount of VAT shown on the return as payable by T in respect of the tax period;

(b) condition 2B is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the VAT outstanding.

(5) The Commissioners may serve on a person who is in default in respect of a tax period a notice (a "special surcharge liability notice") specifying a period—

(a) ending on the first anniversary of the last day of that tax period, and

(b) beginning on the date of the notice.

(6) A period specified under sub-paragraph (5) is a "special surcharge period".

(7) If a special surcharge liability notice is served in respect of a tax period which ends at or before the end of an existing surcharge period, the surcharge period specified in that notice must be expressed as a continuation of the existing surcharge period (so that the existing period and its extension are regarded as a single surcharge period).

Further default after service of notice

18H (1) If a person on whom a special surcharge liability notice has been served—

(a) is in default in respect of a tax period ending within the special surcharge period specified in (or extended by) that notice, and

(b) has outstanding special scheme VAT for that tax period,

the person is to be liable to a surcharge of the amount given by sub-paragraph (2).

(2) The surcharge is equal to whichever is the greater of—

(a) £30, and

(b) the specified percentage of the person's outstanding special scheme VAT for the tax period.

(3) The specified percentage depends on whether the tax period is the first, second or third etc in the default period in respect of which the person is in default and has outstanding special scheme VAT, and is—

(a) for the first such tax period, 2%;

(b) for the second such tax period, 5%;

(c) for the third such tax period, 10%;

(d) for each such tax period after the third, 15%.

(4) "Special scheme VAT", in relation to a person, means VAT that the person is liable to pay to the tax authorities for the administering member State under a special scheme in respect of supplies of scheme services treated as made in the United Kingdom.

(5) A person has "outstanding special scheme VAT" for a tax period if some or all of the special scheme VAT for which the person is liable in respect of that period has not been paid by the deadline for the person to submit a special scheme return for that period; (and the amount unpaid is referred to in sub-paragraph (2)(b) as

"the person's outstanding special scheme VAT" for the tax period).

Default surcharge: exceptions for reasonable excuse etc

18I (1) A person who would otherwise have been liable to a surcharge under paragraph 18H(1) is not to be liable to the surcharge if the person satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—

(a) the special scheme return or, as the case may be, the VAT shown on that return, was despatched at such a time and in such manner that it was reasonable to expect that it would be received by the tax authorities for the administering member State within the appropriate time limit, or

(b) there is a reasonable excuse for the return or the VAT not having been so despatched.

(2) Where sub-paragraph (1) applies to a person—

(a) the person is treated as not having been in default in respect of the tax period in question, and

(b) accordingly, any special surcharge liability notice the service of which depended on that default is regarded as not having been served.

(3) A default is "material" to a surcharge if—

(a) it is the default which gives rise to the surcharge, under paragraph 18H(1), or

(b) it is a default which was taken into account in the service of the special surcharge liability notice on which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a tax period ending within the surcharge period specified in or extended by that notice.

(4) A default is left out of account for the purposes of paragraphs 18G(5) and 18H(1) if—

(a) the conduct by virtue of which the person is in default is also conduct falling within section 69(1) (breaches of regulatory provisions), and

(b) by reason of that conduct the person concerned is assessed to a penalty under that section.

(5) If the Commissioners so direct, a default in respect of a tax period specified in the direction is to be left out of account for the purposes of paragraphs 18G(5) and 18H(1).

(6) The Commissioners must consult with the Treasury before making a direction under sub-paragraph (5).

(7) Section 71(1) (meaning of "reasonable excuse") applies for the purposes of this paragraph as it applies for the purposes of sections 59 to 70.

Penalties for errors: disclosure

18J Where a person corrects a special scheme return in a way that constitutes telling the tax authorities for the administering member State about—

(a) an inaccuracy in the return,

(b) a supply of false information, or

(c) a withholding of information,

the person is regarded as telling HMRC about that for the purposes of paragraph 9 of Schedule 24 to the Finance Act 2007.

Set-offs

18K Where a participant in a special scheme is liable to pay UK VAT to the tax authorities for the administering member State in accordance with the scheme, the UK VAT is regarded for the purposes of subsection (6) of section 130 of the Finance Act 2008 (set-off: England, Wales and Northern Ireland) as payable to the Commissioners."

17 In paragraph 20 (appeals)—

(a) in sub-paragraph (1), for paragraphs (b) and (c) substitute—

"(b) a refusal to make a repayment under paragraph 18C(2) (overpayments: adjustments), or a decision by the Commissioners as to the amount of the repayment due under that provision.";

(b) after sub-paragraph (2) insert—

"(3) Where the Commissioners have made an assessment under section 73(1) in reliance on paragraph 18B(3)—

(a) section 83(1)(p)(i): (appeals against assessments under section 73(1) etc) applies as if the relevant special scheme return were a return under this Act, and

(b) the references in section 84(3) and (5) to the matters mentioned in section 83(1)(p) are to be read accordingly."

18 For paragraph 21 (payments on account of non-UK VAT to other member States) substitute—

"21 Section 44 of the Commissioners for Revenue and Customs Act 2005 (requirement to pay receipts into the Consolidated Fund) does not apply to any money received for or on account of VAT that is required to be paid to another member State under Article 46 of Council Regulation No 904/2010."

19 In paragraph 23 (interpretation)—

(a) in sub-paragraph (1), for the definition of "Article 26c" substitute—

""administering member State", in relation to a special scheme, means the member State under whose law the scheme is established (whether that is the United Kingdom or another member State);"

(b) in sub-paragraph (1), for the definition of "the Controller" substitute—

""the Implementing Regulation" means Implementing Regulation (EU) No 282/2011;"

(c) in sub-paragraph (1), after the definition of "reporting period" insert—

""scheme services" means electronically supplied services, broadcasting services or telecommunication services (and in this definition "electronically supplied services", "broadcasting services" and "telecommunication services" have the meaning given by paragraph 3(2));"

(d) in sub-paragraph (1), after the definition of "special accounting return" insert—

""special scheme" means—

(a) the scheme established under this Schedule, or

(b) any other scheme implementing Section 2 of Title XII of Directive 2006/112/EC;

"special scheme return" has the meaning given by paragraph 16(6);

"tax period" means a period for which a person is required to make a return under a non-UK special scheme;

"UK VAT" has the meaning given by paragraph 16(6);

"the VAT Directive" has the meaning given by paragraph 2(7);"

(e) in sub-paragraph (2)(a), for the words from "virtue" to "2002 VAT Directive)," substitute "paragraph 15 of Schedule 4A (place of supply of electronic, telecommunication and broadcasting services),";

(f) omit sub-paragraph (3).

Miscellaneous amendments

20 In paragraph 2 (persons who may be registered)—

(a) in sub-paragraph (6) for "Article 26c" substitute "Section 2 of Chapter 6 of Title XII of the VAT Directive";

(b) for sub-paragraph (7) substitute—

"(7) In this Schedule "the VAT Directive" means Directive 2006/112/EC (Title XII of which is amended by Council Directive 2008/8/EC)."

21 In paragraph 4 (registration request), in sub-paragraph (2) for "paragraph 9 below" substitute "Article 58b of Implementing Regulation (EU) No 282/2011".

22 In paragraph 15 (Commissioners' power to request production of records), in sub-paragraph (2)(b), for "Article 26c" substitute "Section 2 of Chapter 6 of Title XII of the VAT Directive".

23 In paragraph 16 (understatement or overstatement of UK VAT in special scheme return)—

(a) in sub-paragraph (5)(b) for "Article 26c" substitute "Section 2 of Chapter 6 of Title XII of the VAT Directive";

(b) in sub-paragraph (6), in the definition of "value added tax return", for "Article 26c(B)(5) of the 1977 VAT Directive" substitute "Article 364 of the VAT Directive (as substituted by Article 5(11) of Council Directive 2008/8/EC)".

24 In paragraph 18 (de-registration), in paragraph (b), for "Article 26c," substitute "Section 2 of Chapter 6 of Title XII of the VAT Directive,".

PART 3

OTHER AMENDMENTS: UNION AND NON-UNION SCHEME

25 VATA 1994 is amended in accordance with paragraphs 26 to 28.

26 (1) Section 3A (supply of electronic services in member States: special accounting scheme) is amended as follows.

(2) In subsection (1), after "services" insert ", telecommunication services or broadcasting services".

(3) After subsection (1) insert—

"(1A) Schedule 3BA—

(a) establishes a special accounting scheme for use by persons established in the UK and supplying electronically supplied services, telecommunication services or broadcasting services in other member States, and

(b) makes provision about corresponding schemes in other member States."

(4) For the heading substitute "**Supplies of electronic, telecommunication and broadcasting services: special accounting schemes**."

27 In section 76 (assessment of amounts due by way of penalty, interest of surcharge), in subsection (1)(a), for "or 59A," substitute ", section 59A, paragraph 18H of Schedule 3B or paragraph 25 of Schedule 3BA,".

28 In section 80 (repayment of overpaid VAT etc), in subsection (7), after "this section" insert "(and paragraphs 18C and 18E of Schedule 3B and paragraphs 20 and 22 of Schedule 3BA)".

29 (1) Paragraph 1 of Schedule 24 to FA 2007 (penalties for errors) is amended as follows.

(2) In the Table, after the second entry relating to VAT insert—

"VAT	Return under a special scheme."

(3) Before sub-paragraph (5) insert—

"(4A) In this paragraph "return under a special scheme" means either of the following, so far as relating to supplies of services treated as made in the United Kingdom—

(a) a value added tax return required to be submitted under any provision of the law of a member State other than the

United Kingdom which implements Article 364 of the VAT Directive (as substituted by Article 5(11) of the Amending Directive);

(b) a value added tax return required to be submitted under any provision of the law of a member State other than the United Kingdom which implements Article 369f of the VAT Directive (as inserted by Article 5(15) of the Amending Directive).

(4B) A return under a special scheme is regarded for the purposes of sub-paragraph (1) as given to HMRC when it is submitted to the authority to whom it is required to be submitted under the provision mentioned in paragraph (a) or (as the case requires) (b) of sub-paragraph (4A).

(4C) In sub-paragraph (4A)—

"the VAT Directive" means Directive 2006/112/EC;

"the Amending Directive" means Council Directive 2008/8/EC."

PART 4

COMMENCEMENT

30 (1) The amendments made by this Schedule have effect in relation to supplies made on or after 1 January 2015 (but see also paragraphs 31 and 32).

31 (1) No registration under Schedule 3BA (inserted by paragraph 1) may take effect before 1 January 2015.

(2) A request for registration under Schedule 3BA that is made before 1 October 2014 is to be treated for the purposes of Article 57d of Implementing Regulation (EU) No 282/2011 (as amended by Council Regulation (EU) No 967/2012 (EU) No 967/2012) (registration to have effect from first day of subsequent quarter) as if it were made on that date.

32 (1) No registration under Schedule 3B may take effect in reliance on paragraph 4 before 1 January 2015.

(2) A request for registration under Schedule 3B that is made before 1 October 2014 in reliance on paragraph 4 is to be treated for the purposes of Article 57d of Implementing Regulation (EU) No 282/2011 (as amended by Council Regulation (EU) No 967/2012 (EU) No 967/2012) as if it were made on that date.

EXPLANATORY NOTE

VALUE ADDED TAX: PLACE OF BELONGING OF CERTAIN BODIES CORPORATE

SUMMARY

1. Clause [2] ensures that legal persons that are not in business are treated as belonging in the place where they are established rather than where they are legally constituted.

BACKGROUND NOTE

2. The VAT Act 1994 currently treats legal persons that are not in business as belonging in the country where they are legally constituted. This provides scope for the use of such entities in certain types of avoidance. The VAT Act 1994 is also inconsistent with the Principal VAT Directive 2006/112/EC. The change will make the place of belonging for the purposes of the VAT Act 1994 the place of establishment.

3. If you have any questions about this change, or comments on the legislation, please contact Daniel Taylor on 03000 585973 (email: daniel.taylor@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

VALUE ADDED TAX: SUPPLY OF SERVICES THROUGH AGENTS

SUMMARY

1. Clause [3] disapplies the UK's derogation from Article 28 of the principal VAT Directive 2006/112/EC for telecommunication and electronically supplied services.

BACKGROUND NOTE

2. The UK legislation currently allows HMRC to treat services supplied through agents acting in their own name as either a supply to and by the agent or a supply by the principal. HMRC's practice is to allow such agents to choose how to treat such supplies. This treatment is allowed because the UK derogates from EU VAT legislation that would otherwise see supplies through agents acting in their own name as though they were made by the agent. In order to ensure the effective taxation of telecommunication and electronically supplied services through internet portals and marketplaces the UK is disapplying its derogation for telecommunication and electronically supplied services.

3. If you have any questions about this change, or comments on the legislation, please contact Daniel Taylor on 03000 585973 (email: daniel.taylor@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

VALUE ADDED TAX: SUPPLIES OF ELECTRONIC, BROADCASTING AND TELECOMMUNICATION SERVICES: SPECIAL ACCOUNTING SCHEMES

SUMMARY

1. Clause [1] and Schedule [1] provides for the implementation of the optional special accounting schemes for persons making supplies of broadcasting, telecommunication or electronically supplied services (BTE) to consumers in the EU.

Details of the Schedule

Part 1

2. Paragraph 1 inserts the new Schedule 3BA into the VAT Act 1994, which contains the provisions establishing the special accounting scheme for persons established in the Member States (MS) supplying BTE services to consumers belonging in other MSs, to be known as the Union scheme.

3. New Schedule 3BA Part 1 gives an overview and explains the meaning of scheme services.

4. New Schedule 3BA Part 2 provides for who may register in the UK to use the Union scheme, how they may apply to register, the obligations to notify any changes to the registration, and when a registration may be cancelled.

5. New Schedule 3BA Part 3 sets out the responsibility of a person registered to use the Union Scheme in the UK to submit returns to the Commissioners for the VAT due in the consumers' MS and to pay the VAT due. It specifies when the return and payment are to be made and the way they are to be submitted. It also places an obligation upon the registered business to produce the relevant business records to the Commissioners in electronic format upon request.

6. New Schedule 3BA Part 4 places obligations upon persons registered for other MS equivalent to the Union Scheme in respect of their UK supplies. It sets out that a person registered for such a scheme is not liable to register in the UK on the basis of the BTE supplies made to UK consumers. It permits the Commissioners to deregister a person who has registered in the UK for such supplies but wishes to use the non-UK scheme provided by another MS. It also sets out the rules for amendments, error corrections, late returns and charges to interest applying to declarations of UK VAT made in a non-UK scheme return.

7. New Schedule 3BA Part 5 sets out the rights of appeal of those persons registered to use the Union Scheme and those declaring UK VAT through a non-UK scheme return.

8. New Schedule 3BA Part 6 details the interpretive provisions.

9. Paragraph 2 amends the VAT Act 1994 section 3A to include new Schedule 3BA and gives the power to amend the new Schedule by Treasury Order.

Part 2

10. Paragraph 3 to 15 amend the special scheme for supplies of electronic services detailed in the VAT Act 1994 Schedule 3B to include supplies of telecommunications and broadcasting services from 1 January 2015. This special scheme will become known as the non-Union scheme and provides an accounting scheme for suppliers of BTE services for those not established within the EU.

11. Paragraph 16 inserts new paragraphs 18A to 18K which contains the provisions for scheme returns that are late or incomplete or need amendment.

12. Paragraphs 17 to 24 include interpretive and consequential amendments to Schedule 3B.

Part 3

13. Paragraphs 25 to 27 amend the VAT Act 1994 section 3A and section 76.

14. Paragraph 28 amends the VAT Act 1994 section 80 by referring to paragraphs 18C and 18E of Schedule 3B and paragraphs 20 and 22 of new Schedule 3BA regarding overpayment adjustments.

15. Paragraph 29 amends the Table in paragraph 1 of Schedule 24 to the Finance Act 2007 by inserting new sub-paragraphs 4A-C to include the special scheme returns into the penalty regime for errors.

Part 4

16. Paragraphs 30 to 32 make provision for commencement of the special schemes and for when persons may begin to register.

BACKGROUND NOTE

17. These schemes, known collectively as the Mini-One Stop Shop or MOSS, are being introduced as part of the final stage of the 2008 European agreement on changes to the VAT place of supply of services rules (known as the VAT Package) and were

announced at Budget 2013. The supply of BTE services to consumers are currently taxable where the supplier is located (save for supplies of e-services made by those outside the EU to consumers in the EU). This will change on 1 January 2015 to where the customer belongs.

18. This rule change may increase administration costs of suppliers of BTE services. To mitigate such costs the MOSS IT system will be implemented across the EU from 1 January 2015. MOSS is formed of two parts: The Union Scheme for those that have an establishment in the EU and the Non Union scheme for those that do not have such an establishment. This Schedule enacts those elements of EU law which are not directly applicable to set up the legal framework for the special schemes.

19. The Union Scheme gives EU BTE suppliers the option to register and to account to the Member State where they are established for the VAT on all their BTE supplies to customers in the other Member States (known as the Union scheme) on one MOSS VAT return. If businesses do not register for MOSS they must register in each Member State in which they supply a customer with BTE services.

20. The Non Union Scheme allows suppliers of BTE services which are not established in the EU to register in one Member State to account for the VAT on all their BTE supplies within the EU on one MOSS VAT return. The VAT on Electronic Services (VoES) scheme currently allows this treatment for non EU suppliers of electronic services; MOSS will extend this to broadcasting and telecommunication services. Those already registered for the VoES scheme, may transfer over to the Non-Union scheme and continue to get the benefit of this simplification measure.

21. If you have any questions about this change, or comments on the legislation, please contact Andy Heywood on 03000 544534 (email: andrew.heywood@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 day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2014 No. 0000

VALUE ADDED TAX

The Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury, in exercise of the power conferred by section 7A(6)(b) of the Value Added Tax Act 1994(**a**), make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014.

(2) This Order comes into force on *** and has effect in relation to supplies made on or after 1st January 2015.

Amendment to Part 3 of Schedule 4A to the Value Added Tax Act 1994

2. Part 3 of Schedule 4A to the Value Added Tax Act 1994 (place of supply of services: special rules: exceptions relating to supplies not made to relevant business person)(**b**) is amended as follows.

3.—(1) For paragraph 15 (electronic services), substitute—

"**15.**—(1) A supply to a person who is not a relevant business person of services to which this paragraph applies is to be treated as made in the country in which the recipient belongs (but see paragraph 8).

(2) This paragraph applies to-

(**a**) 1994 c.23; section 7A was inserted by section 76 of, and paragraphs 1 and 4 of Part 1 of Schedule 36 to, the Finance Act 2009 (c.10).

(**b**) Schedule 4A was inserted by section 76 of, and paragraphs 1 and 11 of Part 1 of Schedule 36 to, the Finance Act 2009. It was amended by section 76 of, and paragraphs 1, 15 and 17 of Part 2 of Schedule 36 to, the Finance Act 2009, by S.I. 2010/3017 and by S.I.2012/2787.

(a) electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)),

(b) telecommunication services (as to the meaning of which see paragraph 8(2)), and

(c) radio and television broadcasting services.".

(2) For the heading before paragraph 15, substitute "Electronically supplied, telecommunication and broadcasting services".

4. In sub-paragraph (2) of paragraph 16 (other services provided to recipient belonging outside EC)—

(a) omit paragraphs (i), (j) and (k), and

(b) insert "and" after paragraph (g).

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, which has effect in relation to supplies made on or after 1st January 2015, amends Part 3 of Schedule 4A to the Value Added Tax Act 1994 (place of supply of services: special rules: exceptions relating to supplies not made to relevant business person).

Article 3 substitutes a new paragraph 15 which provides that a supply of services to a person who is not a relevant business person of services to which the paragraph applies is made in the country in which the recipient belongs. The paragraph applies to electronically supplied services, telecommunication services and broadcasting services.

Article 4 amends paragraph 16. Paragraph 16 provides that a supply of services to which that paragraph applies when provided to a person who is not a relevant business person and who belongs in a country which is not a member State (other than the Isle of Man) is to be treated as made in the country in which the recipient belongs.

These amendments are required to implement Articles 58 and 59 of Council Directive 2006/112/EC on the common system of value added tax(**a**) as amended with effect from 1st January 2015 by Council Directive 2008/8/EC amending Directive 2006/112/EC as regards the place of supply of services(**b**). A Transposition Note explaining how these provisions are transposed into UK law is annexed to the Explanatory Memorandum which is available alongside this Order on the National Archives website http://www.legislation.gov.uk.

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**) OJ No L 347, 11.12.2006, p 1-118.
(**b**) OJ No L 44, 20.2.2008, p 11-22.

EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES)(EXCEPTIONS RELATING TO SUPPLIES NOT MADE TO RELEVANT BUSINESS PERSON) ORDER

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Treasury 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 instrument changes the place of supply rule for VAT purposes for most supplies of broadcasting, telecommunication and electronic (BTE) services when made to a non-business person. Currently the place of supply of such services is where the supplier belongs (save where supplies of electronically supplied services are made by a person outside the EU to a non-business person in the EU which are already made where the customer belongs). The purpose of this change is to ensure, as far as possible, that such supplies are taxed where they are consumed.

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

3.1 None.

4. Legislative Context

4.1 The principal VAT Directive (Council Directive 2006/112/EC; "the PVD") provides a framework for the common system of VAT. It prescribes rules identifying the place of supply of services. The PVD was amended by Council Directive 2008/8/EC which introduced a range of changes to those rules, known as the "VAT Package". The changes have taken effect at different stages. This instrument implements Articles 58 and 59 of the PVD, as amended by Directive 2008/8/EC. It is the final part of the VAT Package and takes effect from 1st January 2015.

4.2 The instrument amends Schedule 4A to the VAT Act 1994 ("the Act") which contains special rules setting out exceptions to the general rule that the place of supply of services to a non-business person is where the supplier belongs. That general rule is set out in section 7A(2)(b) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

To be completed at a later date.

7. Policy background

7.1 VAT is a tax on consumption. The aim of the VAT Package series of changes is to modernise the rules on the place of supply of cross-border services so as to ensure, as far as possible, that services are taxed where they are consumed. This instrument is part of the final change required to implement the VAT Package.

7.2 The services covered by this instrument when made to a non-business person are currently taxed where the supplier belongs (with the exception referred to in paragraph 2.1). Such supplies made to non-business persons in the UK by suppliers in member States with a lower rate of VAT than the UK charge less VAT than suppliers in the UK. This change will mean that non-business persons in the UK will be charged the UK rate of VAT for such services wherever the supplier belongs creating a level paying field for UK businesses.

8. Consultation outcome

8.1 Business input has been provided through joint business/HMRC groups.

9. Guidance

9.1 HMRC have publicised the change on their website and will issue detailed guidance well in advance of the change coming into effect on 1 January 2015.

10. Impact

A Tax Information and Impact Note covering this instrument was published on 10 December 2013, as part of the *Overview of Legislation in Draft* document, and is available on the GOV.UK.website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The consequence of the change to the place of supply rule is that those making supplies to non-business persons in other Member States would have to register for VAT in each of those Member States. To minimise the impact of the requirements on firms employing up to 20 people, as for any business, they will be able to register for a "Mini One Stop Shop" scheme (MOSS) in the Member State where they are established and submit one MOSS VAT return for all their intra EU BTE supplies. Separate changes being introduced at the same time will mean electronic marketplaces and App stores will generally be responsible for the VAT on the supply to the consumer, so many small software developers will not be impacted by the change.

11.3 This instrument is part of the VAT package agreed at EU level. HMRC is discussing implementation of the measure with small businesses through a working group.

12. Monitoring & review

12.1 This measure will be kept under review through communication with affected taxpayer groups. HMRC will also monitor VAT receipts in the sectors affected and the take up of MOSS.

13. Contact

Andy Heywood at HM Revenue & Customs Tel: 03000 544534 or email: andrew.heywood@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Refunds of value added tax to health service bodies

(1) In section 41(7) of VATA 1994 (application to the Crown: list of bodies regarded as Government departments) after "Excellence" insert ", Health Education England (established by the Care Act 2014), and the Health Research Authority (also established by that Act),".

(2) The amendment made by subsection (1) is treated as having come into force on [...].

(3) In section 41(7) of VATA 1994 as amended by subsection (1)—

(a) for "above," substitute "—
(a) ",

(b) for the "and" after "1990," substitute—
"(b) ",

(c) after "1978" insert ",
(c) ",

(d) for the "and" after "foundation trust" substitute ",
(d) ",

(e) for the "and" after "Care Trust" substitute ",
(e) ",

(f) for the "and" after "Health Board" substitute ",
(f) ",

(g) after "group," insert—
"(g) ",

(h) after "Centre," insert—
(h) ",

(i) for the "and" after "Commissioning Board" substitute ",
(i) ",

(j) before "Health Education England" insert—
"(j) ",

(k) before "the Health Research Authority" insert—
"(k) ",

(l) the words from "shall be regarded" to the end are to follow, rather than form part of, the paragraph (k) so formed, and

(m) in those words, for "shall" substitute "are each to".

EXPLANATORY NOTE

REFUNDS OF VALUE ADDED TAX TO HEALTH SERVICE BODIES

SUMMARY

1. The Care Act 2014, if passed, will introduce two new NHS bodies: Health Education England and the Health Research Authority. This clause adds these new bodies 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 Health Education England and the Health Research Authority to the list of bodies to be regarded as persons exercising functions on behalf of a Minister of the Crown.

BACKGROUND NOTE

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 Care Act 2014 will – if passed - establish the NHS bodies 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 03000 585990 (email: david.ogilvie@hmrc.gsi.gov.uk).

1 Transfer pricing: restriction on claims for compensation adjustments

(1) Chapter 4 of Part 4 of TIOPA 2010 (transfer pricing: position of disadvantaged person) is amended as follows.

(2) In section 174 (claim by the affected person who is potentially advantaged), in subsection (3), before the entry for section 175 insert—

"section 174A (claim not allowed in some cases where the disadvantaged person is within the charge to income tax),".

(3) After that section insert—

"174A Claims under section 174 where disadvantaged person within charge to income tax

A claim under section 174 may not be made if—

(a) the disadvantaged person is a person (other than a company) within the charge to income tax in respect of profits arising from the relevant activities, and

(b) the advantaged person is a company."

(4) After section 187 insert—

"Treatment of interest where claim prevented by section 174A

187A Excess interest treated as a qualifying distribution

(1) Subsection (2) applies if Conditions A to C in section 187 are met in circumstances where section 174A prevents a claim under section 174.

(2) The interest paid under the actual provision, so far as it exceeds ALINT, is treated for the purposes of the Income Tax Acts as a dividend paid by the company which paid the interest (and, accordingly, as a qualifying distribution)."

(5) The amendments made by this section have effect in relation to any amount arising on or after 25 October 2013, except pre-commencement interest.

(6) "Pre-commencement interest" means an amount of interest to the extent that it is, in accordance with generally accepted accounting practice, referable to a period before 25 October 2013.

EXPLANATORY NOTE

TRANSFER PRICING: RESTRICTION ON CLAIMS FOR COMPENSATION ADJUSTMENTS

SUMMARY

1. Clause [X] introduces amendments to the rules in Chapter 4 of Part 4 of Taxation (International and Other Provisions) Act 2010 limiting the circumstances in which a claim for a compensating adjustment by a disadvantaged person may be made. It also clarifies the tax treatment of interest that has been subject to a transfer pricing adjustment.

DETAILS OF THE CLAUSE

2. Subsection (3) of the new clause inserts new section 174A. This section limits the affect of section 174 so that a claim for a compensating adjustment may not be made by a person (the disadvantaged person) that is within the charge to income tax to the extent that the person that is subject to the transfer pricing adjustment (the advantaged person) is a company.

3. Subsection (4) of the clause inserts new section 187A and sets out the tax treatment of interest where new section 174A limits the ability of the disadvantaged person to make a compensating adjustment claim. Where the specified conditions are met, new section 187A treats the non arm's length interest that is subject to the transfer pricing adjustment as a qualifying distribution.

4. Subsections (5) and (6) state that the amendments will affect amounts arising on or after 25 October 2013 but that they will not apply to interest that is, in accordance with generally accepted accounting practice, referable to a period before that date.

BACKGROUND NOTE

5. The intention to introduce this legislation was announced by the Exchequer Secretary to the Treasury in a Written Ministerial Statement on 25 October 2013. This clause and an HMRC technical note were published on the same day. The amendments set take effect from that day.

6. If you have any questions about this change, or comments on the legislation, please contact Graeme Webster on 03000 585820 (email: graeme.webster@hmrc.gsi.gov.uk).

1 Treatment of agency workers

(1) Chapter 7 of Part 2 of ITEPA 2003 (income tax treatment of agency workers) is amended as follows.

(2) For section 44 (treatment of workers supplied by agencies) substitute—

"44 Treatment of workers supplied by agencies

(1) This section applies if—

(a) an individual ("the worker") personally provides, or is personally involved in the provision of, services (which are not excluded services) to another person ("the client"),

(b) there is a contract between the client and a third person ("the agency") under or in consequence of which—

(i) the services are provided, or

(ii) the client pays, or otherwise provides consideration, for the services, and

(c) remuneration receivable by the worker in consequence of providing, or being involved in the provision of, the services does not constitute employment income of the worker apart from this Chapter.

(2) But this section does not apply if it is shown that the manner in which the worker provides the services, or (as the case may be) the manner of the worker's involvement in the provision of the services, is not subject to (or to the right of) supervision, direction or control by any person.

(3) If this section applies—

(a) the worker is to be treated for income tax purposes as holding an employment with the agency, the duties of which consist of—

(i) the services the worker provides to the client, or

(ii) the worker's involvement in the provision of the services to the client, and

(b) all remuneration receivable by the worker (from any person) in consequence of providing, or being involved in the provision of, the services is to be treated for income tax purposes as earnings from that employment."

(3) In section 45 (arrangements with agencies)—

(a) in paragraph (a), after "providing" insert ", or being personally involved in the provision of,", and

(b) in paragraph (b), after "provided)" insert "or the worker's involvement in their provision".

(4) In section 46 (cases involving unincorporated bodies etc)—

(a) in subsection (1)(a), for "or is under an obligation to personally provide" substitute "or is personally involved in the provision of", and

(b) in subsection (2), for the words from "under" to "contract" substitute "by the worker in consequence of providing, or being involved in the provision of, the services".

(5) In section 47 (interpretation of Chapter 7), omit subsection (1).

(6) In Chapter 3 of Part 11 of that Act (PAYE: special types of payer or payee), in section 688 (agency workers)—

(a) for subsection (1) substitute—

"(1) Subsections (1A) and (1B) apply if the remuneration receivable by an individual in consequence of providing, or being involved in the provision of, services falls to be treated under section 44 (agency workers) as earnings from an employment.

(1A) The relevant provisions have effect as if the individual held the employment with or under the agency.

(1B) For the purposes of sections 687, 689 and 689A, if—

(a) a person other than the agent or an intermediary of the agent makes a payment of, or on account of, PAYE income of the individual, and

(b) the payment is not within subsection (2)(b),

the person is to be treated as making the payment as an intermediary of the agent."

(b) in subsection (2)(a), for "under or in consequence of any contract" substitute "in consequence of providing, or being involved in the provision of, services".

(7) The amendments made by this section are treated as having come into force on 6 April 2014.

2 PAYE obligations of UK intermediary in cases involving non-UK employer

(1) Section 689 of ITEPA 2003 (PAYE: employee of non-UK employer) is amended as follows.

(2) After subsection (1A) insert—

"(1B) Subsection (1C) applies if—

(a) the employee worked for the relevant person during the period under or in consequence of arrangements made between the relevant person and a third person,

(b) the third person did not make the payment of, or on account of, PAYE income of the employee, and

(c) PAYE regulations would apply to the third person if the third person were to make a payment of, or on account of, PAYE income of the employee.

(1C) The third person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount given by subsection (3)."

(3) In subsection (2), for "The" substitute "If subsection (1C) does not apply, the".

(4) The amendments made by this section are treated as having come into force on 6 April 2014.

3 Oil and gas workers on the continental shelf: operation of PAYE

(1) ITEPA 2003 is amended as follows.

(2) In section 222 (payments by employer on account of tax where deduction not possible)—

(a) in subsection (1)(a), after "689" insert ", 689A", and

(b) in subsection (3), after "employer)" insert "or section 689A(3) (deemed payments of PAYE income of continental shelf workers by person other than employer)".

(3) In section 689 (provision about PAYE for employees of non-UK employers), after subsection (1) insert—

"(1ZA) But this section does not apply if section 689A applies or would apply but for a certificate issued under regulations made under subsection (7) of that section."

(4) After that section insert—

"689A Oil and gas workers on the continental shelf

(1) This section applies if—

(a) any payment of, or on account of, PAYE income of a continental shelf worker in respect of a period is made by a person who is the employer or an intermediary of the employer or of the relevant person,

(b) PAYE regulations do not apply to the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, to the employer, and

(c) income tax and any relevant debts are not deducted, or not accounted for, in accordance with PAYE regulations by the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, by the employer.

(2) Subject to subsection (5), subsection (1)(a) does not apply in relation to a payment so far as the sum paid is employment income under Chapter 2 of Part 7A.

(3) The relevant person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the continental shelf worker of an amount equal to the amount given by subsection (4).

(4) The amount referred to is—

(a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of income tax and any relevant debts due under PAYE regulations, the aggregate of the amount of the payment and the amount of any income tax and any relevant debts deductible due, and

(b) in any other case, the amount of the payment.

(5) If, by virtue of any of sections 687A and 693 to 700, an employer would be treated for the purposes of PAYE regulations (if they applied to the employer) as making a payment of any amount to a continental shelf worker, this section has effect as if—

(a) the employer were also to be treated for the purposes of this section as making an actual payment of that amount, and

(b) paragraph (a) of subsection (4) were omitted.

(6) For the purposes of this section a payment of, or on account of, PAYE income of a continental shelf worker is made by an intermediary of the employer or of the relevant person if it is made—

(a) by a person acting on behalf of the employer or the relevant person and at the expense of the employer or the relevant person or a person connected with the employer or the relevant person, or

(b) by trustees holding property for any persons who include, or a class of persons which includes, the continental shelf worker.

(7) PAYE regulations may make provision for, and in connection with, the issue by Her Majesty's Revenue and Customs of a certificate to a relevant person in respect of one or more continental shelf workers—

(a) confirming that, in respect of payments of, or on account of, PAYE income of the continental shelf workers specified or described in the certificate, income tax and any relevant debts are being deducted, or accounted for, as mentioned in subsection (1)(c), and

(b) disapplying this section in relation to payments of, or on account of, PAYE income of those workers while the certificate is in force.

(8) Regulations under subsection (7) may, in particular, make provision about—

(a) applying for a certificate;

(b) the circumstances in which a certificate may, or must, be issued or cancelled;

(c) the form and content of a certificate;

(d) the effect of a certificate (including provision modifying the effect mentioned in subsection (7)(b) or specifying further effects);

(e) the effect of cancelling a certificate.

(9) Subsection (10) applies if—

(a) there is more than one relevant person in relation to a continental shelf worker, and

(b) in consequence of the same payment actually made to the worker, each of them is treated under subsection (3) as making a payment of PAYE income of the worker.

(10) If one of the relevant persons complies with section 710 (notional payments: accounting for tax) in respect of the payment that person is treated as making, the other relevant persons do not have to comply with that section in respect of the payments they are treated as making.

(11) In this section—

"continental shelf worker" means a person in an employment the duties of which are performed—

(a) in the UK sector of the continental shelf (as defined in section 41), and

(b) in connection with exploration or exploitation activities (as so defined);

"employer" means the employer of the continental shelf worker;

"relevant person", in relation to a continental shelf worker, means—

(a) if the employer has an associated company (as defined in section 449 of CTA 2010) with a place of business or registered office in the United Kingdom, the associated company, or

(b) in any other case, the person who holds the licence under Part 1 of the Petroleum Act 1998 in respect of the area in which the duties of the continental shelf worker's employment are performed.

(12) The Treasury may by regulations modify the definitions of "continental shelf worker" and "relevant person", as the Treasury thinks appropriate.

(13) Regulations under subsection (12) may—

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

(b) make incidental, consequential, supplementary and transitional provision and savings, and

(c) amend this section."

(5) In section 690 (employee non-resident etc), in subsection (10)—

(a) after "689", in the first place it appears, insert "or 689A", and

(b) after "689", in the second place it appears, insert "or (as the case may be) 689A".

(6) In section 710 (notional payments: accounting for tax), in subsection (2)—

(a) in paragraph (a)—

(i) after "689" insert ", 689A", and

(ii) for "or 689(3)(a)" substitute ", 689(3)(a) or 689A(4)(a)", and

(b) in paragraph (b), after "689(2)" insert "or 689A(3)".

(7) The amendments made by this section are treated as having come into force on 6 April 2014.

EXPLANATORY NOTE

TREATMENT OF AGENCY WORKERS

SUMMARY

1. Clause [X] amends existing agency legislation (treatment of workers supplied by agencies) in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that Chapter 7 of Part 2 of ITEPA is amended.

3. Subsection 2 substitutes a new section 44 ITEPA 2003:

- New 44 (1) if the conditions in 44(1) (a), (b), and (c) apply then this section applies. Those conditions are where:

  (a) a worker personally provides their services or is personally involved in a service that is being supplied, such as a composite service;

  (b) there is a contract between an end client (the person who the worker is providing their services to) and a third party (known as the agency in this legislation but could be any third party) as a result of which either services of the worker are provided, or the client pays, or otherwise provides consideration, for services to be provided; and

  (c) payments receivable by the worker under or in consequence of the contract is not chargeable elsewhere as employment income for example the worker does not have income tax deducted because they are an employee of another company.

- New 44 (2) provides that new section 44 will not apply where the manner in which the service is provided or the involvement in the provision of a service (such as a composite service) by the worker is not subject to (or the right of) control, direction or supervision by any person.

- New 44 (3) (a) & (b) provide that where the worker is providing services personally or as part of a composite service (a service made up of a number of services) they must be treated as an employee of the agency for income tax, and all income receivable by the worker in consequence of providing a service is to be treated for income tax as earnings to have come from said employment.

4. Subsection 3 amends section 45 ITEPA 2003**:** New 45 (a) & (b) extends this subsection to include a composite service (as defined above).

5. Subsection 4 amends section 46 ITEPA 2003:

- in (1) (a) the obligation to personally provide is removed and replaced by "personally involved in the provision", which applies it to composite services.

- in (2) removes the reference to an agency contract and instead inserts a reference to the remuneration being received by the worker as a consequence of providing, or being involved in the provision of, the services.

6. Subsection 5 amends section 47 ITEPA 2003: 47 (1) has now been omitted, removing the definition of an agency contract and the obligation for personal service.

7. Subsection 6 amends Chapter 3 Part 11 of ITEPA. It substitutes sub-section (1) of section 688 for new sub-section (1). New subsections 1A and 1B apply if the income receivable by the worker would be treated as employment income under the new section 44.

8. New subsection 1A that the worker is treated as being an employee of the agency (third party)

9. New sub-section 1B is that for the purposes of sections 687, 689 and 689A if:

a. Someone other than the third party (agency) or their intermediary makes a payment on account of PAYE income of the worker, and

b. the payment is not within subsection (2)(b) – a payment of, or on account of PAYE income of the worker is made by the client (the person whom the worker is providing their services to) or at the expense of the client.

(b) substitutes 'under of in consequence of any contract' with 'in consequence of providing, or being involved in the provision of services'. This changes the wording to reflect the amended wording of new section 44.

BACKGROUND NOTE

10. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies. It supports the Government's anti-avoidance policy.

11. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 03000 586474 (email: sarah.radford@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PAYE OBLIGATIONS OF UK INTERMEDIARY IN CASES INVOLVING NON-UK EMPLOYER

SUMMARY

1. Clause [X] sets out that a UK agency is responsible for operating PAYE where the worker is employed or engaged by or through a non-UK company and works for a UK company. Where there is no UK agency the arrangements remain as they are currently and the UK company who the employee works for in the UK is responsible for operating PAYE.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for amendments to Section 689 ITEPA 2003.

3. Subsection 2 inserts into Section 689, employee of a non-UK employer, a new subsection. Section 689 applies where PAYE regulation do not apply to the employer of the worker. This is usually because the worker's employer is outside of the UK.

4. Subsection 2 sets that the third person (usually a UK agency) is responsible for making PAYE payments on the amounts paid to the worker. It sets out that for the third person to be responsible for making PAYE payments the following conditions must apply:

   a. the employee works for a person who is not their employer (this person is called the relevant person) and that their working for this person is because another party - the third person (usually a UK agency) has facilitated these arrangements.

   b. that the third person (the agency) has not made payments of or on account of PAYE income.

   c. the PAYE regulations would apply to the third person (the agency). For example they are in the UK.

5. Subsections 3 sets out that this new subsection will take priority over the current arrangements, so where there is a third person (agency) involved in the provision it will be the third person and not the relevant person who is responsible for making PAYE payments.

BACKGROUND NOTE

6. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies. It supports the Government's anti-avoidance policy.

7. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 03000 586474 (email: sarah.radford@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

OIL AND GAS WORKERS ON THE CONTINENTAL SHELF: OPERATION OF PAYE

SUMMARY

1. Clause [X] amends the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 to add in a new section, section 689A. This section applies where oil and gas workers on the UK Continental Shelf are supplied by a non-UK based employer. It provides that a UK-based associate company of the overseas employer, or in the absence of an associate, the oil field licensee, will be responsible for operating PAYE. Where PAYE is paid and accounted for by the offshore employer, HMRC may issue a certificate to confirm this. Whilst the certificate is in force, it relieves the oil field licensee of their obligation to operate PAYE.

DETAILS OF THE CLAUSE

2. Subsection 2 amends section 222 (payments by employer on account of tax where deductions not possible) so that the section also applies to section 698A. Section 222 regulates situations where the employee is paid by a means other than cash and it is not possible for the employer to deduct income tax and other relevant debts (such as overpayment of tax credits). It requires the employee to pay the amount of tax owed to the employer within 90 days for the employer to account to HMRC for it.

3. Subsection 3 amends section 689 to clarify that 689 does not apply in cases where 689A applies or would apply but for a certificate issued under the regulations made under subsection (7) of 689A. Section 689 applies where an employee works for someone in the UK, but is employed and paid by an employer outside the UK. The person in the UK for whom the employee works is treated, for the purposes of the PAYE regulations, as making any payments of, or on account of, PAYE income.

4. Subsection 4 inserts the new section 689A after section 689. The details of new section 689A are:

a. Subsection 1 states the three conditions (subsections 4(1)(a) – (c)) necessary for section 689A to apply.

i. Subsection (1)(a): when a person (employer or intermediary) makes a payment of PAYE income (earnings on which tax is deductable), or what is deemed to be PAYE income, of a continental shelf worker for a certain period. This person can be an employer or an intermediary. An intermediary is someone acting on behalf of the employer or someone acting on behalf of the relevant person. A relevant person is defined in subsection 4(11) as the oilfield licensee or an associated company of

the employer (as defined in the Company Tax Act 2010) with a UK base or registered office.

ii. Subsection (1)(b): when PAYE regulations do not apply to the person making the payment, or the employer, when the person making the payment is acting on behalf of the employer or the relevant person.

iii. Subsection (1)(c): when the person making the payment, or the employer, if that person is acting on behalf of the employer or relevant person, do not deduct or account for income tax or any relevant debts, in accordance with PAYE regulations.

b. Subsection(3) states that for the purposes of PAYE regulations, the associated onshore company of the offshore-employer or the oilfield licensee is to be treated as making a payment of PAYE income of the continental shelf worker equal to the amount defined in subsection (4) of section 689A.

c. Subsection (4) defines the amount of payment as:
   i. where the amount of payment made to the recipient has already had income tax and any relevant PAYE debts deducted, the amount referred to is the amount before any income and relevant PAYE debts were deducted,
   ii. where the amount of payment made to the recipient has not had income tax and any relevant PAYE debts deducted, that is the amount to which subsection (3) refers.

d. Subsection(5) states that if income from the employer is not paid by cash, but by vouchers and tokens, for example, it falls under sections 687A and 693-700. This means that for the purposes of PAYE regulations, the employer is treated as having made a payment of that amount in cash to a worker. Section 689A then applies as if the employer had made an actual payment of that amount to a continental shelf worker, and as if subsection (4)(a) were omitted.

e. Subsection (6) defines what is meant by the term “an intermediary of the employer or of the relevant person” which makes a payment of, or on account of, PAYE income of a continental shelf worker. An intermediary of the employer or of the relevant person can be a person acting on their behalf, or on behalf of a person connected with the employer or the relevant person. They can also be trustees holding property for the continental shelf worker.

f. Subsection (7) gives the power for PAYE regulations to make provision for, and in connection with, the issue of a certificate by HMRC to a relevant person in respect of one or more continental shelf workers. This certificate will confirm that income tax and any relevant debts for the PAYE income of specified continental shelf workers is being deducted and accounted for, as mentioned in subsection (1)(c). Whilst this certificate is in force section 689A does not apply to payments of, or on account of, PAYE income of the

specified workers. The relevant person (as defined in regulations) is relieved of their obligation to operate PAYE during this time.

g. Subsection (9) provides that subsection (10) applies where there is more than one relevant person for a continental shelf worker.

h. Subsection (10) states that if one of the relevant persons complies with section 710 (which regulates earnings, called notional payments, which are not paid by cash) and accounts for the income tax and relevant debts of any PAYE income of the worker, the other relevant persons do not have to comply with that section with regards the payments they are treated as making.

i. Subsection (11) defines the terms "continental shelf worker", "employer" and "relevant person".

j. Subsection (12) gives the Treasury the power to modify these definitions by regulations.

k. Subsection (13) describes the ways in which regulations under subsection (12) can be used.

5. Subsection (5) changes section 690 (employee non-resident etc) of ITEPA 2003 to ensure that the section applies to those falling under section 689A. Section 690 ensures that where an employee, who is not resident or, if resident, not ordinarily resident in the UK, works or will work in the UK, and also works or is likely to work outside the UK, only part of their income may be taxable. Usually payments, which only partly consist of PAYE income, will not be subject to deductions under PAYE. Section 690 provides that payments, or at least a proportion of payments, are subject to PAYE.

6. Subsection (6) changes subsection (2) of section 710 (notional payments: accounting for tax) to ensure that the term notional payment includes the payments described in section 689A (4)(a) too, and that term employer includes those making payments and specified in section 689A. Notional payments are payments not made in cash. This means that section 710 covers those falling under section 689A. Section 710 ITEPA 2003 says how the employer should operate PAYE in respect of a notional payment.

BACKGROUND NOTE

7. At Budget 2013 the Chancellor announced that the Government would strengthen legislation in respect of offshore employment intermediaries. This change is intended to address avoidance schemes in the oil and gas industry involving the placement of the employer of oil and gas workers (who are working on the UK Continental Shelf) outside the UK.

8. Legislation is included in the National Insurance Contributions Bill 2013 (as introduced in the House of Commons on 14 October 2013) to create a similar certification scheme for National Insurance Contributions.

9. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 03000 586474 (email: sarah.radford@hmrc.gsi.gov.uk).

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

INCOME TAX

The Income Tax (Pay As You Earn) (Amendment No. X) Regulations 2014

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	*6th April 2014*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations pursuant to section 1(1) and (2) of the Provisional Collection of Taxes Act 1968(**a**) and a resolution passed by the House of Commons on [ ] 2014(**b**):

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No.X) Regulations 2014 and come into force on 6th April 2014.

2.These Regulations have effect in relation to tax year 2014-15 and subsequent tax years.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

3.—(1) The Income Tax (Pay As You Earn) Regulations 2003(**c**) are amended as follows.

(2) After regulation 84 insert—

"Continental shelf workers: provisions relating to certificates

Application for certificate

84A.—(1) An employer who meets the conditions in paragraph (2) may apply to HMRC for the issue of a UKCS continental shelf workers certificate.

(2) The conditions are that—

(a) the employer supplies or intends to supply a continental shelf worker for whom the relevant person, under section 689A of ITEPA(**a**) (oil and gas workers on the continental shelf), is the oil field licensee;

(**a**) 1962 c.2.

(**b**) Budget resolution number [ ], recorded in the House of Commons Votes and Proceedings for the [ ] 2014. The resolution contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act 1968. Sections 1(3) to (5) of that Act sets out the circumstances in which the resolution will cease to have statutory effect. By virtue of section 1(5), the resolution will cease to have effect once provisions corresponding to those are enacted by the Finance Act 2014. The resolution will in any case cease to have effect on 5th August 2014 by virtue of section 1(3). Relevant amendments to section 1(3) to (5) were made by section 60 of the Finance Act 1968 (c. 44), section 205(5) of the Finance Act 1993 (c. 34), section 50(1) of the Finance Act (No. 2) 1997 (c. 58), and section 112(1) of the Finance Act 2007 (c. 11).

(**c**) S.I. 2003/2682; relevant amendments made by S.I. 2012/822, 2012/1895 and 2013/521.

(b) the employer has or intends to have a contractual relationship under which the employer acts, directly or indirectly, as an agent of the oil field licensee for the purposes of PAYE Regulations; and

(c) the employer or an associated company has not had a certificate cancelled previously for a failure to comply with their obligations and responsibilities under regulation 84B.

(3) An application under this regulation must be made in writing and must include—

(a) the name, address, and employer's PAYE reference, of the employer;

(b) the name and address of a person in Great Britain who is authorised to accept service on behalf of the employer;

(c) confirmation that the employer understands and intends to discharge the obligations contained in regulation 84B; and

(d) the name, address, and employer's PAYE reference of any associated company which is a current or former holder of a UKCS continental shelf workers certificate.

(4) The first application made under this regulation may provide details including name, business address, and oil field licence number of the oil field licensees to whom they supply or intend to supply a continental shelf worker.

(5) An application made under this regulation may be combined with an application made under regulation 114A of the SSC Regulations.

(6) Upon receipt of an application under this regulation an officer of Revenue and Customs may issue a UKCS continental shelf workers certificate.

(7) A UKCS continental shelf workers certificate must include—

(a) the name of the UKCS continental shelf workers certificate holder;

(b) the PAYE reference of the UKCS continental shelf workers certificate holder; and

(c) the date on which the certificate is issued.

(8) A Regulation UKCS continental shelf workers certificate may be issued to—

(a) the person authorised to accept service on behalf of the employer;

(b) the employer; or

(c) both person authorised to accept service on behalf of the employer and the employer.

(9) A certificate may be combined with a certificate issued under regulation 114A of SSC Regulations.

(10) An officer of Revenue and Customs may, by notice in writing to the person authorised to accept service on behalf of the employer, cancel the UKCS continental shelf workers certificate from the date specified in the notice of cancellation.

(11) The date specified in paragraph (10) may not be earlier than 10 working days after the date of the notice.

(12) A notice under paragraph (10) may be combined with a notice under regulation 114A(10) of the SSC Regulations.

UKCS continental shelf workers certificate holder: obligations and responsibilities

84B. A UKCS continental shelf workers certificate holder must—

(a) make such deductions, returns and repayments as are required of a Real Time Information employer;

(b) keep written records of—

(**a**) 2003 c. 1. Section 689A is inserted by clause [ ] of the Finance Bill 2014

(i) the name, date of birth, and national insurance number of the workers supplied;

(ii) the name, registered office and oil field licence number of the oil field licensee to whom each of the workers were supplied; and

(iii) the dates between which the workers were supplied to that oil field licensee;

(c) keep the records required by sub-paragraph (b) for a period of 6 years from the end of the tax year to which they relate; and

(d) where an officer of Revenue and Customs requires them, in writing, to do so, provide copies of the records required by sub-paragraph (b) to HMRC within 30 days of the date of the request;

(e) before the first time they supply an oil field licensee inform HMRC, in writing, of the details of the oil field licensee including name, business address, and oil field licence number of the oil field licensee.

UKCS oil field licensee certificate:

84C.—(1) Where a UKCS continental shelf workers certificate holder has notified HMRC that the employer intends to supply continental shelf workers to an oil field licensee an officer of Revenue and Customs must issue a UKCS oil field licensee certificate to the oil field licensee.

(2) The UKCS oil field licensee certificate must include—

(a) the name of the oil field licensee

(b) the registered office of that oil field licensee;

(c) the oil field licence number;

(d) the name of the UKCS continental shelf workers certificate holder;

(e) the date on which it is issued; and

(f) a description of the continental shelf workers to whom it apples.

(3) Where a UKCS oil field licensee certificate is in force the holder of that certificate is not liable to pay any contributions in respect of any continental shelf worker of a description set out in the certificate.

(4) If a UKCS continental shelf workers certificate is cancelled by an officer of Revenue and Customs that officer must also, by notice in writing, cancel the UKCS oil field licensee certificate.

(5) A notice under paragraph (4) must—

(a) be sent on the same day as the notice cancelling the UKCS continental shelf workers certificate;

(b) specify the date of cancellation of the UKCS oil field licensee certificate; and

(c) notify the oil field licensee that they are liable to meet its obligations as a Real Time Information employer from the date of cancellation.

(6) The date of cancellation of the UKCS oil field licensee certificate must be the date specified in the UKCS continental shelf workers certificate cancellation notice.

Interpretation of regulations 84A to 84C

84D. In regulations 84A to 84C—

"associated company" means any company within the meaning of section 449 of the Corporation Tax Act 2010(**a**);

(**a**) 2010 c.4.

"employer" means an employer with no presence in the United Kingdom;

"oil field licensee" means the holder of a licence under Part 1 of the Petroleum Act 1998(a) in respect of the area in which the duties of the continental shelf worker's employment are performed;

"UKCS continental shelf workers certificate" means a certificate issued under regulation 84A;

"UKCS oil field licensee certificate" means a certificate issued under regulation 84C(1).""

Name
Name
Two of the Commissioners for Her Majesty's Revenue and Customs

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Income Tax (Pay as You Earn) Regulations 2003 ("the 2003 Regulations") make provision, amongst other things, for the deduction and payment of income tax on PAYE income and for returns for that purpose.

Regulation 3 inserts new regulations 84A to 84D into the 2003 Regulations in order to provide for the issue of certificates where an employer with no presence in the United Kingdom discharges filing and payment responsibilities on behalf of the oil field licensee.

These Regulations are made in exercise of a power contained in resolution number [ ], passed by the House of Commons on [ ] 2014 following the Budget held on [ ]. The resolution has temporary statutory effect by virtue of section 1 of the Provisional Collection of Taxes Act 1968. It provides that the Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for and in connection with the issue by HMRC of a certificate to a relevant person in respect of one or more continental shelf workers.

The provisions of the resolution correspond to provisions contained in clause [ ] of Finance Bill 2014, as published by the House of Commons on [ ] 2014. Assuming that the clause is not rejected during the passage of the Bill through Parliament, those provisions will come into force when the Bill receives Royal Assent, and the Order made under the resolution will continue to have statutory effect by virtue of those provisions of the Act arising from the Bill.

(**a**) 1998 c.17.

EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) REGULATIONS

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument sets how to apply for and the requirements of certification for workers on the UK Continental Shelf where the person responsible for operating PAYE is the oil field licensee and the workers are provided by offshore employers who will be acting as an agent for the oil field licensee.

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

3.1 The obligation of certain people to operate PAYE in relation to continental shelf workers comes into force on 6th April 2014, and therefore a Provisional Collection of Taxes Act 1968 ("PCTA") resolution will be necessary. This instrument is being made under that resolution as the certificates are necessary for the administration of the system.

4. Legislative Context

4.1 The instrument is being made to implement the Government's policy with regard to workers on the UK Continental Shelf employed by non-UK companies. This instrument is part of legislation introduced to prevent the avoidance of employment taxes by non-UK based companies employing UK workers. There are is also an instrument bringing in a mirroring certification scheme for National Insurance.

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 This instrument introduces a certification scheme for oil field licensees where they use workers engaged on the UK Continental Shelf who have non-UK employers. This is part of a wider measure strengthening existing legislation to ensure that employment taxes are paid for workers engaged in the UK who have non-UK employers.

7.2 A certificate can be applied for when the non-UK employer does not have a UK associate company, so the legislation deems the oil field licensee to be responsible for making returns through Real Time Information (RTI) and deductions of income tax at source from the workers pay. The certificate will also apply where the licensee is deemed to be an employer for NICs purposes.

7.3 The certificate confirms to the licensee that the non-UK employer is fulfilling the statutory tax and NICs requirements of the licensee. Whilst a certificate is in place HMRC cannot pursue the licensee for any under payments of income tax or failures under RTI the non-UK employer makes. A certificate can be withdrawn by HMRC for a failure by the non-UK employer. If a certificate is withdrawn then the licensee will become responsible for fulfilling the obligations under RTI from the date specified in the notice of withdrawal from HMRC. When a certificate is withdrawn then the company from whom it was withdrawn, and any associated companies, will not be eligible to apply for a certificate in the future.

8. Consultation outcome

8.1 The policy which this instrument enacts was subject to a public consultation. The consultation document was published on 30 May 2013. Almost all responses to the consultation from those engaged in the oil and gas industry requested a certification scheme to be implemented. The response to the consultation was published 14 October 2013 and set out the Governments intention to create a certification scheme. HM Revenue & Customs have also held meetings with the oil and gas industry separately about the operation of the certification scheme.

9. Guidance

9.1 HMRC will be publishing guidance about how to apply for a certification early in the New Year so that people are aware of what they need to do ahead of the certificates coming into effect in April 2014.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be negligible.

10.2 The impact on the public sector is expected to be negligible.

10.3 A Tax Impact and Information Note covering this instrument was published on 10 December 2013 alongside the draft Finance Bill legislation for this measure and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation is not expected to apply to small business.

12. Monitoring & review

12.1 The outcome will be subject to an internal review after 12 months and the legislation may be amended accordingly.

13. Contact

Sarah Radford at the HM Revenue and Custom Tel: 03000 586 474 or email: sarah.radford@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

1 Venture capital trusts

Schedule 1 contains provision about venture capital trusts.

SCHEDULE 1 Section 1

VENTURE CAPITAL TRUSTS

Linked sales

1 (1) After section 264 of ITA 2007 insert—

"264A Restricting relief where there is a linked sale

(1) This section applies where—

(a) an individual subscribes for shares ("the relevant shares") in a VCT ("the VCT"), and

(b) there is at least one linked sale of other shares by the individual.

(2) For the purposes of this Part, the amount the individual subscribes for the shares is to be treated as reduced (but not below nil) by the total consideration given for the linked sales of other shares.

This is subject to subsection (3).

(3) If a sale is linked in relation to more than one subscription for shares—

(a) the consideration for it is to be applied to reduce subscriptions under subsection (2) in the order in which the subscriptions are made, and

(b) accordingly, to the extent that any consideration has been used to reduce an earlier subscription, it is not available to reduce a later one.

(4) A sale of shares ("the sold shares") is "linked" if conditions A and B are met.

(5) Condition A is that the sold shares are in—

(a) the VCT, or

(b) a company which is (or later becomes) a successor or predecessor of the VCT.

(6) Condition B is that—

(a) the individual subscribes for the relevant shares in circumstances where—

(i) the purchase of the sold shares from the individual was conditional upon the individual subscribing for shares in the VCT, or

(ii) the individual's subscription for shares in the VCT was conditional upon that purchase, or

(b) the subscription for the relevant shares and the sale of the sold shares are within 6 months of each other (irrespective of which came first).

(7) A company ("company X") is a "successor or predecessor of the VCT" if—

(a) there is a merger of two or more companies for the purposes of Chapter 5 (see section 323) and—

(i) the VCT is one of the merged companies and company X is "the successor company" (as defined by that section), or

(ii) the VCT is "the successor company" and company X is one of the merged companies, or

(b) section 327 (effect of restructuring of VCT) applies and—

(i) the VCT is "the old company" and company X is "the new company" for the purposes of that section, or

(ii) company X is "the old company" and the VCT is "the new company" for those purposes.

(8) This section does not apply if, or to the extent that, the subscription for the relevant shares is a result of the individual electing to reinvest dividends payable to the individual on shares in the VCT, in acquiring further shares in the VCT."

(2) The amendment made by this paragraph has effect in relation to claims for relief by reference to shares issued on or after 6 April 2014.

Nominees

2 (1) After section 330 of ITA 2007 insert—

"Nominees

330A Nominees

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

(2) In section 284 of that Act (power to make regulations as to procedure), in subsection (1)(d), after "persons" include "(including nominees)".

EXPLANATORY NOTE

VENTURE CAPITAL TRUSTS

SUMMARY

1. Clause [X] and Schedule [Y] make several changes to the Venture Capital Trust (VCT) legislation at Part 6 of the Income Tax Act 2007.

DETAILS OF THE SCHEDULE

2. Paragraph 1 introduces a new section 264A which imposes restrictions on the availability of VCT income tax relief in respect of a subscription for shares in a VCT, in certain circumstances. New section 264A takes effect in relation to shares issued on or after 6 April 2014.

3. New sections 264A(1), (2) and (3) reduce the amount subscribed for shares in a VCT on which income tax relief may be claimed, by the amount of consideration the investor has received for a sale of shares which is "linked" to the subscription for shares.

4. New sections 264A(4), (5) and (6) explain what is meant by a "linked" sale of shares in this context. A sale is "linked" if an individual has sold shares in the same VCT as the VCT in which the investor has subscribed for shares, or in a VCT which is treated as a successor or predecessor of that VCT, and either the subscription for shares is in any way conditionally linked with the share sale, or the subscription and sale are within 6 months of each other.

5. New section 264A(7) explains what is meant by a "successor" or a "predecessor" VCT for this purpose. Where there has been a merger of two VCTs and section 323 ITA applies to treat one VCT as succeeding another, then for the purpose of section 264A those VCTs are regarded as "successor" or "predecessor" as appropriate. Where a new holding company has been inserted above an existing VCT and section 327 ITA applies to treat the holding company as fulfilling the VCT requirements, then the new holding company and the original VCT are treated for the purpose of section 264A as "successor" and "predecessor" companies as appropriate.

6. New section 264A(8) provides that the restriction does not apply to subscriptions for shares which are funded by the reinvestment of dividends payable by the VCT to the individual in respect of shares already held in the VCT.

7. Paragraph 2 introduces a new section 330A, which provides that an individual will qualify for income tax relief on a subscription in VCT shares if that subscription is made on the individual's behalf by a nominee. The tax treatment of holdings of shares or disposals of shares in a VCT will follow in the same way whether the shares are held or disposed of by an

individual, or by a nominee acting on behalf of the individual. Section 330A takes effect from the date the Finance Bill receives Royal Assent.

8. New section 330A(2) amends section 284 ITA to ensure that any regulations made as to VCT procedures may apply to nominees as well as to other persons holding VCT shares.

BACKGROUND NOTE

9. The VCT regime exists to provide access to finance for qualifying small and medium trading companies, by offering a range of tax reliefs to individuals who invest in VCTs which in turn invest on into such companies. This change will ensure that the regime continues to be well-targeted and to provide value for money.

10. If you have any questions about this change, or comments on the legislation, please contact Kathryn Robertson on 03000 585729 (email: kathryn.robertson@hmrc.gsi.gov.uk).

1 Partnerships

Schedule 1 makes provision in relation to partnerships.

SCHEDULES

SCHEDULE 1

Section 1

PARTNERSHIPS

PART 1

LIMITED LIABILITY PARTNERSHIPS: TREATMENT OF SALARIED MEMBERS

Main provision

1 In Part 9 of ITTOIA 2005 (partnerships) after section 863 (limited liability partnerships) insert—

"863A Limited liability partnerships: salaried members

(1) Subsection (2) applies at any time when conditions A to C in section 863B are met in the case of an individual ("M") who is a member of a limited liability partnership in relation to which section 863(1) applies.

(2) For the purposes of the Income Tax Acts—

(a) M is to be treated as being employed by the limited liability partnership under a contract of service instead of being a member of the partnership, and

(b) accordingly, M's rights and duties as a member of the limited liability partnership are to be treated as rights and duties under that contract of service.

(3) This section needs to be read with section 863C (anti-avoidance).

863B Conditions A to C

(1) Condition A is that there are arrangements in place as a result of which—

(a) at or after the time at which it is being determined whether the condition is met, M is to perform services for the limited liability partnership in M's capacity as a member of the partnership, and

(b) it is reasonable to expect that the amounts payable by the limited liability partnership in respect of M's performance of those services will be wholly, or substantially wholly, disguised salary.

(2) An amount is "disguised salary" if it—

(a) is fixed,

(b) if it is variable, is varied without reference to the overall amount of the profits or losses of the limited liability partnership, or

(c) is not, in practice, affected by the overall amount of those profits or losses.

(3) In subsection (1) "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(4) Condition B is that the mutual rights and duties of the members of the limited liability partnership, and of the partnership and its members, do not give M significant influence over the affairs of the partnership.

(5) Condition C is that, at the time at which it is being determined whether the condition is met ("the relevant time"), M's contribution to the limited liability partnership is less than 25% of the amount given by subsection (6).

(6) That amount is the total amount of the disguised salary which, it is reasonable to expect, will be payable in the relevant tax year by the limited liability partnership in respect of M's performance of services for the partnership in M's capacity as a member of the partnership.

"The relevant tax year" means the tax year in which the relevant time falls.

(7) The question of whether condition C is met is to be determined—

(a) at the beginning of the tax year 2014-15 or, if later, the time at which M becomes a member of the limited liability partnership;

(b) after that, at the beginning of each tax year.

(8) If in a tax year—

(a) there is a change in M's contribution to the limited liability partnership, or

(b) there is otherwise a change of circumstances which might affect the question of whether condition C is met,

the question of whether the condition is met is to be re-determined at the time of the change.

(9) If the change is an increase in M's contribution to the limited liability partnership and condition C would not otherwise be met at the time of the change, condition C is to be treated as met unless it is reasonable to expect that at no subsequent time in the tax year will condition C be met.

(10) If it is determined that condition C is met at any time mentioned in subsection (7)(a) or (b) or (8), the condition is to be treated as met at all subsequent times until the question is required to be re-determined by virtue of subsection (7)(b) or (8).

(11) For the purposes of subsection (5) M's contribution to the limited liability partnership is amount A determined under section 108 of ITA 2007 (meaning of "contribution to the LLP") as at the relevant time (subject to subsection (13)).

(12) That section is to be applied with the omission of—

(a) subsections (5)(b) and (9), and

(b) in subsection (6) the words from "but" to the end.

(13) If there are any excluded days in the relevant tax year (see subsections (14) and (15)), amount A is to be reduced by multiplying it by the following fraction—

$$\frac{365 - E}{365}$$

where E is the number of excluded days in the relevant tax year.

(14) If, at the relevant time, it is reasonable to expect that M will not be a member of the limited liability partnership for the whole of the rest of the relevant tax year, any day in the relevant tax year—

(a) which falls after the day on which the relevant time falls, and

(b) on which it is reasonable to expect that M will not be a member of the limited liability partnership,

is an "excluded" day for the purposes of subsection (13).

(15) If the relevant time is—

(a) the time at which M becomes a member of the limited liability partnership, or

(b) the time of an increase in M's contribution to the limited liability partnership,

any day in the relevant tax year which falls before the day on which the relevant time falls is an "excluded" day for the purposes of subsection (13).

863C Anti-avoidance

(1) In determining whether section 863A(2) applies in the case of an individual who is a member of a limited liability partnership, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that section 863A(2) does not apply in the case of—

(a) the individual, or

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

(2) Subsection (4) applies if—

(a) an individual ("X") personally performs services for a limited liability partnership at a time when X is not a member of the partnership,

(b) X performs the services under arrangements involving a member of the limited liability partnership ("Y") who is not an individual,

(c) the main purpose, or one of the main purposes, of those arrangements is to secure that section 863A(2) does not apply in the case of X or in the case of X and one or more other individuals, and

(d) in relation to X's performance of the services, an amount falling within subsection (3) arises to Y in respect of Y's membership of the limited liability partnership.

(3) An amount falls within this subsection if—

(a) were X performing the services under a contract of service by which X were employed by the limited liability partnership, and

(b) were the amount to arise to X directly from the limited liability partnership,

the amount would be employment income of X in respect of the employment.

(4) If this subsection applies, in relation to X's performance of the services, X is to be treated on the following basis—

(a) X is a member of the limited liability partnership in whose case section 863A(2) applies,

(b) the amount arising to Y arises instead to X directly from the limited liability partnership, and

(c) that amount is employment income of X in respect of the employment under section 863A(2) accordingly.

(5) Section 863A(2) does not apply in the case of a member of a limited liability partnership if, apart from this subsection, it would apply in consequence of arrangements the main purpose, or one of the main purposes, of which is to secure that section 850C does not apply for one or more periods of account in relation to—

(a) the member, or

(b) the member and one or more other members of the limited liability partnership.

(6) In this section "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable)."

2 In Part 17 of CTA 2009 (partnerships) after section 1273 (limited liability partnerships) insert—

"1273A Limited liability partnerships: salaried members

(1) Subsection (2) applies at any time when section 863A(2) of ITTOIA 2005 (limited liability partnerships: salaried members) applies in the case of an individual ("M") who is a member of a limited liability partnership in relation to which section 1273(1) applies.

(2) In relation to the charge to corporation tax on income, for the purposes of the Corporation Tax Acts—

(a) M is to be treated as being employed by the limited liability partnership under a contract of service instead of being a member of the partnership, and

(b) accordingly, M's rights and duties as a member of the limited liability partnership are to be treated as rights and duties under that contract of service."

Supplementary provision: deductions

3 (1) ITTOIA 2005 is amended as follows.

(2) At the end of Chapter 5 of Part 2 (trade profits: rules allowing deductions) insert—

"Limited liability partnerships: salaried members

94AA Deductions in relation to salaried members

(1) This section applies in relation to a limited liability partnership if section 863A(2) (limited liability partnerships: salaried members) applies in the case of a member of the partnership ("M").

(2) In calculating for a period of account under section 849 (calculation of firm's profits and losses) the profits of a trade carried on by the limited liability partnership, a deduction is allowed for expenses paid by the partnership in respect of M's employment under section 863A(2) if no deduction would otherwise be allowed for the payment.

(3) This section is subject to section 33 (capital expenditure), section 34 (expenses not wholly and exclusively for trade etc), section 45 (business entertainment and gifts) and section 53 (social security contributions)."

(3) In Chapter 3 of Part 3 (profits of property businesses: basic rules), in the table in section 272(2) (application of trading income rules), after the entry for section 94A insert—

"section 94AA	deductions in relation to salaried members of limited liability partnerships".

4 (1) CTA 2009 is amended as follows.

(2) At the end of Chapter 5 of Part 3 (trade profits: rules allowing deductions) insert—

"Limited liability partnerships: salaried members

92A Deductions in relation to salaried members

(1) This section applies in relation to a limited liability partnership if section 1273A(2) (limited liability partnerships: salaried members) applies in the case of a member of the partnership ("M").

(2) In calculating for a period of account under section 1259 (calculation of firm's profits and losses) the profits of a trade carried on by the limited liability partnership, a deduction is allowed for expenses paid by the partnership in respect of M's employment under section 1273A(2) if no deduction would otherwise be allowed for the payment.

(3) This section is subject to—

(a) section 53 (capital expenditure),

(b) section 54 (expenses not wholly and exclusively for trade etc),

(c) section 1298 (business entertainment and gifts), and

(d) section 1302 (social security contributions)."

(3) In Chapter 3 of Part 4 (profits of property businesses: basic rules), in the table in section 210(2) (application of trading income rules), after the entry for section 92 insert—

"section 92A	deductions in relation to salaried members of limited liability partnerships".

(4) In Chapter 2 of Part 16 (companies with investment business: management expenses)—

(a) in section 1224(1) (accounting period to which expenses are referable) for "1227" substitute "1227A", and

(b) after section 1227 insert—

"1227A Management expenses in relation to salaried members of limited liability partnerships

(1) This section applies in relation to a company if—

(a) as a member of a limited liability partnership, the company is a company with investment business,

(b) section 1273A(2) (limited liability partnerships: salaried members) applies in the case of a member of the partnership ("M"), and

(c) expenses of management of the company's investment business are paid in respect of M's employment under section 1273A(2) but are not referable to any accounting period under sections 1225 to 1227.

(2) The expenses are to be treated as referable to the accounting period in which they are paid."

Commencement

5 The amendments made by this Part are treated as having come into force on 6 April 2014.

PART 2

PARTNERSHIPS WITH MIXED MEMBERSHIP

Main provision

6 (1) Part 9 of ITTOIA 2005 (partnerships) is amended as follows.

(2) In section 850 (allocation of firm's profits and losses between partners) in subsection (1) for "and 850B" substitute "to 850D".

(3) After section 850B insert—

"850C Excess profit allocation to non-individual partners

(1) Subsections (4) and (5) apply if—

(a) for a period of account ("the relevant period of account")—

(i) the calculation under section 849 in relation to an individual partner ("A") (see subsection (6)) produces a profit for the firm, and

(ii) A's share of that profit determined under section 850 or 850A ("A's profit share") is a profit or is neither a profit nor a loss,

(b) a non-individual partner ("B") (see subsection (6)) has a share of the profit for the firm mentioned in paragraph (a)(i) ("B's profit share") which is a profit (see subsection (7)), and

(c) condition X or Y is met.

(2) Condition X is that it is reasonable to suppose that—

(a) amounts representing A's deferred profit (see subsection (8)) are included in B's profit share, and

(b) in consequence, both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would otherwise have been.

(3) Condition Y is that—

(a) B's profit share exceeds the appropriate notional profit (see subsections (10) to (17)),

(b) A has the power to enjoy B's profit share ("A's power to enjoy") (see subsections (18) to (20)), and

(c) it is reasonable to suppose that—

(i) the whole or any part of B's profit share is attributable to A's power to enjoy, and

(ii) both A's profit share and the relevant tax amount (see subsection (9)) are lower than they would have been in the absence of A's power to enjoy.

(4) A's profit share is increased by so much of the amount of B's profit share as, it is reasonable to suppose, is attributable to—

(a) A's deferred profit, or

(b) A's power to enjoy,

as determined on a just and reasonable basis.

But any increase by virtue of paragraph (b) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount any increase by virtue of paragraph (a).

(5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of the increase in A's profit share under subsection (4).

(This subsection does not apply for the purposes of subsection (7) or section 850D(7).)

(6) A partner in a firm is an "individual partner" if the partner is an individual and "non-individual partner" is to be read accordingly; but "non-individual partner" does not include the firm itself where it is treated as a partner under section 863E.

(7) B's profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(a)(i).

(8) "A's deferred profit" is any remuneration or other benefits or returns the provision of which to A has been deferred (whether pending the meeting of any conditions (including conditions which may never be met) or otherwise).

(9) "The relevant tax amount" is the total amount of tax which, apart from this section, would be chargeable in respect of A and B's income as partners in the firm.

(10) "The appropriate notional profit" is the sum of the appropriate notional return on capital and the appropriate notional consideration for services.

(11) "The appropriate notional return on capital" is—

(a) the return which B would receive for the relevant period of account in respect of B's contribution to the firm were the return to be calculated on the basis mentioned in subsection (12), less

(b) any return actually received for the relevant period of account in respect of B's contribution to the firm which is not included in B's profit share.

(12) The return mentioned in subsection (11)(a) is to be calculated on the basis that it is a return which is—

(a) by reference to the time value of an amount of money equal to B's contribution to the firm, and

(b) at a rate which (in all the circumstances) is a commercial rate of interest.

(13) For the purposes of subsections (11) and (12) B's contribution to the firm is amount A determined under section 108 of ITA 2007 (meaning of "contribution to the LLP").

(14) That section is to be applied—

(a) reading references to the individual as references to B and references to the LLP as references to the firm, and

(b) with the omission of—

(i) subsections (5)(b) and (9), and

(ii) in subsection (6) the words from "but" to the end.

(15) "The appropriate notional consideration for services" is—

(a) the amount which B would receive in consideration for any services provided to the firm by B during the relevant period of account were the consideration to be calculated on the basis mentioned in subsection (16), less

(b) any amount actually received in consideration for any such services which is not included in B's profit share.

(16) The consideration mentioned in subsection (15)(a) is to be calculated on the basis that B is not a partner in the firm and is acting at arm's length from the firm.

(17) Any services, the provision of which involves any partner in the firm in addition to B, are to be ignored for the purposes of subsection (15).

(18) A has the power to enjoy B's profit share if—

(a) A is connected with B by virtue of a provision of section 993 of ITA 2007 (meaning of "connected" persons) other than subsection (4) of that section, or

(b) any of the enjoyment conditions is met in relation to B's profit share or any part of B's profit share.

(19) The enjoyment conditions are—

(a) B's profit share, or the part, is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of A, whether in the form of income or not;

(b) the receipt or accrual of B's profit share, or the part, by or to B operates to increase the value to A of any assets held by, or for the benefit of, A;

(c) A receives or is entitled to receive at any time any benefit provided or to be provided (directly or indirectly) out of B's profit share or the part;

(d) A may become entitled to the beneficial enjoyment of B's profit share, or the part, if one or more powers are exercised or successively exercised by any person;

(e) A is able in any manner to control (directly or indirectly) the application of B's profit share or the part.

(20) In subsection (19) references to A include any person connected with A apart from B.

(21) Subsection (22) applies if—

(a) the increase under subsection (4), or any part of it, is allocated by A to the firm itself under section 863E, and

(b) B makes a payment to the firm representing any income tax for which the firm is liable by virtue of section 863E in respect of the amount of the increase allocated to it.

(22) The payment is not to be taken into account in calculating any income of any person for income tax purposes.

850D Excess profit allocation: cases involving individuals who are not partners

(1) Subsections (4) and (5) apply if—

(a) at a time during a period of account ("the relevant period of account") in respect of a firm, an individual ("A") personally performs services for the firm,

(b) if A had been a partner in the firm throughout the relevant period of account, the calculation under section 849 in relation to A for the relevant period of account would have produced a profit for the firm,

(c) a non-individual partner ("B") in the firm (see subsection (6)) has a share of that profit ("B's profit share") which is a profit (see subsection (7)),

(d) it is reasonable to suppose that A would have been a partner in the firm at a time during the relevant period of account or any earlier period of account but for the provision contained in section 850C (see also subsections (8) to (10)), and

(e) condition X or Y is met.

(2) Condition X is that it is reasonable to suppose that amounts representing A's deferred profit (see subsection (11)) are included in B's profit share.

(3) Condition Y is that—

(a) B's profit share exceeds the appropriate notional profit (see subsection (12)),

(b) A has the power to enjoy B's profit share ("A's power to enjoy") (see subsection (13)), and

(c) it is reasonable to suppose that the whole or any part of B's profit share is attributable to A's power to enjoy.

(4) A is to be treated on the following basis—

(a) A is a partner in the firm throughout the relevant period of account (but not for the purposes of section 863E),

(b) A's share of the firm's profit for the relevant period of account is so much of the amount of B's profit share as, it is reasonable to suppose, is attributable to—

(i) A's deferred profit, or

(ii) A's power to enjoy,

as determined on a just and reasonable basis, and

(c) A's share of the firm's profit is chargeable to income tax under the applicable provisions of the Income Tax Acts for the tax year in which the relevant period of account ends.

But A's share of the firm's profit by virtue of paragraph (b)(ii) is not to exceed the amount of the excess mentioned in subsection (3)(a) after deducting from that amount A's share of the firm's profit (if any) by virtue of paragraph (b)(i).

(5) If B is chargeable to income tax, in applying sections 850 to 850B in relation to B for the relevant period of account, such adjustments are to be made as are just and reasonable to take account of A's share of the firm's profit under subsection (4).

(This subsection does not apply for the purposes of subsection (7) or section 850C(7).)

(6) "Non-individual partner" is to be read in accordance with section 850C(6).

(7) B's profit share is to be determined by applying section 850 and, if relevant, section 850A in relation to B for the relevant period of account (whether or not B is chargeable to income tax) on the assumption that the calculation under section 849 in relation to B produces the profit for the firm mentioned in subsection (1)(b).

(8) The requirement of subsection (1)(d) is to be assumed to be met if, at a time during the relevant period of account, A is a member of a partnership which is associated with the firm.

(9) A partnership is "associated" with the firm if—

(a) it is a member of the firm, or

(b) it is a member of a partnership which is associated with the firm (whether by virtue of paragraph (a) or this paragraph).

(10) In subsections (8) and (9) "partnership" includes a limited liability partnership whether or not section 863(1) applies in relation to it.

(11) "A's deferred profit" is to be read in accordance with section 850C(8).

(12) Section 850C(10) to (17) applies for the purpose of determining "the appropriate notional profit"; and A is to be treated as a partner in the firm for the purposes of section 850C(17).

(13) Section 850C(18) to (20) applies for the purpose of determining if A has the power to enjoy B's profit share.

850E Payment from B to A

(1) Subsection (2) applies in a case in which section 850C(4) or section 850D(4) applies if—

(a) A and B have an agreement in relation to B's profit share,

(b) as a result of the agreement, out of B's profit share B makes a payment (directly or indirectly) to A which does not exceed the amount of the increase under section 850C(4) or the amount of A's share of the firm's profit under section 850D(4), and

(c) the payment is not made under any arrangements the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage for any person.

(2) The payment—

(a) is not to be taken into account in calculating any income of A or B for income tax purposes, and

(b) is not for any purpose of the Income Tax Acts to be regarded as a distribution.

(3) In subsection (1)—

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

"B's profit share" has the same meaning as in section 850C or 850D (as the case may be), and

"tax advantage" has the meaning given by section 1139 of CTA 2010."

7 (1) Chapter 3 of Part 4 of ITA 2007 (trade loss relief: restrictions for certain partners) is amended as follows.

(2) In section 102 (overview of Chapter) after subsection (2) insert—

"(2A) This Chapter also provides for no relief to be given for a loss made by an individual in a trade carried on by the individual as a partner in a firm in certain cases where some or all of the loss is allocated to the individual rather than a person who is not an individual (see section 116A)."

(3) At the end insert—

"Partnerships with mixed membership etc

116A Excess loss allocation to partners who are individuals

(1) Subsection (2) applies if—

(a) in a tax year, an individual ("A") makes a loss in a trade as a partner in a firm, and

(b) A's loss arises, wholly or partly—

(i) directly or indirectly in consequence of, or

(ii) otherwise in connection with,

relevant tax avoidance arrangements.

(2) No relevant loss relief may be given to A for A's loss.

(3) In subsection (1)(b) "relevant tax avoidance arrangements" means arrangements—

(a) to which A is party, and

(b) the main purpose, or one of the main purposes, of which is to secure that losses of a trade are allocated, or otherwise arise, in whole or in part to A, rather than a person who is not an individual, with a view to A obtaining relevant loss relief.

(4) In subsection (3)(b) references to A include references to A and other individuals.

(5) For the purposes of subsection (3)(b) it does not matter if the person who is not an individual is not a partner in the firm or is unknown or does not exist.

(6) In this section—

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

"relevant loss relief" means—

(a) sideways relief,

(b) relief under section 83 (carry-forward trade loss relief),

(c) relief under section 89 (terminal trade loss relief), or

(d) capital gains relief.

(7) This section applies to professions as it applies to trades."

8 (1) Chapter 4 of Part 4 of ITA 2007 (losses from property businesses) is amended as follows.

(2) In section 117 (overview of Chapter) in subsection (3) for "and 127B" substitute "to 127C".

(3) After section 127B insert—

"127C Excess loss allocation to partners who are individuals

(1) Subsection (2) applies if—

(a) in a tax year, an individual ("A") makes a loss in a UK property business or an overseas property business as a partner in a firm, and

(b) A's loss arises, wholly or partly—

(i) directly or indirectly in consequence of, or

(ii) otherwise in connection with,

relevant tax avoidance arrangements.

(2) No relevant loss relief may be given to A for A's loss.

(3) In subsection (1)(b) "relevant tax avoidance arrangements" means arrangements—

(a) to which A is party, and

(b) the main purpose, or one of the main purposes, of which is to secure that losses of a UK property business or an overseas property business are allocated, or otherwise arise, in whole or in part to A, rather than a person who is not an individual, with a view to A obtaining relevant loss relief.

(4) In subsection (3)(b) references to A include references to A and other individuals.

(5) For the purposes of subsection (3)(b) it does not matter if the person who is not an individual is not a partner in the firm or is unknown or does not exist.

(6) In this section—

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

"relevant loss relief" means relief under section 118 (carry-forward property loss relief) or section 120 (property loss relief against general income)."

9 (1) Part 17 of CTA 2009 (partnerships) is amended as follows.

(2) In section 1262 (allocation of firm's profits and losses between partners) in subsection (1) for "and 1264" substitute "to 1264A".

(3) After section 1264 insert—

"1264A Excess profit allocation to non-individual partners etc

(1) Subsection (2) applies in a case in which—

(a) section 850C(4) or 850D(4) of ITTOIA 2005 applies for a period of account ("the relevant period of account"), and

(b) the partner who is "B" for the purposes of section 850C or 850D of that Act (as the case may be) is a company.

(2) In applying sections 1262 to 1264 in relation to the company—

(a) for the accounting period of the firm which coincides with the relevant period of account, or

(b) if no accounting period of the firm coincides with the relevant period of account, for accounting periods of the firm in which the relevant period of account falls,

such adjustments are to be made as are just and reasonable to take account of the increase under section 850C(4) of ITTOIA 2005 or A's share of the firm's profit under section 850D(4) of that Act.

(3) If relevant, sections 850C(21) and (22) and 850E of ITTOIA 2005 apply for corporation tax purposes as they apply for income tax purposes."

Commencement

10 The amendments made by paragraphs 6 and 9 are treated as having come into force on 5 December 2013 and have effect in accordance with paragraphs 11 and 12.

11 (1) Section 850C of ITTOIA 2005 has effect for periods of account beginning on or after 6 April 2014 (and section 850E of ITTOIA 2005 and section 1264A of CTA 2009 have effect accordingly).

(2) Sub-paragraphs (3) and (4) apply in relation to a firm where a period of account ("the straddling period") begins before 6 April 2014 but ends on or after that date.

(3) Assume that the part of the straddling period falling on or after 6 April 2014 is a separate period of account.

(4) If section 850C(4) of ITTOIA 2005 would apply in relation to one or more partners in the firm for the assumed separate period of account, Part 9 of that Act has effect as if that part of the straddling period were a separate period of account.

12 (1) Section 850D of ITTOIA 2005 has effect for periods of account beginning on or after 6 April 2014 (and section 850E of ITTOIA 2005 and section 1264A of CTA 2009 have effect accordingly).

(2) Sub-paragraphs (3) and (4) apply in relation to a firm where a period of account ("the straddling period") begins before 6 April 2014 but ends on or after that date.

(3) Assume that the part of the straddling period falling on or after 6 April 2014 is a separate period of account.

(4) If section 850D(4) of ITTOIA 2005 would apply in relation to one or more individuals for the assumed separate period of account, Part 9 of that Act has effect as if that part of the straddling period were a separate period of account.

13 (1) The amendments made by paragraphs 7 and 8 have effect in relation to losses made in the tax year 2014-15 and subsequent tax years.

(2) Sub-paragraphs (3) and (4) apply for the purposes of section 116A or 127C of ITA 2007 if a loss made by an individual as a partner in a firm arises in a period of account ("the straddling period") which begins before 6 April 2014 but ends on or after that date.

(3) The loss is to be apportioned between the part of the straddling period falling before 6 April 2014 and the part falling on or after that date—

(a) on a time basis according to the respective lengths of those parts of the straddling period, or

(b) if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

(4) Section 116A or 127C of ITA 2007 does not apply in relation to the loss so far as it is apportioned to the part of the straddling period falling before 6 April 2014.

PART 3

ALTERNATIVE INVESTMENT FUND MANAGERS: DEFERRED REMUNERATION ETC

Main provision

14 At the end of Part 9 of ITTOIA 2005 (partnerships) insert—

"Alternative investment fund managers

"863D Election for special provision for alternative investment fund managers to apply

(1) Section 863E applies in relation to an AIFM trade of an AIFM firm if the AIFM firm elects for that section to apply.

(2) An election under this section must be made within 6 months after the end of the first period of account for which the election is to have effect.

(3) An "AIFM firm" is a firm carrying on a trade which involves—
(a) wholly or mainly, managing one or more AIFs, or
(b) wholly or partly, carrying out one or more functions of a person who is managing one or more AIFs—
(i) as that person's delegate, or
(ii) as the sub-delegate of a delegate of that person,
and such a trade is called an "AIFM trade".

(4) In subsection (3) references to managing one or more AIFs are to be read in accordance with regulation 4(2) of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773).

863E Allocation of profit to the AIFM firm

(1) This section applies for a period of account of the AIFM trade if—
(a) the calculation under section 849 in relation to a partner ("P") in the AIFM firm produces a profit, and
(b) P's share of that profit determined under section 850, 850A or 850C would, apart from this section, be a profit consisting (wholly or partly) of relevant restricted profit (see subsections (6) to (9)) chargeable to income tax under Chapter 2 of Part 2.

(2) P may allocate all or a part of the relevant restricted profit ("the allocated profit") to the AIFM firm itself.

(3) If P does so—
(a) the allocated profit is to be excluded from P's share of the AIFM firm's profit mentioned in subsection (1)(b),
(b) the AIFM firm is to be treated in accordance with subsection (4) as if it were itself a person who is a partner in the AIFM firm (and for this purpose, in the case of a limited liability partnership, it is the body corporate which is to be treated as that person), and

(c) all enactments applying generally to income tax are to apply accordingly with any necessary modifications (subject to subsection (5)).

(4) The AIFM firm is treated on the following basis—

(a) the calculation under section 849 in relation to the AIFM firm for the period of account produces the profit mentioned in subsection (1)(a),

(b) the AIFM firm's share of that profit determined under section 850 is the allocated profit (and sections 850A and 850C are to be ignored),

(c) that share is chargeable to tax under Chapter 2 of Part 2 for the tax year in which the period of account ends (with the person liable for the tax charged being the AIFM firm), and

(d) the tax is charged at the additional rate.

(5) The Commissioners for Her Majesty's Revenue and Customs may make regulations modifying any of the following enactments applying to income tax as they apply by virtue of this section in relation to the AIFM firm—

(a) those relating to returns of information and supply of accounts, statements and reports,

(b) those relating to the assessing, collecting and receiving of income tax,

(c) those conferring or regulating a right of appeal, and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(6) P's profit determined under section 850, 850A or 850C is "relevant restricted profit" so far as it represents variable remuneration awarded to P—

(a) as deferred remuneration (including deferred remuneration which, if it vests in P, will vest in the form of instruments), or

(b) as upfront remuneration which vests in P in the form of instruments with a retention period of at least 6 months.

(7) In order for any variable remuneration to count for the purposes of subsection (6) it must be awarded to P in accordance with arrangements which are consistent with the AIFMD remuneration guidelines (see section 863H).

(8) In the case of a firm which is an AIFM firm by virtue of section 863D(3)(b) only, this section applies only in relation to partners who fall within a category of staff which is classified as identified staff.

(9) Terms used in subsections (6) to (8) have the same meaning as in the AIFMD remuneration guidelines.

863F Vesting of remuneration represented by the allocated profit

(1) Subsection (2) applies if all or a part of the variable remuneration represented by the allocated profit vests in P at a time when P is carrying on the AIFM trade (whether as a partner in the AIFM firm or otherwise).

(2) The amount given by subsection (5) is treated as a profit of the relevant tax year (see subsection (7)) made by P in the AIFM trade chargeable to income tax under Chapter 2 of Part 2.

(3) Subsection (4) applies if all or a part of the variable remuneration represented by the allocated profit vests in P at a time when P is no longer carrying on the AIFM trade (whether as a partner in the AIFM firm or otherwise).

(4) If this subsection applies—
  (a) P is treated as receiving, in the relevant tax year (see subsection (7)), income of the amount given by subsection (5),
  (b) income tax is charged under this subsection on that income, and
  (c) P is the person liable for that tax.

(5) The amount to be treated as a profit or as income received by P is—
  (a) the amount of the allocated profit, or the part of it representing the part of the variable remuneration, net of the income tax for which the AIFM firm is liable by virtue of section 863E in respect of the allocated profit or the part of it, plus
  (b) an amount equal to so much of that income tax as has been paid by the AIFM firm when the vesting occurs.

(6) Further—
  (a) P is treated as paying, when the vesting occurs, an amount of income tax equal to the amount given by subsection (5)(b), and
  (b) that amount is accordingly to be taken into account in determining the income tax payable by, or repayable to, P.

(7) "The relevant tax year" is—
  (a) if the variable remuneration or the part of it is deferred remuneration, the tax year in which the vesting occurs, or
  (b) if the variable remuneration or the part of it is upfront remuneration, the tax year for which the allocated profit would have been chargeable to income tax under Chapter 2 of Part 2 as mentioned in section 863E(1)(b).

(8) Terms used in this section have the same meaning as in the AIFMD remuneration guidelines (see section 863H).

(9) Section 850E (payment from B to A after application of section 850C(4) or 850D(4)) is to be ignored for the purposes of this section.

863G Vesting statements

(1) This section applies if all or a part of the variable remuneration represented by the allocated profit vests in P.

(2) If P requests it in writing, the AIFM firm must provide P with a statement showing—
  (a) the amount of the allocated profit, or the part of it representing the part of the variable remuneration, gross of the income tax for which the AIFM firm is liable by virtue of section 863E in respect of the allocated profit or the part of it,

(b) the amount of the income tax for which the AIFM firm is liable, and

(c) so much of that amount as has been paid by the AIFM firm when the vesting occurs.

(3) The duty to comply with a request under this section is enforceable by P.

(4) In the case of a limited liability partnership, the duty is enforceable against the body corporate.

863H The AIFMD remuneration guidelines

In sections 863E to 863G "the AIFMD remuneration guidelines" means the "Guidelines on Sound Remuneration Policies under the AIFMD" issued by the European Securities and Markets Authority on 3 July 2013 (ESMA/2013/232)."

Supplementary provision

15 In Part 2 of TMA 1970 (returns of income and gains) in section 12AB (partnership returns to include partnership statement) after subsection (1) insert—

"(1A) In the case of a partnership which has made an election under section 863D of ITTOIA 2005 (whether or not the election has been revoked), a notice under section 12AA(2) or (3) may require the partnership statement to include such information as is specified in the notice for purposes connected with the operation of sections 863D to 863G of ITTOIA 2005."

16 In Part 3 of TCGA 1992 (which makes special provision about partnerships etc) after section 59A insert—

"59B Alternative investment fund managers (1)

(1) Subsection (2) applies if—

(a) under section 863E of ITTOIA 2005, a partner ("P") in a partnership allocates to the partnership an amount of profit ("the allocated profit") representing variable remuneration which, if it vests in P, will vest in the form of instruments,

(b) there is a disposal to P of instruments which are partnership assets of the partnership for the purposes of section 59, and

(c) by virtue of that disposal the variable remuneration vests in P.

(2) Both the persons making the disposal and P are to be treated as if the instruments were acquired by P from those persons for a consideration of an amount equal to the allocated profit net of the income tax for which the partnership is liable by virtue of section 863E of ITTOIA 2005 in respect of the allocated profit.

(3) Terms used in this section which are also used in section 863E or 863F of ITTOIA 2005 have the same meaning as in that section.

59C Alternative investment managers (2)

(1) Subsection (2) applies if—

(a) under section 863E of ITTOIA 2005, a partner ("P") in a partnership allocates to the partnership an amount of profit ("the allocated profit") representing variable remuneration which, if it vests in P, will vest in the form of instruments,

(b) there is a disposal to P of instruments by a company which is a partner in the partnership,

(c) by virtue of that disposal the variable remuneration vests in P, and

(d) the company would, as a partner in the partnership, have been charged to tax on the allocated profit but for adjustments made in the case of the company under section 1264A(2) of CTA 2009 or section 850C(5) of ITTOIA 2005.

(2) Both the company and P are to be treated as if the instruments were acquired by P from the company for a consideration of an amount equal to the allocated profit net of the income tax for which the partnership is liable by virtue of section 863E of ITTOIA 2005 in respect of the allocated profit.

(3) Terms used in this section which are also used in section 863E or 863F of ITTOIA 2005 have the same meaning as in that section."

17 In Part 4 of FA 2004 (pensions) in section 189 (relevant UK individual) after subsection (2A) insert—

"(2B) The income covered by subsection (2)(b) includes—

(a) an amount treated as a profit under section 863F(2) of ITTOIA 2005, and

(b) income treated as received under section 863F(4) of that Act."

18 In section 23 of ITA 2007 (calculation of income tax liability) at the end of Step 4 insert—

"See also section 863E of ITTOIA 2005 which provides for certain partnership profits to be charged at the additional rate."

Power to apply amendments to other types of firms carrying on regulated activities

19 (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend any Act—

(a) so as to apply (with or without modifications), in relation to regulated firms of a specified description, the provision made by the amendments made by this Part, or

(b) so as to make, in relation to regulated firms of a specified description, provision corresponding to the provision made by the amendments made by this Part.

(2) "Regulated firm" means a firm carrying on a regulated activity within the meaning of the Financial Services and Markets Act 2000 (see section 22 of that Act); and "firm" has the same meaning as in ITTOIA 2005 (see section 847 of that Act) (and includes a limited liability partnership in relation to which section 863(1) of that Act applies).

(3) Regulations under this paragraph may—

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

(b) make incidental, consequential, supplementary and transitional provision and savings.

Commencement

20 The amendments made by this Part have effect for the tax year 2014-15 and subsequent tax years.

PART 4

DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

Income tax

21 Part 13 of ITA 2007 (tax avoidance) is amended as follows.

22 (1) In Chapter 5A (transfers of income streams) omit section 809AZF (partnership shares).

(2) The amendment made by this paragraph has effect for cases where the transfer of a right to relevant receipts occurs on or after 6 April 2014.

23 (1) After Chapter 5A insert—

"CHAPTER 5AA

DISPOSALS OF INCOME STREAMS THROUGH PARTNERSHIPS

809AAZA Application of Chapter

(1) This Chapter applies (subject to subsection (2)) if directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a person within the charge to income tax ("the transferor") and another person ("the transferee")—

(a) there is, or is in substance, a disposal of a right to relevant receipts by the transferor to the transferee,

(b) the disposal is effected (wholly or partly) by or through a partnership ("the relevant partnership"),

(c) at any time—

(i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.

(2) This Chapter does not apply if—

(a) the transferor is the spouse or civil partner of the transferee and they are living together, or

(b) the transferor is a brother, sister, ancestor or lineal descendent of the transferee.

(3) In subsection (1)(a) the reference to a disposal of a right to relevant receipts includes anything constituting a disposal of such a right for the purposes of TCGA 1992.

(4) For the purposes of subsection (1)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).

(5) For the purposes of subsection (1)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.

(6) For the purposes of subsection (1)(c) a partnership is "associated" with the relevant partnership if—

(a) it is a member of the relevant partnership, or

(b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).

(7) In subsections (1)(c) and (5) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.

(8) In this Chapter—

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

"partnership" includes a limited liability partnership whether or not section 863(1) of ITTOIA 2005 applies in relation to it,

"relevant receipts" means any income—

(a) which (but for the disposal) would be charged to income tax as income of the transferor (whether directly or as a member of a partnership), or

(b) which (but for the disposal) would be brought into account as income in calculating profits of the transferor (whether directly or as a member of a partnership) for income tax purposes, and

"tax advantage" means a tax advantage, as defined in section 1139 of CTA 2010, in relation to income tax or the charge to corporation tax on income.

809AAZB Relevant amount to be treated as income

(1) The relevant amount is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which the relevant receipts—

(a) would have been chargeable to income tax as income of the transferor, or

(b) would have been brought into account as income in calculating profits of the transferor for income tax purposes,

but for the disposal.

(2) In subsection (1) "the relevant amount" is to be read in accordance with section 809AZB(2) and section 809AZB(3) to (6) applies for the

purpose of determining when income under subsection (1) is treated as arising.

(3) For this purpose, in section 809AZB(2) to (6) references to the transfer of the right are to be read as references to the disposal of the right.

(4) If, apart from this subsection and section 809DZB(3)—

(a) both this Chapter and Chapter 5D would apply in relation to the disposal, and

(b) Chapter 5D would give a greater amount of income of the transferor chargeable to income tax,

this Chapter is not to apply in relation to the disposal."

(2) The amendment made by this paragraph has effect for cases where the arrangements mentioned in section 809AAZA(1) of ITA 2007 are made on or after 6 April 2014.

24 (1) After Chapter 5C insert—

"**CHAPTER 5D**

DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

809DZA Application of Chapter

(1) This Chapter applies if conditions A and B are met.

(2) Condition A is (subject to subsection (3)) that directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a person within the charge to income tax ("the transferor") and another person ("the transferee")—

(a) there is, or is in substance, a disposal of an asset ("the transferred asset") by the transferor to the transferee,

(b) the disposal is effected (wholly or partly) by or through a partnership ("the relevant partnership"),

(c) at any time—

(i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.

(3) Condition A is not met if—

(a) the transferor is the spouse or civil partner of the transferee and they are living together, or

(b) the transferor is a brother, sister, ancestor or lineal descendent of the transferee.

(4) In subsection (2)(a) the reference to a disposal of an asset includes anything constituting a disposal of an asset for the purposes of TCGA 1992.

(5) For the purposes of subsection (2)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).

(6) For the purposes of subsection (2)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.

(7) For the purposes of subsection (2)(c) a partnership is "associated" with the relevant partnership if—

(a) it is a member of the relevant partnership, or

(b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).

(8) In subsections (2)(c) and (6) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.

(9) Condition B is that it is reasonable to assume that, had the transferred asset instead been disposed of directly by the transferor to the transferee, the relevant amount (or any part of it)—

(a) would have been chargeable to income tax as income of the transferor, or

(b) would have been brought into account as income in calculating profits of the transferor for income tax purposes.

(10) In this Chapter "the relevant amount" means the amount of the consideration received by the transferor for the disposal.

(11) If the transferor receives—

(a) no consideration for the disposal, or

(b) consideration which is substantially less than the market value of the transferred asset,

assume for the purposes of subsection (10) that the transferor receives consideration of an amount equal to the market value of the transferred asset.

(12) In subsection (11) references to the market value of the transferred asset are to that value at the time of the disposal.

(13) In this Chapter—

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

"partnership" includes a limited liability partnership whether or not section 863(1) of ITTOIA 2005 applies in relation to it, and

"tax advantage" means a tax advantage, as defined in section 1139 of CTA 2010, in relation to income tax or the charge to corporation tax on income.

809DZB Relevant amount to be treated as income

(1) The relevant amount is to be treated as income of the transferor chargeable to income tax in the same way and to the same extent as that in which it—

(a) would have been chargeable to income tax as income of the transferor, or

(b) would have been brought into account as income in calculating profits of the transferor for income tax purposes,

as mentioned in section 809DZA(9).

(2) Section 809BZB(3) to (6) applies for the purpose of determining when income under subsection (1) is treated as arising (reading references to the transfer of the right as references to the disposal of the transferred asset).

(3) If, apart from this subsection and section 809AAZB(4)—

(a) both this Chapter and Chapter 5AA would apply in relation to the disposal, and

(b) Chapter 5AA would give the same amount, or a greater amount, of income of the transferor chargeable to income tax,

this Chapter is not to apply in relation to the disposal."

(2) The amendment made by this paragraph has effect for cases where the arrangements mentioned in section 809DZA(2) of ITA 2007 are made on or after 6 April 2014.

Corporation tax

25 Part 16 of CTA 2010 (factoring of income etc) is amended as follows.

26 (1) In Chapter 1 (transfers of income streams) omit section 756 (partnership shares).

(2) The amendment made by this paragraph has effect for cases where the transfer of a right to relevant receipts occurs on or after 1 April 2014.

27 (1) After Chapter 1 insert—

"**CHAPTER 1A**

DISPOSALS OF INCOME STREAMS THROUGH PARTNERSHIPS

757A Application of Chapter

(1) This Chapter applies if directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a company within the charge to corporation tax ("the transferor") and another person ("the transferee")—

(a) there is, or is in substance, a disposal of a right to relevant receipts by the transferor to the transferee,

(b) the disposal is effected (wholly or partly) by or through a partnership ("the relevant partnership"),

(c) at any time—

(i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.

(2) In subsection (1)(a) the reference to a disposal of a right to relevant receipts includes anything constituting a disposal of such a right for the purposes of TCGA 1992.

(3) For the purposes of subsection (1)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).

(4) For the purposes of subsection (1)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.

(5) For the purposes of subsection (1)(c) a partnership is "associated" with the relevant partnership if—

(a) it is a member of the relevant partnership, or

(b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).

(6) In subsections (1)(c) and (4) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.

(7) In this Chapter—

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

"partnership" includes a limited liability partnership whether or not section 1273(1) of CTA 2009 applies in relation to it,

"relevant receipts" means any income—

(a) which (but for the disposal) would be charged to corporation tax as income of the transferor (whether directly or as a member of a partnership), or

(b) which (but for the disposal) would be brought into account as income in calculating profits of the transferor (whether directly or as a member of a partnership) for corporation tax purposes, and

"tax advantage" means a tax advantage, as defined in section 1139, in relation to income tax or the charge to corporation tax on income.

757B Relevant amount to be treated as income

(1) The relevant amount is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which the relevant receipts—

(a) would have been chargeable to corporation tax as income of the transferor, or

(b) would have been brought into account as income in calculating profits of the transferor for corporation tax purposes,

but for the disposal.

(2) In subsection (1) "the relevant amount" is to be read in accordance with section 753(2) and section 753(3) and (4) applies for the purpose of determining when income under subsection (1) is treated as arising.

(3) For this purpose, in section 753(2) to (4) references to the transfer of the right are to be read as references to the disposal of the right.

(4) If, apart from this subsection and section 779B(3)—

(a) both this Chapter and Chapter 4 would apply in relation to the disposal, and

(b) Chapter 4 would give a greater amount of income of the transferor chargeable to corporation tax,

this Chapter is not to apply in relation to the disposal."

(2) The amendment made by this paragraph has effect for cases where the arrangements mentioned in section 757A(1) of CTA 2010 are made on or after 1 April 2014.

28 (1) After Chapter 3 insert—

"**CHAPTER 4**

DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

779A Application of Chapter

(1) This Chapter applies if conditions A and B are met.

(2) Condition A is that directly or indirectly in consequence of, or otherwise in connection with, arrangements involving a company within the charge to corporation tax ("the transferor") and another person ("the transferee")—

(a) there is, or is in substance, a disposal of an asset ("the transferred asset") by the transferor to the transferee,

(b) the disposal is effected (wholly or partly) by or through a partnership ("the relevant partnership"),

(c) at any time—

(i) the transferor is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(ii) the transferee is a member of the relevant partnership or of a partnership associated with the relevant partnership, and

(d) the main purpose, or one of the main purposes, of one or more steps taken in effecting the disposal is the obtaining of a tax advantage for any person.

(3) In subsection (2)(a) the reference to a disposal of an asset includes anything constituting a disposal of an asset for the purposes of TCGA 1992.

(4) For the purposes of subsection (2)(b) the disposal might, in particular, be effected by an acquisition or disposal of, or an increase or decrease in, an interest in the relevant partnership (including a share of the profits or assets of the relevant partnership or an interest in such a share).

(5) For the purposes of subsection (2)(c) it does not matter if the transferor and the transferee are not members of a partnership as mentioned at the same time.

(6) For the purposes of subsection (2)(c) a partnership is "associated" with the relevant partnership if—

(a) it is a member of the relevant partnership, or

(b) it is a member of a partnership which is associated with the relevant partnership (whether by virtue of paragraph (a) or this paragraph).

(7) In subsections (2)(c) and (5) references to the transferor include a person connected with the transferor and references to the transferee include a person connected with the transferee.

(8) Condition B is that it is reasonable to assume that, had the transferred asset instead been disposed of directly by the transferor to the transferee, the relevant amount (or any part of it)—

(a) would have been chargeable to corporation tax as income of the transferor, or

(b) would have been brought into account as income in calculating profits of the transferor for corporation tax purposes.

(9) In this Chapter "the relevant amount" means the amount of the consideration received by the transferor for the disposal.

(10) If the transferor receives—

(a) no consideration for the disposal, or

(b) consideration which is substantially less than the market value of the transferred asset,

assume for the purposes of subsection (9) that the transferor receives consideration of an amount equal to the market value of the transferred asset.

(11) In subsection (10) references to the market value of the transferred asset are to that value at the time of the disposal.

(12) In this Chapter—

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

"partnership" includes a limited liability partnership whether or not section 1273(1) of CTA 2009 applies in relation to it, and

"tax advantage" means a tax advantage, as defined in section 1139, in relation to income tax or the charge to corporation tax on income.

779B Relevant amount to be treated as income

(1) The relevant amount is to be treated as income of the transferor chargeable to corporation tax in the same way and to the same extent as that in which it—

(a) would have been chargeable to corporation tax as income of the transferor, or

(b) would have been brought into account as income in calculating profits of the transferor for corporation tax purposes,

as mentioned in section 779A(8).

(2) Section 753(3) and (4) applies for the purpose of determining when income under subsection (1) is treated as arising (reading references to the transfer of the right as references to the disposal of the transferred asset).

(3) If, apart from this subsection and section 757B(4)—

(a) both this Chapter and Chapter 1A would apply in relation to the disposal, and

(b) Chapter 1A would give the same amount, or a greater amount, of income of the transferor chargeable to corporation tax,

this Chapter is not to apply in relation to the disposal."

(2) The amendment made by this paragraph has effect for cases where the arrangements mentioned in section 779A(2) of CTA 2010 are made on or after 1 April 2014.

EXPLANATORY NOTE

PARTNERSHIPS (PART 1): LIMITED LIABILITY PARTNERSHIPS – TREATMENT OF SALARIED MEMBERS

SUMMARY

1. Clause [a] and Schedule [b] remove the presumption of self-employment for some members of limited liability partnerships (LLPs) to tackle the disguising of employment relationships through LLPs.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new sections 863A to 863C into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 863A provides that the consequences in subsection (2) apply at any time when conditions A to C are met in the case of an individual ("M") who is a member of an LLP to which section 863(1) of ITTOIA 2005 applies.

4. Subsection (2) of new section 863A provides the consequences if the circumstances and conditions in subsection (1) are met. It explains that M is to be treated as being employed by the LLP under a contract of service, instead of being a partner, and that, accordingly, M's rights and duties as a member of the LLP are to be treated as arising under that contract of service.

5. Subsection (1) of new section 863B details condition A which is that, there are arrangements in place under which M is to perform services for the LLP in M's capacity as a member of the LLP and it is reasonable to expect that the amounts payable by the LLP for those services will be wholly, or substantially wholly, in the form of disguised salary.

6. Subsection (2) of new section 863B defines the term "disguised salary".

7. Subsection (3) of new section 863B defines "arrangements" for the purpose of subsection (1).

8. Subsection (4) of new section 863B details condition B which is that, M does not have significant influence over the affairs of the LLP.

9. Subsection (5) of new section 863B details condition C which is that, at the relevant time, M's contribution to the LLP is less than 25% of the amount specified by subsection (6).

10. Subsection (6) of new section 863B details the amount that is to be taken into account for the purpose of subsection (5). This is the total amount of disguised salary which,

it is reasonable to expect, will be payable in the relevant tax year by the LLP in respect of M's performance of services for the LLP in M's capacity as a member of the LLP. It also explains the meaning of "The relevant tax year".

11. Subsections (7) and (8) of new section 863B detail when the question of whether condition C is met is to be determined or re-determined.

12. Subsection (9) of new section 863B provides that an increase in M's contribution to the LLP which would result in condition C not being met at the time of the change, is not be so treated unless it is reasonable to expect that condition C will not be met at a later time in the tax year.

13. Subsection (10) of new section 863B provides that where condition C is met, it is treated as met until the question is re-determined either, at the start of the next tax year, or because there is a change in M's contribution to the LLP or another change of circumstances which might affect the question as to whether condition C is met.

14. Subsections (11) and (12) of new section 863B explain what is meant by the term "contribution to the LLP" and how this should be calculated.

15. Subsections (13) to (15) of new section 863B provide for the amount of the contribution to be treated as reduced in certain circumstances.

16. New section 863C contains anti-avoidance rules.

17. Subsection (1) of new section 863C provides that no regard is to be had to any arrangements with a main purpose of securing that new section 863A(2) of ITTOIA 2005 does not apply to an individual member of the LLP.

18. Subsections (2) and (3) of new section 863C detail the circumstances in which the consequences in subsection (4) apply. These are where an individual ("X"), who is not a member of the LLP, performs services under arrangements involving a non-individual member of the LLP ("Y"), a main purpose of the arrangements is to secure that new section 863A(2) of ITTOIA 2005 does not apply to that individual, alone or with other individuals, and an amount arises to Y relating to X's services which would have been employment income of X if X was treated as employed by the LLP.

19. Subsection (4) of new section 863C provides the consequences if the circumstances in subsections (2) and (3) arise. X is treated as a member of the LLP in whose case section 863A(2) of ITTOIA 2005 applies and the amount arising to Y relating to X's services is treated as employment income of X.

20. Subsection (5) of new section 863C prevents new section 863A(2) of ITTOIA 2005 from applying in the case of a member if it would apply because of arrangements with a main purpose of securing that new section 850C of ITTOIA 2005 (excess profit allocation to non-individual partners) does not apply in relation to that member, alone or with others.

21. Subsection (6) of new section 863C defines "arrangements" for the purposes of new section 863C.

22. Paragraph 2 inserts new section 1273A into Part 17 of the Corporation Tax Act 2009 (CTA 2009).

23. New section 1273A applies at any time when new section 863A(2) of ITTOIA 2005 applies and makes corresponding provision for corporation tax purposes.

24. Paragraph 3(2) inserts new section 94AA into Chapter 5 of Part 2 of ITTOIA 2005.

25. Subsections (1) to (3) of new section 94AA apply where a member ("M") of an LLP is treated as being employed under new section 863A(2) of ITTOIA 2005 and provide for a deduction for expenses paid by the LLP in respect of M's employment under new section 863A(2) if no deduction would otherwise be allowed for the payment. The availability of this deduction is subject to the existing prohibitions applying to Part 2 of ITTOIA 2005 and those listed in subsection (3).

26. Paragraph 3(3) applies new section 94AA of ITTOIA 2005 to property businesses.

27. Paragraph 4(2) inserts new section 92A into Chapter 5 of Part 3 of CTA 2009.

28. Subsections (1) to (3) of new section 92A apply where new section 1273A(2) of CTA 2009 applies in the case of a member ("M") of the LLP and provide for a deduction for expenses paid by the LLP in respect of M's employment under new section 1273A(2) if no deduction would otherwise be allowed for the payment. The availability of this deduction is subject to the existing prohibitions applying to Part 3 of CTA 2009 and those listed in subsection (3).

29. Paragraph 4(3) applies new section 92A of CTA 2009 to property businesses.

30. Paragraph 4(4) amends Chapter 2 of Part 16 of CTA 2009 and inserts new section 1227A.

31. Subsections (1) and (2) of new section 1227A detail the circumstances in which the section applies and the consequences of it applying. This section provides a deduction for management expenses purposes where a company with investment business is a member of an LLP, expenses of management of the company's investment business are paid in respect of the employment of a member of the LLP to whom new section 1273A(2) of CTA 2009 applies and the expenses paid would not otherwise be referable to any accounting period. The availability of a deduction is subject to the existing prohibitions that apply to deductions for management expenses.

32. Paragraph 5 provides for commencement.

BACKGROUND NOTE

33. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the gov.uk website on 20 May 2013 and the consultation closed on 9 August 2013.

34. This element of the partnerships review measure is discussed in the consultation document under the heading: *Disguised Employment.*

35. If you have any questions about this change, or comments on the legislation, please contact James Ewington on 03000 553788 (email: partnership.review@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PARTNERSHIPS (PART 2): PARTNERSHIPS WITH MIXED MEMBERSHIPS

SUMMARY

1. Clause [a] and Schedule [b] counter tax advantages arising to individuals in partnership with persons who are not individuals (mixed membership partnerships) by way of excess allocations of profits or losses to certain members.

DETAILS OF THE SCHEDULE

2. Paragraph (6)(3) inserts new sections 850C to 850E into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 850C provides that the consequences in subsections (4) and (5) apply in the circumstances where an individual ("A") is a partner in a firm that has a profit for a relevant period of account and a non-individual partner ("B") has a profit share and either of conditions X or Y is met.

4. Subsections (2) and (3) of new section 850C detail conditions X and Y. Condition X relates to where A's profit is deferred. Condition Y relates to where A has the power to enjoy B's profit share.

5. Subsection (4) of new section 850C provides the consequences for A if the circumstances and conditions in subsection (1) are met. It explains how A's profit share is to be increased by the amount of B's profit share that can reasonably be supposed to be attributable to A's deferred profit or A's power to enjoy B's profits. The increase in the case of A's power to enjoy B's profits is not to be more than the amount by which B's profit share exceeds B's appropriate notional profit, less any amount that is attributable to A's deferred profit. B's appropriate notional profit is calculated by reference to B's appropriate notional return on capital (as defined in subsection (11)) and appropriate notional consideration for services (as defined in subsection (15)).

6. Subsection (5) of new section 850C provides the consequences for B if the circumstances and conditions in subsection (1) are met and B is subject to income tax. In determining B's profit for a period of account adjustments are to be made to reflect the increase in A's profit share on a just and reasonable basis.

7. Subsection (6) of new section 850C defines an "individual partner" and "non-individual partner". A "non-individual" would include, for example, a company or an individual acting as a trustee.

8. Subsection (7) of new section 850C specifies that B's profit share is to be determined by reference to the income tax rules for calculating a partner's profit share. This is the case whether B is chargeable to income tax or corporation tax.

9. Subsection (8) of new section 850C defines the term "A's deferred profit" used in condition X.

10. Subsection (9) of new section 850C defines the term "the relevant tax amount" used in conditions X and Y.

11. Subsection (10) of new section 850C defines the term "the appropriate notional profit" used in condition Y as the sum of the appropriate notional return on capital and the appropriate notional consideration for services.

12. Subsections (11) and (12) of new section 850C define the term "the appropriate notional return on capital" used in subsection 10 and specify how it is to be calculated by reference to B's contribution to the firm.

13. Subsections (13) and (14) of new section 850C specify how the amount of B's contribution to the firm for the purposes of subsections (11) and (12) is to be determined.

14. Subsections (15) to (17) of new section 850C define the term "the appropriate notional consideration for services" used in subsection 10 and specify how it is to be calculated.

15. Subsection (18) of new section 850C) details the circumstances in which A has the power to enjoy B's profit share. This is the case if A is a connected person in relation to B, other than being connected by reason of being partners in the partnership, or if any of the enjoyment conditions specified in subsection (19) are met in relation to all or part of B's profit share.

16. Subsection (19) of new section 850C details the enjoyment conditions.

17. Subsection (22) of new section 850C applies where all or part of the increase in A's profit share is allocated by A to the firm under new section 863E of ITTOIA 2005, which modifies the rules for the taxation of partnerships that manage Alternative Investment Funds, and B makes a payment representing income tax to the firm. The payment is disregarded in calculating any income of any person for income tax purposes.

18. Subsection (1) of new section 850D provides that the consequences in subsections (4) and (5) apply in the circumstances where a non-individual partner ("B") has a profit share for a relevant period of account, and individual ("A") personally performs services for the firm, it is reasonable to suppose that A would have been a partner in the firm but for the rules in new section 850C and either of conditions X or Y is met.

19. Subsections (2) and (3) of new section 850D set out conditions X and Y. Condition X relates to amounts representing A's deferred profit in B's profit share. Condition Y relates to where A has the power to enjoy B's profit share.

20. Subsection (4) of new section 850D provides the consequences for A if the circumstances and conditions in subsection (1) are met. A is treated as a partner in the firm for the relevant period of account, except for the purposes of new section 863E of ITTOIA 2005, and as having a share of the firm's profit for the relevant period of account which is chargeable to income tax. A's share of the profit is the amount of B's profit that can reasonably be supposed to be attributable to A's deferred profit or A's power to enjoy B's profits. A's share of the profits is not to be more than the amount by which B's profit share exceeds B's appropriate notional profit, less any amount that is attributable to A's deferred profit. B's appropriate notional profit is determined in the same way as in new section 850C of ITTOIA 2005.

21. Subsection (5) of new section 850D provides the consequences for B if the circumstances and conditions in subsection (1) are met and B is subject to income tax. In determining B's profit share for a period of account adjustments are to be made to reflect A's share of the firm's profit on a just and reasonable basis.

22. Subsection (7) of new section 850D specifies that B's profit share is to be determined by reference to the income tax rules for calculating a partner's profit share. This is the case whether B is chargeable to income tax or corporation tax.

23. Subsection (8) of new section 850D provides an automatic assumption in relation to a member of a partnership which is associated with the firm. The assumption is that it is reasonable to suppose that the member would have been a partner in the firm at a time during the relevant period of account, or an earlier period of account, but for the provision contained in new section 850C of ITTOIA 2005.

24. Subsection (9) of new section 850D provides the circumstances in which a partnership is "associated" with the firm.

25. Subsection (1) of new section 850E applies subsection (2) if new section 850C(4) of ITTOIA 2005 applies to increase A's profit share, or new section 850D(4) of ITTOIA 2005 applies to treat A as having a share of the firm's profit, and as a result of an agreement in relation to B's profit share, B makes payment to A which does not exceed the amount of the increase of A's profit share or the amount treated as A's share of the firm's profit. This is subject to the payment not being made with a main purpose of obtaining a tax advantage.

26. Subsection (2) of new section 850E provides that a payment is not to be income of A or B, or a distribution, for income tax purposes.

27. Subsection (3) of new section 850E provides definitions relevant to subsection (1).

28. Paragraphs 7(1) and 7(2) amend the overview of Chapter 3 of Part 4 of Income Tax Act 2007 (ITA 2007).

29. Paragraph 7(3) inserts new section 116A into Chapter 3 of Part 4 of ITA 2007.

30. Subsections (1) to (5) of new section 116A provide that no relevant loss relief is to be given to an individual for a loss made in a trade or profession as a partner where the individual is party to arrangements with a main purpose of ensuring that losses are allocated, or otherwise arise, to the individual, or individuals, rather than a non-individual, with a view to the individual obtaining relevant loss relief. For the purpose of this section it does not matter if the entity who is the non-individual is yet to be formed or participate in the partnership.

31. Subsection (6) of new section 116A defines "arrangements" and "relevant loss relief" for the purposes of this section.

32. Paragraphs 8(1) and 8(2) amend the overview in Chapter 4 of Part 4 of ITA 2007.

33. Paragraph 8(3) inserts new section 127C into Chapter 4 of Part 4 of ITA 2007.

34. Subsections (1) to (5) of new section 127C provide that no relevant loss relief is to be given to an individual for a loss made in a property business as a partner where the individual is party to arrangements with a main purpose of ensuring that losses are allocated, or otherwise arise, to the individual, or individuals, rather than a non-individual, with a view to the individual obtaining relevant loss relief. For the purpose of this section it does not matter if the entity who is the non-individual is yet to be formed or participate in the partnership.

35. Subsection (6) of new section 127C defines "arrangements" and "relevant loss relief" for the purposes of this section.

36. Paragraphs 9(1) and 9(2) amend Part 17 of the Corporation Tax Act 2009 (CTA 2009).

37. Paragraph 9(3) inserts new section 1264A into Part 17 of CTA 2009.

38. Subsections (1) and (2) of new section 1264A provide for the situation where the income tax provisions in new sections 850C(4) or 850D(4) of ITTOIA 2005 apply to increase individual A's profit share, or to treat A as having a share of the firm's profit, and a company is non-individual B in relation to A. In determining the company's profits from the firm for an accounting period adjustments are to be made to reflect the increase in A's profit share, or the amount of profit treated as A's share of the firm's profit, on a just and reasonable basis.

39. Subsection (3) of new section 1264A makes corresponding provision for corporation tax in respect of sections 850C(21) and (22) and section 850E of ITTOIA 2005.

40. Paragraphs 10 to 13 provide commencement rules. The changes will take effect from 6 April 2014 with the exception of anti-avoidance rules concerning tax-motivated profit allocations. These rules come into force on 5 December 2013 in order to protect against risks to tax revenue.

BACKGROUND NOTE

41. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the gov.uk website on 20 May 2013 and the consultation closed on 9 August 2013.

42. This element of the partnerships review measure is discussed in the consultation document under the headings: *Partnerships with mixed membership – profits and Partnerships with mixed membership - losses.*

43. If you have any questions about this change, or comments on the legislation, please contact James Ewington on 03000 553788 (email: partnership.review@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PARTNERSHIPS (PART 3): ALTERNATIVE INVESTMENT FUND MANAGERS: DEFERRED REMUNERATION ETC

SUMMARY

1. Clause [a] and Schedule [b] introduces a mechanism for members of alternative investment fund managers (AIFM) partnerships (including their delegates) to allocate certain 'restricted' profits to the partnership. These are profits that those members cannot immediately access because of requirements under the Alternative Investment Fund Managers Directive (AIFMD) (2011/61/EU) to defer remuneration of 'key staff'.

2. The legislation imposes a charge to tax on these profits at the additional rate of tax (45 per cent) to be paid by the AIFM partnership. It also sets out the capital gains treatment where the partner's remuneration is in the form of instruments in the fund under management.

DETAILS OF THE SCHEDULE

3. Paragraph 14 inserts new sections 863D to 863H into Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

4. New section 863D(1) states that section 863E will apply to an AIFM trade of an AIFM firm.

5. Subsection (2) of new section 863D states that the election must be made within 6 months after the end of the first period of account for which the election is to have effect.

6. Subsection (3) contains definitions. An AIFM firm is one which carries on a trade which consists either wholly or mainly of managing one or more alternative investment funds itself, or wholly or partly of doing so as the delegate or sub-delegate of the manager. This trade is the AIFM trade.

7. Subsection (4) links terms used in subsection (3) with regulation 4(2) of AIFM Regulations 2013 (S.I. 2013/1773).

8. New section 863E sets out a mechanism for collection of income tax if the election is made.

9. Subsection 1 of new section 863E applies to the 'relevant restricted profit' of a partner in an AIFM firm. This includes profit which has been reallocated to the partner under the excess profit allocation rules in the new section 850C in Part 2 (subsection (1)(b) of new section 863E).

10. Subsection (2) of new section 863E allows the partner to allocate all or part of the profit of the AIFM trade earned by that partner to the AIFM firm.

11. Subsection (3)(a) of new section 863E excludes the allocated profit from the partner's taxable profit in the period of account.

12. Subsection (3)(b) of new section 863E treats the AIFM firm as if it was a partner in itself.

13. Subsections (4)(a) and (b) of new section 863E stipulate that the firm is subject to income tax on the allocated profit. The profit is treated as chargeable under Chapter 2 of Part 2 ITTOIA for the tax year in which the firm's relevant period of account ends (subsection (4)(c) of new section 863E). The rate of tax payable is the additional rate (subsection (4)(d) of new section 863E).

14. Subsection (5) of new section 863E provides a power for HMRC to make regulations to modify administrative provisions.

15. Subsection (6) of new section 863E defines 'relevant restricted profit'. This definition relies on the concepts derived from the AIFMD remuneration guidelines, which is defined in new section 863H, and which are introduced into these provisions by subsection (9) of new section 863E.

16. The effect of these guidelines and the AIFMD is broadly that certain AIFM firms must defer 40-60 per cent of the variable remuneration of key staff by up to three to five years and pay at least 50 per cent of the variable remuneration in units or shares of the funds they manage, or equivalent ownership interests, rather than cash.

17. 'Relevant restricted profit' includes two categories of variable remuneration. The first category is deferred consideration including remuneration in cash or instruments. The second category is upfront remuneration (i.e. remuneration which is not deferred) which vests in the partner in the form of instruments with a retention period of at least six months.

18. Subsection (7) of new section 863E limits the application of the mechanism to remuneration which is awarded to a partner under arrangements that are consistent with the AIFMD remuneration guidelines.

19. Subsection (8) of new section 863E limits the application of the mechanism in the case of AIFM firms which qualify for the mechanism only because they are delegates of AIFM managers to partners who are 'identified staff' as defined in the guidelines.

20. New section 863F sets out the tax treatment when the relevant restricted profit vests in the partner who initially allocated it to the partnership.

21. Two situations are covered. The first is where at the time the remuneration vests, the partner is still carrying on the AIFM trade, whether as a partner in the firm or otherwise (subsection (1) of new section 863F). In this case, under subsection (2) of new section 863F,

the amount determined by subsection (5) of new section 863F is treated as a profit of the relevant tax year made in the AIFM trade and taxable under Chapter 2 of Part 2 of ITTOIA 2005.

22. The second situation is where the individual in whom the allocated profit vests is no longer carrying on the AIFM trade (subsection (3) of new section 863F). In that case, the individual is not treated as receiving trading income but as in receipt of income liable to income tax in the relevant tax year (subsection (4) of new section 863F). This income is not chargeable Chapter 2 of Part 2 of ITTOIA 2005.

23. The amount which is treated as a profit or income is, under subsection (5) of new section 863F, the amount of the allocated profit net of the income tax for which the AIFM firm is liable plus the amount of that income tax paid by the firm at the time when the vesting occurs.

24. Subsection (6) of new section 863F specifies that the income tax which has been paid by the AIFM firm is credited to the partner in whom the income vests and is taken into account in determining the income tax payable by, or repayable to, that individual.

25. Subsection (7) of new section 863F defines the relevant tax year as the year of vesting, in the case of deferred remuneration, and, in the case of upfront remuneration in the form of instruments, the tax year in which the allocated profit would have otherwise been chargeable to income tax for the partner.

26. Subsection (8) of new section 863F explains that certain terms used in this section take their meaning from the AIFMD remuneration guidelines.

27. Subsection (9) of new section 863F provides that the provisions in the excess profit allocation rules which permits certain adjusting payments to be made without tax consequences is ignored for the purposes of this provision.

28.. New section 863G gives a partner who has allocated profit to an AIFM firm under the mechanism, and in whom the profit then vests, the right to obtain from the firm a statement showing details of the amount of the profits and tax payable and paid.

29. New section 863H defines the AIFMD remuneration guidelines.

30. Paragraph 15 inserts a new section 12AB(1A) into the Taxes Management Act 1970. This gives HMRC the right to require the partnership statement to include information about an election made under new section 863D.

31. Paragraph 16 inserts new sections 59B and 59C into Taxation of Chargeable Gains Act 1992 (TCGA 1992). This applies where allocated profit to which the mechanism applies vests in the partner in the form of instruments.

32. Under the new section 59B, where there has been a disposal to the partner of instruments which are partnership assets for the purposes of section 59 TCGA 1992 and, by virtue of that disposal, the variable remuneration vests in the partner, both the persons

making the disposal and the partner are to be treated as making the disposal and acquisition respectively for an amount equal to the allocated profit net of the tax for which the partnership was liable.

33. New section 59C has the same effect where there is a disposal of instruments by a company which is a partner in the partnership and the company would, as a partner in the firm, have been charged to tax on the allocated profit but for adjustments under the excess profit allocation provisions.

34. Paragraph 17 inserts a new section 189(2B) into Finance Act 2004. This is to ensure that income charged under new section 863F on vesting is also treated as partnership income for pension purposes.

35. Paragraph 18 inserts the charging of AIFM partnership profits into Step 4 in the calculation of income tax liability under section 23 of Income Tax Act 2007.

36. Paragraph 19 gives power to HMRC to make regulations for equivalent provisions to apply in future if necessary to other firms regulated under the Financial Services and Markets Act 2000.

BACKGROUND NOTE

37. This mechanism is part of a wider review of certain parts of the partnership rules announced at Budget 2013. A consultation document *Partnerships: A review of two aspects of the tax rules* was published on the GOV.UK website on 20 May 2013 and the consultation closed on 9 August 2013.

38. This element of the partnerships review measure is flagged up in the consultation document under the heading: *Partnership with mixed memberships – profits: Profit deferral and working capital arrangements.* Further information was received during the consultation period on the AIFMD issue and the use of mixed membership structures by AIFM partnerships. This was fed into the design of the mechanism.

39. If you have any questions about this change, or comments on the legislation, please contact James Ewington on 03000 553788 (email: partnership.review@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PARTNERSHIP (PART 4): DISPOSALS OF ASSETS THROUGH PARTNERSHIPS

SUMMARY

1. Clause [a] and Schedule [b] will prevent tax-motivated disposals of income streams or assets within the charge to tax on income through partnerships giving rise to tax advantages.

2. The legislation will impose a charge to tax on income on the person making the disposal.

DETAILS OF THE SCHEDULE

Income tax

3. Paragraph 21 of the Schedule is introductory.

4. Paragraph 22 omits section 809AZF of Income Tax Act (ITA) 2007, which becomes unnecessary as a result of the new measure.

5. Paragraph 23 (1) inserts new Chapter 5AA into ITA. The Chapter introduces new section 809AAZA, which covers disposals of income streams by persons within the charge to income tax by or through partnerships.

6. New section 809AAZA(1)(a) provides that the Chapter applies if directly or indirectly in connection with arrangements involving a person (the transferor) there is or there is what amounts to a disposal of a right to *relevant receipts* to another person (the transferee) where all of the conditions set out in subsection (1)(b) to (1)(d) are met.

7. Subsection (1)(b) sets out the first condition, which is that the disposal is effected by or through a partnership.

8. Subsection (1)(c) sets out the second condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

9. Subsection (1)(d) sets out the third condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

10. Subsection (2) provides that the legislation does not however apply if the disposal is to a spouse or civil partner or relative of the transferor.

11. Subsection (3) defines disposal as including anything that is a disposal for the purposes of Taxation of Chargeable Gains Act (TCGA) 1992. This includes a part disposal.

12. Subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

13. Subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

14. Subsection (6) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

15. Subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

16. Subsection (8) provides definitions. "Relevant receipts" takes its meaning from the transfer of income streams legislation in Chapter 5A of Part 13 ITA 2007, which is income that would otherwise have been taxable income of the transferor. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

17. New section 809AAZB(1) sets out the treatment where new section 809AAZA applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

18. Subsection (2) gives 'relevant amount' the same meaning as in the transfers of income streams legislation in Chapter 5A of Part 13 of ITA 2007, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.

19. Subsection (4) explains the interaction of new Chapter 5AA with new Chapter 5D of ITA 2007 (Disposals of assets through partnerships). If both apply then new Chapter 5AA will not apply if the charge under new Chapter 5D is greater.

20. Paragraph 23(2) covers commencement of new Chapter 5AA. The legislation applies where the arrangement referred to in new section 809AAZA(1) is made on or after 6 April 2014.

21. Paragraph 24 (1) of the Schedule inserts new Chapter 5D into ITA. The Chapter introduces new section 809DZA, which covers disposals of assets by or through partnerships.

22. New section 809DZA(1) provides that the Chapter applies if both Condition A and Condition B are met.

23. New section 809DZA(2) contains Condition A which is that directly or indirectly in connection with arrangements involving a person (the transferor) there is or there is what amounts to a disposal of an asset in circumstances where subsections (2)(b) to (d) apply.

24. Subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.

25. Subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

26. Subsection (2)(d) requires that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

27. Subsection (3) provides that the legislation does not however apply if the disposal is to a spouse or civil partner or relative of the transferor.

28. Subsection (4) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.

29. Subsection (5) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

30. Subsection (6) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

31. Subsection (7) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

32. Subsection (8) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

33. Subsection (9) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to tax on income would have applied to the “relevant amount” received by the transferee.

34. Subsections (10) to (12) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.

35. Subsection (13) provides definitions. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.

36. New section 809DZB(1) sets out the treatment where new section 809DZA applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

37. Subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.

38. Subsection (3) explains the interaction of Chapter 5D with new Chapter 5AA (Disposals of income streams through partnerships). If both apply then Chapter 5D will not apply if the charge under Chapter 5AA is greater.

39. Paragraph 24(2) covers commencement. The legislation applies where the arrangement is made on or after 6 April 2014.

Corporation tax

40. Paragraph 25 of the Schedule is introductory.

41. Paragraph 26 omits section 756 of Corporation Tax Act (CTA) 2010, which is unnecessary as a result of the new measure.

42. Paragraph 27(1) inserts new Chapter 1A into CTA 2010. The Chapter introduces new section 757A, which covers disposals of income streams by companies by or through partnerships.

43. New section 757A(1)(a) provides that the Chapter applies if directly or indirectly in connection with arrangements involving a company (the transferor) there is or there is what amounts to a disposal of a right to *relevant receipts* to another person (the transferee) where all of the conditions set out in subsection (1)(b) to (1)(d) are met.

44. Subsection (1)(b) sets out the first condition, which is that the disposal is effected by or through a partnership.

45. Subsection (1)(c) sets out the second condition, which is that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

46. Subsection (1)(d) sets out the third condition which is that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

47. Subsection (2) defines disposal as including anything that is a disposal for the purposes of TCGA 1992. This includes a part disposal.

48. Subsection (3) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

49. Subsection (4) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

50. Subsection (5) puts beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

51. Subsection (6) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the right to relevant receipts is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

52. Subsection (7) provides definitions. “Relevant receipts” takes its meaning from the transfer of income streams legislation in Chapter 1 of Part 16 ITA 2007, which is income that would otherwise have been taxable income of the transferor. “Tax advantage” means an advantage in relation to income tax or the charge to corporation tax on income.

53. New section 757B(1) sets out the treatment where new section 757A applies. The “relevant amount” is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

54. Subsection (2) gives ‘relevant amount’ the same meaning as in the transfers of income streams legislation, and also covers the timing of the tax charge. The relevant amount is the consideration given for the income stream, unless the consideration given is much less than the value of the income in which case the charge to tax will be based on a deemed market value disposal.

55. Subsection (3) stipulates that references to the transfer of the right in the transfers of income streams legislation are to be read as references to the disposal of the right.

56. Subsection (4) explains the interaction of Chapter 1A with new Chapter 4 (Disposals of assets through partnerships). If both apply then Chapter 1A will not apply if the charge under Chapter 4 is greater.

57. Paragraph 27(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.

58. Paragraph 28(1) inserts new Chapter 4 into CTA. The Chapter introduces new section 779A, which covers disposal of assets by or through partnerships.

59. New section 779A(1) provides that the Chapter applies if both Condition A and Condition B are met.

60. New section 779A(2) contains Condition A which is that directly or indirectly in connection with arrangements involving a company (the transferor) there is or there is what amounts to a disposal of an asset in circumstances where subsections (2)(b) to (d) are met. .

61. Subsection (2)(b) sets out a requirement that the disposal is effected by or through a partnership.

62. Subsection (2)(c) requires that the transferor and transferee are at any time (not necessarily the same time) members of the partnership.

63. Subsection (2)(d) states that a main purpose of any steps taken in effecting the disposal is to secure a tax advantage for any person.

64. Subsection (3) defines disposal as including anything that is a disposal for the purposes of TCGA1992. This includes a part disposal.

65. Subsection (4) provides that the disposal may in particular be effected by an acquisition, disposal or change in a share in partnership profits or assets.

66. Subsection (5) makes clear that transferor and transferee do not have to be members of the partnership at the same time.

67. Subsection (6) is intended to put beyond doubt that the legislation cannot be avoided by means of chains of partnerships.

68. Subsection (7) provides that references to transferor and transferee include persons connected with the transferor or transferee. So if for example the actual transferor of the asset is not a member of the partnership, but a connected person is, then the legislation can apply to the actual transferor provided that the other conditions are all met.

69. Subsection (8) contains Condition B which is that it is reasonable to assume that, had the transferred asset been disposed of directly by the transferor to the transferee, the charge to corporation tax on income would have applied to the "relevant amount" received by the transferee.

70. Subsections (9) to (11) define relevant amount as the consideration given for the asset, unless the consideration given is much less than the value of the asset in which case it is the market value.

71. Subsection (12) provides definitions. "Tax advantage" means an advantage in relation to income tax or the charge to corporation tax on income.

72. New section 779B(1) sets out the treatment where new section 779A applies. The "relevant amount" is to be charged to tax as income of the transferor in the same way as the relevant receipts would have been.

73. Subsection (2) contains timing rules for the taxable amounts based on the transfers of income stream legislation.

74. Subsection (3) explains the interaction of Chapter 4 with new Chapter 1A (Disposals of income streams through partnerships). If both apply then Chapter 4 will not apply if the charge under Chapter 1A is greater.

75. Paragraph 8(2) covers commencement. The legislation applies where the arrangement is made on or after 1 April 2014.

BACKGROUND NOTE

76. This change is part of a wider review of certain parts of the partnership rules announced in Budget 2013. A consultation document, *Partnerships: A review of two aspects of the tax rules*, was published on the gov.uk website on 20 May 2013 and the consultation closed on 9 August 2013.

77. This element of the partnerships review measure is discussed in the consultation document under the heading: *Partnership members with differing tax attributes.*

78. If you have any questions about this change, or comments on the legislation, please contact James Ewington on 03000 553788 (email: partnership.review@hmrc.gsi.gov.uk).

1 Derivative contracts between group companies

(1) In Chapter 11 of Part 7 of CTA 2009 (derivative contracts: tax avoidance), after section 695 (but before the following italic heading) insert—

"695A Derivative contracts between group companies

(1) This section applies if—

(a) a company ("A") is a party to arrangements ("the derivative arrangements") involving one or more derivative contracts (each of which is referred to in this section as a "specified contract"),

(b) another company ("B") is also a party to the derivative arrangements (whether or not at the same time as A),

(c) A and B are members of the same group, and

(d) directly or indirectly in consequence of, or otherwise in connection with, the derivative arrangements, there is what is, in substance, a payment (directly or indirectly) from A to B of all or part of the profits of the business of A or of a company which is a member of the same group as A or B (or both) ("the profit transfer").

(2) No credit or debit in respect of a specified contract which—

(a) relates to the profit transfer, and

(b) apart from this section, would be brought into account by A or B for the purposes of this Part,

is to be so brought into account.

(3) Subsection (2) does not apply to any credit which arises directly or indirectly in consequence of, or otherwise in connection with, arrangements of which the main purpose, or one of the main purposes, is the securing of a tax advantage for any person.

(4) Subsection (2) does not apply to any credit or debit in respect of one or more specified contracts if, and to the extent that, those specified contracts (either alone or with other derivative contracts) are in a hedging relationship with one or more derivative contracts entered into by A with a company which is not a member of the same group as A or B (or both).

(5) But subsection (4) does not apply to any credit or debit which arises directly or indirectly in consequence of, or otherwise in connection with, arrangements of which the main purpose, or one of the main purposes, is the securing of a tax advantage for any person.

(6) For the purposes of this section a company is a member of the same group as another company if it is (or has been) a member of the same group at a time when the derivative arrangements have effect.

(7) In this section—

"arrangements" includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions;

"group" has the meaning given by section 357GD of CTA 2010;

"tax advantage" has the meaning given by section 1139 of CTA 2010."

(2) The amendment made by this section has effect in relation to credits and debits arising on or after 5 December 2013 from arrangements (whenever they were entered into).

(3) But the amendment does not have effect in relation to any of those credits or debits if, and to the extent that, they arise from the same arrangements, and correspond to, debits or, as the case may be, credits which were brought into account for the purposes of Part 7 of CTA 2009 for any period ending before 5 December 2013.

(4) For the purposes of subsections (2) and (3) references to credits or debits which arise from arrangements includes any credit or debit which arises directly or indirectly in consequence of, or otherwise in connection with, the arrangements.

EXPLANATORY NOTE

DERIVATIVE CONTRACTS BETWEEN GROUP COMPANIES

SUMMARY

1. Clause X stops tax avoidance schemes involving total return swaps. Where arrangements are entered into involving total return swaps or other derivative contracts, and the effect of the arrangements is to transfer profits of a company to other group companies, this measure will prevent any deduction being given for payments under the arrangements.

DETAILS OF THE CLAUSE

3. Subsection 1 introduces a new section 695A into Chapter 11 of Part 7 of the Corporation Tax Act 2009.

4. Section 695A subsection (1) sets out the circumstances in which section 695A applies. These circumstances are set out in subsections (1)(a) to (1)(d).

5. Subsection (1)(a) sets out the first condition, which is that a company A is party to arrangements involving derivative contracts.

6. Subsection (1)(b) sets out the second condition, which is that another company B is also a party to the arrangements.

7. Subsection (1)(c) sets out the third condition which is that companies A and B are members of the same group.

8. Subsection (1)(d) sets out the fourth condition, which is that as a result of the arrangements there is a payment from A to B of all or part of the profits of a company which is a member of a group with A or B or both. The payment can be in substance, can be in whole or in part, and can be direct or indirect.

9. Subsection (2) provides that credits or debits arising in these circumstances are not to be brought into account.

10. Subsection (3) provides an exclusion from subsection (2) in respect of credits only. It provides that, notwithstanding subsection (2), a credit can be brought into account if it arises from tax avoidance arrangements.

11. Subsection (4) provides a further exclusion from subsection (2). It provides that subsection (2) does not apply to debits or credits where they arise from derivative contracts which are in hedging relationships with derivative contracts entered into with companies which are not in the same group as company A or company B.

12. Subsection (5) provides that the exclusion in subsection (4) does not apply if the credits or debits in question arise from tax avoidance arrangements.

13. Subsection (6) sets out when companies are in the same group for the purposes of section 695A.

14. Subsection (7) sets out definitions of some terms used in Section 695A.

15. Subsections (2) to (4) contain commencement provisions.

16. Subsection (2) provides that the clause applies to credits and debits arising on or after 5 December 2013, whenever the arrangements were entered into.

17. Subsection (3) applies in circumstances where a credit or debit arose and was brought into account for any period ending before the commencement date, and a corresponding credit or debit arises after that commencement date. It provides that s695A will not apply to that latter credit or debit, but only to an amount which corresponds to the amount previously arising and brought into account.

BACKGROUND NOTE

18. This measure closes a tax avoidance scheme using derivative contracts.

19. The schemes targeted by the measure involve the use of a derivative contract described as a total return swap under which payments are made, and a deduction is claimed for payments under the total return swap. It will apply to any arrangements involving any derivative contract which have the effect of making a payment linked to the profits of a company to another company in the same group. The effect of the legislation will be to make it clear that no deduction is due for payments of this nature.

20. If you have any questions about this change, or comments on the legislation, please contact Chris Murricane on 03000 585953 (email: chris.murricane@hmrc.gsi.gov.uk) or Tony Sadler on 03000 585479 (email: tony.sadler@hmrc.gsi.gov.uk).

1 Limit on double taxation relief against corporation tax

(1) TIOPA 2010 is amended as follows.

(2) For section 34(1)(b) (reduction in credit: payment by reference to foreign tax) substitute—

"(b) a tax authority makes a payment by reference to that tax, and that payment—

(i) is made to P or a person connected with P, or

(ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into."

(3) In section 34, after subsection (3) insert—

"(4) In subsection (1)(b)(ii) "scheme" includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions."

(4) For section 112(3)(b) (deduction from income for foreign tax (instead of credit against UK tax)) substitute—

"(b) a tax authority makes a payment by reference to that tax, and that payment—

(i) is made to P or a person connected with P, or

(ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into,".

(5) In section 112, after subsection (7) insert—

"(8) In subsection (3)(b)(ii) "scheme" includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions."

(6) In section 42(4) (provisions relating to the limit imposed by section 42(2) on credit against corporation tax) for the "and" after "(as defined in section 44)," substitute—

"section 49B, which requires subsection (2) to be applied separately to certain non-trading credits, and".

(7) After section 49A insert—

"49B Applying section 42(2) to non-trading credits from loan relationships etc

(1) Subsection (2) applies for the purposes of section 42(2) if—

(a) the company has a non-trading credit relating to an item, and

(b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax.

(2) Credit for the foreign tax in respect of that item must not exceed—

$$R \times (NTC - D)$$

where—

R has the same meaning as in section 42(2),

NTC is the amount of the non-trading credit, and

D is the amount given by subsection (3).

(3) D in the formula in subsection (2) is calculated as follows—

Step 1

Calculate the total amount ("TNTD") of the non-trading debits which are to be brought into account by the company in the same accounting period, and in respect of the same thing, as the non-trading credit.

Step 2

Calculate the total ("A") of the amounts which, as amount D, have already been deducted under subsection (2) from other non-trading credits which are to be brought into account in the same period and in respect of the same thing.

Step 3

Calculate the amount given by—

$$TNTD - A$$

Step 4

If the amount calculated at step 3 is greater than or equal to NTC, then D equals NTC.

Otherwise, D is the amount calculated at step 3.

(4) In this section—

"non-trading credit" means—

(a) a non-trading credit for the purposes of Part 5 of CTA 2009 (which is about loan relationships but also has application in relation to deemed loan relationships and derivative contracts), or

(b) a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and

"non-trading debit" means—

(a) a non-trading debit for the purposes of Part 5 of CTA 2009, or

(b) a non-trading debit for the purposes of Part 8 of CTA 2009."

(8) The amendments made by subsections (2), (3), (4) and (5) have effect in relation to payments made by a tax authority on or after 5 December 2013.

(9) The amendments made by subsections (6) and (7) have effect in relation to accounting periods beginning on or after 5 December 2013.

(10) For the purposes of subsection (9), an accounting period beginning before, and ending on or after, 5 December 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.

EXPLANATORY NOTE

LIMIT ON DOUBLE TAXATION RELIEF AGAINST CORPORATION TAX

SUMMARY

1. Clause [X] amends two provisions of Taxation (International and Other Provisions) Act 2010 (TIOPA).

2. Firstly, the clause extends the existing rule that relief for foreign tax is to be reduced if a payment is made by a tax authority by reference to that tax to the claimant or a person connected with the claimant. The new rule will also apply where a payment is made to a person who has made arrangements to receive the payment.

3. Secondly, the clause limits the amount of relief for foreign tax on a non-trading credit from a loan relationship or intangible fixed asset to the amount of UK tax on that net amount of the credit after deducting related debits. It responds to avoidance schemes that seek to exploit mismatches between the amounts of UK and foreign income.

DETAILS OF THE CLAUSE

4. Subsection 2 extends section 34(1)(b) TIOPA so that it applies where a person claims credit for foreign tax and a payment is made by a tax authority to that person, to a connected person or another person who has entered into a scheme to receive the payment, the foreign tax credit must be reduced by the amount of the payment.

5. Subsection 3 inserts a new section 34(4) to define what is meant by "scheme" in section 34(1)(b).

6. Subsection 4 amends section 112(3)(b) TIOPA so that where a deduction has been given to a person for foreign tax and a payment by reference to that tax is made by a tax authority to the person, to a connected person or another person who has entered into a scheme to receive the payment, the amount of the deduction is to be reduced accordingly. It is the equivalent to subsection 2 in the circumstances where there is no claim to relief for foreign tax and instead a deduction for foreign tax is allowed.

7. Subsection 5 inserts a new section 112(8) to define "scheme" in identical terms to new section 34(4).

8. Subsection 6 adds a signpost to section 42(4) to show that in applying the limit on credit for foreign tax in section 42(2), that rule must be read with the new section 49B.

9. Subsection 7 inserts the new section 49B into TIOPA.

10. New section 49B(1) sets out the circumstances where the operative rule in new section 49B(2) applies. These are where a company has a non-trading credit (as defined in new section 49B(4)) relating to an item where credit for foreign tax is allowable against UK tax under either a treaty arrangement or as unilateral relief. A simple example would be where the company receives interest from a foreign source after deduction of withholding tax.

11. New section 49B(2) is the main operative rule. It states that any credit for foreign tax against UK tax in respect of a non-trading credit on an item cannot exceed the amount of corporation tax on the amount of the non-trading credit less an amount of certain non-trading debits ("D") which is given by the formula in new section 49B(3).

12. New section 49B(3) sets out the calculation of "D". The subsection identifies non-trading debits in respect of the same "thing" (such as a loan relationship) that gives rise to the non-trading credit, and for the same accounting period. The total of these debits is reduced by any amounts that have already been deducted under the new rule from other non-trading credits. "D" is then taken as the smaller of this remaining amount and the amount of the non-trading credit to ensure that the calculation in new section 49B(2) does not produce a negative amount.

13. The purpose of new sections 49B(2) and (3) taken together is to identify the amount of 'profit' within the wider non-trading profit that directly relates to the non-trading credit on the loan relationship or other thing giving rise to a claim for relief for foreign tax. The relief is then limited to the amount of corporation tax on that amount. In practice, there will often not be any debits within the scope of new section 49B(3) so this amount will simply be the amount of the non-trading credit in question, but the rule is there to deal with the circumstances where debits do arise.

14. New section 49B(4) defines "non-trading credit" and "non-trading debits". There are two types of non-trading credits. Firstly, non-trading credits for the purposes of the loan relationship rules in Part 5 of the Corporation Tax Act 2009 (CTA09) (which will include non-trading credits on relationships treated as loan relationships under Part 6 of CTA09 and on derivative contracts arising under Part 7 CTA09). Secondly, non-trading credits for the purposes of the intangible fixed assets rules in Part 8 of CTA09. "Non-trading debits" are defined in similar terms.

15. Subsection 8 is the commencement provision for the amendments to section 34. The changes take effect for payments made by a tax authority on or after 5 December 2013.

16. Subsections 9 and 10 are the commencement provisions for new section 49B(2). Subsection 9 says that the new rule applies for accounting periods beginning on or after 5 December 2013, subject to subsection 10, which applies where an accounting period straddles that date. In those circumstances the new rule applies as if the accounting period is split into two separate accounting periods, one relating to the period before 5 December 2013 and one relating to the period on or after that date.

BACKGROUND NOTE

17. The existing legislation in section 34 TIOPA applies where credit for foreign tax is allowed to a person and the foreign tax authority makes a payment by reference to that tax to that person, or to someone connected with that person. The rule requires the relief for foreign tax to be reduced by the amount of that payment.

18. The amendments to sections 34 extend the circumstances where there will be a reduction in credit following payments by the foreign tax authority. The rule will also apply where the payment is made to another person as a consequence of a scheme that has been entered into. This will stop attempts to get around the existing legislation.

19. A non-trading profit arises under the loan relationship rules where the total amount of the non-trading credits brought into account exceed the total amount of non-trading debits. Where the non-trading credit relates to an item such as interest that has suffered foreign tax then relief for some or all of that foreign tax may be available to set against UK tax on the non-trading profit.

20. The clause provides for a limit on the amount of such relief to the amount of corporation tax on the amount of the non-trading credit, after deduction of any related debits, to which the foreign tax relates. This will make clear that schemes that attempt to exploit mismatches between the foreign and UK tax treatment of items of income in order to effectively cross-credit the foreign tax against UK tax on other income are not effective.

21. If you have any questions about this change, or comments on the legislation, please contact Amanda Robinson on 03000 586062 (email: amanda.s.robinson@hmrc.gsi.gov.uk) or Daniel Berry on 03000 585972 (email: daniel.berry@hmrc.gsi.gov.uk).

1 Report on administration of the Scottish rate of income tax

(1) In Chapter 2 of Part 4A of the Scotland Act 1998, after section 80H insert—

"80HA Report by the Comptroller and Auditor General

(1) The Comptroller and Auditor General must for each financial year prepare a report on the matters set out in subsection (2).

(2) Those matters are—

(a) the adequacy of any of HMRC's rules and procedures put in place, in consequence of the Scottish rate provisions, for the purpose of ensuring the proper assessment and collection of income tax charged at rates determined under those provisions,

(b) whether the rules and procedures described in paragraph (a) are being complied with,

(c) the correctness of the sums brought to account by HMRC which relate to income tax which is attributable to a Scottish rate resolution, and

(d) the accuracy and fairness of the amounts which are reimbursed to HMRC under section 80H (having been identified by it as administrative expenses incurred as a result of the charging of income tax as mentioned in paragraph (a)).

(3) The "Scottish rate provisions" are—

(a) this Chapter, and

(b) the amendments made by section 26 of the Scotland Act 2012.

(4) A report under this section may also include an assessment of the economy, efficiency and effectiveness with which HMRC has used its resources in carrying out relevant functions.

(5) "Relevant functions" are functions of HMRC in the performance of which HMRC incurs administrative expenses which are reimbursed to HMRC under section 80H (having been identified by it as administrative expenses incurred as a result of the charging of income tax as mentioned in subsection (2)(a)).

(6) HMRC must give the Comptroller and Auditor General such information as the Comptroller and Auditor General may reasonably require for the purposes of preparing a report under this section.

(7) A report prepared under this section must be laid before the Scottish Parliament not later than 31 January of the financial year following that to which the report relates.

(8) In this section "HMRC" means Her Majesty's Revenue and Customs."

(2) The amendment made by this section has effect in relation to the financial year ending on 31 March 2015 and subsequent financial years.

EXPLANATORY NOTE

REPORT ON ADMINISTRATION OF THE SCOTTISH RATE OF INCOME TAX

SUMMARY

1. Clause [X] amends the Scotland Act 1998 to require the Comptroller and Auditor General (C&AG) to make an annual report direct to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax.

DETAILS OF THE CLAUSE

Part 1

2. Subsection (1) inserts the requirement to produce the report as new section 80HA in Chapter 2 of Part 4A of the Scotland Act 1998.

3. New section 80HA(2) sets out the scope of the annual report to be laid before the Scottish Parliament. The C&AG will report on the adequacy of the additional rules (which has the same meaning as "regulations" in section 2(1) of the Exchequer and Audit Departments Act 1921) and processes which HMRC have put in place to administer and collect the Scottish rate. The C&AG will also report on HMRC's calculation of the amount of Scottish rate income tax to be paid over to the Scottish Government and on the accuracy and fairness of costs reimbursed to HMRC by the Scottish Government for the administration of the Scottish rate.

4. New section 80HA(3) explains that the "Scottish rate provisions" are those set out in Chapter 2 of the Scotland Act 1998 and other amendments made elsewhere in the Taxes Act by section 26 of the Scotland Act 2012.

5. New section 80HA(4)-(5) provides that the C&AG has the discretion to include in the report an analysis of whether HMRC is using its resources in administering the Scottish rate in an effective, efficient and economic manner.

6. New section 80HA(6) requires that HMRC provide the C&AG with information necessary to complete the annual report.

7. Subsection (2) of the clause brings the measure into effect for the financial year ending 31/03/15. As a result of new section 80HA(7), the first report will therefore need to be produced before 31 January 2016.

BACKGROUND NOTE

8. The Scotland Act 2012 amended the Scotland Act 1998 to introduce the Scottish rate of income tax, which is expected to commence in April 2016.

9. The Scottish rate will be set each year by the Scottish Parliament and will be operated by HMRC as part of the UK income tax system; HMRC's costs in implementing and administering the Scottish rate will be reimbursed by the Scottish Government.

10. The Command Paper, "Strengthening Scotland's Future", published alongside the Scotland Bill in November 2010 set out that The Comptroller and Auditor General would, as head of the National Audit Office (NAO), be invited to prepare a report to the Scottish Parliament on HMRC's administration of the Scottish rate of income tax as part of the NAO's annual report on HMRC's overall performance".

11. This clause clarifies the legal basis for this by requiring the C&AG to prepare a report covering these matters and lay it before the Scottish Parliament on an annual basis.

12. If you have any questions about this change, or comments on the legislation, please contact Doug Stoneham on 03000 586858 (email: douglas.stoneham@hmrc.gsi.gov.uk) or Ian Sainsbury on 03000 586739 (email: ian.sainsbury@hmrc.gsi.gov.uk).

1 Penalties under section 26 of FA 2003: extension to excise duty

(1) In this section—

"dutiable excise goods" means goods of a class or description subject to any duty of excise, whether or not those goods are in fact chargeable with that duty, and whether or not that duty has been paid on the goods;

"relevant excise rule" means any duty, obligation, requirement or condition imposed by section 78 of CEMA 1979 (customs and excise control of persons entering or leaving the United Kingdom), so far as that section relates to—

(a) dutiable excise goods a person has obtained outside the United Kingdom, or

(b) dutiable excise goods a person has obtained in the United Kingdom without payment of excise duty,

and in respect of which the person is not entitled to exemption from excise duty by virtue of any order under section 13 of the Customs and Excise Duties (General Reliefs) Act 1979 (personal reliefs).

(2) Sections 26 and 27 and 29 to 41 of FA 2003 (taxes and duties on importation and exportation: penalties) apply in relation to excise duty as they apply in relation to a relevant tax or duty (as defined by section 24(2) of that Act) except that, for this purpose, "relevant rule" in sections 26 and 33 means a relevant excise rule.

EXPLANATORY NOTE

PENALTIES UNDER SECTION 26 OF FA 2003: EXTENSION TO EXCISE DUTY

SUMMARY

1. Clause X will introduce legislation to apply provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of any duty, obligation, requirement or condition imposed by section 78 of Customs and Excise Management Act 1979 (CEMA). The new penalty will then be introduced by amendment to the secondary legislation to describe as a relevant rule a failure to declare goods in excess of the allowance under section 78(1).

DETAILS OF THE CLAUSE

2. Subsection 1 defines dutiable excise goods as goods subject to excise duty whether or not that duty is charged or paid

3. Subsection 1(a) defines a relevant excise rule to mean any duty, obligation or requirement imposed under s78 when it relates to dutiable excise goods that a person has obtained outside the United Kingdom where they are not entitled to be exempt from relief of the payment of duty.

4. Subsection 1(b) defines a relevant excise rule to mean any duty, obligation or requirement imposed under s78 when it relates to dutiable excise goods that a person has obtained in the United Kingdom without payment of duty, where they are not entitled to be exempt from relief of the payment of duty.

5. Subsection 2 provides for the application of the penalty provisions of the Finance Act 2003 to include excise duty as a relevant tax in respect of a contravention of a rule under section78 of CEMA.

BACKGROUND NOTE

6. This measure has been introduced to provide for a customs civil penalty, in cases where there is no allegation of dishonest conduct, when goods are wrongfully imported from a non-EU country.

7. HM Revenue & Customs (HMRC) will provide for the issue of a customs civil penalty to travellers entering the UK from outside the EU who have failed to declare goods in excess of their allowance when stopped before clearing customs controls. This penalty will be used in cases where we find there is no dishonest conduct, as an alternative to existing

customs civil evasion penalties and existing criminal penalties, for use in the case of less serious contraventions, and to allow us more flexibility in our treatment of customers. As with all customs civil penalties there will be strict liability subject to reasonable excuse.

8. 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 Customs and excise: goods carried as stores

Schedule 1 contains provision about goods shipped or carried as stores on ships or aircraft.

SCHEDULE 1

Section 1

GOODS SHIPPED OR CARRIED AS STORES ON SHIPS OR AIRCRAFT

Meaning of "stores"

1 (1) Section 1 of CEMA 1979 (interpretation) is amended as follows.

(2) In subsection (4)(a)(i), for "relevant journey" substitute "journey made by the ship or aircraft".

(3) Omit subsection (4A).

Surplus stores

2 In section 39 of CEMA 1979 (entry of surplus stores), for subsection (1) substitute—

"(1) Surplus stores of any ship or aircraft—

(a) may remain on board the ship or aircraft without payment of duty; or

(b) may be entered for warehousing, notwithstanding that they could not lawfully be imported as merchandise.

This is subject to subsection (2) below."

Power to make regulations about stores

3 In CEMA 1979, after section 60 insert—

"60A Power to make regulations about stores

(1) The Commissioners may by regulations make provision in relation to goods for use on a ship or aircraft as stores.

(2) The provision that may be made by regulations under subsection (1) includes—

(a) provision permitting, in specified circumstances, goods to be shipped or carried as stores without payment of duty or on drawback;

(b) provision requiring authorisation to be obtained, in specified circumstances, for goods to be shipped or carried as stores as mentioned in paragraph (a) above;

(c) provision about obtaining such authorisation;

(d) provision enabling such authorisation to be withdrawn in specified circumstances;

(e) provision imposing, or enabling the Commissioners to impose, conditions or restrictions on the supply, shipping or carriage of goods as stores as mentioned in paragraph (a) above;

(f) provision as to any procedure to be followed in supplying goods to be shipped or carried as stores as mentioned in paragraph (a) above.

(3) Regulations made by virtue of subsection (2)(a) may include—

(a) provision requiring duty to be paid on goods shipped or carried as stores without payment of duty or on drawback where those goods are—

(i) consumed on a journey of a specified description; or

(ii) consumed in specified circumstances in port;

(b) provision as to the persons by whom such duty is payable; and

(c) provision about the way in which, and the time at which, such duty is to be paid.

(4) The provision that may be made by regulations under this section includes—

(a) different provision for different cases; and

(b) incidental, supplemental, consequential or transitional provision or savings.

(5) In this section "specified" means—

(a) specified in regulations made under this section; or

(b) specified by the Commissioners under such regulations."

4 (1) Section 61 of CEMA 1979 (provisions as to stores) is amended as follows.

(2) Omit subsections (1) to (4).

(3) In subsection (5), for the words from "for use on a voyage" to "duty" substitute "without payment of duty".

(4) After subsection (5) insert—

"(5A) But subsection (5) above does not apply where the goods are entered for warehousing in accordance with section 39."

(5) In subsection (6), omit "for use".

(6) The heading of section 61 becomes "**Supplementary provision relating to stores**".

5 In consequence of the provision made by paragraph 4, in section 103 of F(No.2)A 1987 (consumption in port of goods transhipped for use as stores etc), omit subsections (1), (2) and (4) to (7).

Penalties and enforcement

6 In CEMA 1979, after section 60A (inserted by paragraph 3 above) insert—

"60B Failure to comply with regulations under section 60A

(1) This section applies if a person fails to comply with—

(a) any provision made by or under regulations under section 60A; or

(b) any condition or restriction imposed under such regulations.

(2) The person's failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties) (but see subsection (4)).

(3) Any goods in respect of which the person fails to comply with the provision, condition or restriction are liable to forfeiture.

(4) Subsection (2) does not apply if, as a result of the failure, the person is liable to pay a penalty under Schedule 55 to the Finance Act 2009 (penalty for failure to make returns etc) or Schedule 56 to that Act (penalty for failure to make payments on time)."

7 In Schedule 55 to FA 2009 (penalty for failure to make returns etc), in the Table in paragraph 1, after item 20 insert—

"20A	Excise duties	Return under regulations under section 60A of the Customs and Excise Management Act 1979".

8 In Schedule 56 to FA 2009 (penalty for failure to make payments on time), in the Table in paragraph 1, after item 11G insert—

"11GA	Excise duties	Amount payable under regulations under section 60A of the Customs and Excise Management Act 1979 (except an amount falling within item 17A, 23 or 24).	The date determined by or under regulations under section 60A of the Customs and Excise Management Act 1979 as the date by which the amount must be paid".

Commencement

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

(2) So far as not already brought into force by virtue of sub-paragraph (1), the amendments made by this Schedule come into force in accordance with provision contained in an order made by statutory instrument by the Commissioners for Her Majesty's Revenue and Customs.

10 (1) Schedule 55 to FA 2009 (including the amendments of that Schedule made by Schedule 10 to F(No.3)A 2010) is taken to have come into force for the purposes of section 60A of CEMA 1979 on the date on which paragraph 7 of this Schedule comes into force.

(2) Schedule 56 to FA 2009 (including the amendments of that Schedule made by Schedule 11 to F(No.3)A 2010) is taken to have come into force for the purposes of section 60A of CEMA 1979 on the date on which paragraph 8 of this Schedule comes into force.

EXPLANATORY NOTE

GOODS SHIPPED OR CARRIED AS STORES ON SHIPS OR AIRCRAFT

SUMMARY

1. Clause [X] and Schedule [Y] will update the legislation relating to ship and aircraft stores to provide flexibility to facilitate trade practices and increase controls on areas of revenue risk. This will enable HM Revenue & Customs (HMRC) and Border Force to work with the Industry to improve compliance and is in line with our wider commitment to bring customs and excise law up to date to protect customs and excise revenues

DETAILS OF THE SCHEDULE

2. Paragraph 1(1) of the Schedule introduces the amendment to section 1 of the Customs and Excise Management Act (CEMA) 1979.

3. Paragraph 1(2) removes the reference to 'relevant journey' in section 1(4)(a)(i) of CEMA and replaces it with a 'journey made by the ship or aircraft'.

4. Paragraph 1(3) removes section 1(4A) of CEMA which defines "relevant journey" for the purposes of section 1(4).

5. Paragraph 2 substitutes subsection (1) to section 39 of CEMA with a new subsection to provide that surplus stores may remain on board a ship or aircraft without payment of duty or be entered for warehousing

6. Paragraph 3 introduces a new section 60A to CEMA, which provides a new power to make regulations about stores.

7. New subsection (1) of section 60A provides that the Commissioners may make regulations in relation to goods for use on a ship or aircraft stores.

8. New subsection (2) of section 60A provides for what can be included in the regulations.

9. New subsection (2)(a) provides that the regulations may specify the circumstances when goods can be shipped or carried as stores without payment of duty or on drawback.

10. New subsection (2)(b) provides that the regulations may include provision requiring authorisation to be obtained, in specified circumstances, for goods to be shipped or carried as stores without payment of duty.

11. New subsection (2)(c) provides that the regulations may include provision about obtaining such authorisation.

12. New subsection (2)(d) provides that the regulations may include provision about the circumstances when such authorisation can be withdrawn.

13. New subsection (2)(e) provides that the regulations may include provision imposing, or enabling the Commissioners to impose, conditions and restrictions on the supply, shipping or carriage of goods as stores without payment of duty.

14. New subsection (2)(f) provides that the regulations may include provision about the procedures to be followed when supplying goods to be shipped or carried as stores without payment of duty.

15. New subsection 3 of section 60A sets out that where the regulations provide for goods to be shipped or carried as stores without payment of duty, they may also include provision requiring duty to be paid on such goods where they are consumed on a journey of a specified description or consumed in specified circumstances in port. Further provisions are made about the persons by whom such duty is payable and the way in which, and the time at which, it is to be paid.

16. New subsection 4 of section 60A provides that the regulations may make different provision for different cases and incidental, supplemental, consequential or transitional provisions or savings.

17. New subsection 5 of section 60A provides that 'specified' in the section means specified in the regulations or specified by the Commissioners under the regulations.

18. Paragraph 4 amends the heading to section 61 of CEMA, omits subsections (1) to (4) of that section (which are replaced by the regulation making powers in new section 60A) and makes some consequential amendments.

19. Paragraph 5 amends section 103 of the Finance (No. 2) Act 1987 by removing subsections (1), (2) and (4) to (7).

20. Paragraph 6 introduces a new section 60B to CEMA to provide for penalties when any provision made by or under the regulations, or any condition or restriction imposed under the regulations, are contravened and to provide that any goods in respect of which a person contravenes a provision of the regulations are liable to forfeiture.

21. New subsection 60B(1) provides that the new section 60B to CEMA applies if a person contravenes any provision made by or under the regulations made under section 60A or any condition or restriction imposed under the regulations.

22. New subsection 60B(2) provides that the contravention will attract a penalty under section 9 of the Finance' Act 1994.

23. New subsection 60B(3) provides that any goods in respect of which a person fails to comply with a provision, or a condition or restriction, imposed by or the regulations are liable to forfeiture.

24. New subsection 60B(4) provides that a person is not liable to a penalty under section 9 of the Finance Act 1994 if that person is liable to a penalty under Schedule 55 or 56 to the Finance Act 2009.

25. Paragraph 7 amends Schedule 55 to the Finance Act 2009 by inserting a new item 20A in the Table in paragraph 1 of that Schedule to provide for a penalty for a failure to make a return under regulations under new section 60A of CEMA.

26. Paragraph 8 amends Schedule 56 to the Finance Act 2009 by inserting a new item11GA in the Table in paragraph 1 of that Schedule to provide for a penalty for a failure to make payments under regulations under new section 60A of CEMA on time.

27. Paragraph 9 contains commencement provisions and provides that the power to make regulations in the Schedule comes into force on Royal Assent and that the other amendments made by the Schedule come into force in accordance with provisions in an order made by the Commissioners for HMRC.

28. Paragraph 10 contains commencement provisions and provides that the amendments to Schedules 55 and 56 to the Finance Act 2009 come into force when paragraphs 7 and 8 of the Schedule are brought into force by an order made by the Commissioners for HMRC.

BACKGROUND NOTE

29. The Schedule will amend the law to clarify that surplus stores can remain on board a ship or aircraft without payment of duty and make provision for the introduction of procedures to account for duty retrospectively on stores consumed in port or on an intra-UK flight and impose penalties for failing to do so. It will also make provision to allow the Commissioners for HMRC to make regulations for an authorisation procedure to control goods moving from warehouses to be shipped as stores, in order to address an area of revenue risk, and to specify the circumstances in which goods can be shipped or carried as stores without payment of duty. These circumstances will include the journeys on which stores can be shipped or carried without payment of duty. The measure also imposes a penalty for contravening any provision, or condition or restriction, imposed by or under the regulations.

30. 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).

STATUTORY INSTRUMENTS

2014 No.

CORPORATION TAX

The Real Estate Investment Trust (Amendment of Section 528 of the Corporation Tax Act 2010) Regulations 2014

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Regulations in exercise of the powers conferred by section 528(4B) of the Corporation Tax Act 2010(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Real Estate Investment Trust (Amendment of Section 528 of the Corporation Tax Act 2010) Regulations 2014 and come into force on ***2014.

(2) These Regulations have effect in relation to groups of companies or companies which give notices under section 523 or 524 of the Corporation Tax Act 2010 specifying a date on or after **** 2014.

Amendment to the Corporation Tax Act 2010

2. In section 528(4A) of the Corporation Tax Act 2010 (conditions for company, meaning of "institutional investor")(**b**), at the end insert—

"(i) a UK REIT;

(j) a person who is resident in a territory outside the United Kingdom in accordance with the law of that territory relating to taxation and is, under the law of that territory, the equivalent of a UK REIT. "

Name
Name
Date Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 12 of the Corporation Tax Act 2010 sets out the Real Estate Investment Trusts legislation. Section 528 sets out conditions which must be met by a company to enter the regime. Condition D in section 528 is that a REIT cannot be a close company but the shareholding of an institutional investor will not, on its own, make a company close for these purposes, subsection (4A) defines

(**a**) 2010 c. 4, subsections (4A) and (4B) were inserted by paragraph 4 of Schedule 4 to the Finance Act 2012 (c. 14).
(**b**) Section 4A) was inserted by paragraph 4 of Schedule 4 to the Finance Act 2012 (c. 14).

what an institutional investor is for these purposes. These Regulations amend Section 528(4A) to include UK REITs and overseas entities which are equivalent to UK REITs in the list of institutional investors.

[TIIN]

EXPLANATORY MEMORANDUM TO

THE REAL ESTATE INVESTMENT TRUST (AMENDMENT OF SECTION 528 OF THE CORPORATION TAX ACT 2010) REGULATIONS

2014 No. [XXXX]

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 Classes of institutional investor that are listed within the Real Estate Investment Trust (REIT) rules can invest in REITs without causing the REIT to violate the non-close company rule. These Regulations amend that list to include UK REITs and their foreign equivalents as 'institutional investors'.

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

3.1 None

4. Legislative Context

4.1 These Regulations are made by the Treasury under section 528(4B) Corporation Tax Act 2010 (CTA 2010) and it is the first use of those powers.

4.2 One of the conditions for a company to qualify as a REIT is that it is not a close company or is a close company only because it has an institutional investor as a participator (section 528(4) CTA 2010).

4.3 Section 528(4A) lists persons who are "institutional investors".

4.4 Subsection (4B) provides that the treasury may by regulations amend the definition of "institutional investor" by inserting, omitting or amending the list in subsection (4A).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke, will make a compatibility statement regarding Human Rights.

7. Policy background

7.1 REITs are a tax advantaged vehicles introduced to encourage investment in the real estate sector.

7.2 Finance Act 2012 made changes to the regime to encourage investment in REITs by institutional investors. Prior to this, investment by an institutional investor could cause a REIT to violate the requirement that a REIT was not a close company. The change was achieved by listing those institutional investors that would not cause the requirement to be breached. The primary legislation included a power for changes to be made by regulations to the list of institutional investors. REITs themselves were not included in the initial list of institutional investors.

7.3 The Government announced at Budget 2013 that it was to undertake an informal consultation on reforms to the REIT regime to assess the potential appetite for including REITs as 'institutional investors' and the potential tax risk of such a measure. The consultation on the measure took place in the Spring of 2013. The consultation attracted 13 responses.

7.4 Including a UK REIT and its non-UK equivalent in the list of institutional investors will provide three benefits to the REIT sector: facilitating joint venture REITs; enabling specialism by REIT investors; and promoting transfer of international expertise. By attracting more international and institutional capital into the UK the measure is expected to result in a more competitive and efficient UK real estate and REIT sector.

8. Consultation outcome

8.1 The informal consultation - *Including Real Estate Investment Trusts (REITs) as "institutional investors"* - was launched on 20 March 2013 and closed on 14 June 2013. The Government received a total of 13 written responses from Stakeholders representing existing UK and foreign REITs, tax advisors and UK and foreign property industry associations. The respondents broadly welcomed the proposed change.

8.1 Having analysed the responses to the consultation and assessed the potential implications for tax receipts and the wider impact on the REIT regime, the Government considers that the measure will provide benefit to the REIT sector in terms of facilitating joint ventures and providing UK REITs access to more financing opportunities and has therefore decided to include REITs within the definition of "institutional investor". By attracting more international and institutional capital into the UK the measure is expected to result in a more competitive and efficient UK real estate and REIT sector.

9. Guidance

9.1 The change to list of institutional investors will be included in HMRC's manual on REITS – *Guidance on Real Estate Investment Trusts.*

10. Impact

10.1 The Instrument is expected to have negligible impact on business, charities and voluntary bodies.

10.2 The impact on the public sector is expected to be negligible.

10.3 A Tax Information and Impact Note covering this instrument was included in the *Overview of Legislation in Draft* document published on the GOV.UK website on 10 December 2013.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The change will be kept under review through communication with affected taxpayer groups.

13. Contact

Allana Sheil at the HMRC Tel: 03000 586059 or email: Allana.Sheil@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Draft Regulations laid before Parliament under paragraph 146(3) of Schedule 6 to the Finance Act 2000, for approval by resolution of the House of Commons.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. 0000

CLIMATE CHANGE LEVY

The Climate Change Levy (Fuel Use and Recycling Processes) (Amendment) Regulations 2014

Made - - - -	*1st March 2014*
Coming into force - -	*1st April 2014*

The Treasury, in exercise of the powers conferred by paragraph 18(2) and (3) of Schedule 6 to the Finance Act 2000(**a**), make the following Regulations, a draft of which has, in accordance with paragraph 146(3) of that Schedule, been laid before Parliament and approved by a resolution of the House of Commons:

Citation and commencement

1. These Regulations may be cited as the Climate Change Levy (Fuel Use and Recycling Processes) (Amendment) Regulations 2014 and come into force on 1st April 2014.

Amendments to the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005

2. The Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005(**b**) are amended as follows.

3. After paragraph 26 in Part B (mixed uses) of Schedule 1 (uses otherwise than as fuel) insert—

"**26A.** Coal, coke and anthracite used for its structural properties as a bedding agent in the extraction of gas from waste material".

name
name
1st March 2014 Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) 2000 c. 17.
(**b**) S.I. 2005/1715, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Climate change levy is charged on supplies of electricity, gas and solid fuels that are not for domestic or charity use. Supplies for non-fuel use are exempt.

These Regulations amend Part B of Schedule 1 to the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005 (S.I. 2005/1715) so that the use of coke, coal and anthracite partly as fuel and partly for its structural properties as a bedding agent in the extraction of gas from waste is specified as a non-fuel use.

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 Climate Change Levy (Fuel Use and Recycling Processes) (Amendment) Regulations 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument introduces a new exemption from the climate change levy (CCL) for solid fuels used in certain energy from waste technology, and comes into force on 1 April 2014.

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

3.1 None.

4. Legislative context

4.1 The primary legislation containing provisions for CCL is contained in Schedule 6 to the Finance Act 2000 ("Schedule 6"). Paragraph 18 of Schedule 6 provides for an exemption from the CCL for taxable commodities not used as fuel including mixed uses of taxable commodities. A mixed use is where a taxable commodity is being used partly as a fuel and partly for other properties.

4.2 The Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005 ("the principal Regulations"), SI 2005/1715, specify the permitted non-fuel and mixed uses. Schedule 1 part A to these Regulations lists non-fuel uses and Schedule 1 part B lists mixed uses. This instrument adds a new mixed use to part B of the schedule.

5. Territorial extent and application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Sajid Javid MP, Economic Secretary to the Treasury, has made the following statement regarding Human Rights:

In my view the provisions of the Climate Change Levy (Fuel Use and Recycling Processes) (Amendment) Regulations 2014 are compatible with the Convention rights

7. Policy background

- ***What is being done and why***

7.1 Utilising industrial and municipal waste to produce synthetic gas ("syngas"), which consists mainly of hydrogen, is a developing technology that makes use of waste material that would otherwise go to landfill or incineration. This syngas can be burned to generate electricity or put to industrial uses. One form of this technology utilises the structural properties of solid fuels, in supporting the weight of the waste material in the gasification chamber and enabling the residue (slag) to drain out from the bottom of the chamber.

7.2 The Government considers it appropriate on environmental grounds to exempt solid fuels used in this way from the CCL by adding this use of solid fuels to the exempt mixed uses specified in the principal Regulations.

- ***Consolidation***

7.3 No consolidation of the principal Regulations is planned at this time.

8. Consultation outcome

8.1 This legislative amendment has been introduced following representations from those developing the technology concerned.

9. Guidance

9.1 The small number of businesses affected will be contacted directly in relation to this amendment, and HMRC Notice CCL 1/3 will be updated in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Note has been published alongside this memorandum. Both documents are being published on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This instrument will not have an adverse impact on firms employing up to 20 people.

11.3 No special action with regard to small business is deemed necessary.

12. Monitoring & review

12.1 The impact of this measure will be monitored and evaluated as part of the normal Budget process.

13. Contact

Andy Jameson at HM Revenue and Customs Tel: 03000 586 082 or email: andy.jameson@hmrc.gsi.gov can answer any queries regarding the instrument.