HM Treasury

Finance (No. 2) Bill 2015
Explanatory Notes

Clauses 1 to 125

March 2015

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EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Finance (No. 2) Bill 2015 as introduced into Parliament on 24 March 2015. They have been prepared jointly by the HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

EXPLANATORY NOTE

CLAUSE 1: CHARGE AND RATES FOR 2015-16

SUMMARY

1. This clause provides for income tax and sets the main rates for 2015-16.

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

CLAUSE 2: LIMITS AND ALLOWANCES FOR 2015-16

SUMMARY

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the higher personal allowance for those born before 6 April 1938 begin and the married couple's allowance begin to be withdrawn.

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

EXPLANATORY NOTE

CLAUSE 3: PERSONAL ALLOWANCES FOR 2015-16

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

BACKGROUND NOTE

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

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

EXPLANATORY NOTE

CLAUSE 4: BASIC RATE LIMIT FROM 2016

SUMMARY

1. This clause sets the income tax basic rate limit for 2016-17 and 2017-18.

DETAILS OF THE CLAUSE

2. Subsection 1 sets the amount of the basic rate limit for 2016-17 and 2017-18.

3. Subsection 2 disapplies the indexation provisions.

BACKGROUND NOTE

4. Finance Act 2014 sets the basic rate limit at £31,785 for 2015-16. Finance Bill 2015 sets the basic rate limit at £31,900 for 2016-17 and £32,300 for 2017-18.

EXPLANATORY NOTE

CLAUSE 5: PERSONAL ALLOWANCES FROM 2016

SUMMARY

1. This clause sets the income tax personal allowance for 2016-17 and 2017-18 and removes the personal allowance for those born before 6 April 1938.

DETAILS OF THE CLAUSE

2. Subsection 1 sets the amount of the personal allowance for 2016-17 and 2017-18.

3. Subsection 2 disapplies the indexation provisions.

4. Subsection 4 removes the date of birth qualification for the personal allowance provided by section 35 of the Income Tax Act 2007.

5. Subsection 5 omits the personal allowance for those born before 6 April 1938.

6. Subsections 6 to 10 remove references to the personal allowance for those born before 6 April 1938.

7. Subsection 11 provides that the amendments made by subsections 3 to 10 have effect for the 2016-17 tax year and subsequent tax years.

BACKGROUND NOTE

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

9. The amount of the personal allowance for those born before 6 April 1938 is fixed at £10,660. This clause increases the personal allowance to £10,800 for 2016-17, so it also removes the personal allowance for those born before 6 April 1938. The effect is that from 2016-17 everyone, regardless of their date of birth, is entitled to the same personal allowance.

EXPLANATORY NOTE

CLAUSE 6: CHARGE FOR FINANCIAL YEAR 2016

SUMMARY

1. This clause charges corporation tax (CT) for the financial year beginning 1 April 2016 and sets the main rate at 20%.

DETAILS OF THE CLAUSE

2. Subsections 1 and 2 charge and set the main rate of CT for the financial year beginning 1 April 2016.

BACKGROUND NOTE

3. Parliament charges and sets the main rate of CT for each financial year. This clause charges CT and sets the main rate at 20% for the financial year beginning 1 April 2016.

EXPLANATORY NOTE

CLAUSE 7: CARS: THE APPROPRIATE PERCENTAGE FOR TAX YEAR 2017-18

SUMMARY

1. This clause modifies the appropriate percentage bands by revising the appropriate percentages for cars (including those registered before 1 January 1998 and those without a registered CO_2 emissions figure). This increases the level of chargeable benefit for company car tax for employees and of Class 1A National Insurance contributions (NICs) for employers. The amendment has effect on or after 6 April 2017.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces changes to Chapter 6 of Part 3 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 (taxable benefits: cars, vans and related benefits) which increase the appropriate percentage for cars for the tax year 2017-18.

3. Subsection (2) introduces the changes to section 139 ITEPA 2003.

4. Subsection (3) increases the appropriate percentage for cars. Subsection (4) increases the appropriate percentage of the relevant threshold (95 grammes per kilometre) from 16 % to 18 %. (The relevant threshold is the approved CO_2 emissions figure upon which all calculations and bandings of the appropriate percentage are based). The increases are outlined in the following table.

	Increase in appropriate percentage:	
CO_2 emissions figure (grammes per kilometre)	from	to
0 - 50	7 %	9 %
51 - 75	11 %	13 %
76 - 94	15 %	17 %
95 (relevant threshold)	16 %	18 %

5. Subsection (5) introduces a change to section 140 ITEPA 2003 and increases the appropriate percentage for cars without a CO_2 emissions figure. The percentage for engines with a cylinder capacity of 1400cc or less increases from 16 % to 18 %; and for those with a cylinder capacity of 1401cc to 2000cc increases from 27 % to 29 %.

6. Subsection (6) introduces a change to section 142 ITEPA 2003 and increases the appropriate percentage for cars first registered before 1 January 1998 with an internal combustion engine with a cylinder capacity of 1400 cc or less from 16 % to 18 %. The

increase in the appropriate percentage for cars first registered before 1 January 1998 with an internal combustion engine with a cylinder capacity of 1401 cc to 2000 cc increases from 27 % to 29 %.

7. Subsection (7) provides that these changes have effect for the tax year 2017-18.

BACKGROUND NOTE

8. 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.

9. From 6 April 2017, 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 9 % for cars emitting 0-50 grams of CO_2 per kilometre to a maximum of 37 % for cars emitting 200 grams of CO_2 per kilometre or more.

10. This will continue to support the wider market for ultra low emission vehicles (ULEVs) by maintaining lower taxation for ULEVs. At the same time, the increase in appropriate percentages ensures the tax system continues to support the sustainability of the public finances.

11. The Government is committed to legislating over a year in advance of the implementation date so that employers and employees can make informed choices about the type of vehicle and future tax implications.

12. Section 140 ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars without a CO_2 emissions figure and all but the highest band have been increased.

13. 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 the other changes.

EXPLANATORY NOTE

CLAUSE 8: CARS: THE APPROPRIATE PERCENTAGE FOR SUBSEQUENT TAX YEARS

SUMMARY

1. This clause modifies the appropriate percentage bands by revising the appropriate percentages for cars (including those registered before 1 January 1998 and those without a registered CO_2 emissions figure). This increases the level of chargeable benefit for company car tax for employees and of Class 1A National Insurance contributions (NICs) for employers. The amendment has effect on or after 6 April 2018.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces changes to Chapter 6 of Part 3 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 (taxable benefits: cars, vans and related benefits) which increase the appropriate percentage for cars for the tax year 2018-19.

3. Subsection (2) introduces the changes to section 139 ITEPA 2003.

4. Subsection (3) increases the appropriate percentage for cars. Subsection (4) increases the appropriate percentage of the relevant threshold (95 grammes per kilometre) from 18 % to 20 %. (The relevant threshold is the approved CO_2 emissions figure upon which all calculations and bandings of the appropriate percentage are based). The increases are outlined in the following table.

	Increase in appropriate percentage:	
CO_2 emissions figure (grammes per kilometre)	from	to
0 - 50	9 %	13 %
51 - 75	13 %	16 %
76 - 94	17 %	19 %
95 (relevant threshold)	18 %	20 %

5. Subsection (5) introduces a change to section 140 ITEPA 2003 and increases the appropriate percentage for cars without a CO_2 emissions figure. The percentage for engines with a cylinder capacity of 1400 cc or less increases from 18 % to 20 %; and for those with a cylinder capacity of 1401cc to 2000cc increases from 29 % to 31 %.

6. Subsection (6) introduces a change to section 142 ITEPA 2003 and increases the appropriate percentage for cars first registered before 1 January 1998 with an internal

combustion engine with a cylinder capacity of 1400 cc or less from 18 % to 20 %. The increase in the appropriate percentage for cars first registered before 1 January 1998 with an internal combustion engine with a cylinder capacity of 1401 cc to 2000 cc increases from 29 % to 31 %.

7. Subsection (7) provides that these changes have effect for the tax year 2018-19 and subsequent tax years.

BACKGROUND NOTE

8. 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.

9. From 6 April 2018, the graduated table of bands for taxing the benefit of a company car will provide for a two percentage point increase for cars emitting more than 75 grammes of CO_2 per kilometre to a maximum of 37 % for cars emitting 200 grammes of CO_2 per kilometre or more. There will be a 3 percentage point differential between the 0-50 and the 51-75 grammes of CO_2 per kilometre bands; and between the 51-75 and 76-94 grammes of CO_2 per kilometre bands.

10. This will continue to support the wider market for ultra low emission vehicles (ULEVs) by maintaining lower taxation for ULEVs. At the same time, the increase in appropriate percentages ensures the tax system continues to support the sustainability of the public finances.

11. The Government is committed to legislating over two years in advance of the implementation date so that employers and employees can make informed choices about the type of vehicle and future tax implications.

12. Section 140 ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars without a CO_2 emissions figure and all but the highest band have been increased.

13. 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 the other changes.

EXPLANATORY NOTE

CLAUSE 9: DIESEL CARS: THE APPROPRIATE PERCENTAGE FOR 2015-16

SUMMARY

1. This clause increases the maximum appropriate percentage for diesel cars. This increases the maximum level of chargeable benefit for diesel company car tax for employees and of Class 1A National Insurance contributions (NICs) for employers. The amendment has effect on or after 6 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces the change to section 141 Income Tax (Earnings and Pensions) Act (ITEPA) 2003 and increases the maximum appropriate percentage for diesel cars from 35 % to 37 %.

3. This brings the maximum appropriate percentage for diesel company cars into line with petrol company cars.

4. Subsection (2) provides that this change has effect for the tax year 2015-16.

BACKGROUND NOTE

5. Section 139 ITEPA 2003 sets out the basis for calculating the appropriate percentage for cars with a CO_2 emissions figure. 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.

6. Section 141 ITEPA 2003 sets out the basis for calculating the appropriate percentage for diesel cars. Under section 24(11) of Finance Act 2014, section 141 will be repealed with effect from 6 April 2016.

EXPLANATORY NOTE

CLAUSE 10: ZERO EMISSION VANS

SUMMARY

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

DETAILS OF THE CLAUSE

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

3. Subsection (2) replaces sections 155(1) and 155(2) ITEPA 2003 and amends the method of calculating the cash equivalent of the benefit of a van. The charge is increased from £nil for zero emission vans to a percentage of the charge applying to vans which emit CO_2. This percentage increases each tax year from 40% in 2016-17 to 100% in 2020-21. For vans which emit CO_2, the existing van benefit charge continues to apply. The cash equivalent of the van benefit charge remains £nil where the restricted private use condition is met.

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

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

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

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

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

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

BACKGROUND NOTE

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

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

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

EXPLANATORY NOTE

CLAUSE 11: EXEMPTION FOR AMOUNTS WHICH WOULD OTHERWISE BE DEDUCTIBLE

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

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

10. New section 289E introduces a targeted anti-avoidance rule which prevents the exemptions in section 289A and section 289D from applying to expenses payments and benefits in kind which are given as part of certain types of arrangements. An arrangement is caught by this rule if it reduces the amount of General earnings or Specific employment income of the employee subject to tax and National Insurance contributions and one of its main purposes of the arrangement is to avoid tax or National Insurance contributions. New section 289E(6) defines "arrangements" for the purposes of new section 289E.

BACKGROUND NOTE

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

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

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

EXPLANATORY NOTE

CLAUSE 12: ABOLITION OF DISPENSATION REGIME

SUMMARY

1. This clause amends the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to abolish the "dispensations regime" from 6 April 2016 as part of the replacement of that regime with a new exemption for amounts that would otherwise be deductible. It also preserves HMRC's power to revoke dispensations issued prior to the abolition of the regime.

DETAILS OF THE CLAUSE

2. Subsections 2 and 3 repeal sections 65 and 96 ITEPA respectively, which govern the application for, issue of, and revocation of dispensations.

3. Subsection 4 makes a number of consequential amendments to ITEPA as a result of the omission of sections 65 and 96.

4. Subsection 5 sets out that the amendments come into force from 6 April 2016.

5. Subsections 6 – 8 preserve HMRC's powers to revoke dispensations retrospectively in respect of dispensations that are in place prior to 6 April 2016.

BACKGROUND NOTE

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

7. In response to recommendations from the Office of Tax Simplification as part of their general review of employee benefits and expenses, an exemption is being introduced with effect from 6 April 2016 for paid or reimbursed deductible expenses and benefits. As a result there will be no need for dispensations once the exemption becomes effective.

8. This legislation repeals legislation relating to the dispensations regime. However, that legislation also includes a power for HMRC to revoke dispensations retrospectively. As HMRC may still need to exercise that power after the new exemption comes into force in respect of dispensations in place prior to 6 April 2016, this section includes a savings provision in respect of that power.

EXPLANATORY NOTE

CLAUSE 13, SCHEDULE 1: EXTENSION OF THE BENFITS CODE EXCEPT IN RELATION TO CERTAIN MINISTERS OF RELIGION

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

4. New Section 290C (1) applies the section to lower paid employment as a minister of religion for a tax year. 'Employment' will include those ministers of religion who are 'office' holders.

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

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

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

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

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

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

11. New Section 290E (1) to (4) contains a method statement that sets out how to calculate whether the minister of religion is earning at a rate of less than £8,500 in the tax year. In doing so, you have to assume that the employment is not lower paid employment as a minister of religion so that the cash equivalent of any BiKs specified in new section 290C are included in the calculation, as well as any BiKs relating to accommodation outgoings that would have been exempt from income tax under Sections 290A and 290B.

12. The calculation requires all earnings from the employment to be added (including amounts treated as earnings), and also BiKs that would be exempt if the minister of religion is in lower paid employment. A deduction from total income is then made for earnings which are specifically excluded (except for accommodation outgoings of ministers of religion), any extra amount to be added in connection with a car set out in new Section 290F, and finally authorised deductions (as set out in new subsection 290E(4) are subtracted. The total number of days in the year is then divided by the total number of days the minister of religion has worked in the year and this is multiplied by total income (after deductions and exclusions); and this then provides the earnings rate for a minister of religion.

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

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

15. Subsection 3 introduces the Schedule.

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

DETAILS OF THE SCHEDULE

Part 1

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

18. Paragraph 1 introduces the changes.

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

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

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

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

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

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

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

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

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

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

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

30. Paragraph 22 makes changes to paragraph 17 of Schedule 7 ITEPA 2003 to change references from lower paid employments to Chapter 3, 6, 7 and 10 of the benefits code such that the transitional arrangements are maintained and omits sub-paragraph 4 referring to Chapter 11 of Part 3. It also makes changes to paragraph 27(3) of Schedule 7 ITEPA 2003 replacing the words 'not an excluded employment' with 'not lower paid employment as a minster of religion', and 'excluded employment' with 'lower paid employment as a minster of religion'.

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

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

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

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

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

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

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

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

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

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

BACKGROUND NOTE

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

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

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

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

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

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

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

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

47. These changes will be introduced for the 2016-17 and subsequent tax years.

EXPLANATORY NOTE

CLAUSE 14: EXEMPTION FOR BOARD OR LODGING PROVIDED TO CARERS

SUMMARY

1. This clause provides a new exemption from income tax where an employed home care worker is provided with board and/or lodging in the home of the person that they are caring for. This exemption is being introduced as a result of the abolition the £8,500 threshold for benefits in kind and expenses that is taking effect at the same time.

DETAILS OF THE CLAUSE

2. Subsection 1 amends Part 4 of Income Tax (Earnings and Pensions) Act (ITEPA) 2003, (employment income: exemptions).

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

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

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

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

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

BACKGROUND NOTE

8. At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee BiKs and expenses. This followed the Office of Tax Simplification's (OTS) review of employee BiKs and expenses.[2]

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

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

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

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

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

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

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

14. These changes will be introduced for the 2016-17 and subsequent tax years.

EXPLANATORY NOTE

CLAUSE 15 : LUMP SUMS PROVIDED UNDER ARMED FORCES EARLY DEPARTURE SCHEME

SUMMARY

1. This clause extends the existing income tax exemption for lump sum payments made to Armed Forces personnel under the Early Departure Payments 2005 (EDP 05) scheme to include lump sum payments made under the new Early Departure Payments 2015 (EDP 15) scheme. This change will come into effect from 1 April 2015.

DETAILS OF THE CLAUSE

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

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

BACKGROUND NOTE

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

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

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

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

EXPLANATORY NOTE

CLAUSE 16: BEREAVEMENT SUPPORT PAYMENT: EXEMPTION FROM INCOME TAX

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

BACKGROUND NOTE

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

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

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

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

EXPLANATORY NOTE

CLAUSE 17: PAYE: BENEFITS IN KIND

SUMMARY

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

DETAILS OF THE CLAUSE

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

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

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

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

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

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

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

BACKGROUND NOTE

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

10. At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee benefits and expenses. This followed the Office of Tax Simplification's (OTS) review of employee benefits and expenses[3].

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

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

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

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

EXPLANATORY NOTE

CLAUSE 18: EMPLOYMENT INTERMEDIARIES: DETERMINATION OF PENALTIES

SUMMARY

1. This clause amends existing legislation for the procedure for recovery of penalties under Section 100 Taxes Management Act (TMA) 1970. This allows HMRC to issue penalties without issuing proceedings before the First-Tier Tribunal where the penalty relates to the late filing of, non-submission of, or incorrect or incomplete, quarterly returns from employment intermediaries from 6 April 2015.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that Section 100 TMA 1970 (determination of penalties by officer of Board) is amended.

3. Subsection 2 inserts new "subject to subsection (2A)" after "those amendments" in sub- section (2) (c). Subsection 3 inserts new subsection (2A) after subsection (2). New subsection (2A) provides that penalties in relation to an intermediaries return do not appear in the list of exceptions to section 100 TMA 1970 contained in section 100(2) TMA 1970. This means that penalties in relation to the failure to keep, preserve and provide information in the employment intermediaries return required under s716B of the Income Tax (Earnings and Pensions Act) 2003 ("ITEPA") can be issued by an Officer of the Board and do not require proceedings before the First Tier-Tribunal.

4. The amendments made by this section come into force on 6 April 2015.

BACKGROUND NOTE

5. Legislation was introduced in Finance Act 2014 to prevent the avoidance of employment taxes by UK agencies engaging UK workers via non-UK agencies, prevent intermediaries facilitating false self-employment and provide for the introduction of the Employment Intermediaries Information Quarterly Return (the first return is due to be submitted by 5 August 2015). This clause supports the Government's anti-avoidance policy by tackling those who have carelessly or deliberately failed to comply with the returns requirements in regulations made under s716B of ITEPA 2003. These regulations will allow HMRC to take an appropriate targeted compliance response where required.

EXPLANATORY NOTE

CLAUSE 19: ARRANGEMENTS OFFERING A CHOICE OF CAPITAL INCOME RETURN

SUMMARY

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

DETAILS OF THE SCHEDULE

2. Subsection (1) provides for the amendment of Chapter 3 of Part 4 of ITTOIA 2005.

3. Subsection (2) inserts new section 396A into ITTOIA 2005.

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

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

6. The test whether the alternative receipt will be of "substantially the same value" as the dividend may be applied at either distributing company or receiving shareholder level.

7. New section 396A(2)(a) treats alternative receipts from UK companies as a distribution in the tax year of receipt.

8. New section 396A(2)(b) treats the alternative receipt as a qualifying distribution for the purposes of sections 397 or 399 ITTOIA 2005 (which provide dividend tax credits or treat tax as being paid at the basic rate), and for section 1100 Corporation Tax Act 2010 (which allows shareholders to request statements showing the value of a distribution).

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

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

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

12. Subsections 4 to 9 make various consequential adjustments, including to extend the list of items to be charged at special rates for trustees in section 482 of the Income Tax Act 2007.

13. Subsection 10 provides that the amendments apply to things received on or after 6 April 2015, regardless of when the arrangements were entered into.

BACKGROUND NOTE

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

EXPLANATORY NOTE

CLAUSE 20: INTERMEDIARIES AND GIFT AID

SUMMARY

1. This clause amends Chapter 2 of Part 8 of the Income Tax Act 2007 (ITA 2007). It will enable regulations to be made which make it easier for donors to give to charity through an intermediary, such as an independent fund raiser. The regulations will ease the administrative burden on intermediaries by relieving them of the need to receive a Gift Aid declaration for each individual charity a donor gives to through them. They will similarly ease the process for donors giving to multiple charities via a single intermediary.

DETAILS OF THE CLAUSE

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

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

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

5. The regulations which have been made under s.428 and which are currently in force are The Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000.

6. Clause 20(2)(a) amends section 416 of ITA 2007 (the meaning of qualifying donation) by inserting provisions for Gift Aid Declarations (GADs) to be made by an intermediary acting on behalf of an individual making a gift and to be given to an intermediary acting on behalf of a charity.

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

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

- new section 428(3)(a) of ITA which provides for the regulations which set out the requirements for intermediaries and charities to keep necessary records with respect to GADs;
- new section 428(3)(b) of ITA which provides for the regulations to require intermediaries and charities to produce such records for inspection by an officer of HM Revenue & Customs; and
- new section 428(3)(c) of ITA which provides for the regulations to require intermediaries to provide certain information to donors at times to be specified.

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

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

BACKGROUND NOTE

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

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

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

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

EXPLANATORY NOTE

CLAUSE 21: DISGUISED INVESTMENT MANAGEMENT FEES

SUMMARY

1. This clause applies to certain fees or other sums paid to investment managers, and provides that in some circumstances these sums will be charged to income tax. It applies to sums paid through structures involving partnerships, unless they are already charged to income tax as employment income or brought into account in calculating profits. Carried interest is excluded from the charge. The clause comes into effect on 6 April 2015, in respect of disguised fees arising on or after that date, whenever the arrangements were entered into.

DETAILS OF THE CLAUSE

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

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

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

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

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

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

8. Section 809EZB(2) defines an arm's length return. A sum is an arm's length return if comparable investments are made by external investors, the return is reasonably comparable to that received by external investors on comparable investments, and the terms of the investment are reasonably comparable to those governing returns to external investors.

9. Section 809EZC explains the meaning of carried interest for the purposes of Section 809EZB.

10. Section 809EZC (1) defines carried interest as a profit-related return, subject to later provisions.

11. Section 809EZC (2) explains when a sum arising to an individual does so as a profit related-return. The conditions are that there are profits on the investments for the period, the sum is variable by reference to profits on the investments, and that the investments must be the same as those which are used to determine returns to external investors. Where any part of the sum does not meet those conditions, it is not a profit-related return.

12. Section 809EZC (3) provides that where sums arise to an individual as a profit-related return, and there was no significant risk that at least a certain amount would not arise, that certain amount is the "minimum return". That minimum return is not carried interest.

13. Section 809EZC (4) sets out more details of how the minimum amount is to be calculated. The amounts to take into account are the actual sum which arises, and any other sums which might have arisen under the arrangements as profit-related return. The test must be carried out both by looking at each sum which might have arisen individually, and by looking at all sums arising in the tax year as a whole.

14. Section 809EZC (5) provides when the risk mentioned in subsection 3(b) is to be assessed. It is to be at the latest of the time when the individual became party to the arrangements, the time when the individual starts to perform investment management services in respect of the arrangements, or the date of any material change to the arrangements. The material changes to be taken into account are those which relate to the sums which may arise to the individual by way of profit-related return

15. Section 809EZC (6) provides that when deciding that there is a risk that a sum will not arise to an individual, a risk that it will be prevented from arising, caused by insolvency or otherwise, must be ignored.

16. Section 809EZC (7 and 8) set out how sums which are not carried interest are to be treated. If there are sums which are not carried interest they have to be attributed to the actual sums which arise to the managers.

17. If there are amounts which are not carried interest, and they can be attributed to particular actual sums which have arisen, then the part which is not carried interest is apportioned to those actual sums. But where amounts have arisen which are not carried interest, and which cannot be attributed to any particular actual sum, then those amounts are divided between the actual sums arising on a just and reasonable basis.

18. Section 809EZC (9) provides that for the purposes of section 809EZC(7) any part of the sum which is not carried interest, and which can attributed to a particular actual sum, is to be attributed to that sum to the extent that there was no significant risk that it would not arise.

19. Section 809EZD sets out an additional definition of carried interest for the purposes of section 809EZB.

20. Section 809EZD (1) provides that where a sum falls within section 809EZD(2) or 809EZD(3), then it is to be treated as meeting the conditions in section 809EZC and therefore it will qualify as carried interest.

21. Section 809EZD (2) provides that carried interest is a sum paid to an individual from scheme profits, paid after all, or substantially all, of the investments have been repaid, and any preferred return has been paid to external participants in the scheme.

22. Section 809EZD (3) explains how this is applied where the scheme profits and preferred return are calculated on the basis of particular investments.

23. Section 809EZD (4) defines the preferred return, providing that it is a return equivalent to at least compound interest calculated at the rate of 6% per annum on the sum invested for the period during which it was invested in the scheme.

24. Sections 809EZE defines various terms used in the Chapter.

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

26. Section 809EZG provides for the avoidance of double taxation on sums charged under s809EZA.

27. Section 809EZG (1) sets out one of the situations when the section applies. It applies when income tax is charged in respect of a disguised fee under s809EZA, and at any time income tax or another tax is charged under another section in respect of that disguised fee.

28. Section 809EZG (2) sets out the other situation when s809EZG applies. It applies when a charge has arisen under s809EZA in respect of a loan, and tax arises under another section on an amount which must be used to repay that loan.

29. Section 809EZG (3) provides that to avoid a double charge to tax, the individual may claim a consequential adjustment.

30. Section 809EZG (4) provides that an officer of Revenue and Customs must make any consequential adjustments which are just and reasonable.

31. Section 809EZG (5) (a) sets a limit on the consequential adjustment as a result of s809EZG(1), which may not exceed the lesser of the income tax charged under s809EZA and the other tax charged.

32. Section 809EZG (5) (b) sets a limit on the consequential adjustment as a result of s809EZG(2), which may not exceed the lesser of the tax charged under s809EZA, and the charge in respect of the amount of the loan repaid.

33. Section 809EZG (6) sets out how the adjustments may be made.

34. Section 809EZH provides for Regulations to be made to amend the Chapter, to alter the schemes to which the Chapter applies, the persons who are participants, or the sums which constitute carried interest.

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

36. Subsection (4) of the clause provides that the amendment has effect in respect of amounts arising on or after 6 April 2015, whenever the arrangements were made.

BACKGROUND NOTE

37. This clause has been introduced to ensure that fees or other sums for investment management paid to managers of funds are charged to income tax. Structures have increasingly been used by private equity firms in which annual fees are paid as priority partnership shares to avoid an income tax charge on the fees.

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

EXPLANATORY NOTE

CLAUSE 22: MISCELLANEOUS LOSS RELIEF

SUMMARY

1. This clause counters avoidance of income tax involving losses from miscellaneous transactions and limits the miscellaneous income against which a miscellaneous loss can be relieved.

DETAILS OF THE CLAUSE

2. Subsection (2) amends section 152 of the Income Tax Act (ITA) 2007. The effect of these amendments is to limit the miscellaneous income against which loss relief under section 152 of ITA 2007 can be deducted to a person's "relevant miscellaneous income" instead of a person's "miscellaneous income", as previously defined in section 152(5) of ITA 2007. A person's "relevant miscellaneous income" is so much of the person's total income as is income or gains arising from transactions and income on which income tax is charged under, or by virtue of, the same provision in section 1016 of ITA 2007 as a profit or other income arising from the relevant loss-making transaction would have been charged, if the loss on the transaction had been profits or income.

3. Subsection (3) makes consequential changes to section 153 of ITA 2007.

4. Subsection (4) makes consequential changes to section 154 of ITA 2007.

5. Subsection (5) inserts new section 154A into Chapter 7 of Part 4 of ITA 2007.

6. Subsections (1) and (2) of new section 154A provide that loss relief is not to be given to a person under section 152 of ITA 2007 where a loss arises as a result of relevant tax avoidance arrangements.

7. Subsections (3) and (4) of new section 154A provide that a person is not to be given loss relief against income under section 152 of ITA 2007 where the income arises as a result of relevant tax avoidance arrangements.

8. Subsections (5) and (6) of new section 154A define "relevant tax avoidance arrangements" and "arrangements".

9. Subsection (6) makes consequential changes to section 155 of ITA 2007.

10. Subsections (8) to (11) provide for commencement. New section 154A of ITA 2007 has effect in relation to losses and income arising on or after 3 December 2014. The rules providing that loss relief under section 152 of ITA 2007 may only be deducted from "relevant miscellaneous income" have effect for tax year 2015-16 and subsequent years.

BACKGROUND NOTE

11. The Government is aware of avoidance activity that seeks to exploit income tax relief for losses from miscellaneous transactions. This avoidance activity puts at risk substantial amounts of revenue.

12. It was announced on 3 December 2014 that the Government would legislate to counter avoidance of income tax involving losses from miscellaneous transactions. The changes denying loss relief where a miscellaneous loss, or miscellaneous income, arises from relevant tax avoidance arrangements will have effect from 3 December 2014. The changes limiting relief to "relevant miscellaneous income" will have effect for tax year 2015-16 and subsequent years.

EXPLANATORY NOTE

CLAUSE 23: EXCEPTION FROM DUTY TO DEDUCT TAX: QUALIFYING PRIVATE PLACEMENTS

SUMMARY

1. This clause amends the rules on the deduction of income tax from payments of yearly interest. It provides for an exception from the duty to deduct income tax from interest paid on qualifying private placements, with effect from a date to be set in regulations.

DETAILS OF THE CLAUSE

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

3. Subsection (1) of new section 888A provides that the duty to deduct income tax from yearly interest does not apply to a payment of interest on a 'qualifying private placement'. This is defined in subsection (2) as a security which represents a debtor loan relationship of a company, is not listed on a recognised stock exchange and meets such other conditions as are set in regulations. Subsection (6) provides that 'loan relationship' takes its meaning from Part 5 of the Corporation Tax Act 2009.

4. Subsections (3) to (5) of new section 888A set out the provisions that apply to regulations made under this section. They provide, among other matters, that the regulations may set out conditions relating to the security itself, the debtor company, the holder of the security, the consequences where a payment is made in the reasonable but mistaken belief that the security was a qualifying private placement, and to transitional and similar cases.

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

BACKGROUND NOTE

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

7. Where a UK company pays yearly interest on borrowings, tax rules require the company to deduct income tax from the payment. However, there are a number of exemptions from this requirement, and where the borrowing is from a non-UK lender, double taxation treaties commonly allow interest to be paid gross or at a reduced rate of withholding. This measure will remove an obstacle to the development of the UK private placement

market by providing a specific exemption for private placements that meet certain qualifying conditions.

8. The power to make regulations provided in this measure allows detailed conditions to be set out in relation to private placements to qualify for the exemption from the duty to deduct income tax. These regulations will allow the exemption to be appropriately targeted.

EXPLANATORY NOTE

CLAUSE 24: INCREASED REMITTANCE BASIS CHARGE

SUMMARY

1. This clause introduces changes to the remittance basis charge payable by individuals who are resident, but not domiciled, in the UK. It introduces a new remittance basis charge of £90,000 payable by individuals who claim the remittance basis of taxation and who have met the "17-year residence test". It also increases from £50,000 to £60,000 the remittance basis charge payable by individuals who claim the remittance basis of taxation and who have met the "12-year residence test". The changes will apply from the start of the 2015-16 tax year.

DETAILS OF THE CLAUSE

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

3. Paragraphs (a) to (d) of sub-section (2) define the 17-year residence test (the individual has been resident in the UK in at least 17 of the 20 tax years preceding the tax year in which they claim the remittance basis) and ensure that if it applies then neither the 12-year residence test nor the 7-year residence test will apply.

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

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

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

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

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

BACKGROUND NOTE

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

UK, but only liable to UK tax on their foreign income and capital gains to the extent that they are remitted to the UK.

8. The remittance basis rules were revised in Finance Act 2008 to introduce an annual remittance basis charge of £30,000 for those who met what is now the 7-year residence test (the individual has been resident in the UK in at least 7 of the 9 tax years preceding the tax year in which they claim the remittance basis). Finance Act 2012 introduced a higher annual charge of £50,000 payable by individuals who met the 12-year residence test (the individual has been resident in the UK in at least 12 of the 14 tax years preceding the tax year in which they claim the remittance basis).

9. The remittance basis charge ensures that non-domiciled but UK-resident individuals pay a fair tax contribution. The government is increasing the charge for individuals who meet the 12-year residence test and introducing a new higher charge for individuals who meet the new 17-year residence test.

EXPLANATORY NOTE

CLAUSE 25: LOAN RELATIONSHIPS: REPEAL OF PROVISIONS RELATING TO LATE-PAID INTEREST ETC

SUMMARY

1. This clause repeals provisions in Part 5 of Corporation Tax Act (CTA) 2009, which determine the timing of relief for deferred interest and discounts on debt issued to UK companies by a connected company in a non-qualifying territory. Following the repeal, deferred interest and discounts will be subject to the normal loan relationship rules, and will generally be brought into account as they accrue in a company's accounts. The repeal has effect from 3 December 2014 in respect of loans entered into on or after that date. For loans and securities entered into before that date, the current rules will continue to apply in respect of interest and discounts accrued up to 31 December 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for Part 5 of CTA 2009 to be amended.

3. Subsection (2) omits sections 374, 377, 407 and 408 which bring certain cases within the particular rules setting out when deferred interest payable on loans and discounts on deeply discounted securities are to be brought into account for tax. Those cases are situations where companies are connected and where one party to the debt has a major interest in the other.

4. Subsections (3) and (4) make consequential amendments to sections 372.and 373.

5. Subsection (5) makes consequential amendments to section 406.

6. Subsection (6) provides that the repeal of sections 374 and 377 becomes effective from 3 December 2014 for loans entered into on or after that date. For loans which were entered into before 3 December 2014, the current treatment will continue in respect of interest accruing up to 31 December 2015.

7. Subsection (7) sets out, in similar terms, when the repeal of sections 407 and 408 becomes effective for debts entered into on or after 3 December 2014 and for those entered into before that date.

8. Subsections (8) to (14) give further detail of the arrangements for loans and securities entered into before 3 December 2014.

9. Subsection (9) provides that where a company has an accounting period straddling 1 January 2016, it is to be split for the purposes of this provision.

10. Subsections (10) and (12) provide that, if a loan or deeply discounted security entered into before 3 December 2014 is modified between 3 December 2014 and 31 December 2015, the old rules will cease to apply in respect of that loan or security from the date of the modification. Subsection (14) provides that, for this purpose, a new accounting period is deemed to commence when the modification takes effect.

11. Subsections (11) and (13) define a modification of a loan or deeply discounted security as a material change to the terms of the debt or a change in the creditor.

BACKGROUND NOTE

12. At Budget 2013, the Government announced a review of the corporation tax rules governing corporate debt (or 'loan relationships') and derivative contracts. There was consultation on a wide-ranging package of measures to update and simplify these regimes and to reduce their susceptibility to tax avoidance. This clause is being introduced in the context of these wider changes, which are expected to be included in a later Finance Bill.

13. The 'late-paid interest' rules were originally introduced as anti-avoidance provisions to prevent mismatches between the timing of relief for interest in debtor companies and its taxation in the creditor. Interest may be accrued in the accounts of the debtor, and relieved, even though it may not be actually paid and taxed on the creditor until much later, or at all. A similar effect could be achieved through mismatches in the timing of relief for, and taxation of, discounts on deeply discounted securities.

14. Rules in respect of late-paid interest on loans are in Chapter 8, Part 5 of CTA 2009, while Chapter 12 contains rules for deeply discounted securities. Under the late-paid interest rules, relief for interest unpaid 12 months after the period in which it accrued is deferred until it is actually paid. In the case of discounts on deeply discounted securities, no 12 month period is involved, but relief is not available until the security is redeemed.

15. The Chapter 8 rules apply in four cases: where the parties are connected; where the creditor is a participator in a close company; where one of the parties has a major interest in the other; and where the loan is made by trustees of an occupational pension scheme. The Chapter 12 rules for deeply discounted securities effectively mirror the first, second and third of these cases. This clause is concerned with the rules in so far as they apply to connected parties and where one party has a major interest in the other.

16. In 2009 the scope of the rules was greatly restricted, so that, in the case of connected parties or where one party has a major interest in the other, they now only apply where the creditor is resident in a 'non-qualifying' territory (broadly, a 'tax haven'). The anti-avoidance effect of the rules is therefore now very limited in those cases.

17. In addition, the rules have regularly been used by some groups to manage and manipulate the emergence of profits and losses. Loss relief rules permit excess amounts, including trading losses and non-trading loan relationship deficits to be set against a company's other profits of the same period or surrendered to other group companies, again to

be set against profits of the same period. Limited carry back of losses to earlier periods is also possible. All these rules provide immediate relief. However, if trading losses or non-trading loan relationship deficits are not used in any of these ways, they can only be carried forward until such time as the company in which they arose can set them against any future profits which may emerge from the same source. Carried forward amounts cannot be set against profits from other sources or surrendered as group relief.

18. For this reason, some groups use structures involving companies in non-qualifying territories and deliberately defer payment of interest so that losses can be timed to arise in accordance with the availability of profits elsewhere in the group which can absorb them. This effectively sidesteps the intention behind the group relief rules that relief should be available for in-year losses only. Nor does it accord with the anti-avoidance purpose of the late paid interest rules, described above.

19. The wider changes to the loan relationships rules will include introduction of a new regime-wide anti-avoidance rule, whose scope will include counteraction of timing mismatches of the kind originally targeted by the late paid interest rules.

EXPLANATORY NOTE

CLAUSE 26: INTANGIBLE FIXED ASSETS: GOODWILL ETC ACQUIRED FROM A RELATED PARTY

SUMMARY

1. This clause will restrict when and how corporation tax relief is allowed in relation to internally-generated goodwill and certain customer related intangible assets acquired on incorporation of a business. For all relevant incorporations on or after 3 December 2014, relief will be calculated when the asset is disposed of by the company rather than at the time the expenditure is incurred.

DETAILS OF THE CLAUSE

2. This clause amends and inserts new provisions into existing legislation within Part 8 Corporation Tax Act (CTA) 2009.

3. Subsection (1) – (4) insert new sections 849B – D CTA 2009 to restrict the circumstances when a company can claim relief for internally-generated goodwill, and certain customer related intangible assets, when these are acquired from related party individuals, including partnerships, on incorporation of a business.

New Section 849B CTA 2009

4. New section 849B CTA 2009 details the circumstances when the restrictions in either new section 849C or new section 849D will apply to a company claiming relief for debits under Chapters 3 and 4 of Part 8 CTA 2009.

5. Subsection (1) provides that a restriction will only apply where the company acquires a relevant asset directly or indirectly from a related party individual or a firm in which one of the members is a related party individual. The words “directly or indirectly” have been added to the draft that was published on 3 December 2014 to put it beyond doubt that indirect transfers will be subject to the restrictions imposed by new sections 849C and 849D. .

6. Subsection (2) defines “relevant asset”. Relevant assets include the goodwill of a business and certain customer-related intangible assets and unregistered trade marks normally associated with the goodwill of a business. This ensures that the same tax treatment will apply where the accounting treatment is to recognise assets closely associated with goodwill separately from goodwill.

7. Subsection (2)(e) includes a license in respect of a relevant asset to deal with circumstances where the relevant assets are retained by the individual, or a firm, on the incorporation of the business.

8. Subsection (3) defines “the relevant business or part”.

9. Subsections (4) – (6) determine whether either new section 849C or new section 849D applies.

10. Subsection (4) provides that new section 849C will only apply to goodwill to the extent that it was previously acquired from a third party before transfer to the company. Two conditions must be met; first, the transferor must have acquired the relevant business, or part of a business in respect of one or more third party acquisitions, and second, the company must also have acquired that business or part from the transferor.

11. Subsection (5) has the same effect for relevant assets that are not goodwill described in paragraph 10 above.

12. Subsection (6) provides that new section 849D will apply where section 849C does not.

13. Subsection (7) defines "third party acquisition". Subsections (a) and (b) consider the relationship of the parties at the time the transferor acquired the relevant asset to determine whether it is a third party acquisition.

14. Subsection (a) considers the relationship of the parties where the relevant asset was acquired by the transferor from a company and treats any acquisition from a company who is unrelated as a third party acquisition.

15. Subsection (b) has the same effect as paragraph 14 above in relation to acquisitions from persons who are not a company and who are unconnected.

16. Subsection (8) defines "connected" by reference to section 842 CTA 2009.

17. Subsection (9) is an anti-avoidance rule that treats any acquisition as a non-third party acquisition where it has a main purpose of avoiding tax. The existing anti-avoidance rule at section 864 CTA 2009 can also apply.

New section 849C CTA 2009

18. New Section 849C provides for the calculation of the debit arising under Chapters 3 and 4 of Part 8 CTA 2009 to be apportioned where the relevant asset includes previous third party acquisition costs in relation to relevant assets subsequently acquired by the company.

19. Subsection (2) provides for the debit that would otherwise be taken into account under Chapter 3 (D) to be restricted by reference to the appropriate multiplier (AM). The starting point for the calculation is to calculate D, including the relevant asset's previous tax written-down value, before applying the restriction. This is to ensure that for periods after the year the expenditure was capitalised, D is calculated using a notional tax written-down value which excludes previous restrictions.

20. Subsection (3) provides for the debit that would otherwise be taken into account on realisation of the asset under Chapter 4 of Part 8 CTA 2009 to be apportioned between trading and non-trading debits.

21. Subsection (4) provides for the calculation of the trading debit; which is the debit that would otherwise be taken into account multiplied by the appropriate multiplier (D x AM). The calculation of the relevant asset's tax written-down value is as described in paragraph 19.

22. Subsection (5) provides for the calculation of the non-trading debit; which is the difference between the debits that would otherwise be taken into account (D) less the trading debit (TD). The starting point for the calculation of the relevant asset's tax written-down value is different to that described in paragraphs 19 and 21. Instead, the tax written-down value of the relevant asset is the actual tax written-down value i.e. calculated by reference to the actual debits previously taken into account. This is to ensure that the calculation of the non-trading debit includes debits not previously taken into account.

23. Subsection (6) provides for the calculation of the appropriate multiplier (AM) for the purpose of subsections (2) and (4) and ensures that the company cannot claim relief for debits under Chapters 3, or in relation to trading debits under Chapter 4, in an amount higher than the notional accounting value of the relevant asset acquired from the transferor.

24. Subsections (7) to (9) provides that RAVTPA is the notional accounting value of the relevant asset or previously acquired goodwill at the time of acquisition by the company.

25. Subsection (9) provides for the notional accounting value to be determined as if transferor had retained the asset and continued the business. This limits C's debits to the amounts that the transferor would have been entitled to claim if they were entitled to relief under Part 8 CTA 2009.

New Section 849D CTA 2009

26. New section 849D explains the restrictions that will apply in relation to Chapters 3 and 4 of Part 8 CTA 2009 where the relevant asset is not subject to the third party acquisition rule in new section 849C.

27. Subsection (2) provides that no debits are to be brought into account under Chapter 3 of Part 8 CTA 2009 in respect of the amortisation of relevant assets. This is to ensure that debit relief can only be claimed under Chapter 4; for example on realisation of the asset.

28. Subsection (3) provides that any debits brought into account under Chapter 4 in respect of realisations of relevant assets are non-trading debits. This is to limit how a debit on realisation will be available to set against other income of the company.

Commencement

29. Subsections (5) – (8) of the clause provide for the commencement rules, which are effective for acquisitions occurring on or after 3 December 2014, except for the words "directly or indirectly" in subsection (1)(a) of new section 849B which take effect from 24 March 2015.

BACKGROUND NOTE

30. This measure supports the government's objective to have a fair tax system for all.

31. Under Part 8 Corporation Tax Act 2009 (CTA 2009) companies obtain corporation tax relief when expenditure on goodwill and intangible assets are recognised in the accounts. The current rules allow relief to be claimed even when there is continuing economic ownership.

32. Clause 26 amends Part 8 CTA 2009 to restrict the relief available in respect of internally-generated goodwill and customer related intangible assets, where the relevant asset is acquired by a company from related party individual.

33. These amendments will make it fairer to businesses that do not have access to these reliefs. In particular:

34. Small businesses that do not incorporate their business and are therefore currently at a disadvantage compared to those who do.

35. Start-up businesses that have always been operated within a company and who cannot access the relief for internally-generated goodwill, are currently at a disadvantage when compared to those that incorporate their business.

36. This measure will be introduced in Finance Bill 2015 and have effect from 3 December 2014, subject to Royal Assent. It will apply to all transactions and contracts entered into on or after 3 December 2014 and pursuant to contracts entered into and not completed before 3 December 2014.

EXPLANATORY NOTE

CLAUSE 27: EXPENDITURE ON RESEARCH AND DEVELOPMENT

SUMMARY

1. This clause amends Part13 of the Corporation Tax Act (CTA) 2009 to increase both the additional deduction for research and development (R&D) costs incurred by a company which is a small or medium enterprise (SME) and the rate of the R&D Expenditure Credit (RDEC) for large companies.

DETAILS OF THE CLAUSE

2. The clause increases the additional deduction for SMEs in calculating profits from 125% to 130%. This, combined with the normal deduction for such expenditure, gives an increased total of 230%. Losses arising from expenditure on R&D can be surrendered by a loss making company in return for a cash payment at a rate of 14.5% currently giving relief of 32.63% on the actual expenditure. After the increase in the additional deduction rate, the equivalent level of benefit will be 33.35%. The RDEC rate increases from 10% to 11%.

3. Both changes apply to expenditure incurred on or after 1 April 2015.

BACKGROUND NOTE

4. For SME companies additional relief for expenditure on R&D was introduced in 2000. The relief currently gives an additional deduction from profits at a rate of 125% of the qualifying expenditure. This combined with the normal deduction for such expenditure gives a total deduction of 225%

5. The rate of the additional deduction is to be increased from 125% to 130% for expenditure incurred on or after 1 April 2015 once the Treasury make an order.

6. The RDEC was introduced for companies undertaking qualifying activity and incurring qualifying expenditure on 1 April 2013. It was introduced as a standalone credit to be brought into account as a receipt in calculating profits. The current general rate is set as 10% of qualifying R&D expenditure.

7. For profit making companies the credit discharges corporation tax liability that the company would have to pay. Companies with no corporation tax liability will benefit from the RDEC either through a cash payment or a reduction of tax or other duties due. The rate of the R&D expenditure credit is to be increased from 10% to 11% for expenditure incurred on or after 1 April 2015.

EXPLANATORY NOTE

CLAUSE 28: EXPENDITURE ON RESEARCH AND DEVELOPMENT: CONSUMABLE ITEMS

SUMMARY

1. This clause restricts the expenditure in respect of consumable items that qualifies for research and development (R&D) tax credits. In the circumstances where a company sells or otherwise transfers ownership of the products of its R&D activity as part of its ordinary business then the cost of materials that go to make up those products is excluded from expenditure qualifying for relief. This restriction will apply to expenditure incurred on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Sections (1) and (2) amend section 1126 Corporation Tax Act 2009 (CTA 2009) so that the expenditure defined by that section as attributable to relevant research and development is further qualified by new sections 1126A and 1126B.

3. Section (3) sets out the additional rules that define attributable expenditure.

New section 1126A

4. The new section 1126A adds to the attribution rules in section 1126.

5. Subsection (1) excludes certain expenditure on items such as materials, components or machine parts making up a finished product. Where such items are both used in the development of a product and are part of the product that is then transferred for consideration in the ordinary course of business, the cost of the items included in the transferred product will not be qualifying expenditure.

6. Subsection (2) excludes expenditure on certain items which are used in a production process that itself involves some element of research and development. Where this process results in those items being transferred for consideration in the ordinary course of business then the cost of those items transferred will not be qualifying expenditure.

7. Subsections (3) and (4) require an apportionment to be made between non-qualifying and qualifying expenditure on consumable item where not all of the product referred to in subsections (1) and (2) is sold or transferred. The effect is that if some of the product is retained for additional trials, or discarded as sub-standard, the costs of the consumable items in the retained or discarded products will remain qualifying expenditure and will not be excluded by subsections (1) or (2). This applies whether the product is a single item measured in terms of volume or weight (subsection (3)), or is made as discrete units (subsection (4)).

8. Subsection (5) ensures that reference to producing an item refers to the entire process, including the use of ancillaries, such as packaging, that might be required before it is transferred.

9. Subsection (6) ensures that reference to a consumable item forming part of a product includes situations where that item has been physically or chemically changed in some way during the production process.

10. Subsection (7) defines transfer of an item.

11. Subsection (8) excludes the provision of test results, on its own, from being consideration or the transfer of an item, covering cases where an item is supplied for evaluation or testing with no other recompense to the person who created it.

12. Subsection (9) provides that the transfer of waste and scrap items is not a transfer in the ordinary course of business, so regardless that some consideration is received for the transfer (for example, because they may be recycled or valuable substances recovered) the relevant costs will be allowable.

13. Subsection (10) defines item and relevant person.

New section 1126B

14. The new section 1126B confers powers on HM Treasury to amend the attribution rules by regulation.

15. Subsection (1) allows the rules attributing expenditure on consumable items to relevant research and development to be amended by regulations. This enables HM Treasury to take into account various ways in which R&D might be undertaken and consequently the manner in which relevant expenditure on consumable items may be incurred.

16. Subsections (2), (3), (4) and (5) set out what the regulations may amend and how.

17. Sections (4) and (5) make consequential amendments to other sections in CTA 09 that refer to the definition of consumable items in section 1126 and now sections 1126A and 1126B.

18. Section (6) makes a consequential amendment to section 1310(4) to reference the regulatory powers described in paragraph 13 above.

19. Section (7) applies these provisions to expenditure incurred on or after 1 April 2015.

BACKGROUND NOTE

20. Additional relief for R&D costs is an incentive for R&D activity and investment in innovation. R&D tax credits provide an enhanced deduction for expenditure on R&D,

including the cost of materials and other items, such as water, fuel and power transformed or consumed in the R&D activity.

21. As laid out in guidelines issued by the Department for Business, Innovation and Skills (BIS), production costs are not expenditure on R&D. In practice, where R&D activity takes place in conjunction with commercial production the attribution of the cost of consumable items, as previously defined, can be uncertain. This has led to claims for relief for costs in respect of materials and other items used in the production of goods effectively indistinguishable from normal commercial products.

22. This measure makes the relief more targeted on innovative research and development activities, rather than activities related to production. This makes it fairer for those companies that already adhere closely to the BIS guidelines.

EXPLANATORY NOTE

CLAUSE 29: FILM TAX RELIEF

SUMMARY

1. This clause introduces changes to the existing film tax relief. The rate of payable tax credit will be 25% for all films and the category of 'limited-budget film' will be removed. The changes will come into effect on 1 April 2015 or date of state aid approval if later.

DETAILS OF THE CLAUSE

2. Subsection 1 states that Part 15 of Corporation Tax Act (CTA) 2009 is amended.

3. Subsections 2 amends section 1184 to remove the definition of 'limited budget film'. This means that only a single rate of film tax relief is payable on all films?

4. Subsection 3 amends section 1200(3) to change the rate of enhancement of the additional deduction to 100% for all films.

5. Subsection 4 amends section 1202 to a single rate of 25%.

6. Subsections 5 to 7 make consequential changes to omit references to limited budget films.

7. Subsection 8 states that the amendments made have effect in relation to films whose principal photography commenced before commencement day but are not completed by the commencement day.

8. Subsection 9 specifies that commencement day is specified by Treasury regulations but will not be before 1 April 2015.

BACKGROUND NOTE

9. Film tax relief has been successful in supporting investment in the UK film industry. Currently relief is given at a rate of 25 % on the first £20m of expenditure and 20 % on expenditure thereafter.

10. Subject to State aid approval, from 1 April 2015 (or the date of approval if later) film tax relief will be available for surrenderable losses at a single rate of 25 % for all films, providing an incentive to increase investment above £20m of expenditure.

EXPLANATORY NOTE

CLAUSE 30: RELIEFS FOR MAKERS OF CHILDREN'S TELEVISION PROGRAMMES

SUMMARY

1. This clause introduces a new tax relief for producers of children's television programmes. This has effect in relation to accounting periods beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection 1 states that Part 15A of Corporation Tax Act (CTA) 2009 is amended.

3. Subsections 2 and 3 amend section 1216AB by introducing a new category of relief for the producers of children's television programmes.

4. Subsection 4 inserts a new subsection 1216AC(2A) which defines what is meant by a children's television programme. A children's television programme is one where the primary audience consists of persons under the age of 15.

5. Subsections 5 and 6 inserts a new subsection 1216ADA which allows for children's programmes which are game or quiz shows to qualify if the prize total does not exceed £1,000.

6. Subsection 7 specifies that the amendments made by this clause have effect in relation to accounting periods beginning on or after 1 April 2015.

7. Subsection 8 states that subsections (7) and (8) are to apply where a company has an accounting period starting before the 1 April 2015 and ending after that day i.e. it straddles the date of commencement and carries on activities that would fall within the definition of the new relief.

8. Subsection 9 sets out that the company profits and losses for the straddling period are to be apportioned to separate accounting periods for the purpose of calculating its corporation tax.

9. Subsection 10 provides that any amounts that are brought into account for the purpose of calculating profits and loses for corporation tax purposes during the straddling period must be apportioned to the two separate accounting periods on a just and reasonable basis.

BACKGROUND NOTE

10. The television production tax relief was introduced by Finance Act 2013 to encourage the production of culturally British television programmes. Part 15A provides the rules for claiming tax credits on qualifying expenditure for high-end television or animation productions. This tax relief allows qualifying companies engaged in the production of animation, high-end television, and now children's television, (intended for release to the general public) to claim an additional deduction in computing their taxable profits. Where that additional deduction results in a loss, they may surrender that loss for a payable tax credit.

EXPLANATORY NOTE

CLAUSE 31: TELEVISION AND VIDEO GAMES TAX RELIEF

SUMMARY

1. This clause introduces changes to the existing television tax relief. From 1 April 2015 the minimum UK spending requirement will change from 25% to 10% for all qualifying television programmes. Minor consequential amendments are made to other parts of the Taxes Act and have effect from Royal Assent to the Finance Bill.

DETAILS OF THE CLAUSE

2. Subsection 1 lowers the UK expenditure condition in section 1216CE(1) of CTA 2009 from 25% to 10%.

3. Subsection 2 states amendments made have effect in relation to programmes whose principal photography commenced before commencement day but are not completed by the commencement day.

4. Subsection 3 provides for consequential amendments amending references to section 1218 (meaning of ‘company with investment business’ and ‘investment business) to section 1218B in the Corporation Tax Act 2010 and Taxation of Capital Gains Act 1992.

BACKGROUND NOTE

5. The television tax relief has been successful in supporting investment in television production in the UK. The changes to the minimum UK spend will encourage further investment.

6. State aid approval for the amendment was received so from 1 April 2015 the minimum UK spending requirement will change from 25% to 10%. This change will not apply to programmes that complete principal photography before 1 April 2015. Similar changes were made to film tax relief in Finance Act 2014.

EXPLANATORY NOTE

CLAUSE 32, SCHEDULE 2: CORPORATION TAX: BANK LOSS-RELIEF RESTRICTION

SUMMARY

1. This clause and Schedule will restrict the proportion of a banking company's taxable profits arising after 1 April 2015 that can be offset by certain carried forward reliefs to 50 percent. The restriction will apply to relief by carried-forward trading losses, non-trading loan relationship deficits, and management expenses that have accrued by 1 April 2015. This will ensure that a proportion of tax is paid by banking companies that are profitable for an accounting period, even where there are substantial carried forward losses.

2. The new Part includes an anti-avoidance rule that applies from 1 April 2015, but to arrangements entered into from 3 December 2014. The anti-forestalling rule within the Schedule applies from 3 December 2014 and to arrangements entered from that date.

DETAILS OF THE CLAUSE

3. Clause 32 introduces Schedule 2, which is made up of three Parts:

- Part 1 inserts a new Part 7A into Corporation Tax Act 2010 (CTA 2010);
- Part 2 makes consequential amendments to other parts of the Taxes Acts; and
- Part 3 introduces anti-forestalling provisions and deals with commencement.

Part 1: New Part 7A CTA 2010

Chapter 1 – Introduction

4. New section 269A gives an overview of the part.

Chapter 2 – Key definitions

5. New sections 269B to 269BC give the definition of a 'banking company' and related terms in order to establish which companies are included in the scope of the Part.

6. New section 269BD defines group for the purposes of the Part as the group under international accounting standards or, where appropriate, United States generally accepted accounting practice. The term group is not relied upon for the anti-avoidance rule in new section 269CK, which relies on a test of connection (the term connected read in accordance with section 1122 of CTA 2010).

7. New section 269BE contains a power for HM Treasury to make consequential amendments to the Part in light of any changes to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the PRA Handbook or FCA Handbook, European Union Regulations, or appropriate accounting standards; where the Part relies on definitions or meanings from these sources it may be necessary to adapt to changes in them.

Chapter 3 – Restriction on obtaining certain deductions

8. New section 269C gives an overview of the Chapter.

9. New subsections 269CA(1) and (2) create a restriction on the amount of pre- 1 April 2015 carried forward trading losses that a banking company can use in calculating its taxable total profits for an accounting period. The company can only use enough of these losses to cover 50 percent of the 'relevant trading profits' as defined by new section 269I.

10. New subsection 269CA(3) dis-applies the restriction where the company has no profits against which pre-2015 carried forward trading losses could be set.

11. New subsection 269CA(4) defines pre-2015 carried forward trading losses as trading losses carried-forward in accounting periods ending before 1 April 2015, including notional periods ending 1 April 2015 as a consequence of paragraph 6 of this Schedule.

12. New subsection 269CA(5) indicates sections regarding situations where the restriction on deduction does not apply.

13. New subsections 269CB(1) and (2) create a restriction on the amount of pre-2015 carried forward non-trading deficit that a banking company can use in calculating its taxable total profits for an accounting period. The company can only use enough of these deficits to cover 50 percent of the 'relevant non-trading profits' as defined by new section 269J.

14. New subsection 269CB(3) dis-applies the restriction where the company has no profits against which pre-2015 carried forward non-trading deficit could be set.

15. New subsection 269CB(4) defines pre-2015 carried forward non-trading deficit as non-trading deficit carried-forward in accounting periods ending before 1 April 2015, including notional periods ending 1 April 2015 as a consequence of paragraph 6 of this Schedule.

16. New subsection 269CB(5) clarifies that references to non-trading profits in new subsection 269CB(4) take the same meaning as section 457 of the Corporation Tax Act 2009.

17. New subsection 269CB(6) indicates sections regarding situations where the restriction on deduction does not apply.

18. New subsections 269CC(1) and (2) create a restriction on the amount of pre-2015 carried forward management expenses that a banking company can use in calculating its taxable total profits for an accounting period.

19. New subsection 269CC(3) dis-applies the restriction where the company has no profits against which pre-2015 carried forward management expenses could be set.

20. New subsections 269CC(4) to (6) define pre-2015 carried forward management expenses as management expenses carried-forward in accounting periods ending before 1 April 2015, including notional periods ending 1 April 2015 as a consequence of paragraph 6 of this Schedule. New subsection 269CC(4) also indicates sections regarding situations where the restriction on deduction does not apply.

21. New subsection 269CC(7) establishes that the amount of pre-2015 management expenses that can be allowed is the balance of 50 percent of the relevant profits, after reduction by pre-2015 carried forward trading losses and pre-2015 carried forward non-trading deficits.

22. New subsection 269CD(1) establishes how relevant trading profits, relevant non-trading profits, and relevant profits are calculated. The calculation in this subsection should be performed before a calculation of the banking company's 'total profits' or 'taxable total profits' for the purposes of section 4 of CTA 2010, and any amounts of relief the company uses in this calculation will be the same in the calculations for the purposes of section 4.

23. In order to calculate a banking company's 'total profits' it will be necessary to first establish the amount of pre-2015 carried forward trading losses and non-trading loan relationship deficits that will be available following the restriction under this Part.

24. As management expenses are the first relief against total profits (section 1219(1A) of CTA 2009) it will also be necessary to establish the amount of pre-2015 management expenses available to the company for the purposes of calculating other reliefs against total profits in the calculation of the company's taxable total profits.

25. When relief claimed or otherwise allowed is factored into a calculation under this section, it is done on the basis that no pre-2015 carried forward trading losses, non-trading loan relationship deficits or management expenses are available; the amount of relief claimed or otherwise allowed as used in the calculation under this section is then the amount of relief that will be claimed or otherwise allowed in the banking company's calculations for the purposes of section 4 of CTA 2010. Hence, by first performing a calculation under this section in interaction with the rest of this Part, it is possible to establish the amounts of pre-2015 relief available to the company.

26. New subsection 269CD(2) lists the reliefs that should not be included in the calculation of relevant profits. Reliefs carried back from later periods are included, so these can be in effect be claimed against the 50 percent of profits remaining.

27. New section 269CE excludes from the restriction any carried forward reliefs that arose in an accounting period ending before the accounting period in which a company began to carry on relevant regulated activity. Where a company begins to carry on relevant regulated activity part way through an accounting period, there is no requirement to apportion

the period for these purposes. Relevant regulated activity is defined in new section 269D, it is not the same as the full definition of a banking company for the purposes of the Part. Relevant regulated activity includes activity of a type that would be regulated under the Financial Services and Markets Act 2000 even if the company carrying on the activity is not regulated under that Act.

28. New subsections 269CF(1) to (3) remove relevant carried forward losses from the restriction where they have arisen in the first five years of a company beginning to undertake relevant regulated activity. This ensures that expenses made during the start-up period of entering the banking sector are not subject to the restriction.

29. New subsection 269CF(4) ensures that reliefs generated in the start-up period are taken to have been used before any reliefs that arose after the start-up period, so that (unrestricted) start-up losses are taken to have been used before (restricted) relief that arose after the start-up period when establishing what relevant carried forward losses remain to a company at 1 April 2015.

30. New subsection 269CF(5) and (6) give rules for apportioning a company's accounting period that is split by the end of the five year start-up period.

31. New subsection 269CF(7) brings the three reliefs affected by the Part into the definition of 'relevant carried forward loss' for this section.

32. New subsection 269CF(8) directs to the following section for the definition of start-up period.

33. New subsection 269CG(1) defines the start-up period as five years from the day on which a company first undertook relevant regulated activity. This period may be curtailed when a company changes groups. A company is tested on when it begins to carry on relevant regulated activity (defined in new section 269BB) instead of when it became a banking company for the purposes of this Part.

34. New subsections 269CG(2) and (3) applies where the company is a member of a group which contains other members who began to carry on relevant regulated activities not more than five years before the company. The start-up period for that company ends when the five years ends for the earliest group member.

35. New subsection 269CG(4) applies where the company is a member of the group which contains other members who began to carry on relevant regulated activities more than five years before the company; the company has no start-up period.

36. New subsections 269CG(5) and (6) apply where the company becomes a member of a different group during its start-up period. If the company represents a significant proportion of the relevant regulated activity of the group it joins then its start-up period will not change; if it does not then it will inherit the earliest start date in the group (see subsections (2) to (4)), which may mean the company has no start-up period.

37. New subsections 269CG(7) and (8) apply where one or more companies undertaking relevant regulated activity join the group the company with a start-up period is a member of. If the new companies represent a significant proportion of the relevant regulated activity of the group and they have an earlier start date, then the company will inherit that start date (see subsections (2) to (4)), which may mean the company has no start-up period.

38. New subsection 269CG(9) includes joining a partnership in references to joining a group within the section.

39. New subsection 269CG(10) refers to new section 269CL for a definition of first beginning to carry on relevant regulated activity.

40. New section 269CH allows banking companies to use an amount of carried forward loss allowance to designate relevant carried-forward losses, within the meaning in new section 269N, as unrestricted so that the restriction within this Part does not apply.

41. The banking companies able to benefit from this section are building societies and companies which have been allocated an amount of carried-forward loss allowance under either of new sections 269CI or 269CJ. Building societies are those within the meaning of the Building Societies Act 1986.

42. The designation under this section is done in the banking company's tax return (see new Part 9E of Schedule 18 to Finance Act 1998 (FA 1998)).

43. A building society has an initial amount of £25,000,000 of carried-forward loss allowance which it can use to designate under this section. This amount is reduced where a building society designates an amount of carried-forward losses as unrestricted, or where a building society allocates an amount of the allowance to another company it its group under new sections 269CI or 269CJ. A building society may also re-allocate allowance back to itself under new section 269CJ.

44. For companies in the building society's group, the amount of allowance is the amount allocated under those sections, and is reduced when the company designates an amount of carried-forward losses as unrestricted.

45. To the extent a banking company's allowance is not used through designation in one accounting period it is available in any other accounting period.

46. The allowance is not tied to an accounting period, so once a company has an amount of allowance allocated to it, it may designate losses as unrestricted in any original return or by amendment under the normal rules for amendment of a returns in Schedule 18 to FA 1998.

47. New section 269CI permits a building society to allocate carried-forward loss allowance amongst the banking companies in its group. Group takes its meaning from new section 269BD.

48. The section applies where:

- A building society is in a group, and
- The building society still has an amount of carried-forward loss allowance.

49. A building society is given an initial carried-forward loss allowance of £25,000,000. Only the amount of allowance that has not previously been designated by the building society or allocated to another company can be allocated under this section.

50. It is not necessary to allocate the full £25,000,000, and the building society may make multiple allocations under this section up to the limit of its remaining amount of carried-forward loss allowance in accordance with new subsection 269CH(5).

51. The building society can use the allowance without allocating it to itself, but a building society may not use any amount of allowance that has been allocated to another company.

52. A statement of allocation under this section must be submitted at or before the time when a company submits a tax return, or an amendment is made to a tax return, which makes a designation following the allocation made under this section. An officer of Revenue and Customs may accept a statement as valid after the return is submitted.

53. Any allocations made under this section are fixed unless a re-allocation is made under new section 269CJ.

54. New section 269CJ permits a building society to re-allocate the allowance amongst the banking companies in its group, or to re-allocate to itself an amount previously allocated to another company. Group takes its meaning from new section 269BD.

55. The section applies where:

- A building society is in a group,
- An allocation has previously been made under new section 269CI,
- There is a company in the group, including the building society, with more relevant carried-forward losses than available carried-forward loss allowance; and
- The additional carried-forward loss allowance which that company needs is greater than the amount the building society could allocate from its own carried-forward loss allowance under new section 269CI, but
- There is unused carried-forward loss allowance in another company in the group.

56. Only the amount of allowance that has not been designated can be re-allocated, and any allowance previously allocated to a company that has since left the group will not be available for re-allocation.

57. Any banking company, including the building society, which has an amount of allowance re-allocated away from it no longer has that amount of allowance.

58. A statement of allocation under this section must be submitted at or before the time when a company submits a tax return, or an amendment is made to a tax return, which makes a designation following the re-allocation made under this section. An officer of Revenue and Customs may accept a statement as valid after the return is submitted.

59. Any re-allocation made under this section is fixed, subject to a further re-allocation made under this section.

60. New subsections 269CK(1) to (6) outlines the conditions for the targeted anti-avoidance rule to apply. There are three conditions for an arrangement to be within the rule:

- The arrangement creates profits in a company with restricted reliefs that could otherwise be used against those profits;
- The main benefit, or one of the main benefits, of the arrangement is to secure a tax advantage for the company, or the company and connected companies; and
- The value of the tax advantage is greater than value of any other economic benefit of the arrangements to the company, or the company taken with companies connected with it.

61. New subsection 269CK(7) removes profits from relevant profits where they arise from arrangements that meet the conditions. This effectively denies use of any of the pre-2015 restricted reliefs against profits of the arrangements.

62. New subsection 269CK(8) gives definitions for the section.

63. New section 269CL defines when a company first begins carrying on relevant regulated activity as the first time it has undertaken this activity. Where the company is a successor to the relevant regulated activity of an older company, the successor inherits the start date of the predecessor company; this also applies where the predecessor was a building society.

64. New section 269CM brings joint ventures into the same groups as the companies that jointly control it for the purposes of this part, relying on international accounting standards definitions.

65. New section 269CN defines various terms for the Part.

Part 2: Consequential amendments

66. Paragraph 2 inserts a new Part 9E of Schedule 18 to FA 1998. This new Part contains rules for designation of relevant losses as unrestricted under new section 269CH.

67. Paragraph 3 gives effect to the carry forward of expenses of management where they are not useable because of the restriction under Part 7A. The carry-forward of trading losses and non-trading deficits denied by the restriction will happen without the need for any amendments.

68. Paragraphs 4 and 5 integrate Part 7A with the rest of CTA 2010

69. Paragraph 6 amends the controlled foreign company (CFC) provisions in Part 9A of the Taxation (International and Other Provisions) Act) 2010 (TIOPA 2010) to deny relief to banking companies for pre-2015 carried-forward non-trading deficits and management expenses as part of a claim to relevant allowances under section 371UD of that Act (carried forward trading losses are already unavailable). This gives the same treatment to CFC charges of a banking company and profits arising from arrangements under the new section 269CK.

Part 3: Commencement and anti-forestalling

70. Sub-paragraphs 7(1) and (2) provide for the commencement for Part 7A: the restriction applies to calculation of profits of accounting periods after 1 April 2015, and the anti-avoidance rule in new section 269CK applies to arrangements entered into from announcement on 3 December 2014. This interacts with sub-paragraphs (3) and (4) so that any accounting period straddling 1 April 2015 is split into two periods for the purposes of the new Part, and:

- Where there is a profit for the accounting period, the Part will apply to calculation of profits of the part-period commencing 1 April 2015; whilst
- Where there is a loss for the straddling accounting period, the relevant reliefs arising in the part-period ending 31 March 2015 will be within the restriction.

71. Sub-paragraphs 7(3) and (4), as noted above, ensures that where a period straddles that date it is split into two periods: one ending 31 March 2015 and one beginning 1 April 2015. If the result of the straddling accounting period is a profit it is apportioned between the two periods; if the result is a loss it is apportioned between the two periods. The default apportionment method is time, unless that would give an unjust or unreasonable result. The apportionment by any method cannot create a profit in one part-period and a loss in the other; it can only split the overall result for the accounting period between the two part-periods.

72. Paragraph 8 contains the commencement and transitional rules for the changes to Part 9A, and provides that the denial of pre-2015 restricted relief against the CFC charge is against such a charge as arises from accounting periods of a CFC commencing after 1 April 2015. Where a charge arises from a CFC's accounting period straddling that date it will be apportioned on a time basis (or another if that is unjust or unreasonable) and the apportioned charge from the split period commencing 1 April 2015 is denied relief.

73. Paragraph 9 comes into force at announcement on 3 December 2014 and is an anti-forestalling rule targeting arrangements to accelerate the use of reliefs that will be restricted from 1 April 2015. The paragraph applies to arrangements entered on or after 3 December 2014 and to calculation of profits of any accounting periods, or parts thereof, falling between that date and 1 April 2015. Where arrangements meet the conditions, the reliefs that will become restricted under Part 7A are not available against profits of the arrangements.

BACKGROUND NOTE

74. This new Part was announced for the first time at Autumn Statement 2014.

75. The anti-forestalling rule applies from 3 December 2014 and to arrangements entered from that date. The Part itself and the consequential amendments apply from 1 April 2015, including an anti-avoidance rule applying to arrangements entered into from 3 December 2014.

76. Banks have built up exceptionally large losses, a consequence of financial crisis write-downs and the costs associated with subsequent mis-selling. The Government considers it unfair that banks can now use these losses to eliminate tax on recovering profits.

77. This Part will restrict the rate at which these losses can be off-set against taxable profit, increasing corporation tax payments from the sector during this period of fiscal consolidation.

EXPLANATORY NOTE

CLAUSE 33, SCHEDULE 3: TAX AVOIDANCE INVOLVING CARRIED-FORWARD LOSSES

SUMMARY

1. This clause and Schedule introduce an anti-avoidance rule to prevent companies from obtaining a corporation tax advantage by entering contrived arrangements to convert certain carried-forward reliefs into more versatile in-year deductions. The rule will apply to use of reliefs in accounting periods beginning on or after 18 March 2015, with apportionment of relief for accounting periods straddling that date.

DETAILS OF THE SCHEDULE

2. Clause 33 introduces Schedule 3, which is made up of two Parts:

Part 1: New Part 14B CTA 2010

3. Section 730E gives an overview of the new Part.

4. Section 730F defines a "relevant carried forward loss" for the purposes of the Part as any one of three types of corporation tax relief that has been carried forward to the company's current accounting period. The reliefs included are:

- Trading losses carried forward under section 45 CTA 2010;
- Non-trading deficits on loan relationships carried forward under section 457 CTA 2009; and
- Management expenses carried forward under section 1223(2) of Corporation Tax Act (CTA) 2009 or amounts treated as management expenses by section 63(3) of CTA 2010.

5. Section 730G is the operative section within the Part, defining the situations to which the Part applies and what happens when it does.

6. This section relies on various definitions:

- "Relevant profits" are defined within subsection 730G(1) and are the profits arising from an arrangement;
- "Tax arrangements" are defined within subsection 730G(1) and are the arrangements considered under the conditions;
- "Relevant company" is defined within subsection 730G(1) and is the company considered under the conditions;

- "Relevant carried forward losses" is defined in section 730F;
- "Connected" takes the meaning within section 1122 CTA 2010;
- "Deductible amount" is defined in section 730H;
- "Corporation tax advantage" is defined in section 730H;
- "Tax value" is defined in subsection 730G(7); and
- "Non-tax value" is defined in subsection 730G(8).

7. Subsections 730G(2) to (9) give five conditions, all of which must be met for the rule to apply.

8. Subsection 730G(2): Condition A is that because of the tax arrangements relevant profits arise to the company against which one or more relevant carried-forward losses would be available if the anti-avoidance rule did not apply.

9. Subsection 730G(3): Condition B is that because of the tax arrangements the relevant company or a company connected with it will bring a deductible amount into account.

10. Subsection 730G(4) and (5): Condition C is that the main purpose, or one of the main purposes, of the tax arrangements was to secure a corporation tax advantage for the company, or the company taken with any other connected companies, involving both the entitlement to the deductible amount and the use of relevant carried-forward losses.

11. Subsection 730G(6): Condition D is that it is reasonable to assume that when the tax arrangements were entered into the tax value of the arrangements was expected to be greater than the non-tax value. This an objective test to ensure that the rules will only apply to arrangements entered into predominantly for their tax value.

12. Subsection 730G(7): defines tax value as both the corporation tax advantage and any other economic benefits derived from the corporation tax advantage.

13. Subsection 730G(8): defines the non-tax value as any economic value derived from the arrangements apart from that falling in subsection 730G(7).

14. Subsection 730G(9): Condition E gives priority to the targeted anti-avoidance rule in Part 7A of CTA 2010 (Restrictions applying to certain deductions made by banking companies). Where section 269CK in that Part applies then this section will not.

15. Subsection 730G(10) defines the effect where all the conditions are met: the company will be unable to use relevant carried-forward losses against any relevant profits arising from the tax arrangements.

16. Subsection 730H(1) gives definitions for the Part.

17. Subsection 730H(2) clarifies that bringing a deduction into account in section 730G may be taken to mean that the deduction reduces a profit, relieves a profit, or increases a loss.

Part 2: Commencement for Part 14B

18. Where the conditions apply and use of relevant carried-forward amounts is restricted, this will take effect for accounting periods beginning on or after 18 March 2015.

19. Where the rules apply to a company with an accounting period straddling 18 March 2015, that period will be treated as two separate accounting periods for the purposes of this Part, and the restriction on relevant carried-forward amounts will apply in the split period treated as commencing 18 March 2015. The default is a split on a time basis, unless that basis is unjust or unreasonable.

20. This treatment will split any loss for the whole accounting period into a loss in the two periods, or any profit for the whole accounting period into a profit in the two periods.

21. The split operates at the level of amounts brought into account for the purposes of calculating the taxable total profits of the company. Hence if the restriction in subsection 730G(7) applies within a period straddling 18 March 2015:

- Where carried-forward losses or non-trading loan relationship deficits are restricted, the amount of total profits calculated in section 4(3) of CTA 2010 will be higher, increasing the amount of total profits against which relief can be given at Step 2 of section 4(2) in the calculation of taxable total profits; and
- Where management expenses are restricted, which are the first of all reliefs against total profits, the balance of total profits left available for relief at Step 2 of section 4(2) will be higher in the calculation of total profits; and
- These increased amounts will only be reflected in the period deemed to commence on 18 March 2015.

22. The split applies only so far as it is necessary for the purposes of this Part.

23. The Part makes no mention regarding when arrangements may have been entered into, so the rules will apply regardless of when this was.

BACKGROUND NOTE

24. This new Part was announced for the first time at Budget 2015.

25. The government has introduced this anti-avoidance rule to counteract the advantage for companies of entering into contrived arrangements to circumvent:

- The carry-forward rules for the relevant carried-forward reliefs, which limit the way in which relief can be given; and
- The group relief rules in Part 5 of CTA 2010, which only allow relief to be surrendered by a group company against profits arising in the same overlapping period, and not the surrender of relief that has been carried-forward.

26. It is not intended to catch tax planning to make efficient use of relief available to companies within the group, and this is measured through the objective test in condition D in section 730G.

EXPLANATORY NOTE

CLAUSE 34, SCHEDULE 4: PENSIONS FLEXIBILITY: ANNUITIES ETC

SUMMARY

1. This clause and Schedule amend the existing pension tax rules in Part 4 of Finance Act 2004 to allow anyone, including non-dependants, to receive payments from an annuity on the death of a member. The Schedule also amends the Income Tax (Earnings and Pensions) Act 2003 to allow payments of these beneficiaries' annuities to be tax-free on the death of an individual before age 75. These changes are similar to, and build on those made in the Taxation of Pensions Act 2014 to Finance Act 2004, which were in respect of payments of income withdrawal from a drawdown fund on the death of an individual. The changes in this clause and Schedule will have effect on or after 6 April 2015.

DETAILS OF THE SCHEDULE

Part 1

2. Part 1 of the Schedule sets out when annuities, paid following the death of a member, can be paid as an authorised payment to anyone other than a dependant. It also sets out when these payments are taxed against the member's lifetime allowance.

3. Paragraph 2 amends section 167(1) of Finance Act 2004 (FA2004) to allow nominees, and successors, to receive payments of annuities from money purchase arrangements as an authorised pension death benefit, in consequence of the death of a member or a previous beneficiary.

4. Paragraph 3 amends Part 2 of Schedule 28 to FA2004 (Schedule 28). Part 2 of Schedule 28 provides the details of the various authorised pension death benefits that may be paid on the death of a member or the death of a beneficiary of the member.

5. Paragraph 3(2) inserts new paragraph 27AA into Schedule 28 which provides the conditions that must be met for the payment of a nominees' annuity on the death of a member to be an authorised pension death benefit.

6. New paragraph 27AA(1) and (2) provides that a nominees' annuity can be purchased as a joint life annuity with the members' lifetime annuity on or after 6 April 2015. It can also be purchased after the member's death providing the member died on or after 3 December 2014 (the day these changes were announced) and the nominee did not become entitled to the annuity before 6 April 2015. Under changes made last year, a nominee will from 6 April 2015 be able to receive certain pension death benefits as authorised payments. Therefore a nominee cannot become entitled to any pension death benefit before 6 April 2015. Paragraph

27AA(1) also provides that the annuity must be payable by an insurance company and the circumstances when it can cease before the death of the nominee.

7. New paragraph 27AA(3) to (5) provides a power for regulations to be made in connection with the transfer of the sums and assets that were used to provide the nominees' annuity to another insurance company to provide a new nominees' annuity. The regulations may provide the circumstances when the new nominees' annuity is treated as if it were the original nominees' annuity and when the transfer will be an unauthorised payment.

8. Paragraph 3(3) inserts new paragraph 27FA into Schedule 28 which provides the conditions that must be met for the payment of a successors' annuity on the death of a dependant, a nominee or a previous successor to be an authorised pension death benefit.

9. New paragraph 27FA(1) provides that to be a successors' annuity it must be purchased after the member's death providing this was on or after 3 December 2014. In addition the successor cannot become entitled to the annuity before 6 April 2015. A successor will from 6 April 2015 be able to receive pension death. Therefore a successor cannot become entitled to any pension death benefit before 6 April 2015. Paragraph 27FA(1) also provides that the annuity must be purchased using undrawn funds, as defined in new paragraph 27FA(2), payable by an insurance company and the circumstances when it can cease before the death of the successor.

10. New paragraph 27FA(2) defines undrawn funds as funds that come from either a dependant's, a nominee's or a previous successors' drawdown fund and had not been drawn down at the time of that earlier beneficiary's death.

11. New paragraph 27FA(3) to (5) provides a power for regulations to be made in connection with the transfer of the sums and assets that were used to provide the successors' annuity to another insurance company to provide a new successors' annuity. The regulations may provide the circumstances when the new successors' annuity is treated as if it were the original successors' annuity and when the transfer will be an unauthorised payment.

12. Paragraph 3(4) provides that regulations made under 27AA or 27FA can have retrospective effect where the transfer concerned occurs on or after 6 April 2015, providing that the regulations are made before 25 December 2015.

13. Paragraph 4 amends section 216 of FA2004 which provides when a benefit crystallisation event (BCE) occurs and the value of that BCE which is tested against the individual's lifetime allowance.

14. Paragraph 4(2) amends BCE4 which occurs when a member becomes entitled to a lifetime annuity, to provide that the value of the BCE4 includes any nominees' annuity purchased as a joint annuity with the member's lifetime annuity.

15. Paragraph 4(3) inserts new BCE5D into section 216. A BCE5D occurs when a person becomes entitled to a dependants' or a nominees' annuity on or after 6 April 2015 and where the member dies on or after 3 December 2014. It applies where the funds used to purchase

that annuity include relevant unused uncrystallised funds as defined in paragraph 14C(1) of Schedule 32 to FA2004 (Schedule 32). The amount of any BCE5D is the total of the relevant unused uncrystallised funds used to purchase the dependants' or nominees' annuity.

16. Paragraph 5 amends section 217 of FA2004 to provide that where a BCE5D occurs, then if as a consequence there is a lifetime allowance charge arising, the liability for that charge rests with the recipient of the annuity.

17. Paragraph 6 amends section 219(7A) of FA2004, which defines a relevant post-death benefit crystallisation event, to include new BCE5D in this definition.

18. Paragraph 7 makes a number of amendments to Schedule 32, which provides further information about BCEs, as a consequence of the changes made by paragraph 4 of this Schedule to section 216 of FA04.

19. Paragraphs 8 to 10, 12, 15 and 16 make further consequential changes to Part 4 of FA2004 in connection with this Schedule.

20. Paragraph 11 amends section 273B(1) of FA2004, to include the purchase of a nominees' annuity and a successors' annuity in the list of payments that the statutory override in section 273B covers. Trustees and managers may make any of the payments listed in section 273B(1), even where the rules of the pension scheme do not allow them to do so. This override is provided to ensure that trustees of pension schemes can make any of the new types of authorised payments under the flexibility changes, should they wish to do so, without having to change the pension scheme rules.

21. Paragraph 13 makes various further amendments to Schedule 28.

22. Paragraph 13(4) and (6) amends paragraphs 27E(3) and 27K(3) of Schedule 28 to add an additional condition that must be met for funds to be unused drawdown funds for the purposes of paragraph 27E or 27K. This is that since the member's death the funds haven't been used to provide benefits for a beneficiary.

23. Paragraph 13(5) amends paragraph 27E(4) and (5) of Schedule 28 to provide that for funds to be uncrystallised for the purposes of paragraph 27E they must also not have been used to provide a nominees' annuity.

24. Paragraph 14 makes various consequential amendments to Schedule 29 of FA2004 which provides further detail on the conditions that must be met for lump sums to be paid as authorised lump sums.

Part 2

25. Part 2 of the Schedule provides an exemption from income tax for annuities payable on the death of a person before age 75 in certain prescribed circumstances.

26. Paragraph 17(1) inserts new sections 646B to 646F into Chapter 17 of Part 9 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Chapter 17 provides for an exemption from income tax on certain pension income.

27. New section 646B(1) provides circumstances when a dependants' annuity or a nominees' annuity can be paid tax-free. Under section 646B(1) these annuities are exempted from income tax under Part 9 where the member died on or after 3 December 2014 and before age 75, and no payment to that beneficiary was made before 6 April 2015 in connection with the annuity. In addition, if the annuity was purchased using unused uncrystallised funds the entitlement to the annuity must arise within the relevant two-year period as set out in subsection (1)(d).

28. New section 646B(2) provides that a successors' annuity is exempt from income tax under Part 9 where the previous beneficiary died on or after 3 December 2014 and before age 75, and no payment to the successor was made before 6 April 2015 in connection with the annuity.

29. New section 646B(3) provides that a dependants' annuity or a nominees' annuity is exempt from income tax under Part 9 if paid to a beneficiary, where it;

- was purchased with the member's lifetime annuity,
- the member died on or after 3 December 2014 and before age 75, and
- no payment to that beneficiary was made before 6 April 2015 in connection with the annuity.

30. New section 646B(4) provides that the payments to a beneficiary of a lifetime annuity after the death of a member are exempt from income tax under Part 9 if;

- the pension payments meet the conditions to continue after the death of the member for a guaranteed period,
- the member died on or after 3 December 2014 and before age 75, and
- no payment to that beneficiary was made before 6 April 2015 in connection with the annuity.

31. New section 646B(5) provides that the meaning of unused drawdown funds and unused uncrystallised funds for the purposes of section 646B(1) of ITEPA are as set out in paragraph 27E(3) to (5) of Schedule 28 of FA 2004.

32. New section 646B(6) provides that the meaning of undrawn funds for the purposes of section 646B(2)(e) of ITEPA is as set out in paragraph 27FA(2) of Schedule 28 as inserted by this Schedule.

33. New section 646B(7) and (8) provide further definitions for the purposes of this section.

34. New section 646C provides circumstances when payments of annuities and short-term annuities to beneficiaries can be made tax-free.

35. New section 646C(1) provides circumstances when a dependants' annuity or short-term annuity or a nominees' annuity or a short-term annuity bought from a drawdown fund are exempt from income tax under Part 9. These annuities can be paid tax-free where the member died on or after 3 December 2014 and before age 75. This is subject to subsections (4) to (6).

36. New section 646C(2) provides circumstances when a successors' annuity or short-term annuity bought from a drawdown fund paid to a beneficiary is exempt from income tax under Part 9. Under section 646C(2) these annuities can be paid tax-free where the previous beneficiary died on or after 3 December 2014 and before age 75.

37. New section 646C(4) to (6) provides further conditions that must be met for a payment to be exempt from income tax under new subsection (1). Subsection (4) provides that if there is any payment before 6 April 2015 to a dependant in connection with the dependant's drawdown pension fund under which the annuity or short-term annuity was purchased, then all payments will be taxable.

38. New section 646C(5) provides that if there is any payment before 6 April 2015 to a dependant in connection with the dependant's flexi-access drawdown fund under which the annuity or short-term annuity was purchased, then all payments will be taxable.

39. New section 646C(6) provides that if the dependants' or nominees' annuity or short-term annuity is purchased using funds from a drawdown fund that were not designated into that drawdown fund within a two-year period of the member's death as defined in subsection (7), then the annuity payments will be taxable.

40. New section 646C(7) to (9) provides definitions for the terms used in this section.

41. New section 646D provides circumstances when an annuity can be paid tax-free to a beneficiary under an overseas pension scheme or a relevant non-UK scheme ('RNUKS'). These circumstances are similar to those for payments of annuities to beneficiaries purchased directly with funds from UK registered pension schemes. Therefore where an annuity could have been paid tax-free under new section 646B of ITEPA had it been paid from an insurance company from sums and assets from a registered pension scheme, then it is exempt from income tax under Part 9 where it is paid from an overseas pension scheme or RNUKS in similar circumstances.

42. New section 646D(1) provides the circumstances when a beneficiaries' annuity paid in respect of funds from an overseas pension scheme or an RNUKS is exempt from UK tax under Part 9, where the annuity relates to the death of a member on or after 3 December 2014 and before age 75.

43. New section 646D(2) provides the circumstances when a beneficiaries' annuity paid in respect of funds from an overseas pension scheme or an RNUKS is exempt from UK tax under Part 9, where the annuity relates to the death of a previous beneficiary on or after 3 December 2014 and before age 75.

44. New section 646D(3) provides the circumstances when a beneficiaries' annuity bought with a members' annuity in respect of funds from an overseas pension scheme or an RNUKS is exempt from UK tax under Part 9, where the annuity relates to the death of a member on or after 3 December 2014 and before age 75.

45. New section 646D(4) provides the circumstances when a guaranteed annuity that is payable after the death of the member to a beneficiary and paid in respect of funds from an overseas pension scheme or an RNUKS is exempt from UK tax under part 9. This applies where the annuity relates to the death of a member on or after 3 December 2014 and before age 75.

46. New section 646D(5) to (7) provides definitions of various terms used in this section.

47. New section 646D(8) provides the meaning of insurance company for the purposes of this section. It extends the meaning in section 275 of FA2004 which is used for UK registered pension schemes to include persons resident outside the UK who are regulated under the laws of their country of residence to provide annuities.

48. New section 646E provides circumstances when annuities or short-term annuities can be paid tax-free to a beneficiary under an overseas pension scheme or a relevant non-UK scheme ('RNUKS'). These circumstances are similar to those for payments of annuities or short-term annuities to beneficiaries purchased directly with funds from UK registered pension schemes. Therefore where an annuity would have been exempt from income tax under Part 9 because of new section 646C of ITEPA had it been paid from funds from a registered pension scheme, then it is exempt from income tax if paid from the overseas pension scheme or RNUKS in similar circumstances.

49. New section 646E(1) provides the circumstances when a beneficiaries' annuity or short-term annuity paid in respect of funds from an overseas pension scheme or an RNUKS is exempt from UK tax where the annuity relates to the death of a member on or after 3 December 2014 and before age 75. This is subject to new section 646E (4) and (5).

50. New section 646E(2) provides the circumstances when a beneficiaries' annuity or short-term annuity paid in respect of funds from an overseas pension scheme or an RNUKS is exempt from UK tax where the annuity relates to the death of a previous beneficiary on or after 3 December 2014 and before age 75.

51. New section 646E(4) and (5) provides that section 646E(1) does not apply and the annuity or short-term annuity is taxable if there had been a payment to the beneficiary out of the funds from which the annuity or short-term annuity was purchased prior to 6 April 2015.

52. New section 646F sets out various other definitions that are set out in FA2004 that also apply to new sections 646B to 646E.

53. Paragraph 18 amends section 393(2)(a) of ITEPA to provide that a foreign pension that is not chargeable to UK tax under section 573(2A) or (2B), 646D or 646E of ITEPA, will

not be chargeable to UK tax as a payment under an employer funded retirement benefit scheme under section 393 of ITEPA.

54. Paragraph 19 inserts new paragraph 45A into Schedule 36 of FA2004.

55. New paragraph 45A ensure that where a member purchased an annuity before 6 April 2006, then if they die on or after 3 December 2014 and before age 75, any annuity payable to a beneficiary purchased with the original annuity is not taxed under Part 9 of ITEPA and therefore can be paid tax-free. The pensions tax legislation relating to registered pension schemes in FA 2004 commenced on 6 April 2006. Annuities in payment before this date are not treated as made by registered pension schemes. This paragraph therefore ensures that annuities payable to beneficiaries in respect of annuities payable to members that were in payment before and after 6 April 2006 have the same tax treatment.

56. Paragraph 20 inserts new subsections 2E and 2F into section 573 of ITEPA.

57. New section 573(2E) of ITEPA makes clear that where sections 646D or 646E of ITEPA apply, then an annuity is not taxed under section 573.

58. New section 573(2F) of ITEPA makes clear that where paragraph 45A of Schedule 36 to FA2004 applies, then an annuity is not taxed under section 573.

59. Paragraph 21 inserts new section 611A into ITEPA. This section is similar to new sections 573(2E) and (2F) but relates to sections 609 to 611 of ITEPA. Section 611A makes clear that where any of sections 646B to 646E of ITEPA, or paragraph 45A of Schedule 36 to FA2004 apply, then an annuity is not taxed under sections 609 to 611.

60. Paragraph 22 inserts new subsection (3) into section 579 of ITEPA to make clear that certain annuity payments that would otherwise be taxed under this section, can be paid tax free where new sections 646B and 646C of ITEPA apply.

61. Paragraph 23 amends section 579CZA(5)(b) of ITEPA which sets out when income withdrawal paid to a dependant can be paid tax-free from 6 April 2015. The changes ensures that for payments of income withdrawal to be tax-free there can’t be a payment of dependants’ short-term annuity from that dependants’ drawdown pension fund prior to 6 April 2015. This is in addition to the current requirement that there is no payment of income withdrawal before this date.

BACKGROUND NOTE

62. These changes were announced at Autumn Statement 2014 and are supplementary to the changes made in the Taxation of Pensions Act 2014 (TOPA 2014) which have effect from 6 April 2015. TOPA 2014 provides that individuals aged 55 or over can access their money purchase pension savings as they choose from 6 April 2015. Individuals will therefore be able to take as little or as much as they want each year from their tax relieved pension savings. TOPA 2014 also makes a number of changes in connection with what benefits can be paid on

the death of a member, who can receive these and how these are taxed. It also provides that payments of income withdrawal paid as a pension death benefit can be paid tax-free, where the member dies before age 75. Where there are unused funds in the beneficiaries' drawdown at the time of their death, these can also be paid as a tax-free drawdown to a further beneficiary, if the previous beneficiary died before age 75.

63. The changes made by this clause and Schedule extend the provisions in TOPA 2014 relating to income withdrawal payments on the death of the member so that they also apply to annuity payments on the death of the member.

EXPLANATORY NOTE

CLAUSE 35, SCHEDULE 5: RELIEF FOR CONTRIBUTIONS TO FLOOD AND COASTAL EROSION RISK MANAGEMENT PROJECTS

SUMMARY

1. This clause and Schedule introduce deductions for income tax and corporation tax purposes for business contributions to partnership funding schemes for flood defence projects. The legislation will have effect for contributions made on or after 1 January 2015.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new sections 86A and 86B into Chapter 5 of Part 2 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

3. Subsection (1) of new section 86A sets out the conditions for new section 86A to apply.

4. Subsection (2) of new section 86A ensures that this section has priority over a deduction provided for in the Capital Allowances Act 2001 (CAA 2001).

5. Subsection (3) of new section 86A provides for a deduction in calculating the profits of the trade where the conditions are met unless a deduction is denied by subsection (4) of new section 86A.

6. Subsection (5) of new section 86A clarifies the application of subsection (4) of new section 86A.

7. Subsection (6) of new section 86A sets out the conditions for subsection (7)of new section 86A to apply.

8. Subsection (7) of new section 86A ensures that a refund of, or compensation for, a contribution, will be taxable as profits of the trade or as a post-cessation receipt, where it would not otherwise be taken into account.

9. Subsection (8) of new section 86A defines “disqualifying benefit” for the purposes of new section 86A.

10. Subsection (9) of new section 86A clarifies the meaning of “structure” in subsection (8) of new section 86A.

11. New section 86B details the circumstances in which a flood or coastal erosion risk management project is a "qualifying project", and the meaning of a "qualifying contribution", for the purposes of new section 86A, and provides other interpretative provisions.

12. Paragraph 2 applies new sections 86A and 86B of ITTOIA 2005 to property businesses.

13. Paragraph 3 inserts new sections 86A and 86B into Chapter 5 of Part 3 of Corporation Tax Act 2009 (CTA 2009).

14. Subsection (1) of new section 86A sets out the conditions for new section 86A to apply.

15. Subsection (2) of new section 86A ensures that this section has priority over a deduction provided for in CAA 2001.

16. Subsection (3) of new section 86A provides for a deduction in calculating the profits of the trade where the conditions are met unless a deduction is denied by subsection (4) of new section 86A.

17. Subsection (5) of new section 86A clarifies the application of subsection (4) of new section 86A.

18. Subsection (6) of new section 86A sets out the conditions for subsection (7) of new section 86A to apply.

19. Subsection (7) of new section 86A ensures that a refund of, or compensation for, a contribution, will be taxable as profits of the trade or as a post-cessation receipt, where it would not otherwise be taken into account.

20. Subsection (8) of new section 86A defines "disqualifying benefit" for the purposes of new section 86A.

21. Subsection (9) of new section 86A clarifies the meaning of "structure" in subsection (8) of new section 86A.

22. New section 86B details the circumstances in which a flood or coastal erosion risk management project is a "qualifying project", and the meaning of a "qualifying contribution", for the purposes of new section 86A, and provides other interpretative provisions.

23. Paragraph 4 applies new sections 86A and 86B of CTA 2009 to property businesses.

24. Paragraph 5 amends section 1221(3) of CTA 2009 to include new section 1244A.

25. Paragraph 6 inserts new section 1244A into Chapter 3 of Part 16 of CTA 2009.

26. Subsection (1) of new section 1244A sets out the conditions under which the section applies.

27. Subsection (2) of new section 1244A provides that expenses in making a qualifying contribution are treated as management expenses of a company with investment business unless this treatment is denied by subsection (3) of new section 1244A.

28. Subsection (4) of new section 1244A provides clarification on the operation of subsection (3).

29. Subsection (5) of new section 1244A defines "disqualifying benefit" for the purposes of new section 1244A.

30. Subsection (6) of new section 1244A clarifies the meaning of "structure" in subsection (5) of new section 1244A.

31. Subsection (7) of new section 1244A applies new section 86B to new section 1244A as to new section 86A.

32. Paragraph 7 inserts new section 1253A into Chapter 5 of Part 16 of CTA 2009.

33. New section 1253A ensures that a refund of a contribution or compensation for a contribution of services, will be chargeable to corporation tax if it would not otherwise be taken into account in calculating profits for corporation tax purposes.

34. Paragraph 8 amends section 253 of CAA 2001 to include new section 1244A.

35. Paragraph 9 provides commencement rules.

BACKGROUND NOTE

36. This measure forms part of the Government's wider package of measures to maintain and strengthen flood defences across the country.

EXPLANATORY NOTE

CLAUSE 36, SCHEDULE 6: INVESTMENT RELIEFS: EXCLUDED ACTIVITIES

SUMMARY

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

DETAILS OF THE SCHEDULE

Part 1

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

3. Subsection (5) of new section 257MW provides for regulations made under this section to be combined in the same statutory instrument with regulations made under other powers in new section 251A, section 257MB and section 311. As a result, it would be possible to use one statutory instrument to amend the excluded activities for SITR, EIS (and SEIS) and VCTs at the same time.

Parts 2 and 3

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

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

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

Part 4

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

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

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

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

BACKGROUND NOTE

11. The purpose of these provisions is to:

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

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

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

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

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

15. Budget 2015 announced that the government will allow a transition period of 6 months following State aid clearance for the expansion of SITR before such eligibility for EIS, SEIS and VCT is withdrawn.

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

EXPLANATORY NOTE

CLAUSE 37, SCHEDULE 7: DISPOSALS OF UK RESIDENTIAL PROPERTY INTERESTS BY NON-RESIDENTS ETC

SUMMARY

1. Clause 37 introduces Schedule 7 which extends capital gains tax (CGT) from 6 April 2015 to chargeable gains accruing to non-UK resident persons on the disposal of an interest in UK residential property (NRCGT). As well as individuals, trustees and other persons who are normally chargeable to CGT when UK resident, NRCGT will also apply to certain non-resident companies.

DETAILS OF THE CLAUSE AND SCHEDULE

2. This clause introduces Schedule 7, which makes amendments in respect of capital gains tax.

Schedule 7 Part 1

3. Paragraph 1 of Schedule 7 introduces changes to the Taxation of Chargeable Gains Act 1992 (TCGA).

4. Paragraph 2 of Schedule 7 amends section 1 of TCGA 1992 to charge non-UK resident companies to capital gains tax (CGT), and not corporation tax, to the extent that their gains are NRCGT gains. This is subject to the specific exemptions that can be claimed under new section 14F of TCGA 1992 and any other exemptions to CGT that may apply.

5. Paragraph 3 of Schedule 7 inserts new subsections 2(2A), 2(2B) and 2(7B) into section 2 of TCGA 1992. These allow a person who becomes UK resident to use unused allowable NRCGT losses against general chargeable gains.

6. Paragraph 4 of Schedule 7 amends the definition of "ring-fenced ATED-related allowable losses" at subparagraph 2B(10) of TCGA 1992 so that allowable losses used against NRCGT gains cannot also be used against chargeable Annual Tax on Enveloped Dwellings (ATED)-related gains.

7. Paragraph 5 of Schedule 7 amends section 3 of TCGA 1992 and adds new subsections 3(5BA) and 3(5D). These make the annual exempt amount available against a person's net chargeable NRCGT gains for a tax year; and ensure that where a person migrates between the UK and abroad or vice versa and has also general chargeable gains in the UK part of the year, only one annual exempt amount is available.

8. Paragraph 6 of Schedule 7 amends section 4 of TCGA 1992 and adds new subsections (3B) and (3C). These provide that the rate of capital gains tax for chargeable NRCGT gains accruing to a company is 20%.

9. Paragraph 7 of Schedule 7 substitutes section 4B of TCGA 1992. This ensures that allowable losses can be used in the most beneficial way.

10. Paragraph 8 of Schedule 7 amends section 8 of TCGA 1992, which provides certain rules for taxing gains, and relieving losses, of companies chargeable to corporation tax; and inserts new subsection 8(4B). These permit unused allowable NRCGT losses to be used against gains chargeable to corporation tax.

11. Paragraph 9 of Schedule 7 amends section 10A of TCGA 1992, which treats gains and losses accruing to a temporary non-resident as accruing in the year of return, so that a second charge to CGT does not arise on return in relation to chargeable NRCGT gains and losses.

12. Paragraph 10 of Schedule 7 amends section 13 of TCGA 1992, which treats gains accruing to non-UK resident companies as if a proportionate amount had accrued to UK resident participators in the company, so that a second charge to CGT does not arise in relation to chargeable NRCGT gains.

13. Paragraph 11 of Schedule 7 inserts new sections 14B to 14H into TCGA 1992.

14. New section 14B defines "non-resident CGT disposal" for the purposes of TCGA 1992. It is a disposal of a UK residential property where either the person disposing of the property is not resident in the UK or the person is an individual and the gain accrues in the overseas part of a split year.

15. New section 14C provides that "disposal of a UK residential property interest" is defined at new Schedule B1.

16. New section 14D sets out the person who is chargeable to NRCGT and that capital gains tax is charged on the total chargeable NRCGT gains for a tax year after deducting allowable losses.

17. New section 14E holds that an NRCGT loss is not allowable as a deduction from chargeable gains that accrued in a previous tax year.

18. New section 14F provides that a person is not chargeable to CGT in respect of a chargeable NRCGT gain if that person is an eligible person and makes a claim under this section.

19. An eligible person includes: a diversely-held company; a widely-marketed unit trust scheme or open-ended investment company; a unit trust scheme or open-ended investment with a qualifying investor; or a company carrying on life assurance business where the UK land being disposed of was held for the purposes of providing benefits to its policy holders.

20. New section 14G deals with a special type of company ("divided company") sometimes called a protected cell company. This is a company where some or all of its assets are available to meet particular liabilities and some or all of the members have rights to particular assets. It ensures that the test as to whether a company is diversely-held is applied to each individual cell or division of the company, rather than just at the level of the whole company.

21. New section 14H is an anti-avoidance provision. It ensures that a tax charge under 14D cannot be avoided by artificial arrangements.

22. Paragraph 12 of Schedule 7 amends section 16(3) of TCGA 1992 to ensure that NRCGT losses are allowable losses for the purposes of TCGA 1992.

23. Paragraph 13 of Schedule 7 inserts new section 25ZA into TCGA 1992. This provides that if a person is treated (under section 25 of TCGA 1992) as having made a disposal of an asset by virtue of ceasing to trade through a UK branch or agency and that person would be chargeable to NRCGT on a later disposal of that asset, then the gain or loss on the deemed disposal at the time of the withdrawal accrues at the time of the later disposal. The person may elect for this section to not have effect.

24. Paragraph 14 of Schedule 7 inserts new section 48A into TCGA 1992. This provides for where a person makes a chargeable NRCGT disposal and receives payment in the form of a right for future consideration that is unascertainable. It makes the subsequent disposal of that right by a non-UK resident chargeable to NRCGT and provides for how the amount of NRCGT gain or loss is to be computed.

25. Paragraph 15 of Schedule 7 inserts new subsection 57A(3) into TCGA 1992. This provides that where no ATED-related gain or loss accrues on a disposal after applying Schedule 4ZZA that does not prevent that Schedule being applied when applying Part 4 of new Schedule 4ZZB.

26. Paragraph 16 of Schedule 7 inserts new section 57B into TCGA 1992, which introduces new Schedule 4ZZB. This schedule makes provision about the computation of NRCGT gains and losses.

27. Paragraph 17 of Schedule 7 amends subsection 62(2A) of TCGA 1992 and adds new subsection (2AA). These allow unused allowable NRCGT losses to be carried back for the 3 tax years prior to the year in which a person dies.

28. Paragraph 18 of Schedule 7 inserts new section 80A into TCGA 1992. This provides that if trustees of a settlement are treated (under section 80 of TCGA 1992) as having made a disposal of an asset by virtue of becoming resident outside of the UK, they may elect for the gain or loss on the deemed disposal at the time of the withdrawal to accrue at the time of the later disposal of the asset.

29. Paragraph 19 of Schedule 7 inserts new subsection 86(4ZA) into TCGA 1992. Section 86 attributes gains accruing to a non-resident trust to the settlor of the trust. This subsection prevents a double charge by disapplying that rule to the extent that a chargeable NRCGT gain accrues to the trustees.

30. Paragraph 20 of Schedule 7 inserts new subsection 87(5A) into TCGA 1992. Section 87 attributes gains accruing to non-resident trusts to the beneficiaries of the trust. This subsection prevents a double charge by disapplying that rule to the extent that a chargeable NRCGT gain accrues to the trustees.

31. Paragraph 21 of Schedule 7 makes amends section 139 of TCGA 1992 and inserts a new subsection (1AB) so that an asset may be disposed of for no gain and no loss on a scheme of reconstruction involving the transfer of a business where the asset would be chargeable to NRCGT on a subsequent disposal.

32. Paragraph 22 of Schedule 7 inserts a new section 159A of TCGA 1992. This provides that roll-over relief does not apply in respect of a NRCGT gain unless the new assets would be chargeable to NRCGT.

33. Paragraph 23 of Schedule 7 amends section 165 of TCGA 1992 and inserts new subsections 165(7A) to (7C). These provide that in the case where business assets are disposed of as a gift from a non-UK resident to a UK resident, the held-over gain is the held-over NRCGT gain.

34. Paragraph 24 of Schedule 7 amends section 166 of TCGA 1992, which denies gift of business asset hold-over relief when the gift is to a non-UK resident, in consequence of new section 167A.

35. Paragraph 25 of Schedule 7 amends section 167 of TCGA, which denies gift of business asset hold-over relief when the gift is to foreign-controlled company, in consequence of new section 167A.

36. Paragraph 26 of Schedule 7 inserts new section 167A into TCGA 1992. This provides that in the case where business assets are disposed of as a gift from a UK resident to a non-UK resident, hold-over relief is not denied where the asset is chargeable to NRCGT in the hands of the transferee. A new mechanism ensures that the full amount of the held-over gain accrues as a chargeable NRCGT gain for the transferee on their subsequent disposal.

37. Paragraph 27 of Schedule 7 amends section 168 of TCGA 1992, which deems that a held-over gain under section 165 or 260 accrues when the transferee ceases to be UK resident, in consequence of new sections 167A and 261ZA.

38. Paragraph 28 of Schedule 7 inserts new section 168A into TCGA 1992. This provides that where a gain on a deemed disposal would otherwise be deemed to accrue under section 168 at the time the transferee ceases to be UK resident, that it accrues at time the asset is subsequently disposed of if the gain at that time would be a chargeable NRCGT gain.

39. Paragraph 29 of Schedule 7 inserts new section 187B into TCGA 1992. This applies where there would be a deemed disposal of a UK residential interest for the purposes of section 185 when a company ceases to be UK resident.

40. If a NRCGT gain or allowable NRCGT loss would accrue to the company were the company a non-resident company at the time of the deemed disposal, then the gain or loss is

treated as not accruing at the time of that deemed disposal. Instead it is treated as accruing on a subsequent disposal of the asset. Any gain or loss so deferred is aggregated with the NRCGT gain or loss (if any) accruing on the disposal. A company may elect not to apply this rule, so that the gain or loss does accrue at the time it ceases to be UK resident.

41. Paragraph 30 of Schedule 7 inserts new sections 188A to 188K into TCGA 1992. These sections allow non-resident companies which are part of a group to elect to pool losses and gains arising from the disposal of UK residential property.

42. New section 188A sets out the rules where an election can be made by groups of companies ("the NRCGT group") to pool NRCGT gains and losses. The election must be made by all members of the group who are eligible to make the election, and specify the date the election starts. The election must be made within 30 days of the date it is due to take effect. Once made the election is irrevocable. A group of companies for this purpose is as defined in section 170 of TCGA 1992.

43. A company is a qualifying company, and so eligible to join in the election, if it holds a UK residential property interest and meets the qualifying conditions set out in subsection (3).

44. New sections 188B and 188C define what is meant by an "NRCGT group" and how transfers of UK residential property interests between members of that group should be treated. Intra-group transfers do not have any immediate consequence for NRCGT purposes. At any later disposal of the transferred property, the transferee company is treated as having acquired the property when the transferor company acquired it, and is also treated as having done everything that the previous owner did in relation to the property insofar as these are relevant to the computation of NRCGT gains and losses.

45. New section 188D sets out how the tax chargeable should be calculated where a pooling election has effect for the whole or part of a tax year. This provides that the amount is to be determined as if: the gains and losses accruing in the year to any member of the group were chargeable NRCGT gains or allowable NRCGT losses accruing to a single company ('the notional company'); and any unused allowable losses which accrued to a company at a time when it was a member of the NRCGT group in any previous tax year (not earlier than 1965-66) on any disposal of a UK residential property interest accrued to that notional company.

46. New Section 188E sets out further provisions about group losses.

47. New sections 188F and 188G set out when a company becomes eligible to join an active pooling group and what happens when a company ceases to be a member. When a member of the NRCGT group leaves the group holding a UK residential property there is a depooling charge which is computed on the basis that the company is deemed to have disposed of the asset and reacquired it at market value. No such charge arises in the circumstances set out in subsections (3) to (5), for example where there is a merger of two groups, or where the principal company of the group ceases to be a closely held company.

48. New Section 188H sets out who the responsible members of an NRCGT group are for the purposes of the TCGA 1992 and the Taxes Management Act 1970.

49. New Section 188I explains that the members of an NRCGT group are each jointly and severally liable for the tax liabilities of the NRCGT group.

50. New section 188J provides that a nominated company ("the representative company") of an NRCGT group may discharge the obligations of the other "relevant members" to make returns, payments on account of tax liabilities or any other obligations arising to the NRCGT members.

51. New section 188K inserts interpretative provisions for new sections 188A to 188J.

52. Paragraph 31 of Schedule 7 amends section 260 of TCGA 1992 and inserts new subsections 260(6ZA) to 260(6ZC). These provide that in the case where assets are disposed of as a gift from a non-UK resident to a UK resident, and that gift is exempt or potential exempt from inheritance tax, the held-over gain is the held-over NRCGT gain.

53. Paragraph 32 of Schedule 7 amends section 261 of TCGA 1992, which denies hold-over relief under section 260 when the gift is to a non-UK resident, in consequence of new section 261ZA.

54. Paragraph 33 of Schedule 7 inserts new section 261ZA into TCGA 1992. This provides that in the case where assets are disposed of as a gift from a UK resident to a non-UK resident in the circumstances envisaged by section 260, hold-over relief is not denied where the asset is chargeable to NRCGT in the hands of the transferee. A new mechanism ensures that the full amount of the held-over gain accrues as a chargeable NRCGT gain for the transferee on their subsequent disposal.

55. Paragraph 34 of Schedule 7 inserts interpretative provisions into section 288 of TCGA 1992.

56. Paragraph 35 of Schedule 7 makes minor consequential amendments to Schedule 1 to TCGA 1992.

57. Paragraph 36 of Schedule 7 inserts new Schedule B1 into TCGA 1992. This Schedule defines what counts as a disposal of a UK residential property interest.

58. Paragraph 1 of new Schedule B1 defines a "disposal of a UK residential property interest" as, broadly, the disposal of an interest in UK land that has consisted of or included a dwelling at any time during the relevant ownership period, being the period from acquisition or 6 April 2015 (whichever is later) to the day before the date of disposal.

59. Paragraph 2 of new Schedule B1 defines "interest in UK land".

60. Paragraph 3 of new Schedule B1 provides that the grant of an option binding the grantor to sell an interest in UK land is to be treated as the disposal of an interest in UK land.

61. Paragraph 4 of new Schedule B1 defines “dwelling” and provides that a building counts as a dwelling at any time when it is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use. Sub-paragraphs (3) to (11) prescribe occasions when a building is not regarded as a dwelling.

62. Paragraph 5 of new Schedule B1 provides HM Treasury with the power to amend by regulations cases where a building is or is not be regarded as being used as a dwelling.

63. Paragraph 6 of new Schedule B1 provides that temporary unsuitability for use as a dwelling as a result of damage is taken into account in applying the definition of “dwelling” only if certain conditions are met.

64. Paragraph 7 of new Schedule B1 provides that a building “ceases to exist” when demolished completely to ground level, or to ground level except for a façade retained as a condition of planning consent.

65. Paragraph 8 of new Schedule B1 provides that works to demolish or convert a building to a use other than use as a dwelling, and any period immediately prior to then when the building was not used as a dwelling, are periods when the building is to be regarded as unsuitable for use as a dwelling provided that the works are completed by the time the property is conveyed and are performed in accordance with any necessary planning permission or development consent.

66. Paragraph 9 of new Schedule B1 provides that paragraph 8 can apply when retrospective planning permission has been sought and obtained.

67. Paragraph 10 of new Schedule B1 contains general definitions for the purposes of the Schedule.

68. Paragraph 37 of Schedule 7 inserts new Schedule C1 to TCGA 1992.

69. New Schedule C1, Part 1 makes provision about the meaning of “closely-held company”. A company that is not closely-held is a diversely-held company for the purposes of making a claim to exemption from NRCGT under new section 14F of TCGA 1992.

70. Paragraph 1 of new Schedule C1 explains the purpose of Part 1, which is to determine whether or not a company which disposes of a UK residential property interest is a closely-held company in respect of the disposal.

71. Paragraph 2 of new Schedule C1 defines a closely-held company as one that is either under the control of five or fewer persons that have an interest in the company (“participators”), or where those five or fewer persons would be entitled to the greater part of the assets of the company were it to be wound up.

72. Paragraph 3 of new Schedule C1 ensures that when assessing the interests a person has in the assets of a company being wound up, regard is to be had to both direct and indirect interests.

73. Paragraph 4 of new Schedule C1 applies when assessing who a participator in a company is for the purposes of the assets part of the test in paragraph 2. It provides that the person is to be treated as a participator if that person is a participator in any other company that would be entitled to receive assets in the company being wound up.

74. Paragraph 5 of new Schedule C1 provides for certain companies not to be treated as closely-held companies, notwithstanding the fact that the tests in paragraph 2 may be satisfied. The first group are companies that can only be regarded as closely-held by including in the group of controlling participators a company which is itself either a diversely held company or a qualifying institutional investor as defined in sub-paragraph (4).

75. The second group are those where it is only possible to regard a company as closely-held by including a company as a participator that is a loan creditor of the company, and which is itself a diversely held company or a qualifying institutional investor. HM Treasury may vary the types and descriptions of entities that are treated as qualifying institutional investors by Statutory Instrument.

76. Paragraph 6 of new Schedule C1 ensures that a company which would otherwise be treated as a closely held company is not so regarded if it is controlled by a qualifying institutional investor, or by collective investment scheme constituted as a limited partnership. However, a company will still be a closely held company where it is controlled by the general partner of a limited partnership if 5 or fewer participators in the company would be entitled to the majority of the company's assets were it to be wound up.

77. Paragraphs 7 and 8 of new Schedule C1 define the meaning of "control" and provide rules for attributing the rights of close associates when considering whether one or more persons has control of a company.

78. Paragraph 9 of new Schedule C1 defines the meaning of various relevant terms in Part 1.

79. Part 2 of new Schedule C1 makes provision about the "widely-marketed scheme condition". Widely marketed schemes established as either a unit trust, or an open-ended investment company may claim exemption from NRCGT under new section 14F.

80. Paragraph 10 of new Schedule C1 explains that the purpose of Part 2 is to determine whether or not a unit trust scheme or a company which is an open ended investment company is a widely-marketed scheme.

81. Paragraph 11 of new Schedule C1 sets out three conditions that all have to be satisfied for a scheme to be widely-marketed. These include a requirement to produce documents which confirm the categories of investor and confirmation that the scheme is widely held; that there is no deterrent effect in the category of investor in the scheme or any other terms governing participation; and that the units in the scheme are marketed widely.

82. Paragraph 12 of new Schedule C1 defines the meaning of various relevant terms in Part 2.

83. Paragraph 38 of Schedule 7 makes various amendment to Schedule 4ZZA to TCGA 1992, which determines whether an Annual Tax on Enveloped Dwellings (ATED)-related gain or loss accrues to a person. It renumbers the existing paragraph 1 as 1(1) and adds a new subparagraph 1(2) to encompass NRCGT gains and losses.

84. It inserts new subparagraph 5(3A). This provides that an election under paragraph 2(1)(b) of new Schedule 4ZZB to compute gains or losses on the basis of the position over their whole period of ownership applies for the purpose of Schedule 4ZZA as well as for Schedule 4ZZB.

85. It inserts new paragraph 6A, which applies where the gain on a disposal is potentially liable to both CGT as an ATED-related disposal and to CGT under new section 7AB. It provides for the ATED-related gain to be the sum of two components derived from periods before and after 5 April 2015.

86. It also inserts new paragraphs 8 and 9, which explain how wasting assets and capital allowances should be taken into account when calculating gains and losses on relevant high value disposals.

87. Paragraph 39 of Schedule 7 inserts new Schedule 4ZZB to TCGA 1992.

88. New Schedule 4ZZB, Part 1 consists of paragraph 1, which introduces the Schedule and makes provision about the computation of the amount of gain or loss that accrues to a person in relation to a chargeable non-resident disposal of a UK residential property interest.

89. New Schedule 4ZZB, Part 2 consists of paragraphs 2 and 3, which permit a person who has held an asset prior to 6 April 2015 to elect not use the default rebasing method for computing the amount of gains or losses from which the amount of NRCGT gains or losses are computed.

90. Paragraph 2 of new Schedule 4ZZB provides that a person may elect to determine the amount of post 5 April 2015 gain or loss by using the straight-line time apportionment method provided by paragraph 8 unless the disposal is one to which ATED-related CGT applies; or to elect to use the gain or loss over their whole period of ownership, when such an election would apply also for the purpose of ATED-related CGT.

91. Paragraph 3 of new Schedule 4ZZB provides how an election made under paragraph 2 is to be made and that it is irrevocable.

92. New Schedule 4ZZB, Part 3 consists of paragraphs 4 to 10, which contain the main rules for computing NRCGT gains and losses and the amount of a gain or loss that is not a NRCGT gain or loss.

93. Paragraph 4 of new Schedule 4ZZB provides that Part 3 applies when the disposal is of a chargeable non-resident disposal of a UK property interest that is not also chargeable to ATED-related CGT.

94. Paragraph 5 of new Schedule 4ZZB introduces paragraphs 6 to 8, the main computation rules.

95. Paragraphs 6 and 7 of new Schedule 4ZZB provide the default computation to apply where the asset was held at 5 April 2015. The NRCGT gain or loss is that proportion of the post 5 April 2015 gain (as determined by the gain or loss from the asset's market value as at 5 April 2015) that represents the amount of days in the post 5 April 2015 period in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned. Paragraph 7 determines the gain or loss that is not a NRCGT gain or loss.

96. Paragraph 8 of new Schedule 4ZZB modifies the computations at paragraphs 6 and 7 where the asset was held at 5 April 2015 and an election is made, under subparagraph 2 of this Schedule, to determine the amount of post 5 April 2015 gain or loss by using the straight-line time apportionment method. The NRCGT gain or loss is that proportion of the post 5 April 2015 gain that reflects the amount of days in the post 5 April 2015 period in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned.

97. Paragraph 9 of new Schedule 4ZZB provides the computation to apply where the asset was acquired after 5 April 2015; or was held on 5 April 2015 and an election is made, under subparagraph 2 of this Schedule, to compute gains or losses on the basis of the position over the whole period of ownership. Here the NRCGT gain or loss is that proportion of the gain or loss over the period of ownership (since 31 March 1982) that reflects the amount of days in which the asset is used as a dwelling; and any mixed use on the same day is similarly apportioned. Subparagraph 9(5) provides for the amount of pre-6 April 2015 gain or loss that is not a NRCGT gain or loss.

98. Paragraph 10 of new Schedule 4ZZBapplies Part 3 to disposals of contracts to purchase a dwelling off-plan.

99. New Schedule 4ZZB, Part 4 consists of paragraphs 11 to 21, which contain separate computation rules where the disposal also either is, or involves, a disposal that is chargeable to ATED-related CGT.

100. Paragraph 11 of new Schedule 4ZZB provides an overview to Part 4.

101. Paragraph 12 of new Schedule 4ZZB provides that the amount of NRCGT gain or loss is the sum of the amounts determined under paragraphs 13 to 15; and defines "section 14D chargeable day" for the purposes of the special fraction at sub-paragraphs 13(4), 14(4) and 15(3).

102. Paragraph 13 of new Schedule 4ZZB applies where an asset is held at 5 April 2015; no election has been made under paragraph 2 (or its equivalent ATED-related CGT provision) to compute gains or losses on the basis of the position over the whole period of ownership; and no additional rebasing in 2016 is required.

103. The NRCGT gain or loss is that proportion of the post 5 April 2015 gain (as determined by the gain or loss from the asset's market value as at 5 April 2015) that

represents the amount of days in the post 5 April 2015 period in which the asset was used as a dwelling and was not chargeable to ATED-related CGT.

104. Paragraph 14 of new Schedule 4ZZB applies where an asset is acquired after 5 April 2015 or an election is made under sub-paragraph 2 (or its equivalent ATED-related CGT provision) to compute gains or losses on the basis of the position over the whole period of ownership; and no additional rebasing in 2016 is required (when paragraph 15 applies instead).

105. The NRCGT gain or loss is that proportion of the gain that represents the amount of days during the period of ownership in which the asset was used as a dwelling and was not chargeable to ATED-related CGT.

106. Paragraph 15 of new Schedule 4ZZB applies where an asset is rebased to its open market value at 5 April 2016 for the purposes of Schedule 4ZZA and no election has been made. It provides for rebasing of the asset to its open market value at 5 April 2016 for the purposes of ATED-related CGT.

107. The NRCGT gain or loss is that proportion of the gain from 6 April 2015 to 5 April 2016 that represents the amount of days during that period of ownership in which the asset was used as a dwelling and was not chargeable to ATED-related CGT; plus that proportion of the gain from 6 April 2016 that represents the amount of days during the period of ownership from then in which the asset was used as a dwelling and was not chargeable to ATED-related CGT.

108. Paragraph 16 of new Schedule 4ZZB provides that the amount of gain or loss that is neither ATED-related nor a NRCGT gain or loss is the sum of the amounts determined in accordance with paragraphs 17 to 19; and defines "balancing day" for the purposes of the balancing fractions at sub-paragraphs 17(6), 18(4) and 19(4).

109. Paragraph 17 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor NRCGT gains or losses when paragraph 13 applies.

110. Paragraph 18 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor NRCGT gains or losses when paragraph 14 applies.

111. Paragraph 19 of new Schedule 4ZZB contains provisions for computing gains and losses that are neither ATED-related nor NRCGT gains or losses when paragraph 15 applies.

112. Paragraph 20 of new Schedule 4ZZB provides that where part only of the land disposed of is a relevant high value disposal such that the gains that accrue on its disposal is wholly or in part chargeable to ATED-related CGT, the remaining part of the land is treated for Part 4 in the same way as if it formed part of the relevant high value disposal.

113. Paragraph 21 of new Schedule 4ZZB applies Part 4 to disposals of contracts to purchase a dwelling off-plan.

114. New Schedule 4ZZB, Part 5 consists of paragraphs 22 and 23.

115. Paragraph 22 of new Schedule 4ZZB provides that Part 5 applies where a company disposes of a residential property interest.

116. Paragraph 23 of new Schedule 4ZZB provides for indexation to apply when calculating the amount of a relevant gain or loss.

117. New Schedule 4ZZB, Part 6 consists of paragraphs 24 and 25. These paragraphs explain how wasting assets and capital allowances should be taken into account when calculating gains and losses on relevant high value disposals.

118. New Schedule 4ZZB, Part 7 consists of paragraph 26 and contains interpretative definitions for the purposes of the Schedule.

119. Paragraph 40 of Schedule 7 inserts a new sub-paragraph 4(3) into Schedule 4C to TCGA 92. This addresses disposals made by trustees which are chargeable non-resident disposals and sets out how the chargeable amount should be calculated.

Schedule 7 Part 2

120. Paragraph 41 of Schedule 7 introduces amendments to the Taxes Management Act 1970 (TMA 1970).

121. Paragraph 42 of Schedule 7 inserts new section 7A into TMA 1970. This sets out that where a person reports a NRCGT gain on a NRCGT return made to HMRC, that gain is ignored for the purposes of determining whether that person must notify HMRC that they have chargeable gains for the tax year concerned.

122. Paragraph 43 of Schedule 7 inserts new sections 12ZA to 12ZN into TMA 1970.

123. New section 12ZA of TMA 1970 defines various terms used in new sections 12ZB to 12ZN.

124. New section 12ZB requires a person who makes a non-resident disposal to notify the disposal to HMRC in a NRCGT return. The return must be made within 30 days of, normally, the time when the property is conveyed.

125. New section 12ZC requires a single return to be made where two or more NRCGT disposals are made on the same day.

126. New Section 12ZD applies in relation to options that bind the grantor to sell a property and place the same reporting and payment on account obligations on the grantor when the option is exercised as apply when the grant was made.

127. New Section 12ZE requires that the NRCGT return must include “an advance self-assessment” of the amount that is notionally chargeable for the tax year, or additional amount if a previous NRCGT return for the year has been made, subject to certain exceptions set out in new section 12ZG.

128. New section 12ZF explains how to compute the "amount notionally chargeable" and what assumptions are to be taken into consideration.

129. New section 12ZG provides that an advance self-assessment is not required where the person is required to make a self-assessment return for the tax year in which the disposal is made or the previous year; or has made an ATED return for the preceding period.

130. New Section 12ZH treats an NRCGT return as being a self-assessment return for the tax year for persons other than trustees of a settlement. The self-assessment return is treated as being made to HMRC from 31 January following the end of the tax year in which the disposal was made unless the person gives before then a notice that it should be regarded as being made from when the notice is made.

131. New section 12ZI treats an NRCGT return as being a self-assessment return for the tax year for trustees of a settlement. The self-assessment return is treated as being made to HMRC from 31 January following the end of the tax year in which the disposal was made unless the trustees gives before then a notice that it should be regarded as being made from when the notice is made.

132. New section 12ZJ provides, for the purpose of sections 12ZA to 12ZI, that the question as to whether a person is a non-resident at the time of a disposal shall be determined by what at the time of completion it was reasonable for the position to be; and the position and replacement duties if it later becomes certain that the answer is different.

133. New Section 12ZK provides that NRCGT returns may be amended within 12 months of the 31 January following the tax year in which the disposal was made.

134. New section 12ZL provides that an officer of HMRC may correct an NRCGT return in certain cases. No correction may be made more than 9 months after the day on which the return was delivered or an amendment under section 12ZK was made.

135. New section 12ZM provides that an officer of HMRC may enquire into an NRCGT return if notice to do so is given and the enquiry is carried out within certain time limits.

136. New section 12ZN concerns amendments made to the return by a taxpayer during the period of enquiry and its impact on that enquiry.

137. Paragraph 44 of Schedule 7 makes consequential amendments to section 28A of TMA70, which contains provision about the effect of an enquiry closure notice.

138. Paragraph 45 of Schedule 7 inserts new section 28G into TMA1970. Where a NRCGT return has not been filed this section permits HMRC to determine the tax that is believed should be paid.

139. Paragraph 46 of Schedule 7 inserts new subsection 29(7)(a)(ia) into TMA1970. This enables HMRC to make an assessment for tax not self-assessed on an NRCGT return.

140. Paragraph 47 of Schedule 7 inserts new section 29A into TMA 1970. This section enables HMRC to make a discovery assessment for tax not self-assessed on an NRCGT return as long as certain conditions are met.

141. Paragraph 48 of Schedule 7 inserts new subsection 34(1A) into TMA1970. This imposes, in respect of new section 29A, the ordinary 4 year time limit for making assessments.

142. Paragraph 49 of Schedule 7 amends section 42 of TMA 1970, the procedure for making claims, to include claims made in an NRCGT return.

143. Paragraph 50 of Schedule 7 omits subsection 59A(7) of TMA 1970 in consequence of new section 59AB.

144. Paragraph 51 of Schedule 7 inserts new sections 59AA and 59AB into TMA 1970. These deal with payments on account of tax.

145. New Section 59AA determines the payment on account of capital gains tax to be made for a tax year when an NRCGT return contains an advance self-assessment for the year. It is the difference between the amount notionally chargeable in relation to the return and the payments (if any) made towards that amount.

146. New Section 59AB provides that the same rules that apply to the recovery of outstanding tax, apply in respect of an amount due to be paid on account.

147. Paragraph 52 of Schedule 7 makes a consequential amendment to section 59B of TMA 1970 and inserts new subsection 59B(2A) to ensure that the net amount remaining payable (or repayable) at the end of the tax year, after other liabilities have been taken into consideration, is correct.

148. Paragraph 53 of Schedule 7 makes a consequential amendment to section 107A of TMA 1970.

149. Paragraph 54 of Schedule 7 makes a consequential amendment to section 118 of TMA 1970.

150. Paragraph 55 of Schedule 7 makes consequential amendments to Schedule 3ZA to TMA1970.

151. Paragraph 56 of Schedule 7 makes consequential amendments to Schedule 24 to the Finance Act 2007, and inserts new paragraph 21BA.

152. Paragraph 57 of Schedule 7 inserts new paragraph 21ZA into Schedule 36 to the Finance Act 2008. This restricts HMRC from making a notice requiring a person to deliver information or documents unless certain conditions are met.

153. Paragraph 58 of Schedule 7 makes consequential amendments to section 2 of the Corporation Tax Act 2009.

154. Paragraph 59 of Schedule 7 makes consequential amendments to Schedule 55 to the Finance Act 2009.

155. Paragraph 60 of Schedule 7 inserts new subsection 92(7) into the Taxation (International and Other Provisions) Act 2010. This provides that the reference to "tax return for a chargeable period" in subsection (1) does not include an NRCGT return.

Schedule 7 Part 3

156. Paragraph 61 of Schedule 7 provides that the amendments made by Schedule 7 have effect from 6 April 2015 for disposals made on or after that date.

BACKGROUND NOTE

157. A person is not generally chargeable to CGT unless they are resident in the UK; and companies have been chargeable to corporation tax, and not CGT, in respect of chargeable gains accruing to them. Some exceptions exist (for example where a non-resident trades through a UK branch or agency; or where they are necessary to prevent tax avoidance).

158. This measure brings the UK into alignment with most other countries who charge non-residents in relation to immovable property located in their country.

159. It provides a number of exemptions for communal residential accommodation such as purpose built student accommodation, hospices etc. and also exempts non-resident companies that are diversely owned.

EXPLANATORY NOTE

CLAUSE 38, SCHEDULE 8: RELEVANT HIGH VALUE DISPOSALS: GAINS AND LOSSES

SUMMARY

1. This clause reduces the threshold amount for consideration received on a disposal of residential property, above which an Annual Tax on Enveloped Dwellings (ATED)-related gain may accrue and capital gains tax (CGT) may be payable. The changes apply to disposals on or after 6 April 2015.

DETAILS OF THE SCHEDULE

2. Paragraph 2 amends section 2C of the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Subsection (6) of section 2C is amended so that the 'relevant ownership period' depends on whether the property being sold was held on 5 April 2013, 2015 or 2016, and whether was payable before the relevant date. This ensures that any ATED-related gain on which CGT may be payable reflects only changes in the property's value over the period since ATED was first payable. Subsection (7) of section 2C is amended so that subsection (4) continues to apply correctly after the changes to the threshold amount given in paragraphs 3 and 4 take effect.

3. Paragraph 3 amends section 2D TCGA 1992 to reduce the threshold amount from £2 million to £1 million. The change applies to disposals on or after 6 April 2015.

4. Paragraph 4 amends section 2D TCGA 1992 to reduce the threshold amount from £1 million to £500,000. This change applies to disposals on or after 6 April 2016.

5. Paragraph 5 amends section 2E TCGA 1992 so that it continues to apply correctly whichever date is used in Schedule 4ZZA for 'rebasing' the gains or losses which accrue on the disposal.

6. Paragraphs 6 – 13 amend Schedule 4ZZA TCGA which makes provisions for computing ATED-related gains and losses.

7. Paragraph 8 replaces paragraph 2 in Schedule 4ZZA TCGA 1992 with a new paragraph. The new paragraph contains rules for deciding whether a relevant high value disposal within section 2C falls under 'Case 1', 'Case 2' or 'Case 3'. This is necessary in order to determine 'the relevant year' by reference to which the ATED-related gain is to be computed. The conditions for Case 3 are to be considered first, and if they are not met then Case 2 is considered. If a disposal falls neither within Case 3 nor Case 2 then it will be within Case 1. New paragraph 2, subparagraph (5) contains definitions of terms used in earlier

subparagraphs and subparagraph (6) gives 'the relevant year' associated with each of the Cases determined under subparagraphs (2) – (4).

8. Paragraphs 9 and 10 amend paragraphs 3 and 4 of Schedule 4ZZA TCGA. Paragraphs 3 and 4 ensure that changes in the value of a property which take place before the property first becomes chargeable to ATED do not contribute to ATED-related gains when the property is sold (a process known as 'rebasing'). The changes brought about by this clause mean that ATED in respect of a property which is already owned may become payable either in April 2013, April 2015 or April 2016. The amendments to paragraphs 3 and 4 of Schedule 4ZZA ensure that those paragraphs work properly in all cases.

9. Paragraph 11 amends paragraph 5 of Schedule 4ZZA TCGA so that it is capable of applying equitably in any of the three Cases described at new paragraph 2.

10. Paragraph 13 amends paragraph 6 of Schedule 4ZZA TCGA. Paragraph 6 provides rules for computing ATED-related gains and losses where there is no 'rebasing'. The amendment ensures that this paragraph applies where a disposal does not fall within any of the three Cases described at new paragraph 2.

BACKGROUND NOTE

11. These changes, announced at Budget 2014, ensure that the charge to capital gains tax on disposals of residential property continues to be aligned with that property's previous liability to ATED. The value above which a property is potentially liable to ATED decreases from £2 million to £1 million on 1 April 2015 and to £500,000 on 1 April 2016, and the 'threshold amount' for CGT purposes is changing similarly so that the two charges remain aligned. The methods by which ATED-related gains and losses are computed and CGT charged or relieved are not changing except to recognise that owners of certain properties will become liable to ATED and to CGT for the first time as a result of these measures. Gains and losses attributable to periods before they became liable to ATED will continue to be excluded from the charge to CGT on ATED-related gains.

12. These changes further the Government's policy objective of ensuring the fairness of tax on residential property. A package of measures including the charge to CGT on high value disposals was announced at Budget 2012 and the charge was introduced by Finance Act 2013, after consultation.

EXPLANATORY NOTE

CLAUSE 39 AND SCHEDULE 9: PRIVATE RESIDENCE RELIEF

SUMMARY

1. This clause introduces Schedule 9, which restricts access to capital gains tax private residence relief when the residence is in a country where neither the person making the disposal nor their spouse or civil partner is not also tax resident in that country. The changes apply to disposals made on or after 6 April 2015.

DETAILS OF THE CLAUSE AND SCHEDULE

2. This clause and Schedule amend capital gains tax private residence relief.

Private Residence Relief

3. Paragraph 1 of Schedule 9 introduces changes to the Taxation of Chargeable Gains Act (TCGA) 1992.

4. Paragraph 2 of Schedule 9 inserts new sub-section 222(6A) into TCGA 1992. This ensures that where an individual has two or more residences for a period and has determined by notice which is his main residence, that determination is not disturbed simply because during that period another residence is treated as not being occupied as a residence for a tax year under new section 222B.

5. Paragraph 3 of Schedule 9 inserts new sections 222A to 222C into TCGA 1992.

6. New section 222A provides that where a person makes a disposal when non-resident, any determination as to which of two or more of their residences was their main residence for a period is made in the advanced tax return made by non-residents. But that determination cannot vary a previous determination for a residence that has already been disposed of.

7. New sections 222B and 222C treat a residence as not being occupied as a residence for a tax year when it is located in a territory in which neither the person making the disposal nor their spouse or civil partner is tax resident and they do not stay overnight at the property at least 90 times during the year (the “day count test”). This day count test does not prevent absence relief applying in respect of a non-qualifying year.

8. Where the property is owned for part of a year the day count test is reduced by a proportionate amount; and where more than one residence is owned in the same territory during the year, the day count test applies across the properties.

9. Paragraph 4 of Schedule 9 amends section 223 of TCGA 1992 to determine 'the period of ownership' in cases involving disposals by non-residents.

10. Paragraph 5 of Schedule 9 inserts new section 223A into TCGA 1992 and provides a transitional rule in relation to absence relief for cases involving disposals by non-residents. Under the rule, if the absence began prior to 6 April 2015 then that prior period of absence is deducted from the amount of absence available for relief for periods after 5 April 2015.

11. Paragraph 6 of Schedule 9amends section 225 of TCGA 1992 to make corresponding changes in relation to beneficiaries of a trust occupying a dwelling-house under the terms of the settlement.

12. Paragraph 7 of Schedule 9 amends section 225A of TCGA 1992 to make corresponding changes in relation to legatees of a deceased person occupying a dwelling-house under an entitlement as legatee.

13. Paragraph 8 of Schedule 9 makes consequential amendments to section 225B of TCGA 1992.

14. Paragraph 9 of Schedule 9 makes consequential amendments to section 225E of TCGA 1992.

15. Paragraph 10 of Schedule 9 contains commencement provisions.

BACKGROUND NOTE

16. No capital gains tax (CGT) is due on gains accruing on the disposal of a dwelling-house if the person making the disposal has used it as their only or main residence throughout their period of ownership.

17. Where a dwelling-house was the person's only or main residence for part of their period of ownership only an appropriate fraction of the gain is not chargeable to CGT. The remaining portion of the gain is chargeable to CGT subject to final period relief (which takes out of charge the last 18 months of ownership); relief for certain types of absences; and lettings relief.

18. Where a person has more than one residence, he may determine for any period which of them is his main residence by making an election.

EXPLANATORY NOTE

CLAUSE 40: WASTING ASSETS

SUMMARY

1. This clause amends section 45 Taxation of Chargeable Gains Act 1992 (TCGA) to ensure that the exemption for wasting assets is only available for assets used as plant in a business where the asset has been used by a person as plant in their own business. This amendment has effect on or after 1 April 2015 for corporation tax purposes and on or after 6 April 2015 for capital gains tax purposes.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for changes to be made to section 45 TCGA, by inserting new subsections (3A) to (3D).

3. New subsection (3A) provides that section 45(3) TCGA does not apply to disposals where new subsection (3B) disapplies section 45(1) TCGA.

4. New subsection (3B) provides that subsection 45(1) TCGA does not apply where a person disposes of an asset, or an interest in an asset:

5. where the asset has been used for the purposes of a trade, profession or vocation carried on by another person; and
6. because of that use it has become plant for the purposes of section 44(1)(c) TCGA but was not otherwise a wasting asset at disposal; and
7. new subsection (3C) does not apply.

8. New Subsections (3C) and (3D) apply to long funding leasing and deemed disposals made under section 25A TCGA. They ensure that such disposals do not fall within new subsection (3B).

9. Subsection (2) provides that this amendment has effect on or after 1 April 2015 for corporation tax purposes and on or after 6 April 2015 for capital gains tax purposes.

BACKGROUND NOTE

10. Capital gains tax applies to gains accruing on the disposal of assets. However, a gain or loss which arises on the disposal of certain wasting assets is exempt from capital gains tax. This includes plant or machinery where capital allowances cannot be claimed.

11. This clause is designed to make clear that the exemption applies for assets used as plant in a business only where the asset has been used by a disponor as plant for the purposes of his own business. It closes a loophole that allows a person who plans to dispose of an asset to claim the exemption if a third party uses the asset as plant in their business.

EXPLANATORY NOTE

CLAUSE 41: ENTREPRENEURS' RELIEF: ASSOCIATED DISPOSALS

SUMMARY

1. This clause changes the conditions which must be met in order for an individual to claim entrepreneurs' relief (ER) on a disposal of his or her personal assets. These are assets which the claimant owns personally but which are used in a business carried on by a partnership of which he or she is a member, or by a company in which he or she is a shareholder. Under the new rules, such a disposal must be associated with a significant reduction in the claimant's participation in the business in terms of his interest in the partnership's assets or his shareholding in the company. The new rules come into effect in relation to disposals on or after 18 March 2015.

DETAILS OF THE CLAUSE

2. This clause amends section 169K of the Taxation of Chargeable Gains Act (TCGA) 1992.

3. Subsection (2) deletes subsections (1) and (2) of section 169K and replaces them with new subsections (1), (1A) to (1E) and (2).

4. Section 169K, new subsection (1) summarises the new conditions which must be met in order for there to be an associated disposal on which ER must be claimed. Any one of conditions A1, A2 or A3 must be met, along with both condition B and condition C. Conditions A1, A2 and A3 are new and are described below. Conditions B and C are existing conditions given at subsections (3) and (4) of section 169L.

5. Section 169K, new subsection (1A) describes new condition A1. This condition applies if the individual claiming ER ("P") has disposed of his or her interest in the assets of a partnership and that is the "material disposal of business assets" with which the disposal of personal assets may be associated. The condition is met if the interest disposed of is at least a 5% interest in the assets of the partnership, and there are no arrangements by which P could acquire or increase his interest in the partnership after the disposal. These "partnership purchase arrangements" are defined at new subsection (6). For the purposes of this condition, the normal capital gains tax (CGT) rules for determining a partner's share in partnership assets will apply.

6. Section 169K, new subsection (1B) describes new condition A2. This condition applies if P has disposed of shares in a company and that is the material disposal of business assets with which the disposal of personal assets may be associated. The condition is that the shares disposed of must constitute at least 5% of the company's ordinary share capital and must carry at least 5% of the voting rights in the company. Also, there must be no

arrangements by which P could increase his level of participation in the company by acquiring shares or securities either in the company or in a company which is a member of a trading group of which the company is a member. These "share purchase arrangements" are defined at new subsections (1E) and (2).

7. Section 169K, new subsection (1C) limits the circumstances in which condition A2 is met. The condition is not met if the disposal of shares takes place because the company has made a capital distribution in respect of those shares, unless the distribution is made in the course of the company's winding-up or dissolution.

8. Section 169K, new subsection (1D) describes new condition A3. This condition applies if P has disposed of securities of a company and that is the material disposal of business assets with which the disposal of personal assets may be associated. The condition is that the securities disposed of must constitute at least 5% by value of the securities of the company which are in issue (and not redeemed or cancelled) at the time of the disposal. Also, there must be no arrangements by which P could increase his level of participation in the company by acquiring shares or securities either in the company or in a company which is a member of the trading group of which the company is a member. These share purchase arrangements are defined at new subsections (1E) and (2).

9. Section 169K, new subsections (1E) and 2 define the share purchase arrangements relevant to whether conditions A2 or A3 are met. These arrangements include agreements, understandings or schemes under which P or a person connected with P is entitled to acquire shares in, or securities of, certain companies. The companies in question are the company whose shares P has sold and any other company which is a member of the same trading group as that company. If, at the time the shares are sold, there are arrangements which make it reasonable to assume that another company will become a member of the same group as the company whose shares are sold then those companies are treated as being members of the same group at the time of the sale. Section 286 applies for determining whether a person is connected with P.

10. Subsection (3) makes minor changes to subsection (3) of section 169K to make its language consistent with new the subsections (1) to (2).

11. Subsection (4) inserts new subsections (3A) to (3C) into section 169K.

12. Section 169K, new subsection (3A) modifies condition B in subsection (3). Condition B is that the disposal of the personally-owned asset must be part of a withdrawal of P from participation in the business carried on by the partnership or by the company. The effect of new subsection (3A) is that the disposal is not treated as part of such a withdrawal if, at the date of the disposal, there are arrangements by which P could acquire or increase his interest in the partnership after the disposal. These partnership purchase arrangements are defined at new subsection (6). This requirement applies at the time the privately-owned asset is disposed of: it complements the similar requirement in condition A1 which applies at the time of the material disposal of business assets.

13. Section 169K, new subsections (3B) and (3C) also modify condition B in subsection (3). The disposal of a personally-owned asset is not treated as part of a withdrawal from a

company's business if, at the date of the disposal, there exist arrangements by which P could acquire shares in, or securities of, certain companies. The companies in question are the company whose shares P has sold and any other company which is – or can be expected to become - a member of the same trading group as that company. These arrangements correspond to the share purchase arrangements relevant to condition A2 which are described at new subsections (1E) and (2). This requirement applies at the time the privately-owned asset is disposed of: it complements the similar requirement in condition A2 which applies at the time of the material disposal of business assets (see above).

14. Subsection (5) inserts new subsections (6), (7), (8) and (9) into section 169K.

15. Section 169K, new subsection (6) defines partnership purchase arrangements. These are arrangements under which P or a person connected with P (for instance, P's spouse or civil partner, sibling or child: see section 286 for a definition) is "entitled to acquire" an interest in the partnership which is carrying on the trade, or to increase their interest. An interest in a partnership includes a share in the income or profits of a partnership, or a fractional share in the assets of the partnership for the purposes of computing chargeable gains. It also includes an interest in such a share. The meaning of entitled to acquire is given by new subsection (8).

16. Section 169K, new subsection (7) defines terms used elsewhere in the section.

17. Section 169K, new subsection (8) explains what is meant by entitled to acquire in the section. A person is entitled to acquire a thing if they currently have an entitlement to acquire it at a future date, or if they will in future acquire such an entitlement.

18. Section 169K, new subsection (9) contains special rules which determine how the section applies to Scottish partnerships and to partnerships constituted under non-UK law where that law treats partnership assets as held by or on behalf of the partnership (rather than, for instance, by the partners). It ensures that the treatment of these partnerships is consistent with the usual CGT treatment of partnerships by which assets of the partnership are treated as held by the partners.

19. Subsection (6) states that the amendments to section 169K apply to disposals on or after 18 March 2015.

BACKGROUND NOTE

20. These new provisions are effective in relation to disposals on or after 18 March 2015 in order to prevent the forestalling which would otherwise be likely.

21. This measure removes an unintended facility under the entrepreneurs' relief rules. Under these rules the relief could be claimed by an individual on a disposal of a private asset used in a business without the individual permanently reducing their participation in the business by a meaningful amount. Allowing relief in these circumstances is not consistent with the purpose of ER on associated disposals, which is to promote the transfer of a business

to new proprietors along with all the assets used in that business, including assets which are not owned by the trading entity.

22. This measure ensures that entrepreneurs’ relief is better targeted at people who have genuinely reduced their participation in a business.

EXPLANATORY NOTE

CLAUSE 42: ENTREPRENEURS' RELIEF: EXCLUSION OF GOODWILL IN CERTAIN CIRCUMSTANCES

SUMMARY

1. This clause amends the provisions for computing entrepreneurs' relief (ER) due on certain disposals of businesses by an individual or a member of a partnership to a company. Where the new provisions apply, the ER rate of capital gains tax (CGT) will not apply to gains on the business' goodwill, but gain on other business assets are not affected. The new provisions apply to disposals on or after 3 December 2014. They remove a tax incentive to incorporate an existing business.

DETAILS OF THE CLAUSE

2. This clause amends Chapter 3 of Part 5 of the Taxation of Chargeable Gains Act (TCGA) 1992. Subsections (1) to (3) are introductory and make minor amendments.

3. Subsection 4 inserts new section 169LA into TCGA 1992.

4. Subsection (1) of new section 169LA sets out the three conditions for subsection (3) to apply. These are that a person (P) disposes of goodwill as part of a qualifying business disposal directly or indirectly to a close company (C), that P is a related party in relation to C at the time of the disposal, and that P is not a 'retiring partner'.

5. Subsection (2) of new section 169LA explains what is meant by 'a related party'. The definitions in Part 8 of the Corporation Tax Act (CTA) 2009, specifically at section 835 of that Act, apply for the purposes of this measure. This provides that, for the purposes of this clause, P will be a related party in relation to company C if for instance P is a participator (or an associate of a participator) in C, or if P is a participator (or an associate of a participator) in a company that controls or holds a majority interest in C.

6. Subsection (3) of new section 169LA provides a definition of a 'retiring partner' as that term is used in subsection (1). There are three conditions all of which must be met. Firstly, the individual (P) must not be a participator in the transferee company (C), nor can there be arrangements under which he could become one. This is to prevent him from being able to share in the profits of the business or in any increase in value of the business in future. Secondly, although P will by definition be a related party in relation to C (see subsection (1)(b)), this will only be the case because he is an associate of other people who are actually participators in C, and (thirdly) he is only associated with them because they too are partners in the business which is transferred to C. These conditions do not prevent a retiring partner from continuing to perform services for the business, for instance as a consultant.

7. Subsection (4) of new section 169LA provides that, where the conditions in subsection (1) are met, the goodwill is not a relevant business asset for the purposes of section 169L TCGA. This means that a gain or loss accruing on the disposal of the goodwill will not enter into the computation of the amount under section 169N subsection (1).

8. Subsection 5 of new section 169LA provides that the reference to a close company in subsection (1) includes non-UK companies which would be close if they were in fact UK resident. A close company is essentially one which is controlled by five or fewer participators, or by participators who are also directors. This extended meaning of 'close company' also applied for the purposes of deciding whether parties are related (see subsection 2 of new section 169LA).

9. Subsection (6) of new section 169LA is an anti-avoidance provision. It ensures that subsection (3) will apply where a person disposes of goodwill and is at the time of the disposal party to 'relevant avoidance arrangements' if, in the absence of this provision, it would not otherwise apply.

10. Subsection (7) of new section 169LA explains what is meant by 'relevant avoidance arrangements'. They are arrangements which have a main purpose of ensuring either
11. that gains on goodwill will contribute to the gain which is subject to the special ER rate of tax; or
12. that the person making the disposal is not (for any purpose) a related party in relation to a company to which the disposal of goodwill is directly or indirectly made.

13. Subsection (8) of new section 169LA ensures that 'arrangements' has a very broad meaning for the purposes of subsection (5), and adopts the definitions in the CTA 2009 for certain words used elsewhere in the section.

14. Subsection (5) provides that the new section 169LA has effect in relation to disposals of goodwill made on or after 3 December 2014.

BACKGROUND NOTE

15. These new provisions are effective from the date of their announcement at Autumn Statement 2014 in order to prevent the forestalling which would otherwise be likely. Draft legislation and a Tax Impact Information Note have also been published: together with these explanatory notes and the Autumn Statement 2014 itself, they provide a comprehensive picture of the changes proposed.

16. This measure supports the government's objective to have a fair tax system for all.

17. The draft legislation published on 3 December 2014 has been amended in the light of comments received in order to allow retiring partners to claim entrepreneurs' relief on their goodwill even if they are related parties in relation to the transferee company.

18. This measure is complementary to another measure announced at Autumn Statement 2014 (Clause 26) which denies relief in computing corporation tax profits in respect of the

cost of goodwill purchased in comparable circumstances. Together, these clauses remove two incentives which encourage incorporations of businesses for tax reasons rather than for the genuine commercial benefits which may follow from a business being carried on by a company rather than by an individual. HMRC has observed an increasing trend amongst professionals and specialist traders to incorporate their businesses in order to gain these tax advantages.

19. These two clauses allow businesses carried on by individuals and partnerships (unincorporated businesses) to compete more fairly with similar businesses carried on by companies.

EXPLANATORY NOTE

CLAUSE 43: ENTREPRENEURS' RELIEF: TRADING COMPANY ETC.

SUMMARY

1. This clause changes the meaning of 'trading company' and 'trading group' as those terms are used for the purposes of entrepreneurs' relief on capital gains tax. Under the new rules, whether a company is a trading company or the holding company of a trading group will be determined by reference to that company's own activities (or the activities of group companies). Activities of joint venture companies in which a company holds shares will no longer be treated as carried on by the shareholder company. Activities carried on by a company in its capacity as a partner in a firm will not be treated as trading activities. These rules come into effect on 18 March 2015.

DETAILS OF THE CLAUSE

2. This clause amends section 169S of the Taxation of Chargeable Gains Act (TGCA) 1992.

3. Subsection (2) inserts new subsection (4A) into section 169S to amend the definitions of the terms 'trading company' and 'trading group' for the purposes of entrepreneurs' relief. These terms have the meanings given in section 165A, subject to certain modifications given in the rest of subsection (4A).

4. Section 169S, new subsection (4A), paragraph (a) ensures that, when applying section 165A for these purposes, the special rules at subsections (7) and (12) under which a company is treated as carrying on some of the activities of a joint venture company do not apply.

5. Section 169S, new subsection (4A), paragraph (b) ensures that when determining whether a company is a trading company any activities it carries in as a member of a partnership are treated as not being trading activities.

6. Section 169S, new subsection (4A), paragraph (c) contains a rule for identifying trading groups which corresponds to the rule for trading companies in paragraph (b).

7. Subsection (3) deletes the previous definitions of 'trading company' and 'trading group' which are superseded by new subsection (4A) of section 169S.

8. Subsection (4) ensures that, for the purposes of deciding whether entrepreneurs' relief is due, a company does not cease to be a trading company or a member of a trading group merely as a result of the new rules in this clause coming into force.

BACKGROUND NOTE

9. These new provisions are effective in relation to disposals on or after 18 March 2015 in order to prevent the forestalling which would otherwise be likely.

10. This measure removes an unintended facility under the entrepreneurs' relief rules whereby relief could be claimed by an individual who, whilst holding 5% of a company's shares, did not have a similar stake in the trade which gave the shares their value. Allowing relief in these circumstances is inconsistent with the relief's purpose of supporting significant participation by claimants in businesses.

11. This measure ensures that entrepreneurs' relief is better targeted at people who have a significant investment in a trading business.

EXPLANATORY NOTE

CLAUSE 44: DEFERRED ENTREPRENEURS' RELIEF ON INVESTED GAINS

SUMMARY

1. This clause extends the scope of capital gain tax entrepreneurs' relief (ER). At the moment a chargeable gain which is deferred either under the enterprise investment scheme (EIS) or under social investment tax relief (SITR) cannot also be the subject of a claim to ER. As a result of these changes, ER may be claimed on deferred gains when they are charged to tax, subject to the conditions for relief which applied when they were first deferred. The new rules apply to gains which would originally have accrued on or after 3 December 2014.

DETAILS OF THE CLAUSE

2. This clause introduces new Chapter 4 (containing sections 169T to 169V) into Part 5 of the Taxation of Chargeable Gains Act (TCGA) 1992 and specifies the date on which they come into effect.

3. Subsection (1) contains the new sections.

4. New section 169T provides an overview of the new Chapter.

5. New section 169U specifies a number of conditions which must be met in order for a gain which has been deferred under EIS or SITR to qualify for ER when it is treated as accruing. Where all these conditions are met, new section 169V applies to govern how ER is allowed.

6. Subsection (2) of new section 169U states the first condition. A gain representing all or part of a gain which has previously been deferred (or 'held-over') under either EIS or SITR must be treated as accruing under the provisions for those reliefs. The gain which is treated as accruing is known for the purposes of this clause as 'the first eventual gain'.

7. Subsection (4) of new section 169U states the second condition. This condition specifies the nature of the disposal which originally gave rise to the first eventual gain (before any deferrals). This disposal must be a 'relevant business disposal', as defined at subsection (9). Where a gain has been deferred more than once, for instance by being serially reinvested in more than one holding of EIS shares or social investment, it is the 'underlying disposal' associated with the first deferral which has to meet this condition.

8. Subsection (5) of new section 169U states the third condition. This is that a claim to ER must be made in respect of the first eventual gain. The time limit for this claim is 31 January in the year immediately following the tax year in which the gain accrues. The person

making this claim must be the same person who made the disposal which originally gave rise to the first eventual gain.

9. Subsection (6) of new section 169U states the fourth condition. This is that the first eventual gain is the first gain treated as accruing in respect of a particular deferred gain. This means that where part of a deferred gain has previously accrued without a claim to ER being made in respect of it, it is not possible to claim ER under these new provisions when another part of the same gain subsequently accrues.

10. Subsection (7) of new section 169U explains what is meant by 'underlying disposal' in subsection (4).

11. Subsection (8) of new section 169U ensures that when deciding whether the 'source' disposal identified in subsection (4) was either a material disposal or an associated disposal for ER purposes (see subsection (9)), the law which was relevant to the disposal is to be applied. The ER rules as they stood at any other time, for instance when the first eventual gain is treated as accruing, are not relevant.

12. Subsection (9) of new section 169U provides definitions of terms used earlier in section 169U, including 'relevant business disposal' as used in subsection (4). A disposal of shares in or securities of a company is a relevant business disposal if it is either a 'material disposal of business assets' or a 'disposal associated with a relevant material disposal' (also known as an 'associated disposal') for normal ER purposes. A disposal of another sort of asset is a relevant business disposal if it is a disposal of a 'relevant business asset' within section 169L and is also either a 'material disposal of business assets' or a 'disposal associated with a relevant material disposal'.

13. New section 169V contains rules which apply where the conditions in section 169U are all met. The rules explain how ER applies to the deferred gain when it is treated as accruing.

14. Subsection (2) of new section 169V treats the first eventual gain as an amount computed under section 169N(1) and therefore as a gain on which ER is due, subject to the 'lifetime limit' applicable to the total amount of relief given. However, the gain is not to be treated as a chargeable gain except for ER purposes. That is to say, to the extent that ER is given in respect of it, the first eventual gain is not treated as a gain for other purposes of TCGA 1992. This avoids taxing the same gain twice.

15. Subsection (3) of new section 169V applies where the first eventual gain does not represent the whole of the deferred gain. In these cases, the rest of the deferred gain (when it is finally treated as accruing) is also treated as an amount computed under section 169N(1) on which ER is due, without the need for further claims to ER on the later accrual or accruals. As before, the gains which are subject to ER under this subsection are not treated as gains for other purposes of TCGA 1992.

16. Subsection (4) of new section 169V is relevant when the disposal which was the source of the first eventual gain (see section 169U, subsection (4) above) was a disposal associated with a relevant material disposal (an 'associated disposal'). It provides that the

qualifying business disposal implied by subsection (2) or (3) at the time the first eventual gain accrues is treated as an associated disposal for the purposes of section 169P(1). It also ensures that when deciding whether section 169P applies, the conditions in section 169P(4) are to be applied to the disposal which was the source of the first eventual gain.

17. Subsection (5) of new section 169V defines the phrase 'ER purposes' which is used in subsections (2) and (3).

18. Subsection (2) of clause 44 gives the effective date for these changes. They apply to gains which have as their source a qualifying business disposal on or after 3 December 2014.

BACKGROUND NOTE

19. The mechanism of entrepreneurs' relief was amended in 2010. As a result of those changes it was no longer possible for an individual to claim ER on a gain and also to defer the accrual of the same gain if they reinvested the proceeds of their disposal in EIS shares. Nor could ER be claimed when the gain was eventually treated as accruing (for instance when the EIS shares were sold). When SITR was introduced in 2013 the same constraint applied. This has tended to deter investment in EIS shares or in social enterprises in some circumstances.

20. By allowing potential investors to benefit both from the deferral of gains and from ER on those same gains this measure will encourage more investment in business via EIS and SITR. It thereby supports the growth of social enterprises, start-up companies and small and medium-sized businesses carried on by companies.

EXPLANATORY NOTE

CLAUSE 45: ZERO-EMISSION GOODS VEHICLES

SUMMARY

1. This clause extends the Enhanced Capital Allowances (ECA) scheme for expenditure on zero-emission goods vehicles to 5 April 2018. It was due to end on 31 March 2015 for corporation tax and 5 April 2015 for income tax. It also provides that no allowances are to be made if another State aid is received towards qualifying expenditure.

DETAILS OF THE CLAUSE

2. <u>Subsection (1)</u> provides that Sections 45DA and 45DB of the Capital Allowances Act 2001 are amended.

3. <u>Subsections (2) and (8)</u> amend section 45DA(1)(a) to extend the scheme to 2018, with effect from Royal Assent.

4. This ECA is a State aid designed to comply with the environmental protection section of the General Block Exemption Regulation no. 651/2014 (GBER). Section 45DB ensures that the rules set out in the GBER are met. The amendments made at subsections (3) to (10) ensure continued compliance with the GBER.

5. <u>Subsections (4), (6) and (7)</u> delete various words and phrases and add a new subsection 45DB(11A). The effect is to provide that any reference to State aid in the section is to be read widely to include all State aid, and not just aid notified to or approved by the European Commission.

6. <u>Subsection (5)</u>, read with <u>subsections (9) and (10)</u>, mean that by deleting “to that extent”, the effect is to provide that the ECA is not available, or will be withdrawn, where:

- qualifying expenditure has been incurred on or after 1 April 2015 for corporation tax or on or after 6 April 2015 for income tax and a grant that is a State aid is also received on or after 1/6 April 2015;
- qualifying expenditure has been incurred on or before 31 March 2015 for corporation tax and 5 April 2015 for income tax, and a grant that is a State aid is received on or after 1/6 April 2015;
- qualifying expenditure has been incurred on or after 1 or 6 April 2015, and a grant that is a State aid is received on or before 31 March/5 April 2015.

7. In essence a decision has to be made whether to claim ECA or receive a grant, or other payment, that is a State aid.

BACKGROUND NOTE

8. Capital allowances allow the cost of capital assets to be written off against taxable profits. They take the place of depreciation charged in the commercial accounts, which is not allowed for tax. The main rate of capital allowances is currently 18 % per year on a reducing balance basis.

9. ECAs (properly called first-year allowances) are available for expenditure on certain types of plant or machinery. ECAs accelerate the rate at which tax relief is available for capital spending and allow a greater proportion of the cost of an investment to qualify for tax relief against a business's taxable profits of the period in which the investment is made. ECAs provide business with a valuable tax-timing benefit.

10. 100% ECAs for expenditure on zero-emission good vehicles were introduced in 2010. It is one of a number of measures designed to help businesses reduce their CO_2 emissions and to encourage a shift to cleaner goods vehicles. The government announced in Budget 2014 that the scheme would be extended for further three years to 2018 when the existing scheme ends in 2015.

11. The ECA for zero-emission goods vehicles is a State aid and has been designed to comply with the GBER. The GBER exempts certain State aid measures from prior notification to the European Commission if various conditions are met. This clause includes a provision designed to ensure that the ECA remains fully compliant with the GBER rules about the cumulation of State aid, i.e. ensure that the maximum amount of aid that can be received for purchases of qualifying goods vehicles cannot be exceeded. It does this by ensuring that businesses can only claim the ECA or another State aid but not both.

EXPLANATORY NOTE

CLAUSE 46, SCHEDULE : PLANT AND MACHINERY ALLOWANCES: ANTI-AVOIDANCE

SUMMARY

1. This clause introduces Schedule 10 which sets out new restrictions on the amount of expenditure that qualifies for plant and machinery allowances. It can apply where expenditure is incurred under a transfer and long funding leaseback, a sale and leaseback, a connected party transaction or a sale and subsequent hire-purchase. In each case the restriction applies where the seller or transferor (or a person connected with them) has previously acquired the plant and machinery without incurring capital expenditure or an arm's length amount of revenue expenditure. Where the restriction applies, the expenditure qualifying for plant and machinery allowances is restricted to nil. This restriction comes into effect on 25 February 2015.

DETAILS OF THE SCHEDULE

2. Paragraph 2 introduces a new restriction in respect of the qualifying expenditure for the purposes of Part 2 Capital Allowances Act 2001 (CAA 2001) of a person who incurs expenditure under a long funding lease.

3. Sub-paragraph 2(2) introduces the new restriction as section 70DA(5A) CAA 2001. Where the restriction applies the qualifying expenditure of S (the transferor) or CS (a person connected with the transferor to whom the plant or machinery is made available) under a long funding lease is restricted to nil. The restriction applies if S is not required to bring a disposal value into account and S or a linked person acquired the plant and machinery without incurring either capital expenditure or qualifying revenue expenditure. No capital expenditure will have been incurred in cases where, for example, plant or machinery has been transferred to a person as part of a statutory transfer of property or where the whole cost of the asset has been met by another person.

4. Sub-paragraph 2(3) introduces definitions for "linked person" and "qualifying revenue expenditure". A "linked person" is a person that has been connected with S at any time between when the person first acquired the plant or machinery and the transfer by S. "Qualifying revenue expenditure" is revenue expenditure on the provision of the plant or machinery. Where the expenditure is incurred on the purchase of the plant or machinery, the amount must be at least equal to the amount of expenditure that would have been incurred between the seller and the buyer at arm's length. Where the expenditure is incurred on the manufacture or construction of the plant or machinery the amount of the expenditure must be the normal costs of manufacture or construction. A person will not have incurred qualifying revenue expenditure if they have incurred less than the full commercial cost of the plant or machinery. For example, a person will not have incurred qualifying revenue expenditure where there is below arm's length pricing by connected suppliers or where no expenditure is

incurred to acquire the plant or machinery and only repair expenditure is incurred subsequently.

5. Paragraph 3 amends section 218 CAA 2001 to introduce the same restriction in respect of transactions between connected persons (falling within section 214 CAA 2001) and sale and leaseback transactions (falling within section 216 CAA 2001). In this case the restriction applies to B, who is either a purchaser of the plant or machinery connected with the seller, S, or is a purchaser who leases the plant or machinery back to S. The same concepts of "linked person" and "qualifying revenue expenditure" are introduced.

6. Paragraph 4 amends section 229A CAA 2001 to introduce the same restriction in respect of the expenditure of a person, S, or a person connected with S, CS, who incurs expenditure on plant or machinery under a hire purchase contract or similar after S has previously sold the plant or machinery. The new restriction applies to the qualifying expenditure of S or CS under the hire purchase or similar contract.

7. Paragraph 5 amends section 242 to introduce the same restriction where additional VAT becomes payable or VAT rebates are received.

BACKGROUND NOTE

8. The Government announced on 25 February 2015 its intention to remove an opportunity for taxpayers to create an entitlement to capital allowances in respect of assets for which no qualifying expenditure was previously incurred. Any such opportunity was not an intended consequence of the previous legislation.

EXPLANATORY NOTE

CLAUSE 47, SCHEDULE 11: EXTENSION OF RING FENCE EXPENDITURE SUPPLEMENT

SUMMARY

1. This clause and Schedule increase the number of accounting periods in which a company can claim ring fence expenditure supplement (RFES) from 6 to 10. Losses, expenditure and supplement generated before 5 December 2013 will be excluded from supplement claimed under the additional 4 periods. This removes the need for the existing Extended Ring Fence Supplement and Schedule 11 abolishes this. This clause and schedule will allow companies to maintain the value of their expenditure and losses for longer. These supplemented losses can then be carried forward to offset profits for corporation tax purposes. This will have effect in relation to accounting periods ending on or after 5 December 2013.

DETAILS OF THE SCHEDULE

2. The Schedule amends Chapter 5 of Part 8 of the Corporation Tax Act (CTA) 2010 and removes Chapter 5A of the same Part.

3. <u>Paragraph 2</u> alters the Chapter overview to increase the number of accounting periods in which RFES can be claimed from 6 to 10.

4. <u>Paragraph 3</u> provides in section 309 where the rules on accounting periods are subject to new and existing special provisions. New special provisions relate to accounting periods straddling 5 December 2013.

5. <u>Paragraph 4; subparagraph 2</u> increases the number of accounting periods in which RFES can be claimed from 6 to 10.

6. <u>Paragraph 4; subparagraph 3</u> provides for the concept of initial and additional periods. This distinguishes between the first 6 periods for which a company makes a claim, “the initial 6 periods” and further claims under the amended legislation, “the additional 4 periods”. The latter must not begin before 5 December 2013. If the accounting period which straddles 5 December 2013 falls after a company’s initial 6 periods, then that accounting period is dealt with as two separate periods.

7. <u>Paragraph 5</u> sets out that the calculation of the mixed pool must take into account the new adjustments detailed in the new section 318A.

8. Paragraph 6 provides that reductions to the mixed pool due to the disposal of capital assets must be made subject to the adjustment in new section 318A.

9. Paragraph 7 introduces new section 318A. This prevents the additional 4 claims from being made in respect of pre-commencement expenditure incurred and supplement generated before 5 December 2013. Subsections 2 to 4 provide that following a company's 6 initial claims (or if later, 5 December 2013), the mixed pool is reduced by the value of pre-commencement expenditure incurred and supplement generated before 5 December 2013.

10. New section 318A, subsection 5 provides that for the purposes of calculating the mixed pool for the additional 4 claims, any reduction under section 317 should not include the value of disposals which relate to expenditure incurred before 5 December 2013.

11. New section 318A, subsections 6 to 8 set out how expenditure incurred and supplement generated in a pre-commencement period which straddles 5 December 2013 is apportioned for the purposes of making the adjustment. The period is to be treated as two separate pre-commencement periods: one falling before 5 December 2013 and one falling on and after that date. Expenditure incurred and supplement generated in this period are apportioned between the two in proportion to the number of days in each. If this works unreasonably or unjustly, the company may elect a different basis for apportionment if this is just and reasonable.

12. Paragraph 8 sets out that section 326 is read subject to section 327 and 328 for the initial 6 claims but is also read subject to new section 328A for the additional claims.

13. Paragraph 9 sets out that if the ring fence pool is reduced under section 327, this is done subject to provisions of section 328A.

14. Paragraph 10 introduces new section 328A. This prevents the additional 4 claims from being made in respect of losses incurred and supplement generated before 5 December 2013. This adjusts the ring fence pool following the initial 6 claims, or if later, 5 December 2013.

15. New section 328A, subsections 1 to 6 set out that at this time, the ring fence pool is to be reduced. The value of this reduction is to be the value of the amount carried into the pool under the Exploration Expenditure Supplement, ring fence losses and supplement generated before 5 December 2013 and if the company commences business after that date, the value detailed in subsection 4, paragraph (c), minus any previous reductions made to the pool under sections 327 or 328.

16. New section 328A, subsection 4, paragraph (c) prevents the value of any pre-commencement expenditure and pre-commencement supplement from remaining in the adjusted pool due to this amount being treated as commencement year expenditure. The paragraph sets out that if a company commences trading on or after 5 December 2013, then any commencement year loss is also included in the reduction but only up to an amount equal to the value of pre-commencement expenditure or pre-commencement supplement generated before 5 December 2013.

17. New section 328A, subsection 7 removes any amount generated under Exploration Expenditure Supplement from the pool of non-qualifying losses.

18. New section 328A, subsection 8 to 10 operate for section 328A in the same way that subsections 6 to 8 of section 318A operate for that section. (See Paragraph 11). These subsections provide for the apportionment of losses incurred, supplement generated and reductions to be made in an accounting period which straddles 5 December 2013.

19. New section 328A, subsection 11 paragraph (a) sets out that if a loss is removed from the Ring Fence Pool under section 328A and that loss is subsequently carried forward under section 45, this does not require the pool to be reduced under section 327 in respect of that loss.

20. New section 328A, subsection 11 paragraph (b) sets out that if a company has losses which are removed from the pool under this section then these are to be carried forward under section 45 before any losses that remain in the pool.

21. Paragraph 11 removes reference to Extended Ring Fence Supplement in the overview of Part 8 CTA 2010.

22. Paragraph 12 amends the index of defined expressions to include the concepts of the initial 6 and additional 4 periods and to remove all statutory references to Extended Ring Fence Supplement and Chapter 5A.

23. Paragraph 13 abolishes Extended Ring Fence Supplement by repealing Chapter 5A of Part 8 CTA 2010.

BACKGROUND NOTE

24. 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 % for profits of more than £1.5m and 19 % (the small profits rate) for profits of more than £300k. The SC is set at 32 %.

25. 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.

26. The oil and gas trade is subject to high start-up costs and a relatively lengthy period of likely unprofitability. RFES currently allows companies inside the oil and gas ring fence to uplift their ring fence losses or, in the period before they are trading, their "qualifying pre-commencement expenditure", by 10 % for up to 6 accounting periods to maintain their time value until they can be offset against future profits.

27. Presently, companies may claim further supplement under Extended Ring Fence Expenditure Supplement against expenditure, losses and supplement relating to onshore oil

and gas related activities which were generated after 5 December 2013. This supplement may be claimed in respect of 4 periods at a rate of 10%.

28. A call for evidence entitled *Review of the Oil and Gas Fiscal Regime* was launched on 14 July 2014 and closed on 3 October 2014. The initial findings including a summary of responses were published on 4 December 2014, entitled *Driving Investment – a plan to reform the oil and gas fiscal regime*.

29. This clause and Schedule extend the number of accounting periods for which companies can claim RFES from 6 to 10 for expenditure incurred and losses and supplement generated after 5 December 2013. This recognises the extended period before they are able to utilise those amounts and will allow companies to maintain the value of their expenditure for longer.

EXPLANATORY NOTE

CLAUSE 48: REDUCTION IN THE RATE OF SUPPLEMENTARY CHARGE

SUMMARY

1. This clause reduces the rate of Supplementary Charge from 32% to 20% of companies' ring fence profits. The reduced rate will have effect for accounting periods beginning on or after 1 January 2015. For accounting periods straddling this date, the rate will apply to profits apportioned to the part of the accounting period running from1 January 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) reduces the rate of Supplementary Charge from 32% to 20%.

3. Subsection (2) provides that the reduced rate applies to accounting periods beginning on or after 1 January 2015.

4. Subsection (3) makes further provisions where a company has an accounting period beginning before 1 January 2015 and ending on or after that date.

5. Subsection (4) provides that if an accounting period straddles 1 January 2015, this is to be treated as two separate accounting periods: one falling before 1 January 2015 and one falling on and after that date. Profits for the original accounting period are time-apportioned between the two periods in relation to the number of days in each.

6. Subsection (5) provides that when an accounting period is apportioned as described in subsection (4), sections 330A and 330B of Corporation Taxes Act 2010 only apply in relation to the period falling before 1 January 2015.

7. Subsection (6) provides that the amount of Supplementary Charge for a straddling period is equal to the sum of the separate amounts of Supplementary Charge for each of the separate periods mentioned in subsection (4).

BACKGROUND NOTE

8. Supplementary Charge applies to companies producing oil and gas in the UK or on the UK Continental Shelf. Special tax rules apply to such companies. A 'ring fence' is placed around their profits which are treated as a separate trade from the companies' wider activities. This means that the ring fenced profits cannot be reduced by losses from other activities carried on by the company or from losses arising to other companies in the same group.

9. Supplementary Charge is applied to adjusted ring fence profits. These are defined as the amount of profit (or loss) arising from any ring fence trade but excluding any financing costs.

10. Supplementary charge was introduced in 2002 at a rate of 10%. This was increased to 20% for accounting periods beginning on or after 1 January 2006 and to 32% for accounting periods beginning on or after 24 March 2011. This reduction will help provide the right conditions for business investment to maximise the economic recovery of the UK's oil and gas resources.

EXPLANATORY NOTE

CLAUSE 49 AND SCHEDULE 12, 14: SUPPLEMENTARY CHARGE: INVESTMENT ALLOWANCE

SUMMARY

1. This clause and Schedules introduce a new allowance for the purposes of calculating the amount of supplementary charge (SC) payable, which will remove an amount equal to 62.5 % of investment expenditure incurred by a company in relation to a qualifying oil field from its adjusted ring fence profits. It has effect in relation to investment expenditure incurred on or after 1 April 2015.

DETAILS OF THE SCHEDULE

Part 1 – Amendments of Part 8 of Corporation Tax Act 2010 (CTA 2010)

1. Paragraph 1 provides that the Schedule amends part 8 of CTA 2010 (oil activities)

2. Paragraph 2 inserts, after Chapter 6, a new Chapter 6A entitled Supplementary Charge: Investment Allowance which makes provision for a new allowance (reducing the supplementary charge) for investment expenditure incurred in relation to a qualifying oil field.

3. New section 332A provides an overview of new Chapter 6A

4. New section 332B defines “qualifying oil field” as an oil field that is not wholly or partly included in a cluster area.

5. New section 332BA defines “investment expenditure” as expenditure incurred that is capital expenditure or expenditure as prescribed by HM Treasury by regulations.

6. New section 332C provides for how investment allowance is generated by participators in a qualifying oil field, including that “relievable” investment expenditure (as defined by reference to activities in the course of which it is incurred) generates an allowance of 62.5 % of that amount, and that allowance is generated in relation to a qualifying oil field. It also provides for restrictions on relievable expenditure, and for cases where relievable investment expenditure is incurred only partly for the purposes of oil-related activities, or is incurred only partly in relation to a particular qualifying oil field; in both cases the expenditure is to be apportioned to the activities or field concerned on a just and reasonable basis.

7. New section 332CA provides for including expenditure incurred on or after 1 April 2015 in relation to a field before it is determined, if the area subsequently becomes an oil field. The amount is treated as incurred at the time the field is determined.

8. New section 332D provides the disqualifying conditions for expenditure on the acquisition of an asset. Investment expenditure is not relievable if it is incurred in relation to the acquisition of an asset, which has already generated allowance for any company., or for expenditure on the acquisition of a licence, and any connected assets, that would have been relievable had investment allowance legislation been in place.

9. New section 332DA provides that investment expenditure incurred in relation to a field which previously qualified for filed allowance as a new field is not relievable expenditure unless

- (a) the cumulative total relevant expenditure attributable to the company's share of the equity exceeds the relevant field threshold, as defined, or
- (b) the expenditure plus the total above exceeds the relevant field threshold, as defined, or
- (c) the expenditure is incurred on or after the material completion date as determined by the Secretary of State, or
- (d) at the time the expenditure is incurred, the company is not a licensee in the oil field and the expenditure is incurred in making an asset available in a way which gives rise to tariff, or tax exempt tariffing, receipts.

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10. New section 332DB provides that investment expenditure incurred in relation to a project in an additionally-developed oil field is not relievable expenditure unless

- (a) the cumulative total relevant expenditure attributable, attributable to the company's share of project related reserves exceeds the relevant project threshold, as defined, or
- (b) the expenditure plus the total above exceeds the relevant project threshold, as defined
- (c) the expenditure is incurred on or after the material completion date as determined by the Secretary of State, or
- (d) at the time the expenditure is incurred, the company does not hold a share of project related reserves and the expenditure is incurred in making an asset available in a way which gives rise to tariff, or tax exempt tariffing,

11. New section 332DC provides that expenditure related to fields qualifying for onshore allowance is not relievable expenditure.

12. New section 332E provides for a company's adjusted ring fence profits for an accounting period to be reduced (but not below zero) by the cumulative total amount of activated allowance in that period.

13. New section 332EA provides that a company's unused activated allowance is carried forward to the next accounting period.

14. New section 332F provides for the calculation of a company's activated allowance in an accounting period where there is no change in the company's equity share in the oil

field , being the smaller of the closing balance of unactivated allowance, the relevant income from that oil field or, for additionally developed oil fields, the relevant activation limit. The company must hold a closing balance of unactivated allowance greater than zero and have relevant income from the qualifying oil field. "Relevant income" is also defined in this section as production income from oil extraction activities.

15. New section 332FA provides for the calculation of the closing balance of unactivated allowances held by a company for an accounting period.

16. New section 332FB provides for a "relevant activation limit" in respect of additionally-developed oil fields for the purposes of calculating the amount of activated allowance for an accounting period.

17. New section 332FC provides for the calculation of the carrying forward of unactivated allowance.

18. New section 332G introduces and defines reference periods where a company's share of equity in a qualifying oil field changes in any one accounting period. The accounting period is divided into as many reference periods as is necessary according to the acquisitions and disposals made by the company in the qualifying oil field.

19. New section 332H provides for the calculation of a company's activated allowance in any reference period, being the smaller of either the relevant income in the reference period, the total amount of unactivated allowance attributable to that reference period, or for additionally-developed oil fields, the relevant activation limit.

20. New section 332HA provides for the calculation of the total amount of unactivated allowances attributable to a reference period and a qualifying oil field. This is allowance generated in the reference period (including transfer of allowance following an acquisition of equity share) and the amount carried forward from preceding periods.

21. New section 332HB provides that an amount equal to the amount of unactivated allowance attributable to the reference period, less activated allowance for the period and any amount transferred out following a disposal is to be carried forward to the next period.

22. New section 332I introduces the transfers of allowance on disposal of equity share under certain conditions.

23. New section 332IA provides the calculation for the reduction in the amount of unactivated investment allowance if equity is disposed of and for a reduction in the amount of cumulative total relevant expenditure attributable to its share of equity in the field.

24. New section 332IB provides the calculation for the acquisition of the amount of unactivated investment allowance if equity is acquired and for the acquisition of an amount of cumulative total relevant expenditure attributable to its share of equity in the field.

25. New section 332J provides that any alteration to a company's ring fence profits is reflected in the operation and calculations of Chapter 6A.

26. New section 332JA provides that HM Treasury may by regulation change the percentage mentioned in 332C(2), 332DA(4) or 332DB(4) .

27. New section 332K explains when capital expenditure can be said to be incurred for the purposes of Chapter 6A and provides that any regulations made on the meaning of investment expenditure may make provisions about when that expenditure is incurred.

28. New section 332KA provides interpretation on definitions for "adjusted ring fence profits", "cumulative total amount of activated allowance", "investment allowance" "licence", "licensee", and "relevant income".

29. Paragraph 3 provides for the omission of Chapter 7 (reduction of supplementary charge for eligible oil fields).

Part 2 – Commencement and Transitional Provision

30. Paragraph 4 provides interpretation on definitions for "additionally-developed oil field", "authorisation day", "eligible oil field" and "new oil field".

31. Paragraph 5 provides that the introduction of new Chapter 6A is to have effect in relation to accounting periods ending on or after 1 April 2015.

32. Paragraph 6 provides the conditions under which Chapter 7 is omitted.

33. Paragraph 7 provides for the unactivated field allowance held under Chapter 7 to become unactivated investment allowance and the conditions under which this can occur.

34. Paragraph 8 provides for the activated but unused field allowance held under Chapter 7 to become activated investment allowance and the conditions under which this can occur.

35. Schedule 14 provides for further amendments of CTA 2010 that flow from this new legislation, including a new section 330ZA in CTA 2010 enabling companies who hold allowances under more than one chapter to choose the order in which they are applied, and a new section 356IB on the meaning of "authorisation of development" for oil fields.

BACKGROUND NOTE

36. In addition to ring fence corporation tax (RFCT), 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 currently 20 %.

37. 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 the onshore allowance, and the cluster area allowance are provided by Part 8, Chapters 7, 8 and 9 CTA 2010, and apply to fields, projects and sites which satisfy the relevant criteria.

38. This new allowance will help provide the right conditions for business investment to maximise the economic recovery of the UK's oil and gas resources' and simplify the existing regime of field allowances.

39. This measure was announced at Autumn Statement 2014 and a shortened consultation entitled *Fiscal reform of the UK Continental Shelf: consultation on an investment allowance* was launched on 22nd January and closed on 23rd February 2015. The government’s response to this consultation was published on 20 March 2015.

EXPLANATORY NOTE

CLAUSE 50, SCHEDULE 13, 14: SUPPLEMENTARY CHARGE: CLUSTER AREA ALLOWANCE

SUMMARY

1. This clause and Schedule introduce a new allowance for the purposes of calculating the amount of supplementary charge (SC) payable, which will remove an amount equal to 62.5 % of investment expenditure incurred by a company in relation to a cluster area from its adjusted ring fence profits. It has effect in relation to investment expenditure incurred on or after 3 December 2014.

DETAILS OF THE SCHEDULE

Part 1

Amendments to Part 8 of Corporation Tax Act 2010 (CTA 2010)

2. Paragraph 1 provides that the Schedule amends part 8 of CTA 2010 (oil activities).

3. Paragraph 2 inserts, after Chapter 8, a new Chapter 9 entitled Supplementary Charge: Cluster Area Allowance which makes provision for a new allowance (reducing the supplementary charge) for investment expenditure incurred in relation to a cluster area.

4. New section 356JC provides an overview of new Chapter 9.

5. New section 356JD defines “cluster area”, including that it is an offshore area only, as determined by the Secretary of State, and does not include any previously authorised oil fields. It provides for notice to be given of proposed cluster areas, as well as a 30 day period for representations to be made prior to the publication of a final determination. A determination has effect from the day on which it is published. It also provides that determinations can be varied or revoked.

6. New section 356JDA defines “previously authorised oil field”, to exclude from the cluster area oil fields authorised for development before the cluster area determination date, other than a decommissioned oil field. Decommissioned oil fields will have their original authorisation date ignored for the purposes of exclusion from the cluster area, so will be eligible for cluster allowance if in a determined cluster area. It also provides that authorisation for development is interpreted according to section 356IB of CTA 2010, and refers to paragraph 5 of the Schedule to Finance Act 2015 for the treatment of proposed determinations before the date the Act is passed.

7. New section 356JE defines "investment expenditure" as expenditure that is capital expenditure or expenditure as prescribed by HM Treasury by regulations.

8. New section 356JF explains how cluster area allowance is generated including that an amount of "relievable investment expenditure" (as defined by reference to activities in the course of which it is incurred) generates an allowance of 62.5 % of that amount, and that allowance is generated in relation to a cluster area. There is also provision for cases where investment expenditure is incurred only partly for the purposes of oil-related activities, or is incurred only partly in relation to the cluster area; in both cases the expenditure is to be apportioned to that cluster area on a just and reasonable basis.

9. New section 356JFA provides the disqualifying conditions for expenditure on the acquisition of an asset. Investment expenditure is not relievable if it is incurred in relation to the acquisition of an asset, which has already generated allowance for any company, or for expenditure on the acquisition of a licence, and any connected assets, that would have been relievable had cluster allowance legislation been in place.

10. New section 356JG provides for a company's adjusted ring fence profits for an accounting period to be reduced (but not below zero) by the cumulative total amount of activated allowance in that period.

11. New section 356JGA provides that a company's unused activated allowances are carried forward to the next accounting period.

12. New section 356JH provides that where a company's share of the equity in the cluster area remains unchanged during an accounting period, that is to have activated allowances the smaller of the closing balance of unactivated allowance held, or relevant income from that cluster area. The company must hold a closing balance of unactivated allowance greater than zero, and have relevant income from the cluster area. "Relevant income" is also defined in this section as production income from oil extraction activities.

13. New section 356JHA provides for the calculation of the closing balance of unactivated allowances held by a company for an accounting period.

14. New section 356JHB provides that an amount equal to the company's closing balance of unactivated allowances, less activated allowance for the period and any amount transferred out following a disposal, is to be carried forward to the next period.

15. New section 356JI introduces and defines reference periods where a company's share of equity in any licensed area or sub-area in a cluster changes in any one accounting period. The accounting period is divided into as many reference periods as is necessary according to the acquisitions and disposals made by the company in the cluster area.
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16. New section 356JJ provides for the calculation of a company's activated allowance in any reference period, being the smaller of the relevant income in the reference period, or the total amount of unactivated allowance attributable to that reference period.

17. New section 356JJA provides for the calculation of the total amount of unactivated allowances attributable to a reference period and a cluster area. This is allowance generated

in the reference period (including transfer of allowance following an acquisition of equity share) plus the amount carried forward from preceding periods.

18. New section 356JJB provides that an amount equal to the amount of unactivated allowance attributable to the reference period, less activated allowance for the period and any amount transferred out following a disposal is to be carried forward to the next period.

19. New section 356JK provides for a company to elect to transfer a specified amount of cluster area allowance on disposal of an equity share in a licensed area or sub-area, subject to a minimum and maximum transferable amount.

20. New section 356JKA provides for a company to elect the order of priority of disposals if there is more than one disposal on a single day.

21. New section 356JKB provides for the calculation of the amount to be treated as generated by the transferee following the acquisition of an equity share in a licensed area.

22. New section 356JL provides for use of allowance attributable to an unlicensed area in a cluster area. A company may elect a licensed area or sub-area to attribute allowance generated in an unlicensed area to.

23. New section 356JM provides that any alteration to a company's adjusted ring fence profits is reflected in the operation and calculations of Chapter 9.

24. New section 356JMA provides that HM Treasury may by regulations make adjustments to the percentage specified at section 356JF(2).

25. New section 356JN explains when capital expenditure can be said to be incurred for the purposes of new Chapter 9 and provides that any regulations made on the meaning of investment expenditure may make provisions about when that expenditure is incurred.

26. New section 356JNA provides for licensed areas and licensed sub-area in a cluster area.

27. New section 356JNB provides interpretation on definitions for "adjusted ring fence profits", "cluster area allowance", "cumulative total amount of activated allowance", "licence", "licensed area", "licensee", and "relevant income".

28. Paragraph 3 makes provision that additionally-developed oil fields with an authorisation date after the date of determination of a cluster area are not additionally developed oil fields and so are unable to qualify for field allowance under Chapter 7.

29. Paragraph 4 makes provision that new oil fields with an authorisation date after the date of determination of a cluster area are not qualifying oil fields and so are unable to qualify for field allowances under Chapter 7.

Part 2

TRANSITIONAL PROVISIONS

30. Paragraph 5 provides for proposed determinations of cluster areas in the period between 3 Dec 2014, and the date of Royal Assent to Finance Bill 2015, to ensure companies in a licensed area in a proposed cluster area are able to generate cluster area allowance from the date of the proposed cluster area being published. It provides for such proposed determinations to be treated as valid determinations under section 356JD.

31. Paragraph 6 introduces arrangements for companies who are licensees in oil fields in a cluster area, to elect to exclude certain fields from the cluster area until a date to be specified in regulations.

32. Schedule 14 provides for further amendments of CTA 2010 that flow from this new legislation, including a new section 330ZA in CTA 2010 enabling companies who hold allowances under more than one chapter to choose the order in which they are applied, and a new section 356IB on the meaning of "authorisation of development" for oil fields.

BACKGROUND NOTE

33. In addition to ring fence corporation tax (RFCT), 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 currently 20 %.

34. 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, the onshore allowance, and the investment allowance are provided by Part 8, Chapters 6A,7 and 8 CTA 2010, and apply to fields, projects and sites which satisfy the relevant criteria.

35. This clause introduces a new allowance, designed to support the development of oil and gas projects and encourage exploration and appraisal within the surrounding area (or "cluster").

36. This measure was announced at Budget 2014, and a consultation entitled *Maximising economic recovery: consultation on a cluster allowance* was launched on 24 July 2014 and closed on 30 September 2014. The government's response to this consultation was published on 10 December 2014.

EXPLANATORY NOTE

CLAUSE 52: REDUCTION OF RATE OF PETROLEUM REVENUE TAX

SUMMARY

1. This clause amends the Oil Taxation Act 1975 to reduce the rate of petroleum revenue tax from 50% to 35% for chargeable periods ending after 31 December 2015.

DETAILS OF THE CLAUSE

2. Subsection 1 amends the Oil Taxation Act 1975.

3. Subsections 2 and 4 reduce the rate of petroleum revenue tax from 50% to 35% for chargeable periods ending after 31 December 2015.

4. Subsection 3 provides a consequential amendment to the cap on interest carried on a repayment of petroleum revenue tax for periods subject to the lower rate. This subsection reduces the relevant percentage from 60% to 45% for periods ending after 31 December 2015.

BACKGROUND NOTE

5. Petroleum revenue tax (PRT) was introduced by Oil Taxation Act 1975 and is essentially a tax on the profits from oil and gas production from the UK Continental Shelf.

6. This clause reduces the rate of PRT payable by oil and gas companies operating on the UK Continental Shelf from 50% to 35% and provides a consequential reduction in the interest cap provided by OTA75\Sch 2\Para 17.

7. This reduction will help provide the right conditions for business investment to maximise the economic recovery of the UK's oil and gas resources.

EXPLANATORY NOTE

CLAUSE 53: RATES OF ALCOHOLIC LIQUOR DUTIES

SUMMARY

1. This clause provides for a reduction in the rates of excise duty charged on spirits, still cider and perry, sparkling cider and perry not exceeding 5.5 % and wine and made-wine of a strength exceeding 22 %. It also provides for a reduction in the rate of general beer duty and an increase in the rate of high strength beer duty. These changes will have effect on and after 23 March 2015.

DETAILS OF THE CLAUSE

2. Subsection (2) substitutes a new rate of excise duty for spirits in section 5 of the Alcoholic Liquor Duties Act 1979 (ALDA). The previous rate of £28.22 is replaced by £27.66.

3. Subsection (3)(a) substitutes a new rate of excise duty for lower strength beer in section 36(1AA)(za) of ALDA. (This is beer of a strength exceeding 1.2 % but not exceeding 2.8 %). The previous rate of £8.62 is replaced by £8.10.

4. Subsection (3)(b) substitutes a new standard rate of excise duty for beer in section 36(1AA)(a) of ALDA. (This is beer of a strength which exceeds 2.8 % and is not small brewery beer). The previous rate of £18.74 is replaced by £18.37.

5. Subsection (4) substitutes a new rate of excise duty for high strength beer in section 37(4) of ALDA. (This is beer of a strength which exceeds 7.5 %). The previous rate of £5.29 is replaced by £5.48.

6. Subsection (5)(a) substitutes a new rate of excise duty for cider of a strength exceeding 7.5% which is not sparkling cider in section 62(1A)(b) of ALDA. The previous rate of £59.52 is replaced by £58.75.

7. Subsection (5)(b) substitutes a new rate of excise duty for other cider in section 62(1A)(c) of ALDA. The previous rate of £39.66 is replaced by £38.87.

8. Subsection (6) substitutes a new rate of duty for wine and made-wine of a strength exceeding 22 % in Part 2 of the table in Schedule 1 to ALDA. The previous rate of £28.22 is replaced by £27.66.

BACKGROUND NOTE

9. Budget 2015 announced a reduction in the rates of excise duty on the following alcoholic drinks by 2 %:

- spirits;
- wine and made-wine exceeding 22 %;
- beer between 2.8% and 7.5%;
- sparkling cider and perry not exceeding 5.5 %; and
- still cider and perry not exceeding 7.5 %.

10. There will also be a reduction in the rates of excise duty on lower strength beer by 6 % and still cider and perry exceeding 7.5% by 1.3%. The duty rate for high strength beer will increase by 3.7 %, which will result in the total duty rate for high strength beer being reduced by 0.75 %.

11. These changes will take effect from 23 March 2015.

12. The rates of duty on wine and made-wine not exceeding 22 % and sparkling cider and perry exceeding 5.5 % will be frozen in 2015-16; this does not require legislation.

EXPLANATORY NOTE

CLAUSE 54: WHOLESALING OF CONTROLLED LIQUOR

SUMMARY

1. This clause inserts Part 6A into the Alcoholic Liquor Duties Act (ALDA) 1979 to introduce new legislation requiring wholesalers of alcohol, sold at or after the duty point, to be registered to trade by HM Revenue & Customs (HMRC). The requirement for a person obliged to apply to be registered as an alcohol wholesaler comes into effect from 1 January 2016. The window for applications will run from 1 October to 31 December 2015.

DETAILS OF THE CLAUSE

Definitions

2. This clause contains various definitions of terms which are used in Part 6A such as "controlled liquor", "wholesale", "excluded sales" etc.

3. Subsections (2) and (3) define when a sale is a sale of "controlled liquor" and when it is sold "wholesale". The sale of the alcohol must be to a buyer carrying on a trade or business for sale in the course of that business. Controlled liquor is not sold wholesale if it is an incidental sale, a group sale or an excluded sale.

4. Subsections (4) and (5) define an incidental sale as a wholesale sale made by an authorised retailer that is incidental to its retail sales. An authorised retail sale is one that is made in accordance with the requirements under a retailer's alcohol licence or similar authorisation.

5. Subsection (6) defines "group sales" as sales that take place between a seller and a buyer who are both corporate bodies themselves and are members of the same group.

6. Subsection (7) allows for HMRC to prescribe by or under regulations for certain sales to be "excluded sales".

7. Subsection (8) defines "controlled activity" as selling, arranging or offering to sell alcohol wholesale.

8. Subsection (9) defines a "UK person" as someone who for the purposes of VAT is UK based, i.e. has a business establishment or some other fixed establishment in the UK.

Further provision relating to definitions

9. Subsection (1) allows for HMRC to make regulations to define further how the sales covered by the scheme are treated for the purposes of Part 6A. Subsection (2) allows for provision to further define how HMRC treat cases involving offering controlled liquor for sale, or arranging for its, sale wholesale.

Approval to carry on controlled activity

10. This clause sets out the conditions for being granted approval as a registered wholesaler. A trader cannot trade in wholesale alcohol unless they have been approved by HMRC. Applicants will be required to pass a fit and proper test before they can be approved. (The test criteria will be set out in the public notice). If appropriate, conditions or restrictions may be attached to an approval. HMRC will have the power to vary the conditions of approval and if appropriate revoke an approval.

The register of approved persons

11. This clause states HMRC must maintain a register of approved persons and may make certain information from it available to the public via the internet on an online look-up facility (or other appropriate method) to enable persons making duty paid alcohol purchases to check the approval status of the seller.

Regulations relating to approval, registration and controlled activities

12. This clause allows HMRC to make regulations regarding the approval and registration of wholesalers. It also allows HMRC to make specific regulatory provisions in certain circumstances.

13. Subsection (1) allows for regulations covering the registration application process, how variations to approvals are handled and the obligations of registered wholesalers. It also allows for any regulations required for administration of the online register.

14. Subsection (2)(b) allows for regulations covering group approvals. Group members will be jointly and severally liable for any penalties levied on the group or its individual members.

15. Subsection (2)(c) allows for regulations requiring both wholesalers and retailers to keep and make available on request appropriate records, for example, sales invoices and details of due diligence checks to ascertain a wholesaler’s registration status.

16. Subsection (2)(d) and (e) allows for regulations to impose and recover a penalty of up to £1,000 for any contravention of the regulations or conditions of approval.

17. Subsection (2)(f) allows for regulations to provide for alcohol that has been purchased in contravention of the scheme to be forfeited.

Restriction on buying controlled liquor wholesaler

18. This clause states that a person may not purchase alcohol from a UK wholesaler who is required to be approved unless that person has in fact been approved under the scheme.

Offences

19. This clause provides for specific offences for contravention of the scheme.

20. Subsection (1) to (3) states that anyone who knowingly sells, offers for sale or arranges to sell alcohol on a wholesale basis as defined by the scheme, without being approved by HMRC, will be committing an offence.

21. Subsection (4) states that it is an offence for someone to purchase alcohol on a wholesale basis from an unapproved wholesaler where they knew or had reasonable grounds to suspect that the seller was not approved.

22. Subsection (5) sets out the sanctions that can be imposed for offences under this section on summary conviction in England and Wales, Scotland and Northern Ireland.

23. Subsection (6) sets out the sanctions that can be imposed for offences under this section on conviction on indictment.

24. Subsection (7) sets out a transitional provision until such time as section 154(1) of the Criminal Justice Act 2003 commences.

Penalties

25. Provisions covering penalties that may be levied for contraventions of the scheme are covered in new Schedule 2B to ALDA 1979.

Regulations

26. This clause provides more detail on what can be done by regulations under Part 6A

Groups

27. This clause provides further definition of the meaning of group sale by setting out the control requirements for group membership.

28. Subsection (1) sets out the requirements for two or more bodies corporate to form a group.

29. Subsection (2) elaborates upon when one body corporate controls another.

30. Subsection (3) states (a) when individuals will be considered to control another body corporate and (b) when a body corporate is to be regarded as having an establishment in the UK for the purposes of being entitled to be a member of a group. The test is whether the company is established or has an establishment in the UK for VAT purposes.

Schedule 2B – Penalties for contraventions of Part 6A

31. Schedule 2B sets out the penalties that can be levied for contraventions of the scheme.

32. *Liability to a penalty*

33. Paragraph 1 states that penalties are payable for contraventions of the scheme (selling without authorisation and buying from an unapproved wholesaler).

34. *Amount of penalty*

35. Paragraph 2 sub-paragraphs (1) to (3) set out the levels of penalty that can be charged, depending on whether the offence is considered deliberate and concealed, deliberate but not concealed or otherwise. Sub-paragraph (4) defines "deliberate and concealed" and "deliberate but not concealed".

36. *Reductions for disclosure*

37. Paragraph (3) sub-paragraph (1) provides for reductions in penalties for disclosure.

38. Paragraph (3) sub-paragraph (2) describes how a person may disclose a contravention by advising HMRC, assisting in highlighting any additional contraventions and providing all records requested.

39. Paragraph (3) sub-paragraph (3) describes how a disclosure will be considered "unprompted" if it is notified to HMRC prior to them identifying a contravention. All other cases will be considered "prompted".

40. Paragraph 4 provides that following disclosure the Commissioners must reduce the penalty to reflect the quality of the disclosure. It also sets out the minimum levels of the penalties. The amount that the penalty can be reduced by depends upon the quality of the disclosure and whether it is prompted or unprompted.

41. *Special reduction*

42. Paragraph 5 states that under special circumstances, not including the ability to pay, HMRC may reduce a penalty.

43. *Assessment*

44. Paragraph 6 sets out how penalties will be assessed. HMRC will notify the person by way of a penalty notice, setting out the reason for the penalty. Penalties raised will be due 30 days after the date of issue of the penalty notice. Two or more contraventions may be assessed as one contravention for the purposes of raising a penalty. A penalty must be raised within 12 months of HMRC discovering the contravention.

45. *Reasonable excuse*

46. Paragraph 7 states that a penalty will not be levied for non-deliberate contraventions if a person is able to demonstrate that they have a valid excuse. However, it will not be considered a valid excuse that a person entrusted someone else to fulfil their responsibilities,

for example an agent or accountant, unless the person is able to demonstrate that they took appropriate steps to prevent any contravention.

47. *Companies: officer's liability*

48. Paragraph 8 sub-paragraph (1) describes how penalties or a proportion of a penalty that is levied on a company, can also be levied against an officer of that company, if the officer was responsible or partly responsible for a contravention.

49. Paragraph 8 sub-paragraphs (3) to (5) sets out the definition of an "officer" for a body corporate, limited liability partnership and all other cases.

50. *Double jeopardy*

51. Paragraph 9 states a penalty will not be levied for a contravention where a person has already been convicted of an offence for the same contravention.

52. *The maximum amount*

53. Paragraph 10 gives powers to change by regulations the maximum amount of a penalty under paragraph 2(1) (Amount of penalty) where HM Treasury consider that there has been a change in the value of money. Penalties at the revised amount cannot be levied for a contravention that occurred prior to the date that the new amount comes into force.

54. *Appeal tribunal*

55. Sub-clause (6) inserts a new paragraph (ea) to the meaning of "relevant decision" as provided for in section 13A(2) of Finance Act 1994 so that a decision to issue a penalty is subject to review and appeal.

56. Sub-clause (7) provides that any decision as to approval or the conditions under which a person is approved is a decision falling within Schedule 5 to Finance Act 1994 for the purposes of review and appeal.

57. Sub-clause (8) provides for the amendments to ALDA 1979 to come into force on the date of Royal Assent to the Finance Bill. Sub-clause (9) states that the requirement for a person obliged to apply to be registered as an alcohol wholesaler comes into effect from 1 January 2016. The window for applications will run from 1 October to 31 December 2015. Sub-clause (11) states that applications will not be accepted prior to 1 October 2015.

58. Sub-clause (10) states that the requirement for persons to have to check the approval status of persons from whom they purchase wholesale alcohol will come into effect on a date to be stated in the regulations.

59. Sub-clause (12) states that a wholesaler's obligations under the scheme do not come into effect until such time as their application has been considered and determined.

BACKGROUND NOTE

60. Alcohol duty fraud in the UK costs taxpayers an estimated £1.3bn per annum. The most prevalent form of alcohol fraud involves the smuggling or diversion of alcoholic drinks into the UK in large commercial quantities, duty unpaid.

61. The wholesale sector is the major point where illicit alcohol is diverted into retail supply chains to intermingle with legitimate goods because it is the only element of the alcohol supply chain not required to be authorised by HMRC or the licensing authorities. Introducing a requirement for wholesalers to register with HMRC will reduce opportunities for fraud.

62. Following a 2012 formal consultation on alcohol anti-fraud measures the government announced that it would consult further on the introduction of a registration scheme for alcohol wholesalers and launched a further consultation in 2013. The government announced at Autumn Statement 2013 that it would proceed with plans to introduce the alcohol wholesaler scheme from April 2017, and draft legislation was published at Autumn Statement 2014.

63. Since consultation the legislation has been revised to clarify procedures for new criminal offences for trading without approval and buying from an unapproved wholesaler.

EXPLANATORY NOTE

CLAUSE 55: RATES OF TOBACCO PRODUCTS DUTY

SUMMARY

1. This clause provides for changes in the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco) to have effect from 6pm on 18 March 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) substitutes a new table of rates of duty into Schedule 1 to the Tobacco Products Duty Act 1979. The duty rates on tobacco products are changes as follows:

- cigarettes – the ad valorem elements remains unchanged at 16.5%; the specific duty is increased from £184.10 to £189.49 per 1000 cigarettes;
- cigars – increased from £229.65 to £236.37 per kilogram
- hand rolling tobacco – increased from £180.46 to £185.74 per kilogram; and
- other smoking tobacco and chewing tobacco - increased from £100.96 to £103.91 per kilogram

3. Subsection (2) provides for a new table of duty rates to have effect from 6pm on 18 March 2015.

BACKGROUND NOTE

4. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between the richest and poorest in the UK. The Government is committed to maintaining high tobacco duty rates to support health objectives and the public finances. Research has consistently shown that the price of tobacco products negatively affects demand.

5. This clause increases the excise duty on all tobacco products by 2% above the rate of inflation (Retail Price Index). This is in accordance with the March 2014 announcement of increases of 2% above retail price inflation in 2015 for all tobacco duty rates.

6. The duty increase, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 16p, a pack of 5 small cigars by 5p, a 25 gram pack of hand-rolling tobacco by 16p; and a 25 gram pack of pipe tobacco by 9p.

EXPLANATORY NOTE

CLAUSE 56: EXCISE DUTY ON TOBACCO: ANTI-FORESTALLING RESTRICTIONS

SUMMARY

1. This clause introduces new sections 6A and 6B of the Tobacco Products Duty Act (TPDA) 1979. The new sections will prevent tax avoidance through excessive clearance of tobacco products shortly before an expected increase in the rate of duty by tightening restrictions and providing effective sanctions. This measure will come into force in time to apply to the forestalling restrictions ahead of Budget 2016.

DETAILS OF THE CLAUSE

2. Section 6A allows the Commissioners to publish an anti-forestalling notice that will specify a controlled period of up to three months and impose such restrictions as the Commissioners consider to be reasonable.

3. Section 6B provides for sanctions for failing to comply with the new anti-forestalling notices.

4. Subsection 6A(3)(a) provides for restrictions as to the total quantity of tobacco products which may be removed during a controlled period. Subsection 6A(3)(b) allows HM Revenue & Customs (HMRC) to apply monthly limits to removals during the controlled period.

5. Subsection 6A(4) provides a minimum level for the restricted quantities to be set by HMRC. This is based on the average daily clearance by the business concerned over the year ending two months before the start of the restricted period. The restricted amount may not be less than 80% of the average daily clearances as described above multiplied by the number of days in the restricted period.

6. Subsection 6A(5) prevents HMRC from imposing restrictions to remove quantities of tobacco products of less than 30% of the total allocation in any given month.

7. Subsections 6(a) and 7 provide a power to extend the controlled period where a Budget is later than anticipated. For example, one month later and after the initially specified controlled period.

8. Subsections 6B(1) and (2) provide for a penalty to be charged relating to the amount of goods cleared where there are removals in excess of a restriction on one or more occasion and where a person has failed to comply with the anti-forestalling notice.

9. Subsection 6B(3) provides for the amount of the penalty. In particular, there is a reduction of 50% where the person has given an admission notice.

10. Subsection 6B(5) provides that when a person has benefitted from a reduction in a given year, they cannot benefit from a reduction for the following three years.

11. Subsection 6B(6)(b) provides that the admission notice must be sent by the end of the restricted period rather than at the time when the closing statement is submitted.

BACKGROUND NOTE

12. This clause has been introduced to tighten anti-forestalling restrictions and introduce effective sanctions in order to prevent tax avoidance through excessive clearance of tobacco products shortly before an expected increase in the rate of duty. Whilst tobacco manufacturers have complied with their quota limits in the last few years they have cleared a significant amount of product in March, ensuring that as much stock as possible is cleared at the lower, pre-Budget rate of duty. This undermines the effectiveness of the restrictions which are designed to prevent excessive clearances of products immediately before the duty increase.

13. HMRC will publish the public notice as defined in FB15 legislation as an anti-forestalling notice 150 days before the start of the forestalling controlled period where possible to enable appropriate preparation for business to plan for any supply and demand issues. Where a decision is taken to hold an emergency budget HMRC will not be able to provide 150 days' notice before the controlled period.

EXPLANATORY NOTE

CLAUSE 57: AIR PASSENGER DUTY: EXEMPTION FOR CHILDREN IN STANDARD CLASS

SUMMARY

1. This clause extends the air passenger duty child exemption to children under the age of 12 travelling in standard class of travel (usually economy class) from 1 May 2015, with a further extension to children under the age of 16 from 1 March 2016.

DETAILS OF THE CLAUSE

2. Subsection 1 introduces new subsections (4ZA) and (4ZB) to section 31 of Finance Act 1994.

3. New subsection (4ZA) extends the passenger exceptions to children under the age of 16 in standard class of travel.

4. New subsection (4ZB) applies the existing definition of standard class of travel for the purposes of new subsection (4ZA).

5. Subsection 2 provides that this amendment commences on 1 May 2015 but specifies that, in relation to the carriage of a passenger which begins before 1 March 2016, subsection (4ZA) applies only to children under the age of 12.

BACKGROUND NOTE

6. This measure, which was announced at Autumn Statement 2014, helps families by lowering the cost of air travel for children in standard class of travel (usually economy class).

7. The existing exemption for children under the age of 2 without their own seat continues to apply to children travelling in all classes.

EXPLANATORY NOTE

CLAUSE 58: VED RATES FOR LIGHT PASSENGER VEHICLES, LIGHT GOODS VEHICLES, MOTORCYCLES

SUMMARY

1. This clause provides for changes to certain rates of Vehicle Excise Duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (2) amends paragraph 1B of Schedule 1 to VERA to change some of the graduated rates of duty which apply generally to light passenger vehicles first registered on or after 1 March 2001. Table 1 provides the rates payable on a first vehicle licence for a vehicle and table 2 provides the rates on all other licences for a vehicle registered on or after 1 March 2001. Table 2 operates so that vehicles emitting over 225 grams of carbon dioxide per kilometre that were registered in the United Kingdom or overseas before 23 March 2006 pay a lower rate than those registered from 23 March 2006 onwards.

3. Subsection (3) amends paragraph 2(1) of Schedule 1 to VERA to increase the rate of duty by £1 to £59 for motorbicycles with an engine size of over 400cc but not more than 600cc; by £1 to £81 for motorbicycles with an engine size of over 600cc, motortricycles with an engine size over 150cc and trade licences for motorcycles.

BACKGROUND NOTE

4. This rate of Vehicle Excise Duty (VED) chargeable on vehicles is dependent on various factors including the vehicle type, engine size, date of first registration and exhaust pipe emission data. The rate applying to cars registered on or after 1 March 2001 is generally determined by the vehicle's carbon dioxide emissions. A reduced rate of VED applies to cars using alternative fuels or featuring a hybrid fuel-electric powertrain. Alternative fuels include Liquefied Petroleum Gas, Compressed Natural Gas and high blend (at least 85 % content) bioethanol.

5. Cars and vans registered prior to 1 March 2001, and all motorcycles, are taxed by reference to the engine size.

6. The government intends to increase VED rates in 2015-16 by no more than inflation for cars, motorcycles and vans.

EXPLANATORY NOTE

CLAUSE 59: VED: EXTENSION OF OLD VEHICLES EXEMPTION FROM 1 APRIL 2016

SUMMARY

1. This clause provides for an extension to the scope of the exemption to include vehicles constructed before 1 January 1976 and will come into force on 1 April 2016. This clause amends Paragraph 1A of Schedule 2 of Vehicle Excise and Registration Act 1994 (VERA).

DETAILS OF THE CLAUSE

2. Subsection (1) extends the exemption from VED contained in paragraph 1A of Schedule 2 of VERA to vehicles constructed before 1 January 1976.

3. Subsection (2) provides for the extension of the exemption to come into force on 1 April 2014. This subsection also provides a transitional provision so that a nil licence does not need to be in force on 1 April 2016 for a vehicle constructed before 1 January 1976 if there is a vehicle licence already in force in respect of that vehicle. When that existing vehicle licence expires, a nil licence will need to be in force for the vehicle.

BACKGROUND

4. The government considers classic vehicles to be an important part of the nation's historical heritage. The VED exemption is, therefore, designed to support classic vehicle industry within the UK.

5. Budget 2013 announced a measure to extend the scope of the VED exemption to classic vehicles by one additional year. Budget 2014 further announced the government's intention to legislate in each year's Finance Bill to extend the old vehicle exemption by a further year so that vehicles which were constructed 40 years previously will be exempt from paying VED.

6. Section 1 of the Vehicle Excise and Registration Act 1994 (VERA) provides for the charging of Vehicle Excise Duty (VED) in respect of mechanically propelled vehicles and Schedule 1 of VERA sets out the rates of duty. Paragraph 1A of Schedule 2 of VERA provides a VED exemption in respect of vehicles constructed before 1 January 1974 and will be extended to 1 January 1975 from 1 April 2015 as amended by the Finance Act 2014.

7. Finance Act 2014 extended the scope of the exemption for historic vehicles constructed before 1 January 1974 with effect from 1 April 2014 and vehicles constructed before 1 January 1975 with effect from 1 April 2015.

EXPLANATORY NOTE

CLAUSE 60: RATES OF GAMING DUTY

SUMMARY

1. This clause increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) substitutes a new table for the existing table in section 11 (2) of the Finance Act 1997, which has the effect of increasing the gross gaming yield bands for gaming duty.

3. Subsection (2) provides for this change to have effect for accounting periods on or after 1 April 2015.

BACKGROUND NOTE

4. Gaming Duty is charged on any premises in the UK where dutiable gaming takes place. Dutiable gaming includes the playing of casino games such as roulette, baccarat, and blackjack. The amount of duty is calculated by reference to bands of GGY (i.e. gross profits) for that accounting period. For example, duty will be paid at a rate of 15 % on the first £2,347,500 of GGY, then 20 % for the next £1,618,000 of GGY, and so on. Gaming Duty is charged on premises in respect of accounting periods of six months, normally beginning on 1 April and 1 October, with an interim payment which is calculated and due after three months.

5. The change made by this measure increases the GGY bands but makes no changes to the rates. This ensures that casino operators' profits are not subject to the higher gaming duty bands simply as a result of inflation. There is therefore no duty increase in real terms. The basis of revalorisation of the bands is the Retail Price Index (RPI) for the year ended 31 December 2014. In this case the RPI was calculated at 1.97 %.

EXPLANATORY NOTE

CLAUSE 61: TAX CREDIT IN NORTHERN IRELAND

SUMMARY

1. This clause enables the Commissioners for HM Revenue & Customs (HMRC) to pay credit relating to aggregates levy paid on aggregate commercially exploited in Northern Ireland (NI) between 1 April 2004 and 30 November 2010 following importation of the aggregate from another European Union (EU) Member State. It also outlines the part to be played by the Department of the Environment in NI (DoE) in this process and specifies information which must be provided by the person claiming a credit.

2. Regulations provided for under the primary legislation come into force on 1 April 2015

DETAILS OF THE CLAUSE

3. Subsection (2) inserts new sections 30B, 30C and 30D into the Finance Act (FA) 2001.

4. New section 30B(1) enables HMRC to make regulations for the purpose of administering the credit. Section 30B(3) sets out the circumstances in which a person is to be entitled to claim the credit. In particular, they must have previously accounted for aggregates levy in respect of aggregate imported into Northern Ireland during a specified period, and must have previously notified their claim to the DoE. Sections 30B(4) and (5) define terms used in section 30B(3). Section 30B(6) sets out those matters which regulations made by HMRC for the purposes of administering the credit may cover. In particular, it includes a power to impose a requirement that a person is not to be entitled to the credit unless the DoE is satisfied that the site from which the aggregate originated met prescribed conditions; and a power to provide that claims for credit may include interest. Section 30B(7) enables the DoE to set out those prescribed conditions in a notice. Sections 30B(8) and (9) make consequential amendments to FA 2001.

5. New section 30C provides that the power to determine the rate of interest, and method of calculation, is to be set by an Order made by the Treasury, subject to the negative resolution procedure.

6. New section 30D sets out the procedure for making an application to the DoE which will apply if HMRC has imposed a requirement under section 30B(6) that a person is not to be entitled to the credit unless the DoE is satisfied that the originating site met prescribed conditions. Section 30D(2) sets out information that an application to the DoE must contain. Section 30D(3) specifies that an application for a credit cannot be made in respect of a period of time for which a certification has been revoked under section 30D(7). Section 30D(4)

requires the DoE to consider applications that are submitted and either certify that the originating site met the prescribed conditions or refuse the application. Section 30D(5) requires the DoE to provide written notice of the certification it decides to make to both the applicant and HMRC. Section 30D(6) requires the DoE to provide certification to subsequent applicants, if the later application applies to the same site at the same period of time. Section 30D(7) sets out those matters which regulations made by HMRC for the purpose of the administration of the certification by the DoE might cover. Those regulations may, amongst other matters, authorise the DoE to revoke a certification, or part of it. Section 30D(8) removes the effect of certification, for any period where it has been revoked. Section 30D(9) provides for the regulations made under this section to require the DoE to inform HMRC when certification has been revoked. Section 30D(10) provides that expenses incurred by the DoE in complying with its obligation under this section are to be met from the Consolidated Fund of Northern Ireland.

7. Subsections (3), (4), (5) and (6) make minor consequential amendments to the FA 2001

BACKGROUND NOTE

8. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

9. The Aggregates Levy Credit Scheme (ALCS) was introduced on 1 April 2004. It provided an 80 % levy credit to operators in NI who commercially exploited aggregate originating there, provided they entered into an agreement with the DoE to improve environmental standards at their site(s). The scheme was intended to help aggregate producers in NI cope with the very different market conditions (compared with those in Great Britain) as a result of being the only part of the UK to share a land boundary with another EU Member State.

10. In response to action taken by the British Aggregates Association, in 2010 the European General Court annulled the European Commission’s 2004 State aid approval for the ALCS. The scheme was therefore suspended from 1 December 2010 while the Commission undertook an investigation.

11. The Commission completed its investigation and published its decision on 7 November 2014. The Commission was broadly content that the scheme complied with the prevailing rules but expressed concern that the tax benefit arising from the ALCS did not apply to aggregate commercially exploited in NI that originated in another EU Member State. The Commission’s decision identified the steps which the UK was required to take in order to correct this distortion; this legislation gives effect to the requirements set out in the Commission’s decision.

12. HMRC will work in partnership with the DoE in the operation of the tax credits scheme. A business wishing to claim a levy credit will need to supply DoE with details of the quarry in the other Member State from which it obtained the aggregate. DoE will investigate the environmental standards that applied at that quarry at the time of the purchase

and, if satisfied that those standards were broadly equivalent to those met by quarries in NI under the ALCS, will issue the business with a certificate. The business will then need to write to HMRC to claim a levy credit, attaching a copy of the DoE certificate and other evidence supporting its claim.

EXPLANATORY NOTE

CLAUSE 62: CLIMATE CHANGE LEVY: MAIN RATES FROM 1 APRIL 2016

SUMMARY

1. This clause amends Schedule 6 to the Finance Act (FA) 2000 to increase the main rates of climate change levy (CCL) in line with inflation (based on the Retail Prices Index), with effect on and after 1 April 2016.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) replace the table of rates in paragraph 42(1) of Schedule 6 to FA 2000 and provide the commencement date.

BACKGROUND NOTE

3. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business, service and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes energy efficiency and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

4. Since the main rates of CCL were increased in 2007 they have kept pace with inflation so that the levy maintains its environmental effect. On each occasion that the main rates have increased the changes have been legislated for in the previous year's Finance Bill.

EXPLANATORY NOTE

CLAUSE 63: COMBINED HEAT AND POWER STATIONS

SUMMARY

1. This clause amends Schedule 6 to the Finance Act 2000 (Schedule 6) to exclude from the carbon price support (CPS) rates of climate change levy (CCL) commodities used in a combined heat and power (CHP) station to generate good quality electricity that is either self-supplied or supplied under an exemption from the requirement for an electricity supplier licence. This change comes into effect for CPS rate commodities brought onto, or arriving at, the site of a CHP on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (2) amends paragraph 24B of Schedule 6 so that the operator of a CHP station is not deemed to have made a taxable supply to himself of CPS rate commodities where these are used to generate good quality electricity that is either self-supplied or supplied under an exemption from the requirement for an electricity supplier licence under the Electricity Act 1989.

3. Subsection (3) makes consequential amendments to paragraph 24C of Schedule 6 which relates to corrections to the determination of the amount of CPS rate commodities subject to a deemed self-supply.

4. Subsection (4) makes a consequential amendment to paragraph 62 of Schedule 6 which relates to the claiming of tax credits.

5. Subsection (5) provides that these amendments apply in respect of CPS rate commodities brought onto, or arriving at, the site of a CHP on or after 1 April 2015.

BACKGROUND NOTE

6. CHP stations are a class of technology that enables the efficient use of fuel by producing both electricity and heat in a usable form from the same input of fuel. Where the efficiency of the combined production of heat and electricity exceeds certain thresholds the electricity generated is deemed to be good quality. The efficiency of CHP stations is monitored and certified by the CHP Quality Assurance (CHPQA) programme, operated by the Department of Energy and Climate Change.

7. Natural gas, liquid petroleum gas or solid fossil fuels used in electricity generation in Great Britain are liable to the CPS rates of CCL. For CCL purposes, a self-supply is deemed to occur when these CPS rate commodities are burnt to generate electricity in a CHP that has

a generating capacity of more than 2 megawatts, with the operator of the CHP being required to pay the relevant CPS rate of CCL on that supply. The operator of a CHP is deemed to have made a taxable self-supply to himself where, using a formula set out in regulations, these commodities are determined to be referable to the production of electricity, rather than to heat or mechanical power.

8. The effect of current CCL legislation is therefore that all commodities used in a CHP station to produce heat, steam or mechanical power are excluded from the CPS rates. Budget 2014 announced that this exclusion would be extended to fossil fuels used in a CHP station to generate good quality electricity consumed on-site. This mitigates the impact of the CPS rates of CCL on this carbon efficient form of heat and electricity generation and provides further support for UK manufacturing industry. Since Budget 2014, HMRC have worked with industry representatives on the definition of on-site and other details.

EXPLANATORY NOTE

CLAUSE 64: LANDFILL TAX: RATES FROM 1 APRIL 2016

SUMMARY

1. This clause amends section 42(1)(a) and 42(2) of the Finance Act (FA) 1996 to increase the standard and lower rates of landfill tax in line with the Retail Prices Index, rounded to the nearest 5 pence, for disposals of relevant waste made (or treated as made) at authorised landfill sites in England, Wales and Northern Ireland on or after 1 April 2016. This will increase the standard rate to £84.40 per tonne and the lower rate to £2.65 per tonne from this date.

DETAILS OF THE CLAUSE

2. Subsections (2) and (3) amend "£82.60" to read "£84.40" in sections 42(1)(a) and 42(2) of FA 1996. Subsection (3) amends "£2.60" to read "£2.65" in section 42(2) of FA 1996.

3. Subsection (4) provides the commencement date for the changes.

BACKGROUND NOTE

4. Landfill tax was introduced on 1 October 1996 to increase the cost of disposing of waste by landfill and thereby encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste. There is a lower rate of tax, which applies to less polluting qualifying wastes listed in secondary legislation, and a standard rate which applies to all other taxable waste disposed of at authorised landfill sites.

5. In the June 2010 Budget, the government confirmed that the standard rate of landfill tax would rise by £8 per tonne on 1 April each year up to and including 2014. The government also announced a floor under the standard rate of landfill tax so that the rate will not fall below £80 per tonne from 2014-15 to 2019-20.

6. Budget 2014 clarified that the floor of £80 per tonne in the standard rate should be interpreted in real terms and announced that the lower rate will, in future, also increase each year in line with the RPI, rounded to the nearest 5 pence. This means that, on 1 April 2015, the standard rate will increase to £82.60 per tonne and the lower rate to £2.60 per tonne as a result of changes made by Finance Act 2014.

7. The changes in this clause will apply in England, Wales and Northern Ireland only because, as a result of devolution, landfill tax will not apply in Scotland from 1 April 2015.

RESOLUTION 34	**FINANCE BILL 2015** **CLAUSE 65** **SCHEDULE 15**

EXPLANATORY NOTE

CLAUSE 65, SCHEDULE 15: LANDFILL TAX: TREATMENT OF FINES

SUMMARY

1. This clause and Schedule amend Part 3 of the Finance Act 1996 (FA 1996) to provide for the introduction of a new testing regime to help landfill site operators to identify the landfill tax liability of waste fines disposed of at landfill sites in England, Wales and Northern Ireland. Fines are the waste produced by any waste treatment process that involves an element of mechanical treatment, and can include a wide variety of different materials some of which may be liable to landfill tax at the standard rate and some at the lower rate.

2. This schedule establishes a new category of "qualifying fines" which will be liable to landfill tax at the lower rate and provides for the power to impose requirements with which fines must comply in order to be considered "qualifying fines". The amendments made by this schedule will apply to disposals made (or treated as made) in England, Wales or Northern Ireland and made on or after 1st April 2015.

DETAILS OF THE SCHEDULE

3. Paragraph (2) inserts new subsections into section 42 of FA 1996 and makes consequential amendments accommodate the introduction of those new subsections. Sub-paragraphs (2)(2) and (2)(3) insert sections 42(3A) and 42(3B) into FA 1996; these provide that a new category of material referred to "qualifying fines" is to be eligible for the lower rate of landfill tax, and that fines are to be treated as "qualifying fines" if they are comprised of a mixture of materials specified in an order. Sub-paragraphs (4) and (5) make consequential amendments to section 42 of FA 1996 accommodate the insertion of the new subsections 42(3A) and 42(3B).

4. Paragraph (3) makes a consequential amendment to section 63 of FA 1996.

5. Paragraph (4) inserts a new section 63A into FA 1996.Section 63A(1) to (4) provides for the power to make an Order requiring that fines are only to be treated as "qualifying fines" if they are subjected to a specified test, and includes a power to specify the frequency with which such tests are to be carried out; as well as what documents are to be produced, and what conditions landfill operators are to adhere to, in connection with carrying out the specified test. Section 63A(5) and (6) enables these conditions to be set out in notice issued by HMRC. Section 63A(7) provides that HMRC may have the power to direct that a person must carry out the specified test in certain circumstances. Section 63A(8) defines terms used elsewhere in section 63A.

6. Paragraph (5) amends section 70(1) of FA 1996 to include a statutory definition of "fines".

7. Paragraph (6) makes consequential amendments to section 71 of FA 1996.

8. Paragraph (7) inserts new paragraphs (2B) and (2C) into schedule 5 to FA 1996 and make consequential amendments to that schedule. Sub-paragraphs (7)(1) to (7)(3) insert the new paragraphs (2B) and (2C) into schedule 5 to FA 1996. Paragraph (2B) provides for the power to make regulations requiring persons to give HMRC information concerning fines that are claimed to be "qualifying fines", and to notify HMRC if the specified test indicates that fines do not meet the criteria for "qualifying fines"; while paragraph (2C) provides for the power to make regulations requiring persons to retain and preserve samples of fines that have been subjected to testing. Sub-paragraph (7)(4) makes consequential amendments to paragraph 10 of schedule 5 and sub-paragraph (7)(5) makes consequential amendments to paragraph 22 of schedule 5.

9. Paragraph (8) provides that the amendments made by this schedule are to have effect in relation to disposals made (or treated as having been made) on or after the day on which the Finance Bill 2015 receives Royal Assent.

BACKGROUND NOTE

10. Landfill tax was introduced on 1 October 1996 in support of the UK's waste policy to increase the cost of disposal to landfill to reflect the environmental costs; and encourage more environmentally-friendly alternative behaviours. Less polluting materials are subject to a lower rate of tax and all other taxable waste is subject to the standard rate. The tax currently applies to waste disposed of at permitted landfill sites across the UK but from 1 April 2015 it will no longer apply in Scotland following the decision to devolve it.

11. Landfill site operators are responsible for ensuring the tax liability of waste is identified and charged. They raised concerns that the lower rate of tax was not being applied equitably and requested greater certainty on which to base their liability decisions, particularly in relation to fines. At present, fines are not separately identified within landfill tax legislation although they can be lower-rated if they comprise solely qualifying materials listed in legislation or mainly such materials, save for a small amount of non-qualifying material.

12. The Government responded by developing proposals through consultation. This measure, secondary legislation and prescribed testing regime will provide certainty and fairness.

EXPLANATORY NOTE

CLAUSE 66: VAT: REFUNDS TO CERTAIN CHARITIES

SUMMARY

1. This clause inserts two new sections in to the Value Added Tax Act 1994, the purpose of which is to allow certain charities to claim refunds of the VAT they pay on the goods and services they purchase otherwise than for the purpose of any business carried on by the charities. It also makes consequential amendments to the Value Added Tax Act 1994. These changes will take effect in relation to supplies made, and acquisitions and importations taking place, on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection (1) of the clause inserts new sections 33C and 33D into the Value Added Tax Act 1994.

3. Subsection (1) of section 33C provides that this section applies to a charity falling within a description in section 33D, defined as a "qualifying charity".

4. Subsections (2) and (3) of section 33C refund to a qualifying charity the VAT it incurs on purchases made, and goods imported and acquired, for non-business purposes.

5. Subsections (3) to (7) of section 33C contain certain procedural requirements. In particular they allow HM Revenue & Customs to determine how and when claims to refund can be made, prescribe the time limits for claims, provide for VAT to be apportioned when goods or services are supplied to/acquired/imported for business and non-business purposes and specify VAT excluded from the refund provision.

6. Section 33D defines the four categories of qualifying charities to which section 33C applies.

7. Subsection (1) of section 33D defines a palliative care charity, including that its main purpose must be the provision of palliative care at the direction of, or under the supervision of, a medical professional.

8. Subsection (2) of section 33D defines "medical professional".

9. Subsection (3) of section 33D defines an air ambulance charity, including that its main purpose must be to provide an air ambulance service arranged or requested by a relevant NHS body.

10. Subsection (4) of section 33D defines "relevant NHS body" which, amongst other things, must be a body whose main purpose is to provide ambulance services.

11. Subsection (5) of section 33D provides that a charity will be a search and rescue charity if it meets either of two conditions.

12. Subsection (6) of section 33D sets out Condition A, which is that the main purpose of the charity is to carry out search and rescue activities in the United Kingdom or UK marine area and that these activities are coordinated by a relevant authority.

13. Subsection (7) of section 33D sets out Condition B, which is that the main purpose of the charity is to support, develop and promote the activities of charities meeting Condition A in subsection (6).

14. Subsection (8) of section 33D defines "search and rescue activities", "UK marine area" and "relevant authority" and provides HM Treasury with the power to add to the list of relevant authorities by order.

15. Subsection (9) of section 33D provides that a charity will be a medical courier charity if it meets either of two conditions.

16. Subsection (10) of section 33D sets out Condition A, which is that the main purpose of the charity is to transport items intended for use for medical purposes.

17. Subsection (11) of section 33D sets out Condition B, which is that the main purpose of the charity is to support, develop and promote the activities of charities meeting Condition A in subsection (10).

18. Subsection (12) of section 33D provides that "item" in subsection (10) includes any substance.

19. Subsections (2), (3) and (4) of the clause make consequential amendments to the Value Added Tax Act 1994.

20. Subsection (5) of the clause gives effect to the amendment made by the clause in relation to supplies made, and acquisitions and importations taking place, on or after 1 April 2015.

21. Subsection (6) of the clause provides that until a specified time, references in section 33D to an NHS foundation trust in England include an NHS trust in England.

BACKGROUND NOTE

22. This change enables certain charities to claim refunds of VAT on supplies made to them on or after 1 April 2015 for the purpose of their non-business activities. It provides financial support for palliative care charities, and gives the other qualifying charities broadly the same level of VAT recovery as is presently afforded to the publically funded emergency services. The charities that are eligible to make claims are:

- palliative care charities that provide hospice care;
- search and rescue charities such as mountain or cave rescue teams (and charities that support these charities);
- air ambulance charities; and
- medical courier charities such as blood bikes (and charities that support these charities).

EXPLANATORY NOTE

CLAUSE 67: VAT: REFUNDS TO STRATEGIC HIGHWAYS COMPANIES

SUMMARY

1. This clause adds strategic highways companies to the list of bodies which qualify for refunds of VAT under section 41(3) of the Value Added Tax Act 1994. This will take effect from 1 April 2015.

DETAILS OF THE CLAUSE

2. Subsection 1 amends Section 41(7) of the Value Added Tax Act 1994 which lists certain bodies which are entitled to refunds of VAT under section 41(3). Strategic highways companies, which are intended to replace the Highways Agency, are added to that list.

BACKGROUND NOTE

3. Section 1 of the Infrastructure Act 2015 Chapter 7 provides for the establishment of strategic highways companies to take over the functions of the Highways Agency. As an executive agency of the Department of Transport, the Highways Agency is entitled to recover the VAT it pays when purchasing certain services. This measure will ensure that strategic highways companies will similarly be entitled to recover VAT.

EXPLANATORY NOTE

CLAUSE 68: SDLT: ALTERNATIVE PROPERTY FINANCE RELIEF

SUMMARY

1. This clause adds authorised providers of home purchase plans to the definition of a financial institution that applies for the purposes of alternative property finance reliefs. This will extend the availability of alternative property finance relief to all buyers who use an authorised home purchase plan to finance their home purchase. The amendment will have effect where the effective date of the first transaction is on or after the date on which the Finance Bill receives Royal Assent.

DETAILS OF THE CLAUSE

2. Subsection 2 amends section 73BA of the Finance Act (FA) 2003 extending the definition of a financial institution that applies for the purposes of the alternative property finance reliefs to include a person authorised by the Financial Conduct Authority to provide home purchase plans.

3. Subsection 3 makes a consequential amendment to the definition of a financial institution at paragraph 9 of Schedule 4A FA2003, which applies for the purpose of the higher rate of stamp duty land tax.

4. Subsection 4 provides that the amendment will have effect where the effective date of the first transaction is on or after the date on which the Finance Bill receives Royal Assent.

5. Subsection 5 defines "first transaction" for the purposes of subsection 2.

BACKGROUND NOTE

6. Financing a property purchase in a way that does not involve the payment of interest generally involves more than one Stamp Duty Land Tax (SDLT) charge. The alternative property finance reliefs ensure that buyers who finance property purchases using such alternative methods pay the same level of SDLT as those who use a conventional mortgage. Relief is only available where the financier is a financial institution as defined in the legislation. Broadly these are traditional financial institutions such as banks and building societies.

7. Home purchase plans were developed to provide a method of financing a home purchase which doesn't involve the payment of interest and are regulated by the Financial Conduct Authority in a similar way to conventional mortgages.

8. The alternative property finance reliefs are currently only available for home purchase plans provided by a defined financial institution and a buyer who uses a plan provided by such an institution will be able to claim relief. However, a buyer will not be able to claim relief where their home purchase plan provider is not one of the defined financial institutions, even where the provider is authorised by the Financial Conduct Authority to provide home purchase plans.

9. These changes are being made to ensure that all buyers who use a home purchase plan, provided by an authorised provider, to finance their home purchase will pay the same level of SDLT as those who use a conventional mortgage. These changes will come into effect on the date on which the Finance Bill receives Royal Assent.

EXPLANATORY NOTE

CLAUSE 69: SDLT: MULTIPLE DWELLINGS RELIEF

SUMMARY

1. This clause provides for relief to be claimed in respect of superior interests in dwellings subject to a long lease, where the transaction is the lease element of a "lease and leaseback" funding arrangement entered into by a housing association or other qualifying body. The measure will apply to leases granted on or after the day on which the Finance Bill receives the Royal Assent.

DETAILS OF THE CLAUSE

2. Subsection (1) of the clause provides that paragraph 2(6) of Schedule 6B to Finance Act 2003 (multiple dwellings relief: transactions to which Schedule applies) does not apply where the conditions set out in the subsection are met.

3. Subsection (2) provides for commencement.

BACKGROUND NOTE

4. SDLT multiple dwellings relief (MDR) applies to reduce the amount of SDLT payable where interests in more than one dwelling are acquired in a single transaction or in linked transactions.

5. From 4 December 2014 the relief operates by calculating the tax due on an amount of consideration obtained by dividing the total consideration given for dwellings by the number of dwellings and then multiplying this amount of tax by the number of dwellings. This is subject to a minimum amount of tax equivalent to 1% of the total consideration given for dwellings.

6. MDR excludes interests in dwellings which are superior interests (usually the freehold or a headlease) over dwellings subject to a lease granted for more than 21 years. This means that relief is not available for acquisitions of "ground rents": that is, freehold reversions of blocks of flats let on long leases.

7. Housing associations and similar bodies may wish to enter into funding arrangements with investors in order to secure funds for development of new social rented or shared ownership housing. One such arrangement is a "lease and leaseback", under which the housing body grants a long lease of its existing freehold housing stock to an investor for a premium, and the investor then leases it back to the housing body for a term of years at a market rent. In this way the housing body receives a capital sum for development and continues to manage the properties, while the investor receives an income stream.

8. Under a “lease and leaseback” arrangement, the “leaseback” element will generally qualify for SDLT sale and leaseback relief under section 57A Finance Act 2003. The “lease” element will generally qualify for MDR in respect of dwellings let on periodic tenancies or assured shorthold tenancies but not in respect of dwellings subject to shared ownership leases, because these are long leases.

9. The purpose of this measure is to allow MDR to apply to leases of shared ownership property to an investor as part of a “lease and leaseback” arrangement entered into by housing bodies which are “qualifying bodies” for the purposes of the SDLT shared ownership provisions in Schedule 9 Finance Act 2003. This will reduce the cost of entering into these arrangements for investors and these housing bodies.

EXPLANATORY NOTE

CLAUSE 70: ATED: ANNUAL CHARGEABLE AMOUNT

SUMMARY

1. This clause increases annual tax charges for the Annual Tax on Enveloped Dwellings for the chargeable period 1 April 2015 to 31 March 2016 over and above the normal annual Consumer Prices Index increase.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for an amendment to section 99 of Finance Act 2013 (amount of tax chargeable) and sets revised amounts for properties valued at more than £2 million as follows:

Annual Chargeable Amount for 2015/16	*Taxable Value of the Interest*
£23,350	More than £2 million but not more than £5 million.
£54,450	More than £5 million but not more than £10 million.
£109,050	More than £10 million but not more than £20 million.
£218,200	More than £20 million.

3. Subsection 2 brings this annual increase into effect for the chargeable period beginning 1 April 2015.

4. Subsections 3 and 4 dis-apply the requirement to increase the charges by the September 2014 Consumer Prices Index and to publish an Order stating the revised amounts. Indexation will be reapplied to the annual charges for the chargeable period beginning 1 April 2016 for properties valued at more than £2 million.

BACKGROUND NOTE

5. The Annual Tax on Enveloped Dwellings is an annual tax payable by companies, partnerships with a corporate member and collective investment vehicles which own UK residential property valued at more than £2 million.

6. Most residential properties are owned directly by individuals. But in some cases they may be owned by a company, partnership with a corporate member or other collective investment vehicle. In these circumstances the property is said to be 'enveloped' because the ownership sits within a corporate 'wrapper' or 'envelope'.

7. Budget 2014 announced a reduction in the £2 million entry threshold to £500,000 to be phased in over 2 years. From 1 April 2015 a new band will come into effect for properties with a value greater than £1 million but not more than £2 million with an annual charge of £7,000. From 1 April 2016 a further new band will come into effect for properties valued at more than £500,000 but not more than £1 million.

8. The ATED chargeable period runs from 1 April to 31 March. The amount of tax charged is based on the value of the property on a particular date. The annual chargeable amounts are subject to indexation by reference to the previous September Consumer Prices Index (CPI). Parliament can over-ride the normal indexation by provision in the Finance Bill.

9. This clause increases the annual charge for the chargeable period 1 April 2015 to 31 March above normal September 2014 CPI increase for properties valued at more than £2 million. The new bands to be introduced with effect from 1 April 2015 and 1 April 2016 will not be affected by this change.

10. This measure is to ensure that those wrapping residential property in corporate and other 'envelopes' and not using them for a commercial purpose, pay a fair share of tax.

EXPLANATORY NOTE

CLAUSE 71: ATED: TAXABLE VALUE

SUMMARY

1. This clause corrects an anomaly in the legislation so that the 5 yearly valuation dates work as intended with the next 5 consecutive chargeable periods. The changes have effect for chargeable periods beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. This clause inserts new subsection (2A) into section 102 of Finance Act 2013 (taxable value) and provides that the five yearly valuation dates apply to the next five chargeable periods beginning the following 1 April (e.g. the 1 April 2017 valuation date applies to the next five chargeable periods beginning 1 April 2018; the 1 April 2022 valuation date applies to the next five chargeable periods beginning 1 April 2023).

BACKGROUND NOTE

3. ATED is an annual tax payable by companies, partnerships with a corporate member, and collective investment vehicles which own UK residential property valued at more than £2 million. At Budget 2014 the Government announced that the £2m ATED entry threshold would be lowered to £500,000 to be phased in over 2 years.

4. The amount of tax charged is based on the value of the dwelling as at 1 April 2012, and thereafter each 1 April at intervals of 5 years. Where a dwelling is acquired or disposed of, the valuation date is the date of acquisition/disposal.

5. It was the policy intention that a chargeable person who has an interest that falls within ATED because of its value on, say, 1 April 2017, must file a return for the chargeable period beginning 1 April 2018. This was to provide sufficient time to value a property in 2017 and submit a return by the due date of 30 April 2018.

6. However, the legislation as currently drafted means that the chargeable person would in fact have to value their property on 1 April 2017 and file their return by 30 April 2017, giving them only 30 days in which to do so. This clause corrects that anomaly. The changes have effect for chargeable periods beginning on or after 1 April 2015.

EXPLANATORY NOTE

CLAUSE 72: ATED: INTERESTS HELD BY CONNECTED PERSONS

SUMMARY

1. This clause amends the aggregation rule where interests are held by connected persons in the same dwelling. Where one of the connected persons is an individual and the aggregate amount of the interests is less than £2 million, the company's interest must be more than £250,000 for aggregation to apply. The changes have effect for chargeable periods beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

2. This clause amends section 110(2) of Finance Act 2013 (Interests held by connected persons) and introduces a new limit of £250,000 for aggregated interests valued up to £2 million. The effect of this amendment is that where one of the connected persons is an individual, and the combined value of the interests in the property is less than £2million, the company's interest must be more than £250,000 for the aggregation rule to apply.

BACKGROUND NOTE

3. ATED is an annual tax payable by companies, partnerships with a corporate member, and collective investment vehicles which own UK residential property valued at more than £2 million. At Budget 2014 the Government announced that the £2 million entry threshold will be lowered to £500,000.

4. The ATED legislation contains a rule which provides that where two or more chargeable interests are held in the same dwelling by connected persons, then those interests must be aggregated and ATED paid on the aggregate amount, where that amount falls within the ATED entry threshold. However, the legislation provides for an exception to this rule where the connected person is an individual. In this case the company's interest must be more than £500,000 for the aggregation rule to apply.

5. Following the lowering of the ATED entry threshold from properties valued at more than £2 million to properties valued at more than £500,000, an additional limit of £250,000 is introduced for interests valued up to £2 million. The changes have effect for chargeable periods beginning on or after 1 April 2015.

EXPLANATORY NOTE

CLAUSE 73: ATED: RETURNS

SUMMARY

1. This clause amends the annual tax on enveloped dwellings (ATED) return obligations. In particular, it introduces a new type of ATED return, the "relief declaration return", for persons who hold an interest in a dwelling which is eligible for relief from ATED and in respect of which there is no tax to pay. It results in a significant reduction in the administrative burden on businesses by reducing the number of returns that must be filed and the information that must be provided to HM Revenue & Customs. The changes have effect for chargeable periods beginning on or after 1 April 2015.

DETAILS OF THE CLAUSE

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

3. Subsection 2 inserts new subsection (3A) into section 159 Finance Act 2013. It provides that, where a return for a later chargeable period is required by 30 April, and a return for the earlier chargeable period is required later because of the 90 day filing time limit, the return for the later chargeable period can also be delivered within the 90 day time limit.

4. Subsection 3 inserts new section 159A Finance Act 2013 "Relief declaration returns".

5. New subsection 159A(1) defines a relief declaration return as an ATED return which contains a declaration, relates to one, and only one, type of relief and specifies the type of relief it relates to.

6. New subsections 159A(2) and (3) specifies that a relief declaration return may be made in respect of one or more single-dwelling interest and that it does not need to include individual details of the dwelling(s), provided that the conditions in subsection (4) are met.

7. New subsection 159A(4) sets out the conditions which must be met in order for a person to make a relief declaration return. These are:

8. the person making the return must be within the scope of ATED, with respect to the single-dwelling interest on the day the claim is made;

- on the day the claim is made, the single-dwelling interest must be eligible for one of the reliefs set out in subsection 9; and
- there is no tax to pay on the day the return is delivered to HMRC.

9. New subsection 159A(5) specifies that a statement (or declaration) made under new section 159A(1) in a relief declaration return is treated as a claim to a relief in relation to the single-dwelling interest or interests.

10. New subsections 159A(6) and (7) specify that, where a person has already delivered a relief declaration return for a chargeable period in respect of one or more single-dwelling interests, and on a subsequent day within the same chargeable period the relevant conditions are also met in relation to another single-dwelling interest (i.e. that interest is eligible for the same type of relief in the chargeable period), the existing return is treated as also having been made in respect of that other interest.

11. New subsection 159A(8) prescribes the "relevant conditions" for this purpose. These are the conditions set out in section 159A(4), except that the day of the claim is a subsequent day in the chargeable period.

12. New subsection 159A(9) lists the relevant reliefs and the relief codes to be specified in a relief declaration return.

13. New subsection 159A(10) provides that, where there has been a failure to make an ATED return in respect of two or more single-dwelling interests and that obligation could have been discharged by making a single relief declaration return, penalties under Schedule 55 Finance Act 2009 (failure to make a return) will be charged as if there were only one failure.

14. New subsection 159A(11) provides definitions of "pre-claim period" and "taxable day".

15. Subsection (4) of the clause amends section 161 of Finance Act 2013 (return to include self-assessment). It inserts new section 161(2A) which dis-applies the self-assessment requirement in respect of a relief declaration return. The effect of this is that no property valuation is required on the return. It also makes a correction to section 161(2).

16. Subsection (5) of the clause makes consequential amendments to Schedule 33 to Finance Act 2013.

17. Subsection (6) of the clause provides that the changes have effect for chargeable periods beginning on or after 1 April 2015.

18. Subsection (7) and (8) provide that the transitional rule in section 109 of Finance Act 2014, which extends the filing date for properties valued at more than £1 million but not more than £2 million to 1 October 2015 instead of the normal date of 30 April 2015, also applies to those persons eligible to make a relief declaration return.

BACKGROUND NOTE

19. The Annual Tax on Enveloped Dwellings is an annual tax payable by companies, partnerships with a corporate member, and collective investment vehicles which own UK residential property valued at more than £2 million.

20. At Budget 2014 the Government announced that the £2 million ATED entry threshold would be lowered to £500,000. Recognising the additional administrative burden on businesses that hold residential property over £500,000, in particular those entitled to claim

reliefs, the Government also announced consultation on ways to simplify the administration of ATED.

21. A consultation document *Annual Tax on Enveloped Dwellings: Reducing the Administrative Burden on Business* was published in July 2014 and the Government's response to the consultation was published in December 2014. This clause takes forward proposals in response to that consultation.

22. The clause introduces a new type of ATED return – the 'relief declaration return'. For each type of relief being claimed, the company will submit a 'relief declaration return' stating that a relief is being claimed in respect of one or more properties held at that time. No details will be required of the individual properties or the number of properties eligible for the relief. Where a property is acquired in-year which also qualifies for the same type of relief, the existing return is treated as also having been made in respect of that property.

23. A separate relief declaration return will be required where a property is acquired during the year that qualifies for a different type relief and where no relief declaration return has previously been made in relation to that particular relief.

24. A normal ATED return is required, as now, in respect of any property which does not qualify or ceases to qualify for a relief; i.e. where tax is due.

25. The overall result is that businesses with properties which qualify for relief will generally only be required to deliver one relief declaration return a year for all properties covered by a particular relief instead of, as now, multiple detailed returns for each such property. This offers a significant reduction in the administrative burden.

26. This clause also corrects a minor anomaly in the legislation to ensure that the 5 year property valuation dates work as intended with the next 5 consecutive chargeable periods.

EXPLANATORY NOTE

CLAUSE 74: INHERITANCE TAX: EXEMPTION FOR DECORATIONS AND OTHER AWARDS

SUMMARY

1. This clause amends the legislation relating to property which is to be excluded for the purposes of inheritance tax (IHT). It extends the existing IHT tax exemption which applies to decorations for valour or gallant conduct to encompass an Order, decoration or award, including those made by a country or territory outside the UK. The amendment applies to transfers of value made, or treated as made, on or after 3 December 2014.

DETAILS OF THE CLAUSE

2. Subsection (1) amends IHTA by inserting new s6 (1B). It also provides that a relevant decoration and other award is excluded property if it has never been the subject of a disposition for money or money's worth.

3. Subsection (2) provides that the amendment applies to transfers of value made, or treated as made, on or after 3 December 2014.

BACKGROUND NOTE

4. At Autumn Statement 2014 the Government announced that the existing exemption from IHT for awards for valour and gallantry will be extended to include awards for service in the armed forces, and awards made by the State in recognition of achievements and service in public life, such as OBEs. The exemption will also include Orders, decorations or awards made by other countries and territories. The amendments made by this clause will have effect for all transfers of such property made (or treated as made) on or after 3 December 2014.

EXPLANATORY NOTE

CLAUSE 75: INHERITANCE TAX EXEMPTION FOR EMERGENCY SERVICE PERSONNEL ETC

SUMMARY

1. This clause amends the inheritance tax (IHT) legislation to provide that the estates of: emergency service personnel, armed forces personnel and humanitarian aid workers who die as a result of responding to an emergency; and police constables and armed service personnel who die as a result of being attacked due to their status, will be exempt from IHT.

2. It also provides that this exemption will include any additional IHT due on death for lifetime transfers and potentially exempt transfers. The amendments made by this clause have effect in relation to deaths occurring on or after 19 March 2014.

DETAILS OF THE CLAUSE

3. Subsection (1) provides for various amendments to be made to the Inheritance Taxes Act 1984 (IHTA).

4. Subsection (2) inserts a new section 153A. New section 153A sets out the conditions that must be met for the estates of emergency service personnel and humanitarian aid workers (emergency responders) to be exempt from IHT. It determines the circumstances in which the exemption applies, for example, those likely to cause the death of a person or serious harm to the environment. Other emergency circumstances covered include serious injury or illness of a person or an animal. It also defines what qualifies as an emergency, to whom the exemption applies and provides that it is immaterial whether the individual is paid or unpaid. The section also provides that regulations may extend the definition of emergency responders.

5. Subsection (3) amends section 154 IHTA to provide that where armed service personnel die while responding to an emergency, or their death is hastened as a result of injury or illness arising from that emergency, then their estates will be exempt from IHT. It also defines the nature of the exemption, and inserts a reference to the definition of emergency in section 153A IHTA.

6. Subsection (4) inserts a new section 155A. New section 155A sets out the conditions to be met for the estates of police constables and armed service personnel to be exempt from IHT. It determines the circumstances in which the exemption applies, the nature of the exemption and to whom it applies. It provides that it is immaterial whether the individual was acting in the course of his duties when attacked and provides a definition of service personnel

7. New section 155A will not apply where the individual's death occurs as a result of responding to emergency circumstances which would be covered under new section 153A, or as a result of being on active service which would be covered under section 154 IHTA

8. The effect of these changes will be that where a police constable or member of the armed services dies as a result of their status, or a member of the emergency services, or the armed services, or a humanitarian aid worker dies as a result of responding to an emergency, then their estate will be exempt from IHT. Any additional IHT due on death for lifetime transfers (transfers that are immediately chargeable to IHT) and potentially exempt transfers (lifetime transfers of value that meet certain conditions) will not be payable.

9. Subsection (5) provides that these amendments have effect in relation to deaths occurring on or after 19 March 2014.

BACKGROUND NOTE

10. At Budget 2014 the Government announced its intention to introduce IHT exemptions for members of the emergency services in line with the existing exemption for armed service personnel who die in the line of duty or whose death is hastened by an injury incurred in the line of duty. At the Autumn Statement it announced its further intention to introduce a similar exemption for police constables and armed services personnel who die as result of being attacked due to their professional status.

11. The amendments made by this clause will provide that the estates of such workers will be exempt from IHT. Regulations may extend the definition of emergency worker, if necessary. The changes also provide for circumstances where armed forces personnel die as a result of responding to emergencies.

EXPLANATORY NOTE

CLAUSE 76: BANK LEVY: RATES FROM 1 APRIL 2015

SUMMARY

1. This clause amends the rate at which the bank levy is charged from 1 April 2015 onwards.

DETAILS OF THE SCHEDULE

2. Subsection (1) provides that the clause amends Schedule 19 to Finance Act 2011.

3. Subsection (2) increases the bank levy rates from 1 April 2015. The rate applying to chargeable equity and long term chargeable liabilities is increased from 0.078% to 0.105% and the rate for short term chargeable liabilities is increased from 0.156% to 0.21%.

4. Subsection (3) introduces into the table of rates at paragraph 7(2) and the new bank levy rates for the period 1 April 2015 onwards.

5. Subsection (4) provides that the new rate changes made by subsections (2) to (3) are treated as having come into force on 1 April 2015.

6. Subsections (5) to (11) 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 April 2015 is due before 1 April 2015, the first instalment for the same chargeable period due after 1 April 2015 is increased by the adjustment amount. The adjustment amount is the difference between what was actually paid in the pre-1 April 2015 instalment and what would have been due if the post 1 April 2015 rates had been applied. If there is no instalment for the same chargeable period due after 1 April 2015 then a further instalment, equal to the adjustment amount, becomes due on 30 April 2015.

7. Subsection (12) 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. The 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 to

Finance Act 2011) 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).

EXPLANATORY NOTE

CLAUSE 77: INTRODUCTION TO THE TAX

SUMMARY

1. This clause sets out that a Diverted Profits Tax will apply if required conditions are fulfilled.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces the diverted profits tax.

3. Subsection (2) gives a summary of the conditions that must be met for the tax to apply. It also specifies that taxable diverted profits arise only if any of the three rules set out in Clauses 80, 81 and 86 apply to a company for an accounting period

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 78: OVERVIEW OF PART 3

SUMMARY

1. This clause provides an overview of the Part.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) provide an overview of circumstances within clauses 80 and 81 and how the charge is calculated in those circumstances.

3. Subsections (3) to (5) provide an overview of circumstances within clause 86 and how the charge is calculated in those circumstances.

4. Subsection (6) signposts key definitions.

5. Subsection (7) provides an overview of other provisions in the Part.

BACKGROUND NOTE

6. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 79: CHARGE TO TAX

SUMMARY

1. This clause introduces the diverted profits tax, a new and separate tax which will be charged at a main rate of 25% on a company's taxable diverted profits from 1 April 2015. Where a company's taxable diverted profits are "adjusted ring fence profits" or "notional adjusted ring fence profits" (as defined), the main rate does not apply and a special rate of 55% is applied.

DETAILS OF THE CLAUSE

2. Subsection (1) specifies how a charge to the tax is imposed. It can only be imposed by a designated HM Revenue & Customs officer issuing a charging notice or supplementary charging notice to a company for an accounting period.

3. Subsection (2) provides for the tax charged to be at a rate of 25% of the amount of taxable diverted profits (but see subsection (3)), and to include any interest on that amount (see subsection (4)).

4. Subsection (3) modifies subsection (4) where the company's taxable diverted profits are "adjusted ring fence profits" or "notional adjusted ring fence profits" (as defined in subsection (6)). In those circumstances, the tax is charged at a rate of 55%.

5. Subsection (4) describes how and for what period any interest charged under subsection (4)(b) is to be calculated.

6. Subsection (5) defines "adjusted ring fence profits" by reference to section 330 of CTA 2010 (the ring fence profits of an oil or gas trade). The subsection also defines "notional adjusted ring fence profits" by reference to the provisions of clause 85 and on the basis of the assumptions set out at subparagraphs (a) and (b).

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 80: UK COMPANY: INVOLVEMENT OF ENTITIES OR TRANSACTIONS LACKING ECONOMIC SUBSTANCE

SUMMARY

1. This clause sets out the first of two sets of conditions that can give rise to a charge on taxable diverted profits. This clause applies to UK resident companies only.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the conditions that give rise to taxable diverted profits where a UK resident company enters into transactions that lack economic substance or involve entities that lack such substance. The clause does not apply if both the company and another person involved in the transactions are small or medium enterprises.

3. Subsection (2) makes clear that, for the purposes of considering whether the condition in subsection(1)(b) is met, where the UK resident company is a member of a partnership, transactions entered into between the partnership and another person are to be treated as if they were entered into between the UK resident company and that other person.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 81: NON-UK COMPANY: INVOLVEMENT OF ENTITIES OR TRANSACTIONS LACKING ECONOMIC SUBSTANCE

SUMMARY

1. This clause sets out the second of the sets of conditions that can give rise to a charge on taxable diverted profits. This clause applies to non-UK resident companies with a UK permanent establishment (UKPE).

DETAILS OF THE CLAUSE

2. Subsection (1) sets out three conditions that are necessary for the clause to apply for an accounting period in the case of a non-UK resident company.

3. Subsections 1(a) and (1)(b) taken together require that the non-UK resident company must be carrying on a trade in the UK through a permanent establishment in the UK ('UKPE'), such that Chapter 4 of Part 2 of the Corporation Tax Act 2009 applies to determine its chargeable profits for corporation tax for the accounting period.

4. Subsection 1(c) sets out the third condition. If certain assumptions are made about the company in relation to clauses 80, 106, 107, 108, 109 and 110 then clause 80 would apply to UKPE. The first assumption is that UKPE is treated as a distinct and separate enterprise from the non-UK resident company. The second assumption is to treat UKPE as if it were itself a UK resident company under the same control as the non-UK resident company. The third assumption is to treat UKPE as having entered into any transactions that were entered into by the non-UK resident company in so far as the transactions are relevant to UKPE (see subsection (2)).

5. Subsection (2) explains when the transactions mentioned in Subsection 1(c) are "relevant" to UKPE. The transactions are relevant when they have a bearing on the profits of the non-UK resident company that would be attributable to UKPE in accordance with sections 20 to 32 of CTA 2009.

6. Subsection (3) applies where section 1313(2) of CTA 2009 treats the profits of a non-UK resident company operating on the UK Continental Shelf as if they were profits arising from a trade carried on by that company in the UK through a permanent establishment in the UK. Part 1 applies as if the company actually carried on that trade in the UK through a UK permanent establishment.

7. Subsection (4) imports the definition of 'control' from CTA 2010.

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 82: CALCULATION OF TAXABLE DIVERTED PROFITS IN SECTION 4 OR 5 CASE: INTRODUCTION

SUMMARY

1. This clause introduces the rules for calculating taxable diverted profits for an accounting period where clause 80 or clause 81 apply to a company. The rules themselves are set out in more detail in clauses 83, 84 and 85. This clause also defines key expressions used in clauses 83, 84 and 85.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that where clauses 80 or 81 apply, then clause 83 describes the circumstances where no taxable diverted profits arise; and clauses 84 and 85 describe how the taxable diverted profits are determined when they arise.

3. Subsection (2) signposts clause 96, which sets out how a designated HM Revenue & Customs officer estimates profits when issuing a preliminary notice under clause 93 or a charging notice under clause 95.

4. Subsection (3) introduces subsections (4) to (9), which define key expressions used in clauses 83 to 85.

5. Subsection (4) defines "The material provision" as having the same meaning as in clause 80.

6. Subsection (5) defines "The relevant alternative provision". It involves considering what provision the company would have made between itself and a connected company or connected companies had tax not been a relevant consideration.

7. Subsection (6) sets out that making or imposing no provision is treated as making or imposing an alternative provision.

8. Subsection (7) explains the circumstances where the actual provision condition is met. This involves considering whether the provision actually made results in a deduction in computing UK taxable profits (and leaving aside any adjustment that might be made under transfer pricing rules) but where the alternative provision would not have involved those deductions leading to relevant taxable income of a connected company.

9. Subsection (8) explains how to determine the relevant taxable income of a company for a period. It considers what would have been chargeable to UK corporation tax had that company been within the charge to UK corporation tax, making allowances for a just and

reasonable amount of expenses that would have deductible in computing those taxable profits.

10. Subsection (9) defines what is meant by a "connected company" for these purposes.

BACKGROUND NOTE

11. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 83: SECTION 4 OR 5 CASES WHERE NO TAXABLE DIVERTED PROFITS ARISE

SUMMARY

1. This clause describes the circumstances in which no taxable profits arise in an accounting period to a company to which clauses 80 or 81 apply. The actual provision condition, as defined in clause 82, has to be met. There are two further tests, either of which have to be met; which are that there are no diverted profits of the company for the accounting period or the "full transfer pricing adjustment" (as defined) has been made.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the tests that determine whether clause 83 applies. The "actual provision condition" in subsection (1)(a) has to be met. This is defined in subsection (7) of clause 82. Either of the other two tests in subsection (1)(b) also needs to be met. These are that there are no diverted profits of the company for the accounting period, or the "full transfer pricing adjustment" has been made. This is defined in subsection (3).

3. Subsection (2) defines what is meant by "diverted profits".

4. Subsection (3) describes the circumstances in which the full transfer pricing adjustment is made in the accounting period.

BACKGROUND NOTE

5. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 84: SECTION 4 OR 5: CALCULATION OF PROFITS BY REFERENCE TO THE ACTUAL PROVISION

SUMMARY

1. This clause explains how to calculate the taxable diverted profits for an accounting period where clause 80 or 81 applies to a company, "the actual provision condition" is met (as defined in clause 82), and the condition for no taxable diverted profits arising in clause 83 is not met.

DETAILS OF THE CLAUSE

2. Subsection (1) describes when the clause applies. This is where clause 80 or 81 applies to a company for an accounting period, the "actual provision condition" is met, as defined in subsection (7) of clause 82, and clause 83 (cases where no taxable diverted profits arise) does not apply.

3. Subsection (2) explains how to determine the taxable diverted profits, in accordance with the provisions of subsection (2)(a), (b) and (c). It involves applying transfer pricing rules to the "material provision" (that is, the provision that has given rise to the "tax mismatch outcome").

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multi-national enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 85: SECTION 4 OR 5: CALCULATION OF PROFITS BY REFERENCE TO THE RELEVANT ALTERNATIVE PROVISION

SUMMARY

1. This clause explains how to calculate the taxable diverted profits for an accounting period where clause 80 or 81 applies to a company and "the actual provision condition" as defined in clause 82 is not met.

DETAILS OF THE CLAUSE

2. Subsection (1) describes when the clause will apply. This is where clause 80 or 81 applies to a company for an accounting period and "the actual provision condition" as defined in subsection (7) of clause 82 is not met.

3. Subsection (2) states that the taxable diverted profits in relation to the material provision are determined by subsections (3) to (5).

4. Subsection (3) determines whether subsection (4) applies. This is where the actual provision condition would have been met apart from the fact that the relative alternative provision would have resulted in relevant taxable income of a company for that company's corresponding accounting period.

5. Subsection (4) determines the taxable diverted profits where the conditions in subsection (3) are met. These are the additional profits that are described in subsection (2) of clause 84, together with the total amount of any relevant taxable income of a connected company for that company's accounting period that would have resulted from the relevant alternative provision.

6. Subsection (5) determines the taxable diverted profits arising if subsection (4) does not apply. This is calculated according to the method set out in subsection (5)(a) and (b).

7. Subsection (6) defines the "notional additional amount".

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 86: NON-UK COMPANY AVOIDING A UK TAXABLE PRESENCE

SUMMARY

1. This clause sets out the third of the three rules that can give rise to a charge on taxable diverted profits. In particular, it identifies arrangements designed to avoid the existence of a UK permanent establishment.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the conditions for the clause to apply in relation to a foreign (non-UK resident) company. The starting point is that the foreign company has to be carrying on a trade in all or part of the accounting period (subsection (1)(b)), and a person ("the avoided PE") is carrying on activity in the UK in connection with that trade (subsection 1(c)). The condition at subsection 1(e) applies if it is reasonable to assume that the avoided PE or foreign company (or both) designed any of their activity to avoid the carrying on a trade in the UK for corporation tax purposes. Further clarification on that is provided at subsection (4). Subsection 1(f) requires either or both of two further conditions to be met. These are explained at subsections (2) and (3). clause 86 does not apply if both the avoided PE and foreign company are small or medium-sized enterprises in accordance with the definition of the term at clause 114.

3. Subsection (2) sets out the requirements of "the mismatch condition", the first of the two further conditions mentioned at subsection 1(f), in terms of provision ("the material provision") made or imposed as between the foreign company and another person ("A"). The use of the term "provision" here is consistent with the transfer pricing rules at Part 4 of the Taxation (International and Other Provisions) Act 2010.

4. Subsection (3) sets out "the tax avoidance condition", the second of the two further conditions mentioned at subsection 1(f).

5. Subsection (4) provides clarification of a reference to activity of the avoided PE or the foreign company at subsection 1(e). It makes clear that the term includes any limitation agreed or imposed in respect of that activity.

6. Subsection (5) disapplies the clause where the foreign company would not be treated as carrying on a trade in the UK through a permanent establishment in the UK as a result of section 1142 ("Agent of independent status") or 1144 ("Alternative finance arrangements") of CTA 2010, and subsection (5)(b) applies. The further requirement of subsection (5)(b) is that, where section 1142(1) of CTA 2010 applies, the foreign company and avoided PE are not connected within the meaning of section 1122 of CTA 2010. This further requirement does not apply if the avoided PE is regarded for the purposes of section 1142(1) of CTA 2010

as an agent of independent status by virtue of section 1145, 1146 or 1151 of CTA 2010 (in relation to brokers, investment managers and Lloyd's agents respectively).

7. Subsection (6) extends the trading activities of the foreign company in subsection (1) to include the trading activities carried on by a partnership of which the foreign company is a member. This includes supplies made by the partnership in the course of trade, which are treated as being made by the foreign company in the course of its trade. A provision made or imposed as between the partnership and another person is to be regarded as made between the foreign company and the other person for the purposes of subsection (2)(a).

8. Subsection (7) provides a definition of "arrangements" for the purposes of the clause.

BACKGROUND NOTE

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 87: EXCEPTION FOR COMPANIES WITH LIMITED UK-RELATED SALES OR EXPENSES

SUMMARY

1. This clause sets out an exception from the application of clause 86 (“Avoidance of a UK taxable presence”) for companies that meet either of two threshold conditions that are related to the UK-related sales revenue and UK-related expenses of the foreign company or companies connected with the foreign company.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that clause 86 does not apply for an accounting period if the conditions in one or both of subsections (2) and (3) are met.

3. Subsection (2) defines the first condition. A foreign company meets this condition if the total of UK-related sales revenues made by it and connected companies in the accounting period does not exceed £10,000,000.

4. Subsection (3) defines the second condition. A foreign company meets this condition if the total UK-related expenses incurred by it and connected companies in the accounting period, do not exceed £1,000,000.

5. Subsection (4) sets out that where the accounting period is less than 12 months, the amounts in subsections (2) and (3) are to be reduced proportionally.

6. Subsection (5) defines expressions used in subsections (1) to (4) for the purposes of the clause.

7. Subsection (6) determines that the amounts of “revenues” and “expenses” during the accounting period are those which, in accordance with generally accepted accounting practice (“GAAP”), are recognised as revenue or expenses in the company’s profits and loss account or income statement for the period.

8. Subsection (7) explains how to apply subsection (6) where a company does not draw up accounts in accordance with GAAP for the relevant accounting period.

9. Subsection (8) states how “Generally accepted accounting practice” is to be construed.

10. Subsections (9) and (10) allow HM Treasury, by regulations, to amend the amounts set out in subsections (2) and (3).

BACKGROUND NOTE

11. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 88: CALCULATION OF TAXABLE DIVERTED PROFITS IN SECTION 10 CASE: INTRODUCTION

SUMMARY

1. This clause introduces the rules for calculating taxable diverted profits for an accounting period where clause 86 applies. It provides signposts to clauses 89, 90 and 91 which determine the taxable diverted profits. The clause also signposts clauses 93, 95 and 97 which determine how an HM Revenue & Customs officer estimates these profits in a preliminary notice or a charging notice. Subsections (4) to (9) define key expressions used in clauses 90 and 91.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out that if clause applies, then clauses 89, 90 and 91 determine the calculation of taxable diverted profits of the foreign company.

3. Subsection (2) signposts clause 97, which explains how a designated HM Revenue & Customs officer estimates profits when issuing a preliminary notice under clause 93 or a charging notice under clause 95.

4. Subsection (3) refers to subsections (4) to (10), which define key expressions used in clauses 89, 90 and 91

5. Subsection (4) imports the meaning of “the foreign company” from clause 86.

6. Subsection (5) defines “the notional PE profits”, in relation to an accounting period. These are the profits that would have been chargeable to UK corporation tax on the foreign company, being profits attributable to a trade carried on by that company through a permanent establishment in the UK had “the avoided PE” been a permanent establishment in the UK.

7. Subsection (6) defines “the material provision” which has the same meaning as stated in clause 86.

8. Subsection (7) defines “the relevant alternative provision”. This is defined as the provision that would have been made between connected companies if tax had not been a relevant consideration.

9. Subsection (8) states that for the purposes of subsection (7) making or imposing no provision is treated as making or imposing an alternative provision to the material provision.

10. Subsection (9) explains the circumstances in which “the actual provision condition” is met.

11. Subsection (10) defines the “relevant taxable income” of a company.

12. Subsection (11) defines a “connected company”.

13. Subsection (12) imports the meaning of “the mismatch condition” from clause 86.

BACKGROUND NOTE

14. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 89: SECTION 10: CALCULATION OF PROFITS WHERE ONLY TAX AVOIDANCE CONDITION IS MET

SUMMARY

1. This clause explains how to calculate the taxable diverted profits for an accounting period where clause 86 applies and the mismatch condition is not met.

DETAILS OF THE CLAUSE

2. Subsection (1) states that the clause applies where clause 86 applies for an accounting period and the mismatch condition is not met. The mismatch condition is defined in subsection (2) of clause 86.

3. Subsection (2) determines the taxable diverted profits that arise to the foreign company in the accounting period. These are equal to the notional PE profits for the period. The notional PE profits are defined in subsection (4) of clause 88.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 90: SECTION 10: MISMATCH CONDITION IS MET: CALCULATION OF PROFITS BY REFERENCE TO THE ACTUAL PROVISION

SUMMARY

1. This clause explains how to calculate the taxable diverted profits for an accounting period where clause 86 applies and both the mismatch condition and the actual provision condition are met.

DETAILS OF THE CLAUSE

2. Subsection (1) states that the clause applies where clause 86 applies for an accounting period, the "mismatch condition" is met and the "actual provision condition" is met. The "mismatch condition" is defined in subsection (2) of clause 86. The circumstances where the "actual provision condition" is met are defined in subsection (8) of clause 88.

3. Subsection (2) determines the tax diverted profits that arise in the accounting period to the foreign company. These are equal to the notional PE profits for the period. The notional PE profits are defined in subsection (4) of clause 88.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 91: SECTION 10: MISMATCH CONDITION IS MET: CALCULATION OF PROFITS BY REFERENCE TO THE RELEVANT ALTERNATIVE PROVISION

SUMMARY

1. This clause explains how to calculate the taxable diverted profits for an accounting period where the mismatch condition is met, but the actual provision condition is not met.

DETAILS OF THE CLAUSE

2. Subsection (1) states that the clause applies where clause 86 applies for an accounting period, the mismatch condition is met and the actual provision condition is not met. The mismatch condition is defined in subsection (2) of clause 86. The circumstances where the actual provision is met are set out in subsection (8) of clause 88.

3. Subsection (2) explains that the taxable diverted profits arising in the accounting period in relation to the material provision are determined in accordance with subsections (3) to (5).

4. Subsection (3) explains when subsection (4) applies to determine the taxable diverted profits. This is when the actual provision condition would have been met but for the fact that the relevant alternative provision would have resulted in relevant taxable income of a company in its corresponding accounting period. The relevant alternative provision is detailed in subsection (8) of clause 88.

5. Subsection (4) determines the taxable diverted profits that arise in the foreign company if subsection (3) applies. These are the notional PE profits for the accounting period, together with the total amount of any relevant taxable income of a company, for that company's corresponding accounting period, which would have resulted from the relevant alternative provision.

6. Subsection (5) determines the taxable diverted profits if subsection (4) does not apply, as being the sum of what would have been the notional PE profits of the foreign company and the relevant taxable income of a connected company.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 92: DUTY TO NOTIFY IF POTENTIALLY WITHIN SCOPE OF TAX

SUMMARY

1. This clause places a duty upon a company to notify an officer of HM Revenue and Customs (HMRC) if it is potentially within the scope of the diverted profits tax. The clause also sets out circumstances in which no duty to notify arises.

DETAILS OF THE CLAUSE

2. Subsection (1) obliges a company meeting the requirements of subsections (3) or (4) to notify an officer of HMRC if it has profits for an accounting period that might be within the scope of the diverted profits tax. This is subject to subsections (7) and (8).

3. Subsection (2) sets out how a notification must be made and the time within which it must be made.

4. Subsection (3) requires a company to notify if clause 80 or 81 applies to the company and the financial benefit of the tax reduction is significant relative to the non-tax benefits of the material provision.

5. Subsection (4) requires a company to notify if clause 86 applies to the company and, where clause 86 applies by reason of the mismatch condition being met, the financial benefit of the tax reduction is significant relative to the non-tax benefits of the material provision.

6. Subsection (5) makes a number of modifications to clause 86 and clause 110 for the purposes of subsections (3) and (4).

7. Subsection (6) defines the expression "non-tax benefits" for the purposes of subsections (3)(b) and (4)(b).

8. Subsection (7) sets out the circumstances in which there is no requirement to notify under subsection (1). These are: when it is reasonable for the company to conclude that no charge to the diverted profits tax will arise in the period (other than because a transfer pricing adjustment may in the future be made for corporation tax purposes); or an officer of HMRC has confirmed that the company does not have to notify an officer in the current period, because the company has provided information to HMRC and HMRC have examined this information in accordance with subparagraphs (b) (i) and (ii); or it is reasonable for the company to assume (absent a confirmation from an officer of HMRC) that it has provided sufficient information and HMRC have examined that information; or finally where, in the preceding period, notification was given in accordance with subsection (1), or was not required in accordance with paragraphs (b) or (c), and there have been no material changes in

circumstances in regard to whether a diverted profits tax may be imposed in the current period.

9. Subsection (8) allows the Commissioners for Her Majesty's Revenue and Customs to direct that there is no duty to notify under subsection (1) in relation to an accounting period in other circumstances.

10. Subsection (9) sets out further detail about what must be included in the notification.

BACKGROUND NOTE

11. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 93: PRELIMINARY NOTICE

SUMMARY

1. This clause governs the issue of a preliminary notice to a company if a designated HM Revenue & Customs officer believes the company to be within the scope of the diverted profits tax.

DETAILS OF THE CLAUSE

2. <u>Subsection (1)</u> requires a designated HM Revenue & Customs officer to issue a preliminary notice to a company for an accounting period where the officer has reason to believe the company is within the scope of the diverted profits tax because one or more of clauses 80, 81 or 86 apply.

3. <u>Subsection (2)</u> refers to clauses 96 and 97 for the purposes of calculating taxable diverted profits for the purposes of a preliminary notice.

4. <u>Subsection (3)</u> stipulates what information and explanations must be included in a preliminary notice.

5. <u>Subsection (4)</u> allows for the contents of the notice to be determined to the best of the designated HMRC officer's information and belief where the officer otherwise has insufficient information available to determine or identify the matters set out in subsection (3).

6. <u>Subsection (5)</u> sets a time limit of 24 months from the end of the accounting period in which to issue a preliminary notice for that accounting period. This time limit is subject to subsection (6).

7. <u>Subsection (6)</u> extends the time limit for issuing a preliminary notice to four years from the end of the relevant accounting period. Two conditions must be met. Firstly, no notification of potential liability has been received under clause 92 in respect of the accounting period. Secondly, a designated HMRC officer believes that an amount of diverted profits tax that ought to have been charged in relation to that accounting period has not been charged.

8. <u>Subsection (7)</u> requires a copy of the notice to be sent to "UKPE" where clause 81 applies. "UKPE" is the United Kingdom permanent establishment as defined in clause 81. A copy of the notice must be sent to "the avoided PE", where clause 86 applies. "The avoided PE" is the person defined as such in clause 86.

BACKGROUND NOTE

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 94: REPRESENTATIONS

SUMMARY

1. This clause allows a company receiving a preliminary notice to make representations to the designated HM Revenue & Customs (HMRC) officer in respect of that notice and governs the scope and handling of those representations.

DETAILS OF THE CLAUSE

2. Subsection (2) allows written representations to be made within 30 days from the issue of a preliminary notice. Properly made representations must be considered by a designated officer before determining whether to issue a charging notice (see subsection (2) of clause 95).

3. Subsection (3) provides that the designated HMRC officer may consider representations only if they are made on the grounds listed.

4. Subsection (4) provides that the designated HMRC officer is not required to consider representations that relate to certain matters even if the representations would otherwise fall within subsection (3). This exclusion does not apply to arithmetical errors within subsection (3)(a). This subsection does not restrict the representations an officer can consider under clause 101 "HMRC review of charging notice" (see subsection (14) of that clause).

5. Subsection (5) defines "the small or medium-sized enterprise requirement" for the purposes of subsection (3)(b).

6. Subsection (6) defines "the participation condition" for the purposes of subsection (3)(d)(ii).

7. Subsection (7) defines the "80% payment test" for the purposes of subsection (3)(c)(ii) and (d)(ii).

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 95: CHARGING NOTICE

SUMMARY

1. This clause provides for the issue of a charging notice to a company that has been given a preliminary notice and following consideration of any representations under clause 94.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that this clause applies where a designated HMRC officer has given a company a preliminary notice under clause 93.

3. Subsection (2) provides for the issue of a charging notice to the company for the accounting period covered by the preliminary notice. Having considered any representations under clause 94, a designated HMRC officer must either issue a charging notice or notify the company that no such charging notice will be issued. This must be done within 30 days from the end of the 30 day period allowed for representations under clause 94 (whether or not any such representations have been made).

4. Subsection (3) allows a charging notice to be issued for an accounting period, notwithstanding that the company has been notified under subsection (2) that no charging notice will be issued for that accounting period, where that charging notice is pursuant to a different preliminary notice issued in respect of that same accounting period.

5. Subsection (4) refers to clause 96 and clause 97 for provision about the calculation of taxable diverted profits.

6. Subsection (5) stipulates what information and explanations must be included in the charging notice.

7. Subsection (6) provides that where a charging notice is issued to a company, a copy of the notice must be sent to “UKPE” where clause 81 applies. “UKPE” is the United Kingdom permanent establishment as defined in clause 81. A copy of the notice must be sent to “the avoided PE”, where clause 86 applies. “The avoided PE” is the person defined as such in clause 86.

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 96: SECTION 4 OR 5 CASES: ESTIMATING PROFITS FOR PRELIMINARY AND CHARGING NOTICES

SUMMARY

1. This clause explains how the taxable diverted profits specified in a preliminary notice or charging notice are to be estimated where clauses 80 or 81 apply. For cases within clause 86 (non-UK company avoiding a UK taxable presence), see clause 97.

DETAILS OF THE CLAUSE

2. Subsection (1) prescribes the circumstances in which the taxable diverted profits specified in a preliminary notice or charging notice must be determined in accordance with this clause. The circumstances are where clause 80 or clause 81 applies in relation to a company for an accounting period.

3. Subsection (2) provides that the taxable diverted profits are the amount calculated in accordance with clauses 84 or 85, on the basis of the best estimate that the designated officer can reasonably make at the time the notice is to be issued. This is subject to subsections (4) to (6).

4. Subsection (3) sets out "the inflated expenses condition". This condition applies where expenses have been deducted in computing taxable profits, those expenses contribute to an "effective tax mismatch outcome", and the designated HMRC officer considers that those expenses are greater than they would have been in a transaction between independent persons at arm's length.

5. Subsection (4) sets out the conditions under which subsection (5) will apply. It applies when the inflated expenses condition is met and it is reasonable to assume that clause 84 or subsection (4) of clause 85 applies.

6. Subsection (5) provides that, where the conditions under subsection (4) are met, the best estimate made in accordance with subsection (2) is to be made by reducing by 30% the relevant expenses included in the deduction mentioned in subsection (3)(a) and ignoring the transfer pricing rules at Part 4 Taxation (International and Other Provisions) Act 2010.

7. Subsection (6) allows for the adjustment required by subsection (5)(a) to take into account a transfer pricing adjustment under Part 4 TIOPA 2010 to the deduction for expenses if reflected in a company's tax return prior to the issue of the charging notice. The 30% reduction is adjusted accordingly, but cannot be adjusted below nil.

8. Subsection (7) modifies clauses 83(3) and 84(2)(a) for the purposes of this clause.

9. Subsection (8) gives HM Treasury the power to make regulations to modify the percentage specified in subsection (5)(a).

10. Subsection (10) sets out the meaning of “the material provision” and “the relevant expenses”.

BACKGROUND NOTE

11. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 97: SECTION 10 CASES: ESTIMATING PROFITS FOR PRELIMINARY AND CHARGING NOTICES

SUMMARY

1. Clause 97 explains how the taxable diverted profits specified in a preliminary notice or charging notice are to be estimated where clause 86 applies. For cases within clauses 80 and 81see clause 96.

DETAILS OF THE CLAUSE

2. Subsection (1) prescribes the circumstances in which the taxable diverted profits specified in a preliminary notice or charging notice must be determined in accordance with this clause. The circumstances are where the taxable diverted profits fall to be determined under clause 89, 90 or 91.

3. Subsection (2) provides that the taxable diverted profits are the amount calculated in accordance with clauses 89, 90 or 91, on the basis of the best estimate that the designated officer can reasonably make at the time the notice is to be issued. This is subject to subsections (4) and (5).

4. Subsection (3) sets out "the inflated expenses condition". This condition applies where the mismatch condition is met, expenses would be allowed in computing notional PE profits (ignoring transfer pricing adjustments), those expenses contribute to an "effective tax mismatch outcome", and the designated HMRC officer considers that those expenses are greater than they would have been in a transaction between independent persons at arm's length.

5. Subsection (4) sets out the conditions under which subsection (5) applies. It applies when the inflated expenses condition is met and it is reasonable to assume that clause 89 or clause 91(4) applies.

6. Subsection (5) requires that, where the conditions under subsection (4) are met, the best estimate made in accordance with subsection (2) is to be made by reducing by 30% the relevant expenses included in the deduction mentioned in subsection 3(b) and ignoring the transfer pricing rules at Part 4 Taxation (International and Other Provision) Act 2010.

7. Subsection (6) permits HM Treasury to make regulations amending the percentage for the purpose of subsection (5).

8. Subsection (8) provides definitions.

BACKGROUND NOTE

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 98, SCHEDULE 16: PAYMENT OF TAX

SUMMARY

1. This clause and Schedule govern the payment and recovery of tax payable under a charging notice.

DETAILS OF THE CLAUSE

2. Subsection (1) applies the clause when a charging notice is issued.

3. Subsection (2) requires the payment of diverted profits tax within 30 days after the day the charging notice is issued.

4. Subsection (3) makes the company to which the notice is issued liable for payment of the tax (but see also Schedule 1).

5. Subsection (4) prevents postponement of payment of the tax on any grounds. The subsection makes clear that this means the tax is due and payable regardless of whether it is subject to review under clause 101, or subject to an appeal in respect of the notice.

6. Subsection (5) introduces Schedule 1.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 99: DIVERTED PROFITS TAX IGNORED FOR TAX PURPOSES

SUMMARY

1. This clause stipulates that diverted profits tax is not to be taken into account for the purposes of income tax or corporation tax.

DETAILS OF THE CLAUSE

2. Subsection (1) prevents diverted profits tax from giving rise to a deduction or other relief when calculating income, profits, or losses for any tax purposes. It also prevents account being taken of any amount paid (directly or indirectly) by a person for the purposes of meeting, or reimbursing the cost of diverted profits tax.

3. Subsection (2) prevents any amount paid as mentioned in subsection (1)(b) from being treated as a distribution within the meaning of the Corporation Tax Act 2010.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 100: CREDIT FOR UK OR FOREIGN TAX ON SAME PROFITS

SUMMARY

1. This clause makes provision for credit to be given against a liability to diverted profits tax for certain UK and foreign taxes, or controlled foreign company (CFC) charges or foreign equivalents, in defined circumstances.

DETAILS OF THE CLAUSE

2. Subsection (1) applies subsection (2) where a company has paid corporation tax or equivalent foreign taxes by reference to its profits.

3. Subsection (2) permits a just and reasonable credit for the tax referred to in subsection (1) to be given against a liability to diverted profits tax, where both taxes are in respect of the same profits. The credit is allowed against the diverted profits tax charge of the company that has paid the tax referred to in subsection (1), or against the diverted profits tax charge that another company has in respect of the profits on which the tax referred to in subsection (1) was paid.

4. Subsection (3) applies subsection (4) where a company has paid a CFC charge (or similar foreign tax charge) which is calculated by reference to profits of another company.

5. Subsection (4) permits a just and reasonable credit for tax referred to in subsection (3) to be given against a liability to diverted profits tax, where both taxes are in respect of the same profits.

6. Subsection (5) prescribes two circumstances in which no credit may be given under this clause against a liability to diverted profits tax. Firstly, no credit may be given for any tax paid after the end of the review period in respect of the charging notice which imposed the charge to diverted profits tax. Secondly, where the charge to diverted profits tax was imposed by a supplementary charging notice, no credit may be given for any tax paid after the review period within which that notice was issued.

7. Subsections (6) and (7) treat withholding tax, for the purposes of subsection (1), as corporation tax (or a corresponding overseas tax) paid by the person receiving the payments on which the tax is withheld (rather than as tax paid by the person making those payments), provided the withholding tax is not refunded, and explain when withholding tax is refunded for these purposes.

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 101: HMRC REVIEW OF CHARGING NOTICE

SUMMARY

1. This clause sets out and governs the process under which a designated HM Revenue & Customs (HMRC) officer must review a charge to diverted profits tax and may amend a charging notice or issue a supplementary charging notice.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that, where a charging notice has been issued to a company, a designated HMRC officer must carry out a review of the total amount of taxable diverted profits included in that notice and may carry out more than one such review. The review(s) must be completed within the period defined in subsection (2).

3. Subsection (2) defines "the review period" as the 12 months starting after the period allowed for payment of the tax by subsection (2) of clause 98. This is subject to subsection (13) which allows the review period to be terminated early in certain circumstances.

4. Subsection (3) sets out the circumstances in which subsection (4) applies. The company must have paid in full the diverted tax due under the charging notice, and the designated officer must be satisfied that the charge is excessive.

5. Subsection (4) permits (subject to subsection (3)) a designated HMRC officer to issue an amending notice to reduce the amount of diverted profits tax payable.

6. Subsections (5) and (6) set out that the designated HMRC officer may issue more than one amending notice and that where such a notice is issued any tax overpaid must be repaid.

7. Subsection (7) sets out that subsection (8) applies where a designated officer is satisfied that the diverted profits tax charge for the accounting period is insufficient.

8. Subsection (8) permits (subject to subsection (7)) the designated officer to issue a "supplementary charging notice" imposing an additional charge to diverted profits tax.

9. Subsection (9) prohibits more than one supplementary charging notice to be issued in respect of any existing charging notice.

10. Subsection (10) prevents the issuing of a supplementary charging notice during the last 30 days of the review period.

11. Subsection (11) allows amending notices to be issued in respect of a supplementary charging notice in the same way as they can for charging notices.

12. Subsection (12) extends the rules governing the contents and consequences of a charging notice to also apply to a supplementary charging notice.

13. Subsection (13) permits the review period to be terminated early in two circumstances. Firstly, where a supplementary charging notice has been issued, the company may unilaterally terminate the review period. Secondly, at any time, a designated officer and the company may terminate the review period by agreement.

14. Subsection (14) provides that, when carrying out a review under this clause to determine if the taxable diverted profits charged on a company for an accounting period are too high or low, the designated HMRC officer must disregard the special provisions in clauses 96 and 97. The subsection also makes clear that any representations that a designated HMRC officer may consider during the review are not limited by clause 94.

15. Subsection (15) provides that where a supplementary charging notice or amending notice is issued to a company, a copy of the notice must be sent to “UKPE” where clause 81 applies. “UKPE” is the United Kingdom permanent establishment as defined in clause 81. A copy of the notice must be sent to “the avoided PE”, where clause 86 applies. “The avoided PE” is the person defined as such in clause 86.

BACKGROUND NOTE

16. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 102: APPEAL AGAINST CHARGING NOTICE OR SUPPLEMENTARY CHARGING NOTICE

SUMMARY

1. This clause governs appeals against charging notices and supplementary charging notices.

DETAILS OF THE CLAUSE

2. Subsection (1) gives a company to which a charging notice or supplementary charging notice is issued a right of appeal against the notice.

3. Subsection (2) provides that an appeal under subsection 1 must be made in writing to HM Revenue & Customs within 30 days after the end of the review period. The end of the review period is determined by reference to subsections (2) and (13) of clause 101.

4. Subsection (3) requires the grounds of appeal to be specified.

5. Subsection (4) stipulates that, when determining for the purposes of an appeal whether the taxable diverted profits have been correctly calculated, the special rules in clause 96 and 97 must be disregarded.

6. Subsection (5) sets out that the Tribunal in deciding the appeal, may confirm, amend, or cancel the appealed charging notice or supplementary charging notice.

7. Subsection (6) sets out that an appeal under this clause is to be treated as if it were an appeal under the Taxes Acts.

8. Subsection (7) clarifies that subsection (6) does not override the rule that diverted profits tax cannot be postponed (see subsection (4) of clause 98).

BACKGROUND NOTE

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 103: RESPONSIBILITY FOR COLLECTION AND MANAGEMENT

SUMMARY

1. This clause assigns responsibility for the collection and management of the diverted profits tax.

DETAILS OF THE CLAUSE

2. This clause makes the Commissioners for HM Revenue & Customs responsible for collection and management of the diverted profits tax.

BACKGROUND NOTE

3. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 104: PENALTIES ETC

SUMMARY

1. This clause amends other enactments to apply penalty provisions to the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsections (1) to (3) amend Schedule 56 to the Finance Act 2009 to apply penalties for failure to make payments of the diverted profits tax on time.

3. Subsections (4) to (6) amend Schedule 41 to the Finance Act 2008 to apply penalties for failure by a company to notify that it is within the scope of the diverted profits tax.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 105: INFORMATION AND INSPECTION POWERS ETC

SUMMARY

1. This clause amends other enactments to allow existing information and inspection powers to be used for the purposes of the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsection (1) amends Schedule 23 to the Finance Act 2011 so that HMRC's data-gathering powers applies to the diverted profits tax.

3. Subsection (2) amends Schedule 36 to the Finance Act 2008 so that HM Revenue & Customs (HMRC)'s information and inspection powers apply to the diverted profits tax.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 106: "THE PARTICIPATION CONDITION"

SUMMARY

1. This clause sets out the requirements for the participation condition to be met between "the first party" and "the second party" (as defined) for the purposes of clauses 80 and 86.

DETAILS OF THE CLAUSE

2. Subsection (2) sets out the meaning of "the first party" and "the second party". For the purposes of clause 80 these are, respectively, the UK-resident company ("C") and another person ("P"). For the purposes of clause 86 these are, respectively, the foreign company and another person ("A").

3. Subsection (3) provides that the participation condition is met if condition A is met in relation to the material provision, so far as that provision is one relating to financing arrangements, and condition B is met in relation to the material provision, so far as that provision is not one relating to financing arrangements.

4. Subsection (4) sets out condition A, which considers the relationship between the parties at the time the material provision was made or imposed, or within the period of 6 months beginning with the day the material provision was made or imposed.

5. Subsection (5) sets out condition B which considers the relationship between the parties at the time the material provision was made or imposed.

6. Subsection (6) defines the term "financing arrangements".

7. Subsection (7) provides for section 157(2) of the Taxation (International and Other Provisions) Act 2010 to apply for the purposes of the clause and for sections 158 to 163 of that Act to apply in relation to subsections (4) and (5).

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 107: "EFFECTIVE TAX MISMATCH OUTCOME"

SUMMARY

1. This clause describes the effective tax mismatch outcome which is a condition at subsection (1) of clause 80 and subsection (2) of clause 86.

DETAILS OF THE CLAUSE

2. Subsection (2) sets out the meaning of "the first party" and "the second party". For the purposes of clause 80 these are, respectively, the UK-resident company ("C") and another person ("P"). For the purposes of clause 86 these are, respectively, the foreign company and another person ("A").

3. Subsection (3) sets out the conditions which result in an effective tax mismatch outcome for an accounting period.

4. Subsection (4) defines "the tax reduction" by reference to subsection (3)(b).

5. Subsection (5) specifies that, for the purpose of the effective tax mismatch outcome, it does not matter whether the tax reduction results from the application of different tax rates, the operation of a relief, the exclusion of any amount from a charge to tax, or another reason.

6. Subsection (6) describes the cases in which a material provision which might otherwise result in an effective tax mismatch outcome is exempted from doing so. These are where the result arises solely by reason of: employer contributions to a qualifying pension scheme; a payment to a charity; a payment to a person entitled to sovereign immunity in respect of a relevant tax; and certain investment funds, provided they meet the conditions set out in subparagraph (d)(i) or (ii).

7. Subsection (7) sets out the conditions under which "the 80% payment test" is met, for the purposes of subsection (3)(d).

8. Subsection (8) defines "authorised investment fund", "employer", "genuine diversity of ownership condition", "offshore fund", "overseas pension scheme", "registered pension scheme", and "relevant tax" for the purposes of the clause.

9. Subsection (9) signposts clause 108 for further provisions relevant to the application of this clause.

BACKGROUND NOTE

10. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 108: PROVISION SUPPLEMENTING SECTION 31

SUMMARY

1. This clause provides contains provisions that are supplementary to clause 107.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the formula for calculating the tax reduction of the first party of the purposes of clause 107(3)(b) and (7).

3. Subsection (2) specifies for the purposes of clause 107(3)(b) and (7) the assumptions that must be made in determining the resulting increase in the second party's total liability to relevant taxes.

4. Subsection (3) identifies the steps taken to minimise the tax liability that would fall to be paid by the second party for the purpose of the assumptions required to be made under subsection 2(c).

5. Subsection (4) provides that, for the purposes of this clause, any withholding tax that falls to be paid in relation to payments made to the second party is (as long as it is not refunded) treated as tax that falls to be paid by the second party, and not the person making the payment.

6. Subsection (5) sets out, for the purposes of this clause, the conditions under which an amount of tax is considered to be refunded. It also provides that the refunded amount is ignored if it results from qualifying loss relief. Qualifying loss relief is defined in subsection (7).

7. Subsection (6) applies where the second party is a partnership and extends any references to the partnership's liability to tax, to tax being payable by the partnership, and to loss relief obtained by the partnership to include references to those things being liabilities of, tax payable by and loss relief obtained by, as specified, all or any of the members of the partnership.

8. Subsection (7) defines "the first party", "the second party", "qualifying deduction", "qualifying loss relief", and "relevant tax" for the purposes of the clause.

BACKGROUND NOTE

9. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 109: "EXCEPTED LOAN RELATIONSHIP OUTCOME"

SUMMARY

1. This clause explains when an effective tax mismatch outcome is an "excepted loan relationship outcome" for the purposes of clause 80 and clause 86.

DETAILS OF THE CLAUSE

2. Subsection (1) applies the clause for the purposes of clause 80 and clause 86.

3. Subsection (2) provides the definition of an "excepted loan relationship outcome" by reference to Parts 5 and 7 of CTA 2009.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 110: "THE INSUFFICIENT ECONOMIC SUBSTANCE CONDITION"

SUMMARY

1. This clause sets out the conditions under which the insufficient economic substance condition, which is required to be met for clause 80 or for subsection (2) of clause 86, is met.

DETAILS OF THE CLAUSE

2. Subsection (2) sets out the meaning of "the first party" and "the second party" For the purposes of clause 80 these are, respectively, the UK-resident company ("C") and another person ("P"). For the purposes of clause 86 these are, respectively, the foreign company and another person ("A").

3. Subsection (3) provides that the "insufficient economic substance condition" is met where one of more of subsections (4) to (6) apply.

4. Subsections (4) and (5) apply where the material provision that gives the effective tax mismatch outcome is made or imposed by means of a single transaction or a series of transactions. It requires a comparison of the financial benefit of the tax reduction with any other financial benefit referable to the transaction or transactions, for the first and second parties taken together. The "tax reduction" has the meaning given by subsection 4 of clause 107. It must also be reasonable to assume that the transaction was designed to secure the tax reduction, subject to the clarification provided at subsection (9).

5. Subsection (6) applies where a person that is party to a transaction or to one or more transactions in a series, to which subsection (b) of clause 80 or subsection (2)(a) of clause 86 refers, and it is reasonable to assume that the person's involvement in the transaction or transactions was designed to secure the tax reduction, unless one or both of the conditions in subsection (7) is met.

6. Subsection (7) sets out the conditions referred to in subsection (6). These test the person's contribution of economic value to the transaction or series of transactions by reference to the functions or activities that its staff perform and compare this to the value of the financial benefit of the tax reduction.

7. Subsection (8) sets out who is included in a person's staff for the purposes of subsection (7).

8. Subsection (9) describes the circumstances to which regard must be had when determining that a transaction or transactions are designed to secure a tax reduction and makes clear that a transaction or transactions may be designed to secure that end even though they may also have been designed to secure other ends.

9. Subsection (10) sets out the meaning of other defined terms used in the clause.

BACKGROUND NOTE

10. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 111: "TRANSACTION" AND "SERIES OF TRANSACTIONS"

SUMMARY

1. This clause defines "transaction" and "series of transactions" as those terms are used in Part 1.

DETAILS OF THE CLAUSE

2. Subsection (1) defines "transaction".

3. Subsection (2) defines "series of transactions".

4. Subsection (3) provides that none of the matters set out in subsection (4) will prevent a series of transactions from being regarded as constituting the means by which provision has been made or imposed between any two persons.

5. Subsection (4) lists at (a) to (c) the matters referred to in subsection (3).

6. Subsection (5) defines "arrangement" for the purposes of clause 111.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 112: TREATMENT OF A PERSON WHO IS A MEMBER OF A PARTNERSHIP

SUMMARY

1. This clause applies where a person is a member of a partnership.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) provide that, where a person is a member of a partnership, references to the expenses, income or revenue, or a reduction in income, of the person includes references to the person's share of the expenses, income or revenue, or a reduction in the income, of the partnership.

3. Subsection (3) defines what is meant by "the person's share".

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 113: "ACCOUNTING PERIOD" AND "CORRESPONDING ACCOUNTING PERIOD"

SUMMARY

1. This clause defines what is meant by an "accounting period", "accounting periods", or "corresponding accounting period"; and treats a non-UK resident company as having accounting periods under certain conditions.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that references to an accounting period of a company mean the accounting period of the company for the purposes of corporation tax.

3. Subsection (2) sets out conditions that must be met for subsection (3) to apply to a non-UK resident company which is not within the charge to corporation tax.

4. Subsection (3) sets out that if the conditions in subsection (2) are met, the company is treated as having such accounting periods for corporation tax purposes as it would have had if it carried on a trade in the UK through a permanent establishment in the UK, by reason of the activity of the avoided PE, as that term is used in clause 86.

5. Subsection (4) supplements the conditions set out in subsection (3).

6. Subsection (5) allows a designated HM Revenue & Customs officer to determine the accounting periods of a non-UK resident company to the best of the officer's information and belief, where there is insufficient information to identify the accounting periods in accordance with subsection (2).

7. Subsection (6) defines the corresponding accounting period.

BACKGROUND NOTE

8. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 114: OTHER DEFINED TERMS IN PART 3

SUMMARY

1. This clause defines various terms used in this Part.

DETAILS OF THE CLAUSE

2. Subsection (1) defines various terms.

3. Subsection (2) provides that, for the purposes of this Part, a tax having the characteristics set out at (a) or (b) may be considered to correspond to corporation tax.

BACKGROUND NOTE

4. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base

EXPLANATORY NOTE

CLAUSE 115: APPLICATION OF OTHER ENACTMENTS TO DIVERTED PROFITS TAX

SUMMARY

1. This clause applies certain other enactments to the diverted profits tax.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 206(3) of the Finance Act 2013, to add the diverted profits tax to the taxes to which the general anti-abuse rule applies.

3. Subsection (2) amends paragraph 7 of Schedule 6 to the Finance Act 2010, to add the diverted profits tax to enactments to which definition of "charity" in Part 1 of that Schedule applies.

4. Subsection (3) amends section 1139 of the Corporation Tax Act 2009 to add to the definition of "tax advantage" the avoidance or reduction of a charge to diverted profits tax.

5. Subsection (4) amends section 178 of the Finance Act 1989, so that it applies for the purposes of clause 79.

6. Subsection (5) amends section 1 of the Provisional Collection of Taxes Act 1968, so that it applies for the purposes of diverted profits tax.

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 116: COMMENCEMENT AND TRANSITIONAL PROVISION

SUMMARY

1. This clause provides for the diverted profits tax to come into effect on 1 April 2015 and establishes transitional arrangements for accounting periods which straddle the effective date.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the diverted profits tax will have effect for accounting periods starting on or after 1 April 2015.

3. Subsection (2) sets out transitional arrangements for accounting periods that start before but end on or after 1 April 2015. The subsection provides for the part of the accounting period that falls before 1 April 2015 and the part that falls on or after that date to be treated as separate accounting periods and for the profits of the whole accounting period to be apportioned between them on a just and reasonable basis.

4. Subsection (3) extends the notification period in clause 92(2)(b) to 6 months for accounting periods that end on or before 31 March 2016.

5. Subsection (4) ensures the commencement provisions for Lloyd's corporate members do not include profits referable to times before 1 April 2015.

6. Subsection (5) defines a "Lloyd's corporate member" for subsection (4)

BACKGROUND NOTE

7. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

SCHEDULE 16: RECOVERY OF UNPAID DIVERTED PROFITS TAX DUE FROM NON-UK RESIDENT COMPANY

SUMMARY

1. This Schedule sets out provisions for the recovery of diverted profits tax from the UK-representative of a non-UK resident company and from any company that is related to the non-resident company.

DETAILS OF THE SCHEDULE

Part 1

2. Part 1 of the Schedule applies, with some modifications, the provisions of Chapter 6 of Part 22 of the Corporation Tax Act 2010 (collection, etc. of tax from UK representatives of non-UK resident companies) to the recovery of diverted profits tax.

Paragraph 1

3. This paragraph ensures that Chapter 6 of Part 22 of Corporation Tax Act 2010 has effect in relation to diverted profits tax and interest on diverted profits tax.

4. Sub-paragraph (2) introduces sub-paragraphs 3 to 5, which modify the application of Chapter 6 of Part 22 of Corporation Tax Act 2010 in relation to diverted profits tax.

5. Sub-paragraph (3) applies Chapter 6 of Part 22 "the avoided PE" (within the meaning of clause 86), as it would apply to a permanent establishment in the United Kingdom through which the company carries on a trade.

6. Sub-paragraph (4) allows for references to "chargeable profits of the company attributable to that establishment", within section 969(3) of the chapter, to be read as references to "taxable diverted profits arising to the company…" for the purposes of the application of the chapter to diverted profits tax.

7. Sub-paragraph (5) provides that references to the giving or service of a notice in section 971 of the Corporation Tax Act 2010 include a reference to the giving of a notice.

Part 2

8. Part 2 of the Schedule enables unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

Paragraph 2

9. Sub-paragraph (1) applies the Schedule where an amount of diverted profits tax has been charged on a non-UK resident company for an accounting period and the whole or any part of that amount is unpaid at the end of the due and payable date.

10. Sub-paragraph (2) defines "the taxpayer company" for the purposes of Part 2 of the Schedule as the non-UK resident company described in sub-paragraph (1).

Paragraph 3

11. This paragraph defines what is meant by "the relevant period" for the purposes of Part 2 of the Schedule.

Paragraph 4

12. This paragraph defines what is meant by a "related company" for the purposes of Part 2 of the Schedule.

13. Sub-paragraph (1) defines a "related company" by reference to group and consortium relationships.

14. Sub-paragraph (2) defines when two companies are members of the same group, for the purposes of sub-paragraph (1)(a).

15. Sub-paragraph (3) defines when two companies are members of the same group, for the purposes of sub-paragraph (1)(c).

16. Sub-paragraph (4) defines when a company is a member of a consortium or owned by a consortium for the purposes of Part 2 of the Schedule.

17. Sub-paragraph 5 provides that "51% subsidiary" in paragraph 4 has the same meaning as in section 1154 Corporation Tax Act 2010.

Paragraph 5

18. This paragraph governs the serving of notices on related companies for the recovery of diverted profits tax.

19. Sub-paragraph (1) allows a notice to be served on a related company, requiring the payment of diverted profits tax (or in a consortium case the proportion of that tax provided for by paragraph 7) within 30 days of the service of the notice.

20. Sub-paragraph (2) stipulates what information must be included in the notice.

21. Sub-paragraph (3) gives effect to the notice as if it were a charging notice and as if the amount recoverable under the notice were diverted profits tax charged on the company on which the notice is served.

22. Sub-paragraph (4) defines “consortium case” for the purposes of Part 2 of the Schedule.

Paragraph 6

23. This paragraph sets a time limit for the serving of a notice under Part 2 of the Schedule of three years beginning with the date when the charging notice or supplementary charging notice was issued.

Paragraph 7

24. This paragraph sets out rules for the calculation of the amount recoverable from a related company in a consortium case.

25. Sub-paragraph (1) establishes the amount that a related company may be required to pay by notice under Part 2 of the Schedule by reference to the group and consortium relationship categories in paragraph 4(1).

26. Sub-paragraph (2) provides that, for the purposes of paragraph 7, a member’s share in a consortium is the lower of the percentages set out in sub-paragraph (3)(a)-(c).

27. Sub-paragraph (3) sets out the three percentage measures referred to in sub-paragraph (2).

28. Sub-paragraph (4) requires the calculation of an average percentage where the percentages set out above have fluctuated during the relevant period.

29. Sub-paragraph (5) applies Chapter 6 of Part 5 of the Corporation Tax Act 2010 for the purposes of sub-paragraph (3), as it is applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of the Corporation Tax Act 2010.

Paragraph 8

30. Sub-paragraph (1) allows a company that has paid an amount in pursuance of a notice under Part 2 of the Schedule to recover that amount from the taxpayer company.

31. Sub-paragraph (2) prevents a payment made in pursuance of a notice under Part 2 of the Schedule from being allowed as a deduction in calculating income, profits, or losses, for any tax purpose.

BACKGROUND NOTE

32. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

EXPLANATORY NOTE

CLAUSE 117, SCHEDULE 17: DISCLOSURE OF TAX AVOIDANCE SCHEMES

SUMMARY

1. This clause and Schedule makes changes to the Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of the Finance Act (FA) 2004. In particular it changes the information that employers must provide to employees and to HM Revenue & Customs (HMRC) in relation to avoidance involving their employees. It provides HMRC with a power to identify users of undisclosed avoidance schemes, increases the penalty for users who do not comply with their reporting requirements under DOTAS and introduces protection for those wishing to voluntarily provide information about potential failures to comply with the DOTAS. It also introduces a requirement, under which promoters of tax avoidance schemes must notify HMRC of relevant changes to notified schemes and provides for HMRC to publish information about promoters and schemes that are notified under the regime.

2. These changes will be introduced by Finance Bill 2015 and take effect from Royal Assent to the Bill, to improve the information provided to users of tax avoidance schemes and to HMRC and to improve compliance with the DOTAS regime more generally.

DETAILS OF THE SCHEDULE

3. Paragraph 1 introduces a new section 310C into FA 2004. It requires promoters to notify HMRC within 30 days if the name of a scheme, or the name or address of a promoter, changes after a reference number has been issued under section 311 of FA 2004. Subsections (4), (5) and (6) of section 310C address the position where there is more than one promoter in relation to the notified scheme. A promoter is only obliged to provide information about changes to a promoter's details that apply specifically to itself and the requirement on a promoter to provide information is satisfied if that information has been provided by another promoter.

4. Paragraph 3 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 310C of FA 2004.

5. Paragraph 4 amends section 311(1) of FA 2004 to increase the period within which HMRC may allocate a reference number to notifiable proposals or arrangements from 30 to 90 days.

6. Paragraph 5 introduces a new subsection (2A) into section 312A of FA 2004. It requires that where an employer receives, or might reasonably be expected to receive, a tax

advantage from notifiable arrangements relating to an employee's employment, the employer must provide prescribed information to the employee.

7. Paragraph 8 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 312A(2A) of FA 2004.

8. Paragraph 9 introduces a new section 313ZC into FA 2004. It requires employers to provide HMRC with prescribed information at the prescribed time about each employee to whom they have provided information in accordance with section 312A of FA 2004. The duty on the employees to provide similar information under section 313 of FA 2004 is disapplied in Regulations in circumstances where section 313ZC of FA 2004 applies.

9. Paragraph 6 amends section 313 of FA 2004, as a consequence of the changes made in paragraph 9, so that the requirements of section 313 of FA 2004 can be disappplied in Regulations in cases where an employer is required to provide prescribed information about employees under new section 313ZC of FA 2004.

10. Paragraph 11 amends section 98C of the Taxes Management Act 1970 to introduce penalties where a person has failed to provide information required under section 313ZC of FA 2004.

11. Paragraph 12 amends section 313C of FA 2004. It enables HMRC to require a person suspected of being an introducer in relation to a notifiable proposal to provide prescribed information about those with whom they have made a marketing contact within the meaning of section 307(4B) of FA 2004.

12. Paragraph 13 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 313C of FA 2004.

13. Paragraph 14 introduces a new section 316A into FA 2004. It enables HMRC to include information not directly related to the reference number issued under section 311 of FA 2004 on the form which promoters or other persons must use to provide that number to other persons under section 312 or section 312A of FA 2004.

14. Paragraph 15 amends section 98C of the Taxes Management Act 1970 to provide for penalties where a person has failed to provide information required under section 316A of FA 2004.

15. Paragraph 16 introduces a new section 316B into FA 2004. It enables persons to voluntarily provide information or documents to HMRC which they suspect may assist HMRC in determining whether there has been a breach of any of the requirements of Part 7 of FA 2004.

16. Paragraph 17 introduces a new section 316C into FA 2004. It enables HMRC to publish information about promoters and schemes that are notified under Part 7 of FA 2004 and which have been issued with a reference number under section 311 of FA 2004. HMRC

must inform a promoter before publishing any information which would identify that person as a promoter and may not publish any information that will identify scheme users.

17. Paragraph 17 also introduces a new section 316D into FA 2004. It requires HMRC to publish information about court rulings that are relevant to the earlier publication of information under section 316C of FA 2004 and to publish it in the same manner as the original publication.

18. Paragraph 18 amends section 98C(3) of the Taxes Management Act 1970. It increases the penalties for users of tax avoidance schemes who fail to correctly provide information about the reference number to HMRC under section 313 of FA 2004. The penalties are increased to an amount not exceeding £5,000, £7,500 and £10,000 for each of the three categories of failures mentioned in that subsection.

19. Paragraph 19 sets out transitional provisions for new section 310C of FA 2004. The new section takes effect only for schemes which are notified under section 308 and issued with a reference number under section 311 of FA 2004 on or after the day on which Finance Act 2015 is passed.

20. Paragraph 20 sets out transitional provisions for section 312A(4) of FA 2004. It treats any notice given under section 312A(4) of FA 2004 before Finance Act 2015 is passed as given also in relation to section 312A(2A) of FA 2004.

21. Paragraph 21 sets out transitional provisions for new section 316C of FA 2004. The new section takes effect only for schemes which are notified and issued with a reference number under section 311 of FA 2004 on or after the day on which Finance Act 2015 is passed, and in relation to court rulings given on or after that day.

BACKGROUND NOTE

22. The Disclosure of Tax Avoidance Schemes (DOTAS) legislation in Part 7 of FA 2004 is designed to give HMRC early warning of tax avoidance schemes. This provides HMRC with the opportunity to consider changes in the law to close loopholes and to challenge schemes that it believes do not work. It requires a person, usually the person who designs or sells the tax avoidance scheme, to provide details of their scheme to HMRC if it meets certain criteria. The changes being made will improve the information provided to HMRC and to users of tax avoidance schemes as well as improving compliance with the DOTAS regime more generally. The publication of information about promoters and schemes notified under the regime and issued with reference number will help would-be users to better understand the serious risks they face when getting involved with tax avoidance.

EXPLANATORY NOTE

CLAUSE 118, SCHEDULE 18: ACCELERATED PAYMENTS AND GROUP RELIEF

SUMMARY

1. This clause and Schedule amend the accelerated payment legislation in Part 4 of the Finance Act (FA) 2014 to ensure that those rules work effectively where avoidance arrangements give rise to losses or other amounts surrendered as group relief. The changes will come into effect from Royal Assent to Finance Bill 2015.

DETAILS OF THE CLAUSE

2. This clause introduces Schedule 18.

DETAILS OF THE SCHEDULE

3. Paragraphs 1 and 2 are introductory.

4. Paragraph 3 introduces and defines the term 'asserted surrenderable amount'. This is the amount that would be available for surrender as group relief if the taxpayer's arrangements were to achieve their objective, taking into account any amount of relief claimed by the company itself against its own profits; but which an officer of HM Revenue & Customs (HMRC) officer considers will not be available for surrender if those arrangements fail to achieve their objective.

5. Paragraph 4 amends section 221 of FA 2014. The 'denied advantage', defined in section 220 of FA 2014, is the amount that HMRC considers will not be an effective tax advantage if the arrangements fail to achieve their objective. If the denied advantage consists of or includes an 'asserted surrenderable amount', this paragraph adds a requirement for HMRC to specify in an Accelerated Payment Notice (APN) the amount of any group relief that HMRC considers should not be available for surrender.

6. Paragraph 5 amends section 222 of FA 2014. It extends the taxpayer's right to make representations to cover the amount that HMRC has specified which cannot be surrendered as group relief.

7. Paragraph 6 makes a small consequential amendment to section 223 of FA 2014, to the effect that section 223 applies only to the amount of an accelerated payment and not to any amount of denied group relief.

8. Paragraph 7 inserts section 225A of FA 2014. Section 225A sets out that where HMRC has given a notice to the effect that a specified amount may not be surrendered, the

company may not consent to surrender that amount. As a result, this means that no company in the group may claim that amount as group relief. If any amount has been claimed, the claimant company or companies must amend their return(s) to reflect the new situation. The time limit for amending a company tax return is relaxed for this purpose.

9. Section 225A(6) and (7) of FA 2014 cover the situation where a claimant company is required to amend their return as a result of a notice under this legislation, but that amendment cannot take effect because there is an open enquiry into that return. In that particular situation, there would be no cash payment to the Exchequer so that the cashflow benefit would remain with the taxpayer while the dispute was in progress. Section 225A(6) and (7) allow HMRC to issue an APN to the claimant company (or companies) under the existing provision in section 219 of FA 2014 to ensure that the amount in dispute does sit with the Exchequer.

10. Paragraph 8 amends section 227 of FA 2014, which gives HMRC the power to amend or withdraw an APN. The amendment enables HMRC to reduce or cancel a specified amount that cannot be surrendered as group relief. Where such a reduction or cancellation takes place, the original surrender and claim(s) are not automatically reactivated (section 227(12A) of FA 2014). Instead the companies may make revised surrenders and claims. The relevant time limits are relaxed for this purpose.

11. Paragraph 9 inserts new Section 227A of FA 2014. This applies where the final result of a dispute, whether by agreement or by final decision of a court or tribunal, is to allow some or all of the amounts that had originally been surrendered (or which could have been surrendered but for the issue of an APN) as group relief. A company in the group (not necessarily the original group relief claimant) may make a claim within 30 days of the final determination of the amount available.

12. Paragraph 10 makes changes to Schedule 32 to FA 2014 to have the same effect for Partner Payment Notices (PPN) as for APNs, with necessary adaptations.

13. Paragraph 11 amends Section 55 of TMA 1970. This ensures that where a company does not take the necessary action under Paragraph 75(6) of Schedule 18 to the Finance Act 1998 so that an assessment is issued under Paragraph 76, the company cannot then seek to retain the cash benefit of the tax by postponing the amount charged in the assessment.

14. Paragraph 12 sets out that this change to the accelerated payment legislation applies to group relief surrenders whenever they were made, provided all the necessary requirements for an accelerated payment are met. This ensures that APNs or PPNs issued as a result of this change are on the same footing as any other APN or PPN issued under this legislation.

BACKGROUND NOTE

15. The Accelerated Payment Legislation was introduced in Part 4 of FA 2014. It permits HMRC to issue an Accelerated Payment Notice (APN) or Partner Payment Notice (PPN) requiring payment up front of the tax in dispute in certain specified circumstances.

16. Where a company has losses or certain other amounts that derive from arrangements that meet the criteria, an APN would not require it to pay over any amounts at that point because it may have no actual tax to pay when the dispute is resolved. However, it could surrender some or all of those amounts as group relief so that the cash timing benefit passes to other companies in the group.

17. This change therefore prevents those amounts being surrendered and claimed while the dispute is in progress, so that the relevant cash amount can be held by the Exchequer during the dispute. It takes effect from Royal Assent.

18. Where a company is a member of a partnership that generates a loss through arrangements that meet the criteria, the issue of a PPN will prevent that company surrendering its share of those losses to another company in its group. This has no effect on other members of the partnership who may be claiming or using the losses in different ways. The final amount of any loss that can be surrendered will be determined through the partnership return, and any revision will then flow through to the partners in the normal way. When that happens HMRC will revise any PPN accordingly.

EXPLANATORY NOTE

CLAUSE 119, SCHEDULE 19: PROMOTERS OF TAX AVOIDANCE SCHEMES

SUMMARY

1. This clause introduces Schedule 19 which allows HMRC to issue conduct notices to a broader range of connected persons under the Promoters of Tax Avoidance Schemes legislation included in Finance Act 2014. The Schedule also amends Finance Act 2014 to provide that the three year time limit for issuing notices to promoters who fail to comply with their obligations under the disclosure of tax avoidance schemes (DOTAS) regime applies from the date when the failure is established. Finally, the Schedule amends the 2014 Finance Act to ensure that the threshold conditions take account of decisions by independent bodies in matters of all relevant forms of professional misconduct. These changes will have effect for the purposes of determining on or after the date of Royal Assent to Finance Act 2015 whether a person met a threshold condition.

DETAILS OF THE SCHEDULE

2. Paragraph 2 amends Section 237 Finance Act 2014.

3. Paragraph 2(2) inserts new sub-section (1A). The new subsection widens the circumstances in which an authorised officer in HMRC has a duty to give a conduct notice to a person carrying on a business as a promoter of tax avoidance schemes. The subsection extends the duty to include when the officer becomes aware that a person has met a threshold condition within the last three years and another person in business as a promoter is treated as meeting that threshold condition by virtue of the associations set out in Part 2 Schedule 34 Finance Act 2014 (as amended by paragraph 4 of this Schedule).

4. Paragraph 2(3) amends sub-section (3) so that it refers to the treating of another person as meeting a threshold condition in line with the amendments paragraph 4 of this Schedule makes to Part 2 of Schedule 34 to Finance Act 2014.

5. Paragraph 2(4) modifies the significance test applied when considering issuing a conduct notice to a promoter in cases where a person other than that promoter actually met a threshold condition. Anauthorised officer must determine that the meeting of the condition should be regarded as significant in relation to giving that conduct notice by reference to both the person who met the condition and to the person who is treated as meeting that condition.

6. Paragraph 2(5) makes a consequential amendment to sub-section (7).

7. Paragraph 2(6) inserts new sub-section (7A) to allow for the meeting of a threshold condition by another person pursuant to Part 2 of Schedule 34.

8. Paragraph 2(7) makes a consequential amendment to sub-section (9).

9. Paragraph 2(8) inserts new sub-section (10). It provides that it is possible for an authorised officer to give a conduct notice both to a promoter, who has met a threshold condition, and to another promoter who is treated as meeting the threshold condition that the former promoter actually met.

10. Paragraph 3 makes a consequential amendment to the definition of conduct notice in section 283.

11. Paragraph 4 amends Part 2 of Schedule 34 Finance Act 2014.

12. Paragraph 4(3) replaces existing paragraph 13 with new paragraphs 13A, 13B, 13C and 13D.

13. New paragraph 13A contains the definition of terms for the purposes of this Part of the Schedule.

14. New paragraph 13B sets out the circumstances in which a relevant body can be treated as meeting a threshold condition by virtue of a person who controls the relevant body meeting that threshold condition in the last 3 years. This includes where either the relevant body in question, or the person who controls them, was carrying on a business as a promoter at that earlier time. This also includes circumstances in which the relevant body to which the meeting of a threshold condition is being attributed did not exist at the earlier time.

15. New paragraph 13C sets out the circumstances in which a person (other than an individual) can be treated as meeting a threshold condition by virtue of a relevant body, which that person controlled at that time, meeting a threshold condition in the last three years. This includes circumstances where a threshold condition is met by a relevant body but a different relevant body was carrying on the business of a promoter - provided both were controlled by the person in question at the earlier time. This also includes circumstances where the relevant bodies have ceased to exist.

16. New paragraph 13D sets out the circumstances in which a relevant body can be treated as meeting a threshold condition by virtue of another relevant body meeting a threshold condition in the last 3 years – provided the latter was controlled at the earlier time by the same person who now controls the former. This includes circumstances where a threshold condition is met by a relevant body but a different relevant body was carrying on the business of a promoter, provided both were controlled by the person in question at the earlier time. This also includes circumstances where the relevant bodies have ceased to exist.

17. Paragraph 5 makes consequential amendments to Schedule 36.

18. Paragraph 6 amends paragraph 5 Schedule 34 Finance Act 2014 by substituting new sub-paragraphs 5(2) to 5(6) for existing sub-paragraph 5(2).

19. New sub-paragraph 5(2) provides that a person will have failed to comply with the provisions of Part 7 of Finance Act 2004 (disclosure of tax avoidance schemes) listed in

paragraph 5(1) of Schedule 34 if any of new conditions A to C, introduced by this Schedule, are met.

20. New sub-paragraph 5(3) sets out condition A, which is met where a tribunal determines that there has been a failure to comply with the provision concerned, provided that determination is final.

21. New sub-paragraph 5(4) sets out condition B, which is met where there has been a failure to comply with the provision concerned but the tribunal deems there to have been no failure on account of a reasonable excuse.

22. New sub-paragraph 5(5) sets out condition C, which is met where a person who has failed to comply with the provision concerned admits that failure in writing to HMRC.

23. New sub-paragraph 5(6) defines "appeal period" for the purposes of the preceding provisions.

24. Paragraph 7 amends paragraph 8 Schedule 34 Finance Act 2014 so that the threshold condition of professional misconduct by a promoter takes into account decisions by independent bodies.

25. Paragraph 8 provides for the power to amend or add to the circumstances in which a person is treated as meeting a threshold condition by statutory instrument. Any such instrument would be subject to the affirmative procedure.

26. Paragraph 9 sets out the date of commencement for the changes introduced by this Schedule. These changes will have effect for the purposes of determining whether a person meets a threshold condition in a period of three years ending on or after the date of Royal Assent to Finance Act 2015.

BACKGROUND NOTE

27. Legislation introduced in Finance Act 2014 allows HM Revenue and Customs (HMRC) to issue conduct notices to promoters and subsequently monitor promoters who breach a conduct notice. Monitored promoters were made subject to new information powers and penalties which also applied to intermediaries that continue to represent them after monitoring commences. This measure will include associated and successor entities of promoters in the high-risk promoter regime. A small number of other changes are also included in this measure, aimed at ensuring the 2014 legislation functions as intended.

28. The changes to this legislation are part of the Government's strategic response to avoidance and to deter the use of avoidance schemes through influencing the behaviour of promoters, their intermediaries and clients.

EXPLANATORY NOTE

CLAUSE 120, SCHEDULE 20: PENALTIES IN CONNECTION WITH OFFSHORE MATTERS AND OFFSHORE TRANSFERS

SUMMARY

1. This clause and Schedule amend the existing penalty regime that applies to non-compliance involving an offshore matter. They extend its scope by applying it to inheritance tax, and to where the proceeds of non-compliances are hidden offshore. The territory classification system is also updated to reflect advances in international tax transparency through the implementation of the Common Reporting Standard (CRS). It is anticipated that the provisions will commence in April 2016.

DETAILS OF THE CLAUSE

2. <u>Subsection (1)</u> introduces Schedule 20 which amends the offshore penalty provisions relating to errors in returns, failure to notify liability, failure to make returns in Schedule 24 to Finance Act (FA) 2007 (Schedule 24), Schedule 41 to FA 2008 (Schedule 41) and FA 2009 (Schedule 55).

3. <u>Subsections (2) to (4)</u> provide that the Schedule comes into force on a day specified by a Statutory Instrument made by the Treasury: different times may be specified in respect of different provisions or for certain purposes.

DETAILS OF THE SCHEDULE

Penalties for errors.

4. <u>Paragraph 1</u> provides for Schedule 24 to be amended. Schedule 24 imposes penalties for inaccuracies in a return or other document submitted to HM Revenue & Customs (HMRC). Penalties for inaccuracies currently fall into any one of 3 categories for the purposes of determining the level of penalty applicable. Penalties arising from a "domestic matter" in relation to income tax and capital gains tax and for all inaccuracies relating to other taxes subject to the penalty regime in Schedule 24, currently attract the lowest level of penalty set by category 1.

5. Inaccuracies involving an offshore matter in relation to income tax and capital gains tax may be liable for a higher penalty than for a domestic matter relating to those taxes depending upon the extent of any information sharing arrangements between the territory concerned and the UK.

6. Paragraph 2 amends paragraph 4 of Schedule 24 by inserting sub-paragraph (1A) and amending sub-paragraphs (2) and (5) so as to as to increase the levels of penalty in respect of a category 1 inaccuracy as a result of the lowest level of penalty now being attached to the new category 0 described below. No change is made to current levels of penalty in relation to inaccuracies falling within categories 2 and 3. A consequential amendment is made so that paragraph 4(5) of Schedule 24 refers to 4 categories of inaccuracy (0, 1, 2 and 3).

7. Paragraph 3 amends paragraph 4A of Schedule 24 by–

- inserting the new category of inaccuracy (category 0) which carries the lowest level of penalty as described above (equivalent to those currently in category 1) (see newly inserted sub-paragraph (A1) (which creates category 0) and consequential amendment to sub-paragraph (7));
- determining the penalty for an inheritance tax inaccuracy by reference to whether the inaccuracy involves a domestic matter, an offshore matter or an offshore transfer in the same way as for income tax and capital gains tax. It also provides rules (see newly inserted sub-paragraph (4A)) determining where assets are treated as held or situated for inheritance tax related penalties as well as making consequential amendments to sub-paragraphs (2)(c) and (3)(c); and
- inserting, in categories (0, 1, 2 and 3), the concept of an "offshore transfer" (see the definition in newly inserted sub-paragraph (4B) and consequential amendments made to sub-paragraphs (2)(a), (3)(a), (5) and (6)(a)) which is separate from the existing concept of "offshore matter".

8. The new sub-paragraph (4A) requires that where the tax at stake is inheritance tax, the territory where assets are situated or held is determined by reference to where they are situated or held immediately after the transfer of value giving rise to the inheritance tax charge.

9. The new sub-paragraph (4B) provides that an inaccuracy only involves an "offshore transfer" if it does not involve an "offshore matter"; is deliberate (whether or not concealed); results in a potential loss of income tax, capital gains tax or inheritance tax; and the "applicable condition" in the new paragraph 4AA is satisfied.

10. Paragraph 4 inserts paragraph 4AA into Schedule 24. It sets out the "applicable condition" referred to by newly inserted paragraph 4A(4B). The applicable condition will be satisfied if, by the date when the document containing the inaccuracy is given to HMRC ("filing date" as defined in paragraph 4AA(7))-

- income (or any part of it) chargeable to income tax is received in, or transferred to, a territory outside the UK;
- the proceeds (or any part of them) of a disposal giving rise to a charge to capital gains tax are received in, or transferred to, a territory outside the UK; or
- the disposition giving rise to transfer of value by reason of which inheritance tax is chargeable is a transfer of assets and after the disposition the assets (or part of them) are transferred to a territory outside the UK.

11. Paragraph 4AA(5) extends the applicable condition by providing that references to income, proceeds or assets transferred must be read as including any assets derived from or representing the income, proceeds or assets.

12. Paragraph 4AA(6) ensures that where more than one category of territory is involved in an “offshore transfer”, the level of penalty for the inaccuracy will be determined by reference to the highest category of territory involved.

13. Paragraph 4AA(8) provides that references to income or the proceeds of a disposal or transfer of value must be read as including references to any assets (as defined in section 21(1) of the Taxation of Capital Gains Act 1992) derived from or representing the income or proceeds.

14. Paragraph 5 amends the Table in paragraph 10 of Schedule 24 which specifies the minimum percentages to which a penalty in paragraph 4 may be reduced on account of disclosures made by a taxpayer who is liable to a penalty. The amendment to the table is made in consequence of the new level of penalties applying to a category 1 inaccuracy so as to specify the minimum percentages to which those penalties may be reduced depending upon whether or not the taxpayer made a prompted or unprompted disclosure.

15. Paragraph 6 makes consequential amendments to paragraph 12 of Schedule 24 so that where penalties are imposed under paragraphs 1 and 1A of that Schedule in respect of the same inaccuracy, the aggregate amount of the penalties must not exceed 100% of the potential lost revenue in respect of a category 0 inaccuracy and 125% in respect of a category 1 inaccuracy.

16. Paragraph 7 makes consequential amendments to paragraph 21A of Schedule 24 which determines the category in which a territory falls for the purposes of offshore matters. A new sub-paragraph (A1) is inserted and sub-paragraph (2) is substituted so that a territory will fall as a category 2 territory unless designated by Treasury order as a category 0, 1 or 3 territory. Sub-paragraph (7) is substituted so that the first Treasury order specifying territories in category 0 must be made using the affirmative resolution procedure.

17. Paragraph 8 amends paragraph 21B of Schedule 24. Sub-paragraph (1A) is inserted so that the Treasury may make regulations determining for the purposes of paragraph 4AA where income or proceeds of a disposal are received or transferred or where assets are transferred. Sub-paragraph (2) is amended so that the Treasury may make different provisions for income tax, capital gains tax and inheritance tax when making regulations for determining where an income source is located, asset is situated or held, or activities carried on.

Penalties for failure to notify

18. Paragraphs 9 to 13 make amendments to Schedule 41 in relation to the new category 0 and an offshore transfer that correspond to the amendments made to Schedule 24 by the provisions described in paragraphs 6 to 15 and 17 of this Explanatory Note. Since Schedule 41 does not apply to inheritance tax, there are no amendments in relation to that tax.

Penalties for failure to make returns etc

19. Paragraphs 14 to 19 make amendments to Schedule 55 in relation to the new category 0, an offshore transfer and inheritance tax that correspond to the amendments made to Schedule 24 by the provisions described in paragraphs 6 to 15 and 17 of this Explanatory Note.

BACKGROUND NOTE

20. HMRC may charge penalties in cases where income, gains etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. Schedules 24, 41 and 55 of FA 2007 (errors in tax returns etc.), FA 2008 (failure to notify liability) and FA 2009 (returns not filed on time) respectively ("the penalty Schedules") set out the minimum and maximum penalties that may be charged.

21. In each case the penalty is a percentage of the amount of revenue potentially lost or, in relation to a penalty under Schedule 55 FA 2009, which would have been shown in the return in question. Schedule 10 to FA 2010 amended the penalty Schedules to categorise conduct giving rise to a penalty in relation to income tax or capital gains tax by reference to whether the conduct involved an offshore matter. Maximum penalties are higher for penalties relating to territories falling within categories 2 and 3 than in relation to territories falling within category 1 (which also includes penalties in relation to a "domestic matter"). The legislation provides that a territory falls within category 2 unless designated as category 1 or 3 by Treasury order. Designation of a territory is made by reference to the level of information exchange arrangements (if any) between the UK and the territory. Territories within category 1 (which include EU member States) have entered into arrangements for automatic exchange of information with the UK broadly comparable with information provided automatically to HMRC within the UK. The higher penalties corresponding to categories 2 and 3 reflect the fact that, owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance and that the choice of such territories by those failing to report accurately their tax obligations may well have been influenced by that factor.

22. This measure makes the tax system fairer, by strengthening civil sanctions for the small minority who evade tax by hiding taxable income, gains and assets offshore, and contributes to building the deterrent effect. This Schedule builds on the increased penalties for offshore non-compliance introduced in FA 2010 in three ways.

23. First, a new category 0 is introduced, having the same penalty levels as the current category 1. The intention is that only overseas territories making arrangements with the UK that meet the new Common Reporting Standard will fall into category 0. The penalty levels in new category 1 are raised slightly, those in categories 2 and 3 will stay the same. It is envisaged that most or all territories currently in category 1 will, over time, make arrangements so as to fall within category 0. Regulations to classify territories will be made in 2016.

24. Second, penalties relating to inheritance tax are brought within the scope of the scheme already existing for income tax and capital gains tax so that penalties involving assets in category 1-3 territories will be higher than those for failures in relation to assets in the UK or category 0 territories.

25. Third, the provisions will cover not only income and gains arising offshore, but also non-compliance in the UK where the payment is made overseas or received in the UK and then moved offshore.

EXPLANATORY NOTE

CLAUSE 121, SCHEDULE 21: PENALTIES IN CONNECTION WITH OFFSHORE ASSET MOVES

SUMMARY

1. This clause and Schedule introduce a new penalty for income tax, capital gains tax and inheritance tax where assets are moved from a "specified territory" to a "non-specified territory" and the main, or one of main purposes, of the movement is to prevent the discovery of a loss of revenue by HM Revenue & Customs (HMRC). The Schedule has effect from the day after Finance Bill 2015 receives Royal Assent.

DETAILS OF THE CLAUSE

2. The clause introduces Schedule 21 which imposes an additional penalty where

3. a person is liable for an earlier penalty for a failure to comply with certain income tax, capital gains tax or inheritance tax obligations; and
4. there is a related transfer of, or change in the ownership arrangements for, an asset situated or held outside the UK.

DETAILS OF THE SCHEDULE

5. Paragraph 1 provides that a penalty is payable, in addition to a penalty for an earlier deliberate failure, where an asset is moved from one territory to another (a "relevant offshore asset move") to prevent or delay the discovery of that original failure.

6. Paragraph 2 specifies which penalties for the earlier failure potentially trigger the additional penalty.

7. Paragraph 3 defines the term "deliberate failure" in relation to the "original penalty".

8. Paragraph 4 defines the term "relevant offshore asset move". Such an event occurs where a the taxpayer remains beneficial owner of the asset even though the asset has moved from a specified territory to a non-specified territory, the person holding the asset made a corresponding change of residence, or there was a change in ownership arrangements of the asset. In applying the tests, any second or later asset purchased with all or part of the proceeds of sale of the original asset will be regarded as the original asset.

9. Paragraph 4(5) and (6) provide that HM Treasury will make Statutory Instruments setting out which territories are "specified".

10. Paragraph 5 defines the "relevant time" after which the occurrence of a "relevant offshore move" will cause Condition B of paragraph 1 of this Schedule to be met. For income tax and capital gains tax, the "relevant time" is the beginning of the tax year relevant to the failure or inaccuracy giving rise to the "original penalty". For inheritance tax, the "relevant time" is the time when the liability for the tax at stake first arises.

11. Paragraph 6 provides that the amount of additional penalty is 50% of the original penalty. It also makes clear that although the original penalty is determined by reference to a liability to tax, the penalty under this Schedule is not (further distinguishing between the conduct giving rise to the two penalties).

12. Paragraph 7 provides for the assessment and notification of the penalty. The time limits for HMRC to assess the penalty are the same as those applying to the relevant "original penalty". Payment must be made before the expiry of 30 days beginning on the day of notification. Procedurally, the penalty is treated in the same way as a tax assessment and may be enforced in the same way. An amendment must be made to the amount of penalty if the "original penalty" is amended (up or down).

13. Paragraph 8 affords a right of appeal against HMRC's decision to impose a penalty under this Schedule which may be either affirmed or cancelled by a tribunal. Except where express provision is made in the Schedule, an appeal will be treated in the same way as an appeal against an assessment or determination of the tax concerned (including HMRC review of the decision and determination of the appeal by the First Tier Tribunal or Upper Tribunal).

14. Paragraph 9 provides that the Schedule has effect in relation to "relevant offshore asset moves" occurring after the day on which Finance Bill 2015 receives Royal Assent. Apart from two exceptions, it does not matter if the liability for the original penalty arose before or after that day. The two cases in which a person will not be liable to the additional penalty are where:

- the tax unpaid as a result of an inaccuracy giving rise to an "original penalty" under Schedule 24 FA 2007 has been assessed or determined before this legislation comes into effect; and
- the tax unpaid as a result of a failure giving rise to an "original penalty" under Schedule 41 FA 2008 and Schedule 55 FA 2009 has been assessed or determined before this legislation comes into effect and the failure relating to it has been remedied by that day.

BACKGROUND NOTE

15. HMRC may charge penalties in cases where income, gains and assets etc. are not declared or notified to HMRC either deliberately or through a failure to take reasonable care. The maximum and minimum penalty vary according to the transparency of the jurisdiction in which the income etc. arises or is hidden. The higher penalties apply where owing to the inferior level of information exchange arrangements, HMRC is less likely to detect non-compliance (which may have formed part of the reason for choosing the territory concerned).

16. As more overseas territories enter into agreements to provide greater automatic exchange of information with the UK under the new Common Reporting Standard (with first information exchanges to be made in 2017), there is a risk that money and investments will be moved from those territories to others that have not entered into such agreements in order to continue to “hide” past failures to pay tax lawfully payable. While the past failures are already liable to penalties there would be no further sanction for new, additional steps taken to continue hiding the original failures. These provisions address this by imposing a further penalty for an offshore asset move irrespective of whether the conduct giving rise to the “original penalty” occurred before or after the day on which Finance Bill 2015 receives Royal Assent, but only in cases where the original penalty reflected a deliberate failure. It is intended that territories will be “specified” once they have committed to exchanging information under the Common Reporting Standard.

17. The Background Note to Schedule 20 contains a fuller explanation of the offshore penalty regime and other measures being taken to deter non-compliance involving offshore matters.

EXPLANATORY NOTE

CLAUSE 122: COUNTRY-BY-COUNTRY REPORTING

SUMMARY

1. This clause gives HM Treasury a power to make regulations to introduce country-by-country reporting. It means that the Treasury will be able in the future to implement recommendations made by the Organisation for Economic Co-operation and Development (OECD) on country-by-country reporting and require UK-based multinational enterprises to report for each tax jurisdiction in which they have a presence how their revenue, profit and taxes are allocated, as well as other indicators of economic activity.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces a power to make regulations to implement country-by-country reporting.

3. Subsection (2) defines country-by-country reporting by reference to guidance published by the OECD.

4. Subsection (3) provides that the Treasury may modify the way in which the country-by-country reporting requirement is implemented.

5. Subsection (4) and subsection (6) set out particular matters which may be dealt with by regulations, including who will be required to make the report, the timing and form of the report, and penalties for failing to comply with the regulations.

6. Subsection (5) enables the regulations to allow certain requirements, obligations or other provisions within subsection (4) to be made by directions given by the Commissioners of HM Revenue & Customs.

7. Subsection (8) provides that the regulations will be made by statutory instrument. The regulations will be subject to negative procedure.

BACKGROUND NOTE

8. The OECD developed a country-by-country reporting template and accompanying guidance as part the strand of work in the OECD/G20 Base Erosion and Profit Shifting (BEPS) project intended to strengthen international standards on tax transparency. The reporting template requires multinational enterprises to show for each tax jurisdiction in which they do business:

- the amount of revenue, profit before income tax and income tax paid and accrued; and
- their total employment, capital, retained earnings and tangible assets.

9. Multinational enterprises will also be required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of business activities within a selection of broad areas which each entity engages in.

10. The country-by-country report is intended to be a risk-assessing tool to help tax administrations assess whether multinational groups may have engaged in transfer pricing or other practices in order to artificially reduce their taxable profit or shift their income into jurisdictions where they will pay less tax. The Government announced on 20 September 2014 that it is committed to implementing country-by-country reporting in the UK.

11. Regulations will be made at a later date after the OECD has completed further work on implementation issues, including how the reports will be filed and how countries will exchange the information contained in the reports.

EXPLANATORY NOTE

CLAUSE 123: STATUS FOR TAX PURPOSES OF CERTAIN BODIES

SUMMARY

1. This clause ensures that the Commonwealth War Graves Commission and the Imperial War Graves Endowment Fund can continue to claim charity tax reliefs administered by HM Revenue & Customs. The clause comes into effect on and after the date of Royal Assent to Finance Bill 2015

DETAILS OF THE CLAUSE

2. Clause 123 provides that the Commonwealth War Graves Commission and the Imperial War Graves Endowment Fund Trustees are treated as charities for the purposes of the enactments listed paragraph 7 of Schedule 6 to Finance Act 2010.

BACKGROUND NOTE

3. The Commonwealth War Graves Commission is responsible for the commemoration and maintenance of the graves of Commonwealth forces who died in the First and Second World Wars. The Commission was established by Royal Charter in 1917 and was set up as a "not for profit" organisation. It operates in 154 countries around the world. The Commission is funded by its six member governments – the UK, Canada, South Africa, New Zealand, Australia and India. High Commissioners for those countries are appointed by the member countries to sit on the Commission. The UK Secretary of State for Defence is Chairman.

4. The Commonwealth War Graves Commission has a separate Endowment Fund (The Imperial War Graves Endowment Fund) which was created by Act of Parliament in 1926.

5. When the Commonwealth War Graves Commission was created it did not register as a charity but it was entitled to charitable exemptions from tax until the law was changed in 2010.

6. This provision continues the Commonwealth War Graves Commission's (and Imperial War Graves Endowment Fund) entitlement to claim charity tax reliefs.

EXPLANATORY NOTE

CLAUSE 124: REDEMPTION OF UNDATED GOVERNMENT STOCKS

SUMMARY

1. This clause enables the Government to redeem three undated government stocks, first issued in the late nineteenth century. The majority of provisions come into force on Royal Assent to the Finance Bill.

DETAILS OF THE CLAUSE

2. Subsections (1) to (4) enable HM Treasury to redeem three undated stocks commonly known as 2¾% Annuities, 2½% Annuities and 2½% Consolidated Stock. HM Treasury must give at least three months' notice in the London Gazette of their intention to redeem (subsection (2)) and the sums necessary for the redemption will come from the National Loans Fund (subsection (3)). There are existing legislative provisions about the redemption of these stocks, not all of which are now useable. Subsection (4) disapplies these provisions if redemption occurs under the clause.

3. Subsection (5) provides for the consequential repeal of existing provisions in primary legislation which relate to these government stocks.

4. Subsections (6) and (7) concern the commencement of the clause. The repeals in subsection (5) come into force on such days as HM Treasury appoints by order. Otherwise, the clause comes into force on Royal Assent to the Finance Bill.

BACKGROUND NOTE

5. This clause will provide for the government to redeem 2¾% Annuities, 2½% Annuities and 2½% Consolidated Stock with at least three months' notice in the London Gazette. The terms and conditions of the stocks do not enable their redemption. However, provision for their redemption by Parliament was made in legislation dating from the nineteenth century. For two of the stocks, conditions in that legislation can no longer be met and consequently new provision is being made for the redemption of all three stocks in the Finance Bill 2015. The government announced at Budget 2015 that it will redeem these three bonds once this Finance Bill legislation has been enacted.

6. At Autumn Statement 2014, the government announced that it was adopting a strategy to remove the remaining undated government bonds from the debt portfolio, where it is deemed to provide value for money. Since 31 October 2014, the government has announced the redemption of five undated bonds: 4% Consolidated Loan, 3½% War Loan, 3½% Conversion Loan, 3% Treasury Stock and 2½% Treasury Stock.

EXPLANATORY NOTE

CLAUSE 125: COMMENCEMENT ORDERS AND REGULATIONS

SUMMARY

1. This clause amends the provisions relating to the parliamentary procedure applicable to statutory instruments which bring into force provisions of enactments relating to the taxation of chargeable gains, income tax and corporation tax

DETAILS OF THE CLAUSE

2. Subsection (1) substitutes section 287(4)(b) of Taxation of Chargeable Gains Act (TGCA) 1992 so that the exception from the negative resolution procedure applies to orders or regulations which provide for any provision of an enactment relating to the taxation of chargeable gains to come into force or have effect in accordance with the order or regulations.

3. Subsection (2) substitutes section 1014(6)(b) of Income Tax Act (ITA) 2007 to make equivalent provision in relation to provisions of the Income Tax Acts.

4. Subsection (3) substitutes section 1171(6)(b) of Corporation Tax Act (CTA) 2010 to make equivalent provision in relation to provisions of the Corporation Tax Acts.

5. Subsection (4) provides that the amendments do not have effect in relation to any power conferred by an Act passed before the day on which this Act is passed.

BACKGROUND NOTE

6. The negative resolution procedure is the default parliamentary procedure for statutory instruments relating to capital gains tax, income tax and corporation tax (see section 287(3) of TCGA 1992, section 1014(4) of ITA 2007 and section 1171(4) of CTA 2010). But commencement orders are not generally subject to any parliamentary procedure, so section 287(4)(b) of TCGA 1992, section 1014(6)(b) of ITA 2007 and section 1171(6)(b) of CTA 2010 disapply the negative resolution procedure in the case of orders that provide for commencement on an appointed day.

7. Powers to make subordinate legislation (including commencement powers) are now generally drafted as powers to make regulations. Commencement regulations cannot benefit from section 287(4)(b) of TCGA 1992, section 1014(6)(b) of ITA 2007 or section 1171(6)(b) of CTA 2010 as those provisions refer only to orders. This clause amends those sections to include regulations as well as orders and include orders and regulations which provide for commencement in accordance with provision contained in the order or regulations