HM Treasury

Draft provisions for Finance Bill 2017
Explanatory Notes

Clauses 1 to 98

05 December
2016

Explanatory notes

Introduction

1. These explanatory notes relate to the draft provisions for Finance Bill 2017 as published for consultation on 5th December 2016. They have been prepared jointly by the HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the draft provisions. They are for consultation and comments are welcome.

2. The notes need to be read in conjunction with the draft provisions for Finance Bill 2017. They are not, and are not meant to be, a comprehensive description of the draft provisions. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

3. If you wish to comment on any clause, please contact the email address named in the relevant explanatory note background section. The closing date for comments is 1st February 2017.

Table of contents

Clause 1 and Schedule 1: Workers' services provided to public sector through intermediaries

Summary

1. This clause and schedule amend Part 2 of The Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to introduce off-payroll tax reform for intermediaries operating within the public sector.

Details of the Clause

2. Clause 1 introduces Schedule 1 making provision about workers' services provided through intermediaries.

Details of the Schedule

Schedule 1: Workers' services provided to public sector through intermediaries

3. Part 1 introduces amendments to the intermediaries legislation in Chapter 8 of Part 2 ITEPA 2003. The amendments have the effect that new Chapter 10 rather than Chapter 8 applies to certain payments made in connection with services provided through an intermediary to the public sector.

4. Part 2 introduces a new Chapter 10 into Part 2 of ITEPA 2003 headed "Workers' services provided to public sector through intermediaries".

5. Part 3 introduces consequential amendments with effect from 6th April 2017. These include amendments into the travel for employment involving intermediaries rules at s339A ITEPA 2003 and trading income rules in Part 3 of Corporation Tax Act 2009 (CTA 2009) with a new section 140A: Intermediary where worker engaged by public authority.

Part 1 Preliminary amendments:

6. The existing Chapter 8 contains sections 48 to 61 which apply the provisions for the operation of a tax charge on payments to workers under arrangements made by intermediaries.

7. Section 48 is amended so that it will no longer apply to services provided through an intermediary to a public authority.

8. Section 49 (1) is amended so that it will no longer apply to services provided to a client who is a public authority.

9. Sections 52(2) (b) and (c) are amended to include new Chapter 10 as well as Chapter 8 for the conditions of liability where the intermediary is a partnership.

10. Section (61)(1) will be amended to include the definition of the public sector engagements to which the new Chapter 10 applies.

Part 2: New Chapter 10 of Part 2 ITEPA 2003

11. Chapter 10 contains sections 61K to 61V which have effect for the tax year 2017-18 and subsequent tax years. These sections explain the scope of the new chapter and how it interacts with other relevant legislation.

12. Section 61K contains the scope of the new chapter, covering the provision of services to a public authority through an intermediary.

13. Section 61L provides the definitions of "public authority".

14. Section 61M defines the engagements to which the Chapter applies together with subsections detailing the qualifying conditions for the legislation to apply, and the terms on which the services are provided.

15. Section 61N sets out the preliminary qualifying conditions (A-C) for the types of intermediary in a contractual chain, and defines and identifies the fee payer in those chains. This section treats the worker as receiving earnings and sets out the tax requirements that fall on the fee payer. It also explains circumstances where the tax obligations may move elsewhere within the contractual chain, including situations involving non-resident fee payers.

16. Section 61O defines the qualifying conditions where the intermediary is a company and sets out the definitions of "associated company" and "material interest" to be used in respect of that section.

17. Section 61P defines the qualifying conditions where the intermediary is a partnership and defines "relative" for the purposes of the section.

18. Section 61Q sets out the four steps required to calculate the "deemed direct payment". The subsections explain each step and its constituent parts in turn to account for Value Added Tax (VAT), the cost of materials and eligible expenses. It also provides details of the expenses allowed as part of that calculation.

19. Section 61R applies the Income Tax Acts to the deemed direct payment explained in Section 61Q. The subsections explain the circumstances when a worker would not be chargeable to tax in respect of the deemed direct payment by virtue of residence. They also explain when a payment to a partnership would be taxed in a personal rather than partner's capacity.

20. Section 61S outlines the information to be provided by the client, to the person they contract with and the consequences of failure to do so. The subsections set out the basic form that information must take and the time limit for providing it.

21. Section 61T outlines the consequences of providing fraudulent information and explains the fraudulent documentation conditions.

22. Section 61U sets out steps to prevent a double charge to tax and provides for certain deductions. The subsections explain the circumstances in which remuneration from the intermediary may be reduced and what it may and may not be reduced by, including capital allowances and contributions to registered pension schemes. The subsections go on to explain the limits of the reduction and the types of payment which may be reduced.

23. Section 61V defines various terms used in this Chapter.

Part 3: Consequential amendments

24. Part 3 sets out the consequential amendments required from wider legislation which have effect for tax year 2017-18 and subsequent tax years.

25. Section 7(5) (a) of ITEPA 2003 is amended to reflect the addition of the new Chapter 10.

26. Section 339A of ITEPA 2003: Travel for employment involving intermediaries inserts new subsections to explain when the new sections of Chapter 10 do and do not apply to this section.

27. Part 3 of CTA 2009 is amended to insert section140A: Intermediary where worker engaged by public authority after section 139. The subsections explain when the section applies and the deduction which is allowed.

28. Paragraphs 10 to 12 provide for commencement for the tax year 2017-18 and to have effect in relation to payments treated as made on or after 6 April 2017.

Background note

29. This Chapter has been introduced to move responsibility for operating the current intermediaries rules in Chapter 8 of Part 2 ITEPA 2003 from an individual worker's intermediary to any public sector, agency or third party paying that intermediary. This reform will not affect those operating in the private sector.

30. These changes are being introduced to improve fairness in the tax system by ensuring that individuals are not able to sidestep employment taxes or NICs by working through a PSC. Removal of the 5% allowance will simplify the administration of the reformed rules and reflects the transfer of responsibility for making a decision about whether the rules apply and deducting and making the associated tax and NICs payments.

31. If you have any questions about this change, or comments on the legislation, please contact Neil Chattell on 03000 586575 (email: neil.chattell@hmrc.gsi.gov.uk) or Alan Reay on 03000 528832 (email: kevin.a.reay@hmrc.gsi.gov.uk).

Clause 2 and Schedule 2: Optional remuneration arrangements

Summary

1. This clause introduces legislation which will limit the income tax and employer National Insurance contributions (NICs) advantages where benefits in kind are provided through salary sacrifice arrangements (described in the legislation as optional remuneration arrangements). It does so by imposing a notional cost on taxable benefits based on the value of the amount of salary given up, if this is greater than the charge that would otherwise be due under the legislation. For most benefits which are subject to either a full or a limited exemption, the exemption is disapplied if the benefit is provided in conjunction with a salary sacrifice arrangement. Some benefits will retain their exemption even if provided under such arrangements.

Details of the clause

2. Clause 2 introduces Schedule 2.

3. Details of the schedule

4. <u>Paragraph 1</u> inserts new sections 69A and 69B into Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

5. <u>New section 69A</u> (optional remuneration arrangements) makes provision for when a benefit is provided through an optional remuneration arrangement. Two types of such arrangements are identified. In subsection (2) type "A" arrangements occur when earnings of the employment (or a future right to such earnings), which would otherwise be taxed under Chapter 1 of Part 3 of ITEPA are given up in exchange for a benefit.

6. Type "B" arrangements, are described in subsection (3), and these occur when an employee is offered the alternative of a benefit or a cash allowance in lieu of the benefit. Where the cash allowance is chosen, that is already taxable under Chapter 1 of Part 3 ITEPA. Under the new provisions, where the benefit is taken instead, it will be valued at the level of what the cash allowance would have been.

7. <u>New section 69B</u> (the "amount foregone") defines the "amount foregone" as the amount of earnings described in subsections (2) and (3) of new section 69A. Subsections (2) and (3) set out provisions for apportionment if required. In most cases individuals will know the amount of earnings given up for a particular benefit or the alternative value of a cash allowance, but where this is not known, the

legislation provides for an apportionment to be made on a "just and reasonable" basis.

8. Subsection (4) defines "benefit" and "earnings" and the reference to "received" in that subsection should be read across to section 18 ITEPA which sets out provisions for general earnings consisting of money.

9. Paragraphs (2) to (20) amend various sections in Part 3 ITEPA (Employment income: earnings and benefits etc. treated as earnings). These mostly introduce new subsections into the relevant charging provisions to provide that the greater of the cash equivalent or the amount foregone is the relevant amount to be treated as earnings from the employment. There are also a number of minor consequential amendments.

10. Paragraphs (3) and (4) amend section 81 ITEPA (Benefit of cash voucher treated as earnings) and section 87 ITEPA (benefit of non-cash voucher treated as earnings) respectively, by inserting new subsections which define "the relevant amount" in cases where the benefit is provided through an optional remuneration arrangement.

11. In the case of credit-tokens, there is only a benefit treated as earnings when the credit-token is used to obtain money, goods or services. Paragraph (5) amends section 94 ITEPA (benefit of credit token treated as earnings) in respect of the relevant amount and sets out steps for determining the relevant cost of provision for the tax year.

12. Paragraphs (6) and (7) introduce amendments to the provisions on living accommodation in Chapter 5 of Part 3 ITEPA. Section 102 (benefit of living accommodation treated as earnings) is amended by the insertion of new subsections which define "the relevant amount" in cases where the benefit is provided through an optional remuneration arrangement. The relevant amount in this instance refers to the "modified cash equivalent".

13. Paragraph (7) inserts new section 103A (meaning of "modified cash equivalent"). The cash equivalent of the benefit of provided living accommodation is calculated under either section 105 (cash equivalent: cost of accommodation not over £75,000) or 106 ITEPA (cash equivalent: cost of accommodation over £75,000). New section 103A modifies the calculation of the cash equivalent with the effect that it represents the cost of the benefit without taking into account amounts made good. That results in a higher figure to compare against the amount foregone in respect of the benefit.

14. Paragraph (8) amends section 119 ITEPA (where alternative to benefit of car or van offered). The section was intended to prevent avoidance of the car or van benefit charge through the argument that no benefit applies if a cash alternative is offered (even if that alternative is not taken). The drafting in new section 69A ensures that a comparison has to be made between the cash alternative and the cash equivalent of the benefit, so in most cases section 119 becomes otiose. However, the new rules in relation to optional remuneration arrangements will not apply to ultra-low emission cars (those with emissions of 75 grams CO2 per kilometer or less), so the section has been amended to retain the effect for these particular vehicles.

15. Paragraph (10) inserts new sections 120A and 120B into ITEPA. This brings the taxation of the benefit of a car made available for private use within the scope of the new rules on optional remuneration arrangements only if the registered CO2 emissions exceed 75 grams per kilometer. Cars with a registered emission figure of 75 grams and below will be taxed, as now, on the cash equivalent of the benefit.

16. New section 120A (benefit of car treated as earnings: optional remuneration arrangements) provides for the relevant amount, which includes a modified cash equivalent. New section 120B (meaning of "modified cash equivalent") sets out the method for calculating the modified cash equivalent so that the cash equivalent normally used is increased by the amount of any deductions made, ignoring any capital contributions.

17. Paragraph (11) amends section 149 (benefit of car fuel treated as earnings) to reflect the relevant amount to be treated as earnings.

18. Paragraph (13) inserts new section 154A into ITEPA (benefit of van treated as earnings: optional remuneration arrangements) to reflect the relevant amount. This includes provision for a modified cash equivalent achieved through ignoring deductions.

19. Paragraph (15) inserts new section 160A into ITEPA (Benefit of van fuel treated as earnings: optional remuneration arrangements). This makes provision for the relevant amount to be treated as earnings.

20. Paragraph (17) amends section 175 (benefit of taxable cheap loan treated as earnings) to make provision for the relevant amount to be treated as earnings and a modified cash equivalent to be used.

21. Paragraph (18) inserts new section 175A into ITEPA (meaning of "modified cash equivalent"). This provides for using the modified cash equivalent where a replacement loan would be treated as the same loan (as in section 186 ITEPA), and where loans are treated as being aggregated under section 187 ITEPA.

22. Paragraph (20) amends section 203 (cash equivalent of benefit treated as earnings) by inserting new subsections (1A) to (1C) and by making provision for the relevant amount to be treated as earnings.

23. Paragraph (21) inserts new section 228A into Part 4 of ITEPA (general exclusions from exemptions: optional remuneration arrangements). This provides that where a benefit under Part 4 is provided by an optional remuneration arrangement, the exemption will no longer apply unless subsection (3) applies. In most cases the amount foregone will be treated as income from the employment. The effect of subsection (2) is that where the sum relates to the payment or reimbursement of costs incurred by the employee, the amount foregone will be treated as earnings falling within Chapter 1 of Part 3.

24. Subsection (3) sets out the type of exemption within Part 4 which are not affected by the rules on optional remuneration arrangements. The first of these are "special case exemptions" which are defined in subsection (4) to include the exemptions specified in the provisions listed in that subsection. The effect of this provision is that the exemptions would be lost because of salary sacrifice or flexible benefit provisions already applying to the sections specified.

25. "Excluded exemptions" are those which will remain exempt regardless of whether there is an optional remuneration arrangement in place. Subsection (5) lists the specific provisions falling within this category. They include employer-provided childcare schemes, the loan of a cycle or cyclists' safety equipment, pensions provisions and benefits related to termination of employment.

26. Subsection (8) provides an order-making power to amend the lists set out in subsections (4) and (5).

27. Paragraphs (22) to (24) provide for consequential amendments to Part 5 ITEPA and to Part 2 of Schedule 1 to ITEPA.

28. Paragraph (25) provides the commencement and transitional provisions. The transitional arrangements apply where an individual already has an optional remuneration arrangement in place with their employer before 6 April 2017. Subparagraph (5) provides that in most cases, if there are no changes in the provision of the benefit, the existing method of computing the cash equivalent of the benefit or access to an exemption will continue to apply up to and including 5 April 2018.

29. Subparagraph (4) provides an extended period for transitional arrangements for certain other benefits for which arrangements were in place before 6 April 2017. If there are no changes in the provision of the benefit, the existing method of computing the cash equivalent of the benefit will apply in respect of employer-provided living accommodation (Chapter 5 of Part 3 ITEPA), cars, vans and related benefits (Chapter 6 of Part 3), and loans (Chapter 7 of Part 3) up to and including 5 April 2021.

30. One further extended transitional provision is set out in subparagraph (6). This covers arrangements for school fees, which would fall within Chapter 10 of Part 3. These arrangements are normally made for the teaching staff or other employees of independent schools. If arrangements in respect of school fees were made before 6 April 2017, and there is no change in the provision of the benefit, the existing method of computing the cash equivalent of the benefit will apply up to and including 5 April 2021.

31. Where optional remuneration arrangements are entered into for the first time after 5 April 2017, or the arrangements are varied or renewed after that point, the new rules will apply from the earlier of the dates on which the arrangements are made or varied, or the date of the transitional arrangements set out in subparagraphs (4) to (6).

32. Subparagraphs (7) to (10) explain when variations or renewals occur. It provides that a variation would not include any variation which has to be made because of

accidental damage or other loss of a benefit beyond the individual's control (e.g. having a company car stolen). Individuals who suspend optional remuneration payments during a period of statutory leave specified in subsection (10) will not be regarded as having varied or renewed the optional remuneration arrangement.

Background note

33. The use of salary sacrifice arrangements in the provision of benefits in kind allows some employees to pay less income tax and NICs in comparison to what they would have paid if remunerated entirely in cash. Employers also achieve a cash saving. The cost of the tax and NICs represents an Exchequer cost which is borne by the majority of taxpayers.

34. To address this unfairness, the government intends to limit the income tax and NICs advantages available by imposing a notional cost on taxable benefits based on the value of the amount of salary given up, if this is greater than the charge that would otherwise be due under the legislation. For those benefits which are subject to either a full or a limited exemption, the exemption is disapplied if the benefit is provided in conjunction with a salary sacrifice arrangement.

35. For certain key policy areas such as pensions provision, childcare, ultra low emission cars and the provision of cycles and cyclists' safety equipment, which the government wishes to continue supporting but which could fail without the use of salary sacrifice arrangements, the government has agreed to continue allowing the use of salary sacrifice arrangements without limiting the effect on tax and NICs savings.

36. The new legislation will have effect on new or revised contractual arrangements involving salary sacrifice which take place on or after 6 April 2017. For agreements in place before that date which continue to apply without change, the new rules will take effect from 6 April 2018 for all benefits except cars with CO2 emissions of 76 grams per kilometer and above, employer-provided living accommodation, and school fees. The old rules will continue to apply for these three types of benefit until 6 April 2021.

37. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy Team by email: employmentincome.policy@hmrc.gsi.gov.uk

Clause 3: Taxable benefits: time limit for making good

Summary

1. This clause introduces a date for 'making good' on benefits-in-kind which are not accounted for in real time through Pay As You Earn (PAYE). The date is 6 July following the end of the tax year in which the tax liability of the benefit-in-kind arises. The date has effect for benefits-in-kind which give rise to a tax liability for the tax year 2017-18 or any subsequent tax year.

Details of the clause

2. Subsection 1 introduces amendments to Part 3 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. Subsection 2(a) amends section 87 by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of a non-cash voucher. Subsection 2(b) defines the relevant tax year for calculating the cash equivalent of the benefit of a non-cash voucher.

4. Subsection 3 applies the definition that the time at which a cheque voucher is treated as handed over is when it is posted for the purposes of calculating the relevant tax year.

5. Subsection 4 amends section 94(2) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of a credit token.

6. Subsection 5 amends section 105(2) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of living accommodation costing £75,000 or less.

7. Subsection 6 amends section 106(3) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of the benefit of living accommodation costing over £75,000.

8. Subsection 7 amends section 144 by introducing the date of 6 July as the date for making good when calculating the deduction for payments for private use of a car.

9. Subsection 8 amends section 151(2) by introducing the date of 6 July as the date for making good when calculating whether the cash equivalent of the benefit of car fuel is nil.

10. Subsection 9 amends section 152(2) by introducing the date of 6 July as the date for making good when calculating the proportionate reduction in the cash equivalent of car fuel.

11. Subsection 10 amends section 158 by introducing the date of 6 July as the date for making good when calculating the reduction for payments for private use of a van.
12. Subsection 11 amends section 162(2) by introducing the date of 6 July as the date for making good when calculating whether the cash equivalent of the benefit of van fuel is nil.
13. Subsection 12 amends section 163(3) by introducing the date of 6 July as the date for making good when calculating the proportionate reduction in the cash equivalent of van fuel.
14. Subsection 13 amends section 203(2) by introducing the date of 6 July as the date for making good when calculating the cash equivalent of benefit treated as earnings.
15. Subsection 14 provides that these changes have effect for the tax year 2017-18 or any subsequent tax year.

Background note

16. An employee can receive remuneration from their employment which does not take the form of money and this is known as a benefit-in-kind. Benefits-in-kind are subject to tax and the majority are also liable for employer's Class 1A National Insurance contributions. It is the cash equivalent of the benefit-in-kind which is subject to tax and liable to NICs. The cash equivalent is usually calculated as the cost to the employer of providing the benefit-in-kind, although in some cases it is calculated in a different way.
17. 'Making good' is where the employee makes a payment in return for the benefit-in-kind they receive. The making good payment has the effect of reducing the taxable value of the benefit-in-kind, often to zero. This reduces the amount of the employee's taxable earnings. The employee might make good if the employer requires the employee to make a contribution towards the provision of the benefit-in-kind; or if the employer or employee wants to reduce the tax due on the benefit-in-kind.
18. At present, there is a range of dates for making good on benefits-in-kind and, for some benefits-in-kind, there is no date in legislation. Employers have said that the current dates cause difficulties for employers and have requested clarity.
19. The clause sets a date of 6 July after the end of the tax year for making good on benefits-in-kind which are not accounted for in real time through Pay As You Earn ('payrolled'). The taxable value, and the value on which Class 1A National Insurance contributions are payable, will be reduced only if the benefit-in-kind is made good by that date.
20. The clauses introduce amendments to legislation on specific benefits-in-kind and also to the provision on calculating the cash equivalent of benefits treated as earnings.
21. The changes introduce greater clarity into the rules on making good and help employers and employees understand their obligations.
22. The clause does not affect the existing dates in legislation for making good on benefits-in-kind which are payrolled.

23. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy team on 03000 521589 (email: employmentincome.policy@hmrc.gsi.gov.uk)

Clause 4: Taxable benefits: ultra-low emission vehicles

Summary

1. This clause amends the appropriate percentage for ultra-low emission vehicles (cars with CO_2 emissions of 0-75 grams per kilometre) for the purpose of calculating the taxable benefit of a company car. It also makes related changes to the appropriate percentage for conventionally fuelled cars.

2. The effect of the changes is that the appropriate percentage for cars in the lowest CO_2 emissions category (1-50 grams CO_2 per kilometre driven) will be based both on CO_2 emissions as well as on the electric range of the car, which is the distance the vehicle can travel in pure electric mode. For cars with emissions of 51 grams CO_2 per kilometre and upwards, the appropriate percentage remains based on CO_2 only.

3. The changes have effect for the tax year 2020-21 and subsequent tax years.

Details of the clause

4. Paragraph (1) introduces amendments to Chapter 6 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (taxable benefits: cars, vans and related benefits).

5. Paragraph (2) amends section 139 of ITEPA by replacing subsections (1) to (6) of that provision with new subsections (1) to (5).

6. Subsection (1) provides for the appropriate percentage for a year for a car with CO_2 emissions of 75 grams per kilometre and below in accordance with the table in that subsection. It introduces a new zero-emission band for cars with no CO_2 emissions; 5 new bands for cars with CO_2 emissions of 1 to 50 grams per kilometre, which are based on the electric range figure of the car; and 5 new bands for cars with CO_2 emissions figure of 51 to 74 grams per kilometre, based on the CO_2 emissions figure only.

7. Subsection (2) requires a car's CO_2 emissions figure or electric range figure to be rounded down to the nearest whole number for the purpose of the table in subsection (1).

8. Subsection (3) introduces a new rule for determining the appropriate percentage for cars with a CO_2 emissions figure of 75 grams per kilometre and above. This is 20% plus 1% for each 5 grams per kilometre by which a car's CO_2 emissions figure exceeds 75 grams per kilometre (up to a maximum of 37%).

9. Subsection (4) requires a car's CO_2 emissions figure to be rounded down to the nearest multiple of 5 for the purpose of the rule in subsection (3).

10. Subsection (5) defines the "electric range figure" for the purpose of section 139.

11. Paragraph (3) amends section 140 of ITEPA to increase the appropriate percentage for cars without a registered CO_2 emissions figure. This increases from 23% to 24% for cars with a cylinder capacity of 1400cc or less, and from 34% to 35% for cars with a cylinder capacity of 1401 to 2000cc. Paragraph 3(b) decreases the appropriate percentage from 16% to 2% for cars that cannot emit CO_2 under any circumstances when driven.

12. Paragraph (4) amends section 142 of ITEPA to increase the appropriate percentage for cars first registered before 1 January 1998. This increases from 23% to 24% for cars with a cylinder capacity of 1400cc or less, and from 34% to 35% for cars with a cylinder capacity of 1401 to 2000cc.

13. Paragraph (5) repeals section 170(3) of ITEPA which was an enabling power allowing for the amendment of the "relevant threshold". This is no longer relevant as the concept of the "relevant threshold" no longer exists.

14. Paragraph (6) provides for these changes to have effect for the tax year 2020-21 and subsequent years.

Background note

15. Section 139 ITEPA sets out the basis for determining the appropriate percentage for cars with a registered CO_2 emissions figure. From 6 April 2020, the graduated table of company car tax bands will now include a differential for cars with emissions of 1 to 50 grams per kilometre based on the electric range of the car. A separate zero-emission band is also introduced.

16. These changes will support the transition to cleaner, zero and ultra-low emission cars which will help to improve air quality in towns and cities and protect the environment for the next generation. It will encourage the take-up of the lowest CO_2 emitting cars which use the most advanced technologies beyond 2020-21.

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

18. Section 142 of ITEPA 2003 sets out the basis for calculating the appropriate percentages for cars registered before 1 January 1998 and these have been increased in line with other changes.

19. The government retains its commitment to legislate over three years in advance of the implementation date, so that employers and employees can make informed choices about what type of vehicles they use and future tax implications.

20. If you have any questions about this change, or comments on the legislation, please contact Employment Income Policy Team by email: employmentincome.policy@hmrc.gsi.gov.uk.

Clause 5: Taxable benefits: asset made available without transfer

Summary

1. This clause introduces rules for calculating the taxable value (cash equivalent) of an asset provided to an employee or a member of their family or household which is available for their private use. The rules will allow for days when the asset is unavailable for private use to be ignored for the purposes of calculating the cash equivalent under certain circumstances. These rules will apply to assets which do not currently have specific charging provisions elsewhere in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

Details of the clause

2. Subsection 1 introduces amendments to Chapter 10 of Part 3 of ITEPA 2003.

3. Subsection 2 amends section 205 ITEPA 2003 (cost of the benefit: asset made available without transfer) and provides for a benefit consisting of an asset being made available for private use. It then inserts new subsections (1A) to (1D). These define the meaning of private use and make provision for deductions from charge under certain circumstances.

4. Subsection 3 inserts new sections 205A and 205B ITEPA 2003. New section 205A (deduction for periods when asset unavailable for private use) provides for a deduction to be made for any day when the asset is unavailable for private use and new section 205A(2) sets out the circumstances when a deduction may apply.

5. If the asset is first provided at some point after the beginning of the relevant tax year, the period before it is made available may be deducted from the calculation of the cash equivalent of the benefit. Similarly, if the asset is permanently withdrawn at some point before the end of the relevant tax year, the period after it is made available may be deducted. New section 205A(3) sets out the conditions, which if satisfied, will result in a reduction of the cost of the benefit.

6. New section 205B (reduction of cost of taxable benefit where asset is shared) provides for a reduction in the cost of the benefit when it is made available for the private use of more than one employee. This is to be achieved on a just and reasonable basis.

7. Subsection 4 amends section 365 ITEPA 2003 to ensure that a deduction in the cost of the benefit cannot be made under both Chapter 10 of Part 3 and Chapter 3 of Part 5 of ITEPA 2003.

Background note

8. On the strict statutory interpretation of the current legislation that applies when an asset is made available to an employee without transfer, employees should be taxed as if the asset were available to them for the entire year even if, for example, it is only made available for part of the year or it is shared with another employee. There is no provision in the legislation to apportion an expense relating partly to the provision of the benefit and partly to another matter. This has the potential for unfair outcomes which cannot be corrected simply by publishing guidance.

9. This clause will introduce in Finance Bill 2017 legislation setting out more detailed rules for calculating the cash equivalent which will allow adjustments for days when the asset is not available for the employee's private use. These supersede the arrangements set out in current HM Revenue and Customs (HMRC) guidance which are not supported by legislation.

If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy Team by email: employmentincome.policy@hmrc.gsi.gov.uk

Clause 6: Pensions advice

Summary

1. This clause introduces a new income tax exemption to cover the first £500 worth of pensions advice provided to an employee (including former and prospective employees) in a tax year. It will allow advice not only on pensions, but also on the general financial and tax issues relating to pensions, allowing individuals to make more informed decisions about saving for their retirement. The changes replace existing provisions which limited the exemption solely to pensions advice and was capped at £150 per employee per year.

Details of the clause

2. Paragraph (1) introduces new section 308C to Chapter 9 of Part 4 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. New section 308C provides an exemption where relevant pensions advice is provided by the employer or where the employer pays for or reimburses the cost of advice when incurred by, or in respect of, an employee, a former employee or a prospective employee.

4. Subsections (2) and (3) limit the amount of the exemption to the first £500 of the benefit in the relevant tax year.

5. Subsection (4) ensures this is set by the employment, so that if an individual has more than one employment and each employer provides the benefit in the relevant tax year, the exemption will apply in respect of both.

6. Subsection (5) defines "relevant pensions advice". This covers advice on a person's pension arrangements, as well as more general advice relating to the use of a person's pension funds.

7. The exemption only applies if either of the Conditions A or B set out in new sections 308C(6) and (7) are met. Condition A sets out availability conditions so that, for example, the benefit cannot just be provided to the board of directors of a company. Condition B allows the employer to provide advice to certain groups of employees on grounds of age or ill-health without breaching the generally available or available by location aspects of Condition A. This still relies on the benefit being made available to all those employees in the same situation.

8. Paragraph (2) makes a consequential amendment to s228 ITEPA 2003.

9. Paragraph (3) revokes Regulation 5 of the Income Tax (Exemption of Minor Benefits) Regulations 2002 (S.I. 2002/205). This provided the previous, more limited exemption

of £150 per employee per year. Paragraph (4) makes a consequential amendment in respect of this revocation.

Background note

10. This exemption was recommended as an outcome of the recent Financial Advice Market Review (FAMR) conducted jointly by HM Treasury (HMT) and the Financial Conduct Authority (FCA). It reflects the government's acknowledgement that individuals aged 55 or more are making significant decisions on the application of their pension savings and may wish to seek advice.

11. The FAMR concluded that there is a particular advice gap in relation to pensions. The government is keen to ensure that financial advice is affordable and accessible to consumers, especially those nearing the point of retirement. The government wants to encourage employers to provide advice to employees to help them make informed choices about what to do with their pension savings.

12. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy Team by email: employmentincome.policy@hmrc.gsi.gov.uk

Clause 7: Deductions for employee liabilities: certain legal expenses etc

Summary

1. This clause extends existing reliefs for employees (or former employees) who may require legal advice or indemnity insurance which is funded by their employer. Currently, such costs are only deductible from earnings for employees who have had allegations made against them in their capacity as an employee (a liability). This clause provides equivalent deductions to be available in relation to proceedings where no allegation has been made or is expected to be made against the employee, for example, where an employee is asked to give evidence before a public hearing when they might also require legal advice and support.

Details of the clause

2. Subsection 1 introduces amendments to Parts 4 and 8 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. Subsection 2 amends section 346 ITEPA 2003 (deduction for employee liabilities) by changing the heading and inserting, in paragraph (b) new paragraphs BA and BB. These paragraphs provide for a deduction from earnings to be available for costs or expenses unrelated to an employee's liability. In the case of new paragraph BA, where these are incurred in connection with an employee giving evidence about matters related to the employment. In the case of new paragraph BB, where there are other costs or expenses not falling within the provisions of existing paragraph B or new paragraph BA, but which are related to the employment.

4. Subsection 2(f) provides a number of definitions relating to certain wording such as "acts", "giving evidence" and "proceeding or other process" to be inserted as new section 346(4).

5. Subsection 3 amends section 349 ITEPA 2003 (meaning of "qualifying insurance contract") so that the contract of insurance can also cover costs or expenses relating to the giving of evidence and other costs or expenses related to the employment but which are unrelated to an employee's liability.

6. Subsection 4 amends section 558 ITEPA 2003 (meaning of "deductible payment") to mirror the provisions set out in section 346 ITEPA 2003 for employees to apply in the same way to former employees. In addition, subsection 5 similarly amends section 560 ITEPA 2003 in relation to contracts of insurance.

7. Section 6 provides for commencement for the tax year 2017-18 and subsequent tax years.

Background note

8. This clause ensures that employees (or former employees) who may require legal advice or indemnity insurance which is funded by their employer, for example in preparation for an appearance before a public enquiry, will not be taxed on the benefit provided by virtue of a deduction being available from earnings.

9. Currently, when an employer funds legal support or pays a premium for legal indemnity insurance for their employees to cover costs connected with proceedings related to their employment, it is only tax-free for employees who have had allegations made against them in their capacity as an employee (a liability). There is no equivalent deduction or relief in relation to proceedings where no allegation is made against the employee.

10. This leads to unfair outcomes and the government has decided to introduce legislation which removes this unfairness.

11. Further amendments have been made to sections 409 and 410 ITEPA 2003 to allow the exemption to apply when an employer or former employer has made payments on behalf of the individual or the individual's personal representatives. A separate explanatory note in respect of this has been published.

12. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy Team by email: employmentincome.policy@hmrc.gsi.gov.uk

Clause 8: Termination payments: treatment of certain legal expenses etc

Summary

1. This clause extends existing reliefs for individuals on termination of employment (or for individuals now deceased) who may receive a benefit or payment in respect of legal advice or indemnity insurance which is funded by their employer. Currently, such costs are only deductible if they have first been paid by the individual with a termination arrangement, or, in the case of a deceased person, by the individual's personal representative. This clause provides that a deduction is allowable if the relevant costs are met by the employer on behalf of the individual or the individual's personal representatives as appropriate.

Details of the clause

2. Subsection 1 introduces amendments to Chapter 3 of Part 6 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. Subsection 2 amends section 409 ITEPA 2003 (exception for payments and benefits in respect of employee liabilities and indemnity insurance) by allowing a deduction from earnings when an employer meets the cost on behalf of the individual.

4. Subsection 3 introduces similar provisions in respect of section 410 ITEPA 2003 by allowing a deduction when a former employer meets the cost on behalf of the individual's personal representatives.

5. Subsection 4 provides commencement provisions for the tax year 2017-18 and subsequent tax years.

Background note

6. The requirement that individuals subject to a termination payment or the personal representatives of those who are deceased could only have access to the deductions available by paying for the costs of the deductible amounts first leads to unfair outcomes.

7. As a result, the government has decided to introduce legislation which removes this unfairness.

8. This clause puts individuals subject to a termination payment or the personal representatives of those who are deceased in the same position as employees (or former employees) who may require legal advice or indemnity insurance which is funded by their employer.

9. Further amendments have been made to section 346 ITEPA 2003 to extend the scope of legal advice and indemnity insurance that is subject to a deduction. A separate explanatory note in respect of this has been published.

10. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy Team by email: employmentincome.policy@hmrc.gsi.gov.uk

Clause 9: Termination payments etc: amounts chargeable to tax on employment income

Summary

1. This clause introduces amendments to tighten and clarify the income tax treatment of termination payments. The clause has effect for the tax year 2018-19 and subsequent tax years.

Details of the clause

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

3. Subsection 2 makes a consequential amendment to section 7(5) of ITEPA which is necessary as a result of this new legislation.

4. Subsection 3 inserts new sections 402A to 402E into Chapter 3 of Part 6 (Payments and Benefits on Termination of Employment etc) of ITEPA.

New Section 402A

5. New section 402A determines how payments and other benefits made on termination should be split between Sections 402B (termination awards not benefitting from the threshold) and 403 (termination awards that benefit from the tax and National Insurance contribution-free threshold).

6. New subsection 402A(1) defines “termination award”.

7. New subsection 402A(2) sets out how new section 402B applies.

8. New subsection 402A(3) states that section 403 of ITEPA will now only apply if the new Section 402B does not apply, i.e. if the termination payment is not to be treated as general earnings then it will fall into the termination payments charge and benefit from the £30,000 threshold.

9. New subsection 402A(4) clarifies that section 403 also applies to other types of payment to which Chapter 3 of Part 6 of ITEPA applies by virtue of section 401(1)(b) or (c) (payments made in relation to change in duties or earnings). This means that the new general earnings charge under new section 402B only applies to those payments arising from termination and not to the other types of payment provided for in this Chapter.

New Section 402B

10. New subsection 402B(1) sets out that termination awards which do not benefit from the £30,000 threshold should be treated as earnings from the employment.

11. New subsection 402B(2) cross refers to section 7(3)(b) and (5)(ca) of ITEPA which relate to payments treated as general earnings.

12. New subsection 402B(3) dis-applies the rules which determine when termination awards are deemed to be received under Section 403(3).

New Section 402C

13. New subsection 402C(1) identifies when new section 402B must apply to a termination award (and is therefore treated as general earnings).

14. New subsection 402C(2) ensures that redundancy payments or approved contractual payments, which are exempt under section 309 ITEPA, are not brought into new section 402B (and are therefore not general earnings).

15. New subsections 402C(3) to 402C(4) establish the concept of the post-employment notice pay and how that pay should be treated in relation to new section 402B. The amount of the post-employment notice pay is the amount of a termination award which should be treated as general earnings. These subsections explain how section 402B applies if the post-employment notice pay is less than, greater than or equal to the total termination award.

16. New subsection 402C(5) signposts the meaning of redundancy payment and approved contractual payment at section 309 of ITEPA.

New Section 402D

17. New subsections 402D(1) and 402D(2) provide a formula for determining the post-employment notice pay and what happens if the figure produced by the formula is negative. The formula relies on figures that are defined elsewhere in new section 402D. If the employee has received a payment in connection with their termination that has already been taxed as general earnings, such as a payment in lieu of notice (PILON), this is taken into account in determining the post-employment notice pay so that it is not effectively taxed twice.

18. New subsections 402D(3) to (7) provide various situations for the application of the general formula in section 402D(1). New subsection 402D(3) is the general application of the formula if new subsections (5) to (7) do not apply. Here, BP, the employee's basic pay over the last calendar year up to the trigger date (trigger date is explained elsewhere in the legislation) is multiplied by D, the number of days in the post-employment notice period (also explained elsewhere in the legislation). This is then divided by Y, which is 365 (the number of days in a non-leap year).

19. New subsection 402D(4) provides a signpost for the meanings of "post-employment notice period" and "trigger date".

20. New subsection 402D(5) sets out how to apply the formula where the employee has been in the employment for less than a year up before trigger date. In this case, BP is the employee's total basic pay over the length of their employment and Y is the number of days of the employement.

21. New subsection 402D(6) sets out how to apply the formula if the employee has been in the employment for a year or more and is paid weekly. Where this is the case BP is the basic pay over 52 weeks and Y is 364.

22. New subsection 402D(7) sets out how to apply the formula where the notice period is a whole number of months and the post-employment notice period is expressed in whole number of months and the default period is also a whole number of months. BP is the employee's basic pay over the year, D the length of the post-employment notice period is expressed in months and Y is 12.

23. New subsection 402D(8) provides a definition of "basic pay" for the purposes of new section 402D.

24. New subsections 402D(9) provides a targeted anti-avoidance rule which captures any arrangements designed to reduce the post-employment notice pay for the purposes of avoiding tax, and where this is the case looks through the arrangements as if they had no effect.

25. New subsection 402D(10) provides a definition of "arrangements" as referred to in new section 402(10).

New Section 402E

26. New subsection 402E(1) provides that subsections (2), (3), (6), and (7) of that section provide definitions for concepts which are set out in new section 402D.

27. New subsections 402E(2) to 402E(4) provide the meaning of the related concepts of "post-employment notice period" and "earliest lawful termination date" for the purposes of this legislation. These establish the length of the post-employment notice period which can then be used to establish the employee's post-employment notice pay.

28. New subsection 402E(5) sets out the meaning of "notice case" in relation to a termination.

29. New subsection 402E(6) provides a meaning for "minimum notice" which is required to establish the length of the post-employment notice period.

30. New subsection 402E(7) provides a meaning for "trigger date" which is required to establish a timeframe by which to reference the employee's basic pay.

31. Subsections (4) and (5) make consequential amendments to sections 403 and 404 of ITEPA which are necessary as a result of this new legislation.

32. Subsection (6) provides a power to vary the threshold through insertion of new section 404B into Chapter 3 of Part 6 ITEPA. It provides that the Treasury may make regulations subject to the negative resolution procedure to this effect unless those regulations reduce the amount of the threshold, in which case the regulations must be subject to the affirmative resolution procedure.

33. Subsection (7) inserts new text into section 406 of ITEPA to define "injury" to reflect what HM Revenue and Customs considers to be its correct interpretation.

34. Subsection 8 inserts new Section 412A (exception in certain cases of non-UK-based employment) into Chapter 3 of Part 6 of ITEPA.

New Section 412A

35. New subsections 412A(1) and 412A(2) provide that Chapter 3 of Part 6 of ITEPA does not apply if a number of conditions specified in subsection 412A(2)(a) to (e) are met with regard to the employee's relevant earnings.

36. New subsections 412A(3) and (4) define "relevant earnings" for the purposes of this section.

37. New subsection 412A(5) gives the meaning of "foreign earnings deduction provision".

38. Subsection (9) amends section 413 of ITEPA (exception in certain cases of foreign service) so that foreign service relief no longer applies except in cases of seafarers.

39. Subsection (10) amends section 414 of ITEPA (reduction in certain cases of foreign service) so that the proportionate reduction provided by this section to amounts that would otherwise count as employment income under Chapter 3 Part 6 no longer applies except in cases of seafarers.

40. Subsections (11) and (12) make consequential amendments to section 717(4) ITEPA (regulations etc not subject to negative procedure) as a consequence of subsection (6), and to Schedule 7 to the Finance Act 2008 and Schedule 46 to the Finance Act 2013 in consequence of subsection (9).

41. Subsection (13) provides that the amendments made by this new legislation take effect from the tax year 2018-19.

Background note

42. The current rules for taxation of termination payments are complex and the exemptions incentivise employers to manipulate the rules by structuring arrangements to include payments that are ordinarily taxable to minimise the tax and National Insurance contributions (NICs) due.

43. At Budget 2016, the government announced that it would align the employer NICs treatment of termination payments with income tax and that it would tighten the scope of the £30,000 exemption to prevent that manipulation.

44. This clause is intended to bring fairness and clarity to the taxation of termination payments by making it clear that all payments in lieu of notice, not just contractual payments in lieu of notice, are taxable earnings. All employees will pay tax and Class 1 NICs on the amount of basic pay that they would have received if they had worked their notice in full, even if they are not paid a contractual payment in lieu of notice. This means the tax and NICs consequences are the same for everyone and it is no longer dependent on how the employment contract is drafted or whether payments are structured in some other form, such as damages.

45. The existing £30,000 income tax exemption will be retained and employees will continue to benefit from an unlimited employee NICs exemption for payments associated with the termination of employment.

46. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy team on 03000 521589 or email: employmentincome.policy@hmrc.gsi.gov.uk

Clause 10: PAYE settlement agreements

Summary

1. Clause 10 amends the provisions of Chapter 5 of Part 11, Income Tax (Earnings and Pensions Act) 2003 (ITEPA). It removes the need for PAYE settlement agreements (PSAs) to be agreed with an officer of HMRC.

Details of the clause

2. Subsection 1 amends sections 703(a) and 704(1) (a) ITEPA, substituting "an officer of Her Majesty's Revenue and Customs" with "Her Majesty's Revenue and Customs".

3. Subsection 2 arranges for the amendment to have effect from the tax year 2018/19 and subsequent tax years.

Background note

4. PSAs are arrangements under which employers can, in a single payment, settle their employees' income tax liabilities for certain benefits and expenses. The government aims to reduce the administrative burden on employers of operating PSAs in their current form. This clause aligns with the principles of HMRC's wider digital transformation strategy.

5. The proposed simplification is the removal the requirement for an employer to submit a request, and obtain agreement of terms, in advance of their end of year reporting obligations. The proposed process will allow for employers to submit their PSA request at the year end, and to make ad hoc requests during the year.

6. Currently, the process relies on the submission of paper returns. HM Revenue and Customs (HMRC) will develop a digital solution, in line with its digital strategy. It will be a largely automated process, although HMRC will be able to intervene manually to mitigate compliance risk.

7. This clause paves the way for automated agreements with HMRC. Consequential changes to Part 6 of the Income Tax (PAYE) Regulations 2003 will be required with effect from 6 April 2018.

8. HMRC's guidance will be strengthened, reducing errors and providing certainty for employers

9. If you have any questions about this change, or comments on the legislation, please contact Anne Archer on 03000 586099 (email: anne.t.archer@hmrc.gsi.gov.uk).

Clause 11 and Schedule 3: Overseas pensions

Summary

1. This clause and schedule make changes to the UK tax charges that arise on overseas pension savings, including where payments are made out of funds that have had UK tax relief, and where foreign pensions and lump sums are paid to UK residents. It also provides for no new pension saving in specialist pension schemes for foreign service and aligns the tax treatment for registered pension schemes whether based in or outside the UK.

Details of the clause and Schedule

Part 1: Charges where payments made in respect of overseas pensions

2. Part 1 amends Schedule 34 to the Finance Act (FA) 2004 to extend from five to ten tax years the period of an individual's non-UK residence during which UK tax charges can apply to payments out of pension savings in overseas pension schemes that have had UK tax relief.
3. Paragraph 2 amends paragraph 1 of Schedule 34.
4. Paragraph 2(2) introduces the term 'benefited scheme' in subparagraph 1(6) of Schedule 34, which is the pension scheme that receives a relevant transfer.
5. Paragraph 2(3) inserts new subparagraphs (6A) to (6F).
6. New subparagraph (6A) provides that there are three types of relevant transfer:
7. an original relevant transfer which is defined in new subparagraph (6B)
8. a subsequent relevant transfer, which is a defined in new subparagraph (6D)
9. any other relevant transfer, which includes relevant transfers made before 6 April 2017
10. New subparagraph (6B) defines an original relevant transfer as one that is received from either a registered pension scheme or a transfer from another overseas pension scheme where the pension funds or rights under that scheme had benefitted from UK tax relief (a relevant non-UK scheme) on or after 6 April 2017.
11. New subparagraph (6C) introduces the concept of a 'ring-fenced transfer fund'. The ring-fenced transfer fund is the sums or assets transferred in as an original relevant transfer.

12. New subparagraph (6D) defines a subsequent relevant transfer as one that is made out of an original relevant transfer that formed the whole or part of a ring-fenced fund.

13. New subparagraph (6E) ensures that even where there are a number of transfers of the same funds, the rules in subparagraph (6D) will apply so that those later transfers will also be 'subsequent relevant transfers'.

14. New subparagraph (6F) provides the power for HM Revenue & Customs (HMRC) to make regulations to set out what does not constitute a ring-fenced transfer fund.

15. Paragraph 3 amends paragraph 2 of Schedule 34.

16. Paragraphs 3(2) and 3(3) provides that payments to or in respect of a member of a relevant non-UK scheme that has pension funds or rights built up under that scheme that have benefited from UK tax relief (a relieved member) or who has transferred into that scheme from a registered pension scheme or another relevant non-UK scheme where the transfer is not taxable as an unauthorised payment (a transfer member) will continue to be subject to UK tax charges. Such members will continue to be subject to UK tax charges if the individual is UK resident or has been resident in any one of the previous five tax years to the extent that the contributions were made or transfers received before 6 April 2017. These funds are called '5-year rule funds' and are defined in new subparagraph (3).

17. Paragraph 3(4) inserts new subparagraphs (2) to (4).

18. New subparagraph (2) extends to 10 years the period in which UK tax charging provisions can apply to payments out of funds for which individuals have benefited from UK tax relief on pension funds or rights under an overseas pension scheme or which individuals have transferred to a qualifying recognised overseas pension scheme (QROPS). This extension will apply to funds or rights that accrue or are transferred on or after 6 April 2017 only.

19. New subparagraph (3) defines the terms 5-year rule funds and 10-year rule funds in relation to pension funds or rights that have benefitted from UK tax relief and transfers. The extended UK tax charging provisions will apply to 10-year rule funds only.

20. New subparagraph (4) sets out that the definitions for the terms used in paragraph 2 are provided in paragraphs 1, 3 and 4.

21. Paragraph 4 amends paragraph 3 of Schedule 34 which relates to payments to or in respect of relieved members of relevant non-UK schemes that from pension funds or rights built up under that scheme that have benefited from UK tax relief (a UK tax-relieved fund).

22. Paragraph 4(2) inserts new subparagraph (5A).

23. New subparagraph (5A) provides the power for HMRC to make regulations to determine that a member's UK tax-relieved fund is reduced by a payment, event or anything else. For example, this will allow HMRC to make regulations to provide that the amount calculated as being subject to UK tax charges is reduced, even in

cases where a payment is not made to the member, such as (but not limited to) when funds are designated into flexi-access drawdown.

24. Paragraph 4(3) amends subparagraph 6 to provide HMRC with the power to make regulations to determine that something other than a payment can reduce a member's UK tax-relieved.

25. Paragraph 4(4) inserts new subparagraph (8).

26. New subparagraph (8) provides that where HMRC makes regulations under subparagraph (6), HMRC can also make regulations under that subparagraph to reduce a particular part of the UK tax-relieved fund.

27. Paragraph 5(1) amends paragraph 4 of Schedule 34 which relates to payments to or in respect of transfer members of relevant non-UK schemes that have received transfers.

28. Paragraph 5(2) contains consequential amendments to include reference to the new ring-fenced transfer fund.

29. Paragraph 5(3) contains consequential amendments to include reference to the new subparagraph (3A).

30. Paragraph 5(4) inserts new subparagraph (3A).

31. New subparagraph (3A) provides that the sums or assets in a member's relevant transfer fund are distinct from those in a member's ring-fenced transfer fund.

32. Paragraph 5(5) inserts new subparagraphs (5) to (7).

33. New subparagraph (5) makes the same provision as in paragraph 3(5A) of Schedule 34 (inserted by paragraph 4(2) of this Schedule) but in relation to a transfer member of a relevant non-UK scheme.

34. New subparagraph 6 makes the same provision as in paragraph 3(6) of Schedule 34 (amended by paragraph 4(3) of this Schedule) but in relation to a transfer member of a relevant non-UK scheme.

35. New subparagraph (7) makes the same provision as in paragraph 3(8) of Schedule 34 (inserted by paragraph 4(4) of this Schedule) but in relation to a transfer member of a relevant non-UK scheme.

36. Paragraphs 6 and 7 contain consequential amendments to the powers to make regulations in relation to relieved members and transfer members and the annual allowance provisions in Schedule 34 to include reference to the new 'ring-fenced transfer fund'.

37. Paragraph 8 provides that the changes for this Part of the Schedule take effect on or after 6 April 2017.

Part 2: Consequential amendments of ITEPA 2003

38. Part 2 sets out amendments to the temporary non-residents provisions in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 as a result of the changes made in Part 1 of this Schedule.

39. Paragraph 9 contains consequential amendments to section 576A of ITEPA 2003 to include reference to the new 'ring-fenced transfer fund'.

40. Paragraph 10 contains the same amendments as in paragraph 9 of this Schedule but made to the version of section 576A of ITEPA 2003 that applies where the year of departure from the UK is the tax year 2012-13 or earlier.

Part 3: New Chapter 5A Part 4 FA 2004 (non-UK registered pension schemes)

41. Part 3 sets out how the rules in Part 4 FA 2004 apply to registered pension schemes based outside the UK and how those schemes interact with registered pension schemes based in the UK and relevant non-UK schemes.

42. Paragraph 11(1) inserts new Chapter 5A into Part 4 of FA 2004.

43. New section 242A defines a non-UK registered pension scheme as one that is based outside the UK but is registered in the UK for tax purposes.

44. New section 242B(1) applies the tax provisions in Part 4 of FA 2004 to non-UK-based registered pension schemes in the following circumstances:

- in relation to UK-relieved funds (defined in new section 242C) held under a non-UK registered pension scheme, the rules apply as they would to the sums or assets held under a UK-based registered pension scheme;
- in relation to non-UK-based registered pension schemes, the rules apply as they would to a UK-based registered pension scheme to the extent of the scheme's UK-relieved funds;
- in relation to members of non-UK-based registered pension schemes, the rules apply to their rights under the scheme to the extent that they are represented by UK-relieved funds, in the same way as funds held under a UK-based registered pension scheme; and
- in relation to contributions to a non-UK-based registered pension scheme the rules apply as they do to contributions to a UK-based registered pension scheme.

45. New section 242B(2) of new section 242B provides that other rules in Chapter 5A take precedence over the rules in subsection 1.

46. New section 242B(3) provides HMRC with the power to make regulations to clarify how UK the provisions of Part 4 FA 2004 and tax relief applies in relation to non-UK-based registered pension schemes.

47. New section 242B(4) provides that regulations made under the power in paragraph 242B(3) can amend provisions in relation to the rules in Part 4 FA 2004 and

other Acts and make consequential amendments. For example this will enable HMRC to provide for relief from tax on pension income paid under a non-UK-based registered pension scheme which is taxable under Part 9 of ITEPA 2003.

48. New section 242B(5) of new section 242B sets out that the definitions for the terms used in subsection 1 are provided in section 242C.

49. New section 242C(1) defines UK-relieved funds of a non-UK registered scheme as sums or assets held for the purposes of, or represent accrued rights under the scheme

- That, directly or indirectly, relate to sums or assets that were held under a registered pension scheme at any time,
- That directly or indirectly, relate to the sums or assets that were held under a UK tax-relieved fund of a relieved member of a relevant non-UK scheme at any time, or
- That are held for the purposes of, or represent accrued rights under a scheme where the member is an accruing member and are taken to have benefited from tax relief under regulations made by HMRC.

50. New section 242C(2) sets out that the definition of relevant contributions is provided in regulation 14ZB of the Information Regulations as

- a relievable pension contribution paid by or on behalf of an individual under a money purchase arrangement that is not a cash balance arrangement relating to the individual
- a contribution in respect of an individual by their employer under a money purchase arrangement that is not a cash balance arrangement in relation to that individual
- a contribution by an employer under a scheme but not in respect of any individual that becomes held under money purchase arrangement that is not a cash balance relating to the individual.

51. New section 242C(3) provides that paragraphs (7) and (8) of the Information Regulations, defining accruing member and relevant contributions respectively, apply for the purposes of section 242C.

52. New section 242C(4) defines the Information Regulations as Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567).

53. New section 242D(1) provides that section 242D sets out how the annual allowance charge applies to non-UK registered pension schemes.

54. New section 242D(2) confirms that an individual's input into a non-UK registered pension scheme is to be included in the calculation of the amount to be tested against the annual allowance only if HMRC has set out in regulations that they are taken to have been made in respect of that individual under the scheme in the year.

55. New section 242E sets out that the taxable property provisions (defined at paragraph 1 of Schedule 29A) apply in relation to a non-UK registered pension scheme as if the scheme were established in the UK.

56. Paragraph 11(2) provides that the changes for this Part of the Schedule take effect for the tax year 2017-18 and later tax years.

Part 4: Income tax on pension income

57. Part 4 brings 100%, instead of 90%, of the foreign pension income of UK residents into charge for UK tax purposes. It also removes the facility for tax relief in respect of new saving in the specialist pension schemes for those working outside the UK.

58. Paragraph 12 amends provisions relating to the UK taxation of foreign pension income.

59. Paragraphs 12(1) to 12(4) remove subsection 2 of section 575, subsection 3 of section 613 and subsection 3 of section 635 of ITEPA 2003 and makes consequential amendments so that the full amount, instead of 90%, of a UK resident individual's foreign pension is taxable in the UK.

60. Paragraph 12(5) updates a reference in the Income Tax (Trading and Other Income) Act 2005.

61. Paragraph 12(6) provides that the changes made by paragraph 12 of this Schedule take effect from the 2017-18 tax year.

62. Paragraph 13 provides that specialist pension schemes used to provide pension savings for those working solely outside the UK will only meet the requirements under section 615 of the Income and Corporation Taxes Act (ICTA) 1988 if they are established before 6 April 2017. To continue to receive relief under section 615(3) on annuity payment no new pension saving may be made after 5 April 2017 to existing schemes established under section 615 ICTA 1988.

Part 5: Lump sums for UK residents from foreign pension schemes

63. Part 5 brings into charge for UK tax purposes lump sums paid under foreign pension schemes to or in respect of UK residents. Where the lump sum is paid under a pension scheme that meets the definition of an overseas pension scheme, the lump sum will receive the same tax treatment as the same payment made under a registered pension scheme.

64. Paragraph 14 amends ITEPA 2003.

65. Paragraph 15(1) amends section 395B of ITEPA 2003.

66. Paragraph 15(2) removes foreign service relief for UK resident members of an employer-financed retirement benefits scheme who receive a lump sum in the tax year.

67. Paragraph 15(3) makes consequential amendments relating to the definition of the term foreign service, amended by paragraph 16 of this Schedule.

68. Paragraph 15(4) provides that the changes made by paragraph 15 of this Schedule take effect from the 2017-18 tax year.

69. Paragraph 16 inserts new section 395C into ITEPA 2003.

70. New section 395C(1) sets out the meaning of foreign service as provided by subsections 2, 3, 6 and 8 of this section.

71. New section 395C(2) provides that service in the 2013-14 tax year or later tax years is foreign service only if the duties are performed outside the UK, the earnings would not be relevant earnings and a deduction equal to the whole amount of the earnings would have been allowable in relation to seafarers' earnings.

72. New section 395C(3) provides that service in or after the 2003-04 tax year but before the 2013-14 tax year is foreign service only if the earnings were not relevant earnings and a deduction equal to the whole amount of the earnings would have been allowable in relation to seafarers' earnings.

73. New section 395C(4) and (5) define relevant earnings for subsections 2 and 3 respectively.

74. New section 395C(6) provides that service after the 1973-74 tax year but before the 2003-04 tax year is foreign service is foreign service only if tax was not chargeable on the emoluments under Case I Schedule E or a deduction equal to the whole amount of the emoluments was allowable under a foreign earnings deduction provision.

75. New section 395C(7) defines the foreign earnings deduction provision for subsection 6.

76. New section 395C(8) provides that service before the 1974-75 tax year is foreign service only if tax was not chargeable on the emoluments under Schedule E or Case I Schedule E.

77. Paragraph 17 inserts new subsections 554Z4(7) and (8) into ITEPA 2003.

78. New subsection 554Z4(7) sets out that the value of a relevant step is not reduced for foreign service when the relevant step is lump sum relevant benefit under an EFRBS paid to a UK resident.

79. New subsection 554Z4(8) defines EFRBS and relevant benefit.

80. Paragraph 18 inserts new subsections 573(4) into ITEPA 2003.

81. New subsection 573(4) provides for a UK tax charge on the payment of a relevant lump sum under a pension scheme established outside the UK where the member is UK resident (or if the member has died, was UK resident immediately before their death), including where the beneficiary is not UK resident.

82. Paragraph 19 amends section 574(1) of ITEPA 2003 to insert the term a relevant lump sum into the definition of foreign pension.

83. Paragraph 20(1) inserts new section 574A into ITEPA 2003.

84. New section 574A(1) defines a relevant lump sum as a lump sum paid from a pension scheme that is not a registered pension scheme, relevant non-UK scheme or employer-financed retirement benefits scheme and the lump sum is not a relevant step to which the disguised remuneration rules in Chapter 2 of Part 7A of ITEPA 2003 apply.

85. New section 574A(2) provides that a lump sum paid under a relevant non-UK scheme is a relevant lump sum if the member payment provisions in Schedule 34 of FA 2004 do not apply to the lump sum.

86. New section 574A(3) sets out the steps to calculate the amount of pension that is treated as arising in relation to a relevant lump sum paid under a foreign pension scheme that is not one of the schemes set out in subsection 1.

- Step 1 allows for deductions that are available to any taxpayer under Chapter 17 of Part 9 of ITEPA 2003
- Step 2 allows for a deduction in relation to rights built up in a pension scheme before 6 April 2017
- Step 3 allows for a deduction in relation to a lump sum payable under an overseas pension scheme where an amount would be exempt from income tax if the lump sum were paid under a registered pension scheme.

87. New section 574A(4) sets out that the amount arrived at by following the steps in subsection 2 is treated as the amount of taxable pension income arising in the tax year.

88. New section 574A(5) defines the terms used in this paragraph.

89. Paragraph 20(2) provides that the changes for this paragraph of the Schedule take effect on or after 6 April 2017.

90. Paragraph 21 contains consequential amendments to section 576A of ITEPA 2003 to include reference to the new relevant lump sum.

91. Paragraph 22 contains the same amendments as in paragraph 21 of this Schedule but made to the version of section 576A of ITEPA 2003 that applies where the year of departure from the UK is the tax year 2012-13 or earlier.

Part 6: Regulations

92. Part 6 amends section 169 FA 2004.

93. Paragraph 23(1) amends section 169 of FA 2004.

94. Paragraph 23(2) inserts new subsection 2A.

95. New subsection (2A) provides a power for HMRC to make regulations to require information or evidence in a particular form in relation to the notification of recognised overseas pension schemes.

96. Paragraph 23(3) inserts new subsection 4C

97. New subsection (4C) provides that the existing power to make regulations in relation to recognised overseas pension schemes can require information in a particular form.

98. Paragraph 23(4) inserts new subsections 7A and 7B.

99. New subsection 7A provides HMRC with the power to make Regulations to ensure that where a relevant overseas transfer of a pension in payment is made the pension in the new pension scheme will be treated as the pension in the scheme under which it was formerly held.

100. New subsection 7B defines a relevant overseas transfer as a transfer of sums or assets representing rights under a relevant non-UK scheme to another relevant non-UK scheme or to a registered pension scheme in respect of an individual member.

101. Paragraph 23(5) makes consequential amendments.

Background note

102. A number of changes are being made to the UK taxation of foreign pensions

103. HMRC will:

- Extend from five to 10 years the period in which UK tax charges can apply to payments out of funds in overseas pension schemes that contain pension funds or rights that have benefitted from UK tax relief
- Ensure that funds in a registered pension scheme based outside the UK are subject to UK taxation consistent with the tax treatment of a UK-based registered pension scheme
- Tax the full foreign pension of UK residents, instead of 90%
- Tax foreign pension lump sums paid to UK residents that are not already liable to UK tax
- Close specialist “section 615 schemes” to new pension saving if individuals wish to continue to be able to receive relief from tax in respect of annuity payments from those schemes.
- Have new powers to make Regulations specifying how information and evidence should be provided and that a pension transferred from a relevant non-UK scheme out of funds that have benefitted from UK tax relief to another relevant non-UK scheme or a registered pension scheme will be treated as the original pension.

104. If you have any questions about this change, or comments on the legislation, please contact Beverley Davies on 03000 512336 (email: pensions.policy@hmrc.gsi.gov.uk)

Clause 12 and Schedule 4: Investment trusts etc: deduction of income tax at source

Summary

1. Clause 12 introduces Schedule 4 which amends Part 15 of the Income Tax Act 2007 (ITA 2007) so that the requirement to deduct a sum representing income tax from yearly interest will no longer apply in the case of interest distributions made by open-ended investment companies (OEICs), authorised unit trusts (AUTs) and investment trusts companies (ITCs). Similarly, it removes the requirement to deduct tax from interest paid to investors in peer to peer lending. Savers and investors will therefore receive these types of income without tax being deducted. The changes apply to interest distributions and payments of interest made on or after 6 April 2017.

Details of the Schedule

Part 1: Interest distributions of investment trust or authorised investment fund

2. Paragraph 1 inserts new sections 888B, 888C and 888D into ITA 2007. These sections remove the requirement in section 874 to deduct tax from interest distributions of, respectively, ITCs, OEICs and AUTs.

3. Paragraph 2 makes a consequential amendment to section 45(2) of the Finance Act 2009. It removes powers to make regulations about ITCs, which are made redundant by these changes.

Part 2: Interest on peer-to-peer lending

4. Paragraph 3 inserts new section 888E into ITA 2007. This section ensures that the requirement in section 874 to deduct tax does not apply to interest on peer-to-peer lending.

5. Subsections (2), (4) and (5) of section 888E explain the meaning of 'peer-to-peer lending', linking it to regulatory rules.

6. Subsection (6) permits regulations to be made amending section 888E in the event that relevant regulatory rules are changed in future.

Part 3 : Further amendment and commencement

7. Paragraph 4 amends section 874(3)(a) of ITA 2007, substituting the new reference to 888E instead of 888 for.

8. Paragraph 5 provides for commencement for amounts payable on or after 6 April 2017.

Background note

9. Since the introduction of the Personal Savings Allowance, with effect from 6 April 2016, 95% of taxpayers have no tax to pay on their savings income, including interest. Because of this, the obligation on banks and building societies to deduct tax at source from payments of interest on accounts was removed from the same date.

10. In the light of this, following consultation on further changes to the rules on deduction of tax, the government announced at the March 2016 Budget that, from 6 April 2017, deduction at source would also end for interest distributions of OEICs, AUTs and ITCs and for interest on peer-to-peer lending. This clause and schedule give effect to that announcement, bringing the treatment of interest from these sources into line with interest on bank and building society accounts. This ensures that those with no tax to pay on this savings income will not have to reclaim tax deducted from HM Revenue and Customs.

11. If you have any questions about this change, or comments on the legislation, please email mailbox.financialproductsandservices@hmrc.gsi.gov.uk.

Clause 13: Life insurance policies: recalculating gains on part surrenders

Summary

1. This clause introduces an application process by which policyholders who have part surrendered or part assigned their life insurance policies (including capital redemption policies and contracts for life annuities) and generated a wholly disproportionate taxable gain can apply to HM Revenue and Customs (HMRC) to have their gain recalculated on a just and reasonable basis. The clause introduces new sections 507A and 512A into Income Tax (Trading and Other Income) Act (ITTOIA) 2005 which have effect from 6 April 2017.

Details of the clause

Section 507A ITTOIA 2005: Recalculating gains under section 507

2. Subsection 1 allows a person who has made a part surrender or part assignment of a life insurance policy which gives rise to a gain under section 507 to apply to an officer of HMRC to have the gain reviewed if they consider that it is wholly disproportionate.

3. Subsection 2 requires that applications under subsection (1) must be made in writing and received by an officer of HMRC within 2 years after the end of the insurance year in which the gain under section 507 arose. A longer period may be allowed if the officer agrees.

4. Subsection 3 provides that if the officer considers that the gain arising under section 507 is wholly disproportionate then the gain must be recalculated on a just and reasonable basis.

5. Subsection 4 ensures that following a recalculation under subsection (3) all references to a gain under section 507 in Chapter 9 of ITTOIA 2005 (excluding this section) should be regarded as references to the gain as recalculated under this subsection.

6. Subsection 5 instructs an officer of HMRC to notify the applicant of the result of the recalculation of the gain.

Section 512A ITTOIA 2005: Recalculating gains under section 511

7. Subsection 1 allows a person who has made a part assignment for money (or money's worth) or a part surrender followed by an assignment (otherwise than for money) of a life insurance policy which gives rise to a gain under section 511 to apply to an

officer of HMRC to have the gain reviewed if they consider that it is wholly disproportionate.

8. Subsection 2 requires that applications under subsection (1) must be made in writing and received by an officer of HMRC within 2 years after the end of the insurance year in which the gain under section 511 arose. A longer period may be allowed if the officer agrees.

9. Subsection 3 provides that if the officer considers that the gain arising under section 511 is wholly disproportionate then the gain must be recalculated on a just and reasonable basis.

10. Subsection 4 requires that following a recalculation under subsection (3) all references to a gain under section 511 in Chapter 9 of ITTOIA 2005 (excluding this section) should be regarded as references to the gain recalculated under this subsection.

11. Subsection 5 instructs an officer of HMRC to notify the applicant of the result of the recalculation of the gain.

Background note

12. At Budget 2016 the government announced its intention to change the tax rules for part surrenders and part assignments of life insurance policies to ensure that wholly disproportionate gains were no longer charged to tax. This was to provide a fairer outcome for those policyholders that inadvertently generated such gains. A consultation on possible options for change was held from 20 April to 13 July 2016.

13. Following consultation, the government decided to introduce legislation to retain the existing tax rules for part surrenders and part assignments but allow policyholders who had inadvertently triggered a disproportionate gain to apply to an officer of HMRC to have their gain recalculated on a just and reasonable basis. This legislation is expected to have limited application as it is considered that wholly disproportionate gains will arise very infrequently.

14. If you have any questions about this change, or comments on the legislation, please contact Darryl Wall on 03000 585977 (email: darryl.wall@hmrc.gsi.gov.uk)

Clause 14: Personal portfolio bonds

Summary

1. This clause provides a power to make secondary legislation to amend the property categories that may be selected without triggering the personal portfolio bonds (PPB) anti-avoidance rules contained in sections 515 to 526 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). The power has effect from royal assent of Finance Act 2017.

Details of the clause

2. This clause introduces new subsections (5), (6) and (7) to section 520 of ITTOIA 2005.

3. Subsections (5), (6) and (7) give the Treasury the power to add, remove or change the property categories listed in subsection (2) and their definitions (currently in subsection (4)), and to make consequential amendments. A statutory instrument which removes a property category requires the 28 day affirmative procedure in the House of Commons.

Background note

4. The PPB legislation prevents an individual placing personal assets in a life insurance policy to avoid a tax charge on income arising from those assets. At Budget 2016 the government announced its intention to review the property categories a policyholder may select to have within their life insurance policy without triggering the provisions of the PPB legislation. A consultation was held seeking views on current and new property categories. Following consultation the government decided to take a power to update the legislation in regulations to take account of recent changes in the investment landscape and to respond quickly to further changes that may occur in the future. Additions to the property categories will be subject to the negative procedure. Removing property categories will require the affirmative procedure as they could bring policies within the charge to tax.

5. If you have any questions about this change, or comments on the legislation, please contact Marie Madden on 03000 529481 (email: marie.madden@hmrc.gsi.gov.uk)

Clause 15: EIS and SEIS: the no pre-arranged exits requirement

Summary

1. This clause amends the Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) rules to allow companies that issue shares with rights to a future conversion into shares of another class in that company to qualify for relief. The amendments will have effect to shares issued on or after 5 December 2016.

Details of the clause

2. Subsection 1 introduces the amendments to be made to Parts 5 and 5A of the Income Tax Act (ITA) 2007.

3. Subsection 2 amends Section 177, the “no pre-arranged exits requirement” of the EIS, to exclude arrangements for the conversion or exchange of shares in the company from one class to another from being considered as arrangements for the disposal of those shares.

4. Subsection 3 provides a matching amendment for Section 257CD and the SEIS.

5. Subsection 4 provides for commencement.

Background note

6. The EIS and SEIS encourage investment in smaller, higher risk trading companies by offering tax reliefs to individual investors who subscribe for new shares in qualifying companies.

7. Sections 177 and 257CD ITA 2007 act to deny tax relief if certain arrangements exist, in connection with the issue of the shares, that provide for the disposal of shares or securities in the company. Where a company converts or exchanges one class of shares into, or for, another within the qualifying period of the EIS and SEIS, this would be considered to be a disposal of the shares. Therefore, where such future rights or other such arrangements exist at the time of the share issue, sections 177 and 257CD would apply, preventing the company from accessing either the EIS or SEIS.

8. HM Revenue and Customs has been discussing the issue of share conversion rights with industry members and advisers for over a year to understand the implications of allowing companies to include share conversion rights in their articles of association and elsewhere.

9. Companies often issue shares with these rights for commercial reasons to enable them to simplify their share structures at some future date, for example before listing on a stock exchange or private refinancing. These amendments are intended to allow

companies to issue shares with these rights without limiting their access to the EIS or SEIS. However, the amendments do not change the treatment that would apply if shares are converted or exchanged in this manner within the qualifying period. Neither do the amendments exclude any other aspects of the issuing arrangements from the application of Sections 177 or 257CD.

10. If you have any questions about this change, or comments on the legislation, please contact Alex Buckley on 03000 586048 (email: alex.buckley@hmrc.gsi.gov.uk)

Clause 16: VCTs: follow-on funding

Summary

1. This clause amends the Venture Capital Trust (VCT) rules to enable a new parent company, which has acquired an old company through a certain type of share for share exchange, to receive follow-on funding from a VCT on the basis of the old company's funding history. The clause has effect for investments made, and relevant holdings issued, on or after 6 April 2017.

Details of the clause

2. Subsection (1) introduces amendments to Chapter 6 of Part 6 of the Income Tax Act (ITA) 2007.
3. Subsection (2) makes consequential changes to section 326 of ITA 2007.
4. Subsection (3) inserts new section 327A ITA 2007 in Chapter 6 of Part 6 of ITA 2007.
5. Section 327A(1) specifies that the provisions of the section apply only if a new company has acquired an old company through a share for share exchange within the requirements of section 326(1) and (2). Among other conditions, the shares in the old company must have been exchanged for new shares and securities in the new company on a proportionate basis. "Shares" include securities under the provisions of section 328(1) ITA 2007.
6. Section 327A(2) and (3) clarify the application of sections 280C (the permitted maximum age condition) and 294A (the permitted company age requirement) ITA 2007 respectively, where a share for share exchange has taken place within section 326(1) and (2).
7. Section 327A(2)(a) and (3)(a) specify that condition A in sections 280C(4) and 294A(3) will be met if the old company had received a relevant investment before the end of its initial investing period. The money raised by the new company must be used for the same business activities of the old company as the initial investment in the old company.
8. Section 327A(2)(b) and (3)(b) specify that condition C in sections 280C(6) and 294A(5) will be met if the old company had received a relevant investment under condition B of sections 280C(5) and 294A(4). The money raised by the new company must be used for the same business activities of the old company as the initial investment in the old company.
9. Section 327A(4) clarifies the meaning of a relevant holding in section 327A(3).
10. Subsection (4) specifies that the provisions of new section 327A will apply to new investments made in, or relevant holdings issued by, the new parent company on or after 6 April 2017.

Background note

11. Venture Capital Trusts (VCTs) are one of the tax-advantaged venture capital schemes. The schemes are intended to encourage individuals to invest in certain early stage, higher risk, trading companies to support their growth and development. Companies that are eligible for investment by a VCT are also eligible to receive investments by individuals under the Enterprise Investment Scheme (EIS).

12. Additional rules introduced by Finance (No. 2) Act 2015 restrict the age of companies that are eligible to receive an investment by a VCT or under the EIS. In general, the investment must be received before the end of the company's initial investing period. The initial investing period ends seven years after the company's first commercial sale unless the company is a knowledge-intensive company. In that case, the initial investing period ends 10 years after the company's first commercial sale.

13. The detailed rules on the age limits for companies are at section 175A ITA 2007 for the EIS and sections 280C and 294A ITA 2007 for VCTs. Section 280C provides for investments under Chapter 3 of Part 6 of ITA 2007 and section 294A provides for qualifying holdings within Chapter 4 of Part 6 of ITA 2007.

14. There are three exceptions to the general age limit described above:

    - condition A: a company may receive follow-on funding after the end of the initial investing period if the initial investment was received before the end of the initial investing period
    - condition B: a company may receive initial funding after the end of the initial investing period if the amount of the investment is at least 50% of the company's turnover, averaged over the previous five years, and the company uses the money to enter a new product market or geographic market
    - condition C: a company may receive follow-on funding if it received an initial investment under condition B.

15. This clause arises from technical discussions with advisers and VCTs following the introduction of the additional rules by Finance (No. 2) Act 2015.

16. The EIS rules already allow a new parent company that has carried out a share-for-share exchange within section 247 ITA 2007 to receive follow-on funding, where the old company had issued shares before the end of the initial investing period or under condition B. However the VCT share-for-share exchange rules are drafted differently from the EIS rules and do not make provision for the new parent company to take on the old company's funding history. Clause 16makes provision to align the effect of the VCT rules with the existing EIS rules.

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

Clause 17: VCTs: exchange of non-qualifying shares and securities

Summary

1. This clause provides a power for HM Treasury to make regulations on the exchange of non-qualifying investments held by a Venture Capital Trust (VCT) for new shares or securities in the course of a share reorganisation or company reconstruction. This power has effect from Royal Assent.

Details of the clause

2. Subsection 1 amends section 330 (Power to facilitate company reorganisations etc involving exchange of shares) of the Income Tax Act (ITA) 2007.

3. Subsection (2) extends the regulatory power in section 330 by introducing new subsection (1A). This allows provision to be made for cases where shares or securities that are exchanged do not meet the requirements of Chapter 4 of ITA 2007.

4. Subsections (3), (4) and (6) make consequential amendments to the references in section 330.

5. Subsection (5) inserts new subsection (3A). This sets out a non-exhaustive list of matters that may be provided for by regulation under the extended power.

6. Subsection (7) ensures that the power in section 330 to make provision having retrospective effect does not extend to provision made under new subsection (1A)

Background note

7. Venture Capital Trusts (VCTs) are one of the tax-advantaged venture capital schemes. The schemes are intended to encourage individuals to invest in certain early stage, higher risk, trading companies to support their growth and development. VCTs are approved listed investment companies offering tax incentives to their individual investors. In order to be approved and retain approval the VCT is required to meet certain conditions with regard to its investments.

8. The Finance Act 2016 introduced rules that prescribe the non-qualifying holdings that a VCT may make. These rules took effect from 6 April 2016 but do not apply to non-qualifying investments made before that date. These investments can continue to be held by a VCT.

9. In the course of a commercial restructuring or buy-out it is sometimes the case that a VCT is obliged to exchange one form of investment for another. The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (SI 2002/2661) allow concessions where a qualifying

investment is exchanged for investments that do not meet some or all of the qualifying holding conditions in Chapter 4. In accordance with these regulations the new investments are deemed to be qualifying investments, subject to certain limitations, so that the VCT is not immediately at risk of a breach of its approval.

10. The relief provided in SI 2002/2661 applies only in the circumstance that the original investment was a qualifying investment. This clause arises from technical discussions with advisers and VCTs, and provides for a similar relief in relation to non-qualifying investments. This will allow a VCT to dispose of non-qualifying investments through an exchange for new non-qualifying investments without immediate loss of its approved status.

11. Draft regulations will be published for consultation before Public Bill Committee of the Finance Bill.

12. If you have any questions about this change, or comments on the legislation, please contact Martin Trott on 03000 585619 (email: venturecapitalschemes.policy@hmrc.gsi.gov.uk)

Clause 18: Business investment relief

Summary

1. Generally, a UK resident non-domiciled individual who is taxed on the remittance basis will be subject to UK tax on any overseas income or gains which they bring to the UK, regardless of the purpose for which such funds are used. The Business Investment Relief (BIR) was introduced to attract foreign investment without incurring a tax liability on remittance providing it was invested in UK business.
2. This clause introduces a number of changes to the rules governing BIR to encourage foreign investors to make greater investment into UK business. The changes have effect for investments made on or after 6 April 2016.

Details of the clause

3. Subsection 1 amends Chapter A1 of part 14 of ITA 2007.
4. Subsection 2 introduces a change to section 809VC to allow an investor to claim BIR on the acquisition of existing shares in a company in which they have made an investment.
5. Subsection 3 amends section 809VD to provide for the extension of the start- up period for a company from 2 to 5 years. It also introduces a new section 3A which provides a definition of the new eligible hybrid company available for investment. This company will be a combination of both a stakeholder and trading company as previously investment could only be made in a company that carried out either of these roles rather than a combination of both.
6. Subsection 4 clarifies the position in relation to corporate partners by amending section 809VE. Investment in partnerships was excluded from BIR from the outset. It has always been the government's position that this exclusion extends to corporate members of partnerships and HMRC have consistently refused claims for BIR on investment in such corporate members. Feedback has suggested that the legislation is not clear on this point. This amendment addresses that concern by making clear that a company which is a partner in a partnership is not to be regarded as carrying on the trade of the partnership, meaning that unless the target company is carrying on commercial trade in its own right, it will not qualify for BIR.
7. Subsection 5 highlights a number of changes made to section 809VH which deals with a potential tax charge being incurred if a benefit is received either directly or indirectly as a result of an investment. Currently this rule is breached if an investor receives any benefits directly or indirectly from the company they have invested in or any company associated to this company, whether or not the benefit is connected to the investment. The revised legislation will remove any reference to an involved company in the rules.

This change means that the legislation will instead treat the rule as having been breached where a benefit is received from anyone in circumstances directly or indirectly attributable to the investment.

8. Subsection 6 amends section 809VJ to extend the grace period allowed to remove income or gains from a company that becomes non-operational to 2 years from the date that the investor first becomes aware, or ought reasonably to have become aware, that the company has become non-operational.

9. Subsection 7 now includes an eligible hybrid company in the order of disposals at section 809VN.

10. Subsection 8 provides for all the amendments shown above to come into force from 6 April 2017.

Background note

11. The clause supports the policy of expanding the scope of BIR to make it easier and more attractive to potential investors to bring their money from overseas to invest in UK businesses.

12. At Autumn Statement 2015 the government announced it would consult on ways the BIR rules can be amended to increase take-up. The changes set out in the clause expand the types of businesses in which an investment can be made and ensure that the anti-avoidance rules do not discourage genuine investment. They also clarify parts of the rules which were previously unclear.

13. Finally there will be further clarification that a company which is a partner in a partnership is not to be regarded as carrying on the trade of the partnership, meaning that unless the target company is carrying on a commercial trade in its own right, it will not qualify for BIR.

14. A consultation on the proposed changes commenced on 19 August 2016 and ran for 8 weeks before closing on 20th October 2016. The response paper will be published on 5th December 2016.

15. HM Revenue and Customs (HMRC) will produce updated guidance to support these changes at their commencement date.

16. If you have any questions about this change, or comments on the legislation, please contact Aidan Close on 03000 585 255 (email: aidan.close@hmrc.gsi.gov.uk)

Clause 19 and Schedule 5: Trading and property allowances

Summary

1. This clause and schedule provides for a new trading and property allowance for individuals of £1,000 each. The allowances will provide for full relief on trading and property income of up to £1,000. This clause also provides for partial relief where there is relevant income above the level of the allowance, if the individual elects for a new alternative method of calculating profits by deducting the allowance from their receipts, instead of the actual allowable expenses. The trading allowance will also apply to certain miscellaneous income from providing assets or services. Any income which attracts rent-a-room relief will not be eligible for either of the allowances. These allowances will take effect from the tax year 2017 to 2018.

Details of the Clause

2. This clause introduces a Schedule which provides for a trading allowance and property allowance that give relief from income tax.

Details of the Schedule

Part 1: Main provisions

3. Paragraph 1 inserts a new Part 6A "Income charged under this Act: Trading and Property Allowances" to the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). The new Part has 2 new chapters, "Chapter 1 Trading allowance" comprised of new sections 783A-Q and "Chapter 2 Property allowance" comprised of new sections 783R-Z7.

Chapter 1 – Trading allowance

4. New section 783A sets out an overview of the trading allowance.

5. New section 783B provides that trades carried out in partnership or rent-a-room trades are not relevant trades for the purposes of relief under this chapter. Partnerships are excluded to avoid adding extra complexity to the rules. The section is also intended to prevent claims for the new allowance and rent-a-room relief on the same trading income.

6. New section 783C defines miscellaneous income as the income before any expenses are deducted in determining the amount chargeable to tax under Chapter 5 of Part 8, ITTOIA. This is intended to prevent people from claiming both expenses and the allowance against the same receipts. Sub-section (2) excludes miscellaneous income

that attracts rent a room relief to prevent claims for the new allowance and rent-a-room relief on the same miscellaneous income.

7. New section 783D defines an individual's relevant income, eligible for relief under this chapter as the total of the receipts of an individual's relevant trades and miscellaneous income for the tax year. The trade receipts are those otherwise brought in to account in calculating the profits of a trade for a tax year chargeable to income tax under Chapter 2 of Part 2, ITTOIA. This excludes items such as adjustment income and post cessation receipts, chargeable under other chapters of ITTOIA. The period for which the trade receipts are brought in to account will be determined by the basis period rules in Chapter 15, of Part 2, ITTOIA.

8. New section 783E sets the amount of the allowance, which can be increased by Treasury regulations.

9. New sections 783F-H set out the rules for when an individual's relevant income for a tax year is less than the trading allowance defined in section 783E. The default position is that this income is not chargeable to income tax ("full relief"). There is an election under new section 783M for full relief not to be given.

10. New section 783I provides for partial relief where an individual with relevant income is not eligible for full relief, if they make an election under new section 783N for an alternative method of calculation of their profits from all relevant trades and miscellaneous income. This method overrides the profit calculated under Chapter 2 of Part 2, ITTOIA and the calculation of miscellaneous income under Chapter 8 of Part 5, ITTOIA. The effect of this section applying to all relevant income is to prevent individuals from using the trading allowance, if they choose to deduct actual expenses in calculating the profits of any other relevant trade.

11. New section 783J the alternative method provides that the profits of each of the individual's relevant trades will be calculated as set out in steps 1 and 2 of sub-section (2), by deducting the allowance from the receipts of the trades for the tax year, as defined in section 783D (2), instead of deducting the actual trading expenses. Step 3 provides for a deduction for overlap profits in calculating the profits of the final tax year of the trade and on change of accounting date, where this provided for in Chapter 15, of Part 2, ITTOIA.

12. New section 783K the alternative method provides that the allowance is deducted from miscellaneous income for the year, as defined by new section 783C, instead of deducting the actual expenses.

13. New section 783L provides that an individual with multiple sources of trading and/or miscellaneous income, can choose how to allocate the trading allowance between the different sources. The deduction of the allowance at step 2 of new section 783J, cannot create a loss.

14. New section 783M this election to dis-apply new sections 783G and 783H, can be made on a tax return and has effect for the tax year for which it is made. The section also sets out the time limits for making the election.

15. New section 783N this sets out the rules for an election for partial relief under new sections 783J and 783K. This can be made on a tax return and has effect for the tax

year for which it is made and for all of the relevant trades carried on by the individual in the tax year. The section also sets out the time limits for making the election.

16. New sections 783O excludes individuals from relief under this chapter in two circumstances where the individual qualifies for rent-a-room relief in respect of rent-a-room receipts. The first is where those receipts are below the rent-a-room relief limit given in section 789 ITTOIA and the individual makes an election under section 799 to dis-apply the full rent-a-room relief for the tax year. The second is where the individual's rent-a-room receipts exceed the rent-a-room relief limit given in section 789, and the individual chooses not to make an election for the alternative calculation of profits described in section 800 but instead opts to calculate profits by deducting expenses. The intention is to prevent individuals from using the trading allowance if they choose to deduct actual expenses in calculating the profits of any other trade.

17. New section 783P is an anti-avoidance provision to prevent employers from trying to reclassify some payments to employees (or to persons connected with employees) as trading or miscellaneous income to take advantage of the allowance.

Chapter 2 – Property Allowance

18. New section 783R sets out an overview of the property allowance.

19. New section 783S provides that distributions of income from a Property Authorised Investment Fund or a Real Estate Investment Trust and any property income comprising of rent a room receipts of an individual who qualifies for rent-a-room relief are not relevant property businesses.

20. New section 783T provides that relievable receipts are only those brought in to account in calculating the profits of a UK or overseas property business chargeable under Chapter 3 of Part 3, ITTOIA. This excludes items such as adjustment income and post cessation receipts, chargeable under other chapters of Part 3, ITTOIA. Balancing charges which arise from an excluded source of receipts such as rent a room receipts are excluded from scope.

21. New section 783U provides that an individual's relevant property income, eligible for relief under this chapter is the total relievable receipts from relevant property businesses for the tax year.

22. New Section 783V sets the amount of the allowance, which can be increased by Treasury regulations.

23. New section 783W-X sets out the rules for when an individual's relevant property income for a tax year is less than the allowance defined in new section 783V. The default position is that this income is not chargeable to income tax ("full relief"). There is an election under new section 783Z2 for full relief not to be given.

24. New section 783Y-Z provides for partial relief where an individual is not eligible for full relief, if they make an election under new section 783Z3 for the alternative method to calculate the profits of all relevant property businesses. This method overrides the profit calculated under Chapter 3 of Part 3, ITTOIA. Under this method deductions allowable in calculating profits charged to income tax under Chapter 3 of

Part 3, ITTOIA do not form part of the calculation of profit. Instead the property allowance can be deducted from the relievable receipts, as defined by section 783T. The effect of this section applying to all relevant property income is to prevent individuals from using the property allowance if they choose to deduct actual expenses in calculating the profits of any other relevant property business.

25. New section 783Z1 provides that an individual with both a UK and an overseas property business can choose how to allocate the allowance between the different property businesses. This cannot create or increase a loss.

26. New section 783Z2 this election to dis-apply new section 783X can be made on a tax return and has effect for the tax year for which it is made. The section also sets out the time limits for making the election.

27. New section 783Z3 this sets out the rules for an election for partial relief under new section 783Z. This has effect for the tax year for which it is made and for all of the relevant property businesses carried on by the person in the tax year. This also sets out the time limits for making the election.

28. New section 783Z4 provides that individuals with a tax reduction in lieu of non-deductible costs of mortgage interest are excluded from relief under this chapter.

29. New section 783Z5 excludes individuals from relief under this Chapter in two circumstances where the individual qualifies for rent-a-room relief in respect of rent-a-room receipts. The first is where those receipts are below the rent-a-room relief limit given in section 789 ITTOIA and the individual makes an election under section 799 to dis-apply the full rent-a-room relief for the tax year. The second is where the individual's rent-a-room receipts exceed the rent-a-room relief limit given in section 789, and the individual chooses not to make an election for the alternative calculation of profits described in section 800 but instead opts to calculate profits by deducting expenses incurred from their rental income. The intention is to prevent individuals from using the property allowance if they choose to deduct actual expenses in calculating the profits of any other property business.

30. New section 783Z6 is an anti-avoidance provision which prevents relief from being available if the individual's relievable receipts include an amount paid by or on behalf a company of which the individual is an employee (or a person connected with the employee) at the time the payment is made.

Part 2: Consequential amendments

31. Paragraph 2 makes consequential changes to ITTOIA that flow from this new legislation.

32. Paragraph 4 inserts a new section in Chapter 2, of Part 2, ITTOIA, to have the effect that the profits of the trade calculated in accordance with Chapter 1, of the New Part, will override the rules for calculating profits of a trade, apart from this new section, under Chapter 2, of Part 2, ITTOIA.

33. Paragraph 5 inserts a new section in Chapter 5, of Part 3, ITTOIA, to have the effect that the profits of a property business calculated in accordance with Chapter 2, of the

New Part, will override the rules for calculating profits, apart from this new section, under Chapter 3, of Part 3, ITTOIA.

34. Paragraph 6 makes consequential changes to section 688 ITTOIA.

Part 3 - Commencement

35. Paragraph 8 provides for commencement in tax year 2017 to 2018.

Background note

36. At Budget 2016, the government announced two new £1,000 allowances each for property and trading income to take effect from 6 April 2017. The aim of the measure was to provide simplicity and certainty regarding income tax obligations on small amounts of income from providing goods, services, property or other assets and to help the UK become leaders in the digital and sharing economy. The government announced at Autumn Statement 2016 that the trading allowance will also apply to certain miscellaneous income from providing assets or services.

37. The new Part 6A inserted by this clause and schedule will provide for full relief on trading and property income of up to each allowance of £1,000. Individuals with income of up to the allowance will no longer have to declare or pay tax on this income. This eliminates the need for individuals to determine allowable expenses or contact H M Revenue and Customs (HMRC) to declare the income. The new Part 6A also introduces partial relief, which will apply when income is above the level of the allowance, if individuals choose to make an election to pay tax using the alternative method, broadly on their receipts less the value of the allowance, instead of deducting actual expenses. This would also mean that individuals would not have to determine their allowable expenses, providing simplification and certainty. Individuals that have expenses above the level of the allowance such as a typical landlord or person who is self-employed can do the same as now and pay tax on their profits calculated after deducting their actual expenses, and not to elect to use the allowance.

38. If you have any questions about this change, or comments on the legislation, please contact Tony Page on 03000 537842 (email: Anthony.page@hmrc.gsi.gov.uk)

Clause 20 and Schedule 6: Carried-forward losses

Summary

1. This clause reforms the tax treatment of certain types of carried-forward loss for corporation tax purposes. The legislation takes effect from 1 April 2017.
2. The reform has two aspects. It provides more flexibility in how losses arising on or after 1 April 2017 can be relieved when they are carried forward; and it limits the amounts against which all carried-forward losses (whenever they arise) can be relieved to 50% of profits, subject to an annual allowance.
3. The schedule is set out in five parts. Part 1 creates separate rules for losses arising before 1 April 2017, and for losses arising on or after 1 April 2017. Part 2 sets out how the restriction of relief to 50% of profits will operate. Part 3 sets out a new form of group relief for carried-forward losses. Part 4 contains minor and consequential amendments. Part 5 covers commencement provisions.

Details of the clause and Schedule

4. Clause 20 introduces the Schedule.

Schedule 6

Part 1: Amendment of general rules about carrying forward losses

5. Paragraphs 1 to 3 amend the heading and introduction to Chapter 16 of Part 5 of the Corporation Tax Act (CTA) 2009. Chapter 16 will now apply only to non-trading loan relationship deficits arising before 1 April 2017 or that arise at any time to charities.
6. Paragraph 4 inserts new Chapter 16A, comprising new sections 463A to 463H, into Part 5 of CTA 2009.
7. New section 463A introduces Chapter 16A, which applies to non-trading loan relationship deficits arising in accounting periods beginning on or after 1 April 2017 where the company that incurred the deficit is not a charity.
8. New section 463B allows a claim to be made for the whole or part of the deficit arising to be set against profit of any description for the period in which the deficit arises, or to be carried back and set against profits for earlier accounting periods.
9. New section 463C specifies the time limit for making a claim under section 463B, which is 2 years after the end of the period in which the deficit arose, or such further period as an officer of HM Revenue and Customs (HMRC) allows. Section 463C also

permits a different claim to be made for different parts of the non-trading deficit for the period.

10. New section 463D applies where the claim under section 463B is for the deficit to be set off against profits for the period in which the deficit arose. The claim must specify the amount of the deficit to be relieved and identify the profits against which it is to be set. Section 463D(4) contains a priority rule - relief under this section is given before any relief for certain losses arising in the year or carried back to the accounting period from a later period.

11. New section 463E sets out what happens when a claim is made under section 463B to carry back a deficit to an earlier period. Relief can only be given for an amount that is the smaller of the deficit remaining after relief under section 463D and the company's relievable profits (defined in new section 463F).

12. New section 463F sets out what profits can be relieved under section 463E by carrying back a non-trading loan relationship deficit to an earlier period, which must be a period ending within the period of 12 months immediately before the period in which the deficit arises (see section 463F(2) to (4)). Those profits are profits chargeable under Part 5 of CTA 2009 (loan relationships), but reduced by any relief which must be given in priority (see section 463F(5) for the list of those reliefs).

13. New section 463G sets out how relief is given in later periods for any unrelieved deficits, after giving relief against profits of the same or an earlier period and after any amounts surrendered as group relief. The company may claim to set off some or all of the remaining deficit against its total profits of the next period. The claim must be made within 2 years of the end of the accounting period for which the claim is made or such further period as an officer of HMRC allows. It does not have to claim the whole amount and any amount remaining is carried forward and considered under new section 463H.

14. New section 463H applies where an amount is carried forward under section 463G but is not set off against profits of the first period in which those deficits could be relieved or surrendered as group relief. Any remaining amount can be the subject of a claim by the company under section 463G for set-off against total profits in a later period. Again, the company does not have to claim the full amount available.

15. Paragraph 5 amends section 753(3) of the CTA 2009, part of the Intangible Fixed Assets legislation. It introduces a different term so that amounts of non-trading losses on intangible fixed assets that are carried forward to a later period can be treated separately and given the correct treatment under the new rules. Under current rules a non-trading loss on intangible fixed assets is carried forward and treated as a debit arising in a later period and aggregated with any non-trading intangible credits of the later period. This amendment has the effect that a loss on non-trading intangible fixed assets that is not used in an accounting period will be carried forward and set against a company's total profits of a later accounting period instead of being aggregated with any intangible non-trading credits of a later accounting period.

16. Paragraph 6 amends section 1223 of CTA 2009.

17. Paragraph 6(2) amends section 1223(1)(b) of CTA 2009 to bring within the scope of section 1223 amounts brought forward from an earlier period where a company is unable or decides not to claim all of those amounts in the current period. This then permits any remaining unclaimed amounts to be carried forward to a later period under section 1223(3). Paragraph 39 makes a further amendment to section 1223(1)(b) of CTA 2009. Taken together these amendments ensure that section 1223 applies correctly where expenses of management are eligible to be carried forward and set against total profits of a later accounting period.

18. Paragraph 6(3) inserts new subsections (3A) to (3E) into section 1223 of CTA 2009. Subsections (3B) to (3D) require that a claim must be made to deduct excess expenses of management in the next accounting period, but the claim need not be made for the full amount available. Before this change, a claim was not required. Where expenses of management are carried forward to a later period, subsection (3E) removes the requirement in section 1219(1A) of CTA 2009 that those expenses of management must be set off before any other deductions against total profits.

19. Paragraph 7 introduces amendments to Chapter 2 of Part 4 of CTA 2010 (trading losses).

20. Paragraph 8 amends the wording of section 36(1) of CTA 2010 so that it refers to all forms of relief for trading losses.

21. Paragraph 9 amends the heading before section 37 of CTA 2010.

22. Paragraph 10 amends section 45 of CTA 2010, which provides relief for trade losses carried forward against trade profits of a subsequent period, so that it applies only to losses arising before 1 April 2017.

23. Paragraph 10(5) introduces new subsections (4A) to (4C) into section 45. These new subsections allow a claim to be made to specify that an amount of trading profits of an accounting period beginning on or after 1 April 2017 are not to be reduced by a trading loss carried forward. The claim must be made within two years after the end of the accounting period specified, or within such further period as an officer of HMRC allows.

24. Paragraph 11 inserts new sections 45A to 45H into CTA 2010.

25. New section 45A provides for relief for a trading loss where all or part of the loss is not relieved against total profits in the period of the loss nor surrendered as group relief in that period. Any remaining part of the loss may, on the making of a claim, be carried forward and set against total profits of a later period (section 45A(5)). Section 45A(2) imposes restrictions such that a trading loss may not be carried forward to the later period and set against total profits if:

- The trade became small and negligible in the period in which the loss arose;
- Relief was unavailable in the year the loss arose under section 37 CTA 2010 because of certain specific exclusions, for example, section 37(5)

CTA 2010 (trade carried on wholly abroad), section 44 CTA 2010 (trade not carried on on a commercial basis); or,

- Relief would be unavailable under section 37 CTA 2010 for any loss that arose in the period to which the claim relates because in that period, the trade was not carried on commercially (section 44 CTA 2010).

26. Where one or more of these conditions applies, the loss may be available to be carried forward and set against profits from the same trade under new section 45B of CTA 2010.

27. New section 45A(6) sets out that the claim must be made within two years after the end of the later period or within such further period as an officer of HMRC allows.

28. New section 45B applies where a trading loss arises on or after 1 April 2017, the trade is carried on in the next accounting period, but the conditions for carrying forward the loss and claiming relief against total profits in section 45A are not met. The amount of the unrelieved loss is carried forward and relief given against profits of the same trade of the next accounting period (sections 45B(3) and (4)). The company may however make a claim within two years of the end of that next accounting period for any part of that loss not to be relieved against the trade profits of that period (section 45B(5)).

29. New section 45C allows a trade loss carried forward under section 45A that remains unrelieved to be carried forward to a further period in which the trade is carried on, and a claim to be made under section 45A for the whole or a part of that loss to be relieved against the company's total profits of that further period.

30. New section 45C(2) specifies that the loss may not be carried forward to that further period and set against total profits if:

    - The trade became small or negligible in the period from which the loss was carried forward under section 45A; or

    - Relief would be unavailable under section 37 CTA 2010 for any loss that arose in the further period because, in that further period, the trade was not carried on commercially (section 44 CTA 2010).

    Where either of these conditions is not satisfied, relief may be considered under new section 45D.

31. New section 45D applies where a trading loss carried forward under section 45A CTA 2010 remains unrelieved, but the loss cannot be carried forward to a further period and relief claimed against total profits under section 45A because the conditions in section 45C(2) CTA 2010 (outlined above) are not met. Providing the trade continues in that further period, the amount of the unrelieved loss is carried forward under section 45B and relief given against profits of the same trade of the further accounting period. The company may make a claim under section 45B for any part of that loss not to be relieved against the trade profits of that further period.

32. New section 45E allows a trading loss carried forward under section 45B that remains unrelieved to be carried forward to a further period in which the trade is carried on, and relief given against profits of the same trade of that further accounting period under the terms of Section 45B (see section 45E(2)). The company may make a claim under section 45B for any part of that loss not to be relieved against the trading profits of that period.

33. New section 45F introduces a form of terminal loss relief where losses are carried forward to an accounting period in which a trade ceases. Any unrelieved losses may be set against profits of the 3-year period ending with the end of the period in which the trade ceased (section 45F(3)). Relief cannot be claimed for the period in which the loss arose, any prior period and any period beginning before 1 April 2017 (section 45F(4)). The loss is set off either against profits of the same trade where losses are carried forward under section 45 or 45B or against total profits where losses are carried forward under section 45A (section 45F(7). The claim must be made within two years after the end of the accounting period in which the trade ceases, or within such further period as an officer of HMRC allows.

34. New section 45G sets out how to compute the relief where an accounting period falls partly within the 3 year period set out in section 45F.

35. New section 45H is an anti-avoidance rule to counteract arrangements involving a cessation of a trade and a transfer of all or part of the trade to a party outside the charge to corporation tax. The section denies relief under section 45F where the conditions are met. This rule is the equivalent to section 41 of CTA 2010, which applies to the existing relief for terminal losses.

36. Paragraph 12 introduces amendments to Chapter 4 of Part 4 of CTA 2010 (losses from a UK property business).

37. Paragraph 13 amends section 62 of CTA 2010. It introduces new subsections (5A) to (5D) which require a claim to be made for these types of losses to be carried forward and set against profits of a later period and which also permit the company to claim some or all of the amount available.

38. Paragraph 14 amends section 63 of CTA 2010. This section applies where a company ceases to carry on a UK property business, but the company continues to carry on an investment business after the UK property business has ceased. Any unrelieved losses from the property business can be carried forward and relieved as expenses of management of the investment business. New subsections (4) to (7) are inserted. A claim will now be required for these amounts to be carried forward and set against later profits. The company may claim some or all of the amount available. In addition, the priority rule in section 1219(1A) of CTA 2009 is disapplied where expenses of management are carried forward to a later period so that the company will not be required to set off those expenses of management in priority to other reliefs.

Part 2: Restriction on deductions in respect of carried-forward losses

39. Paragraph 15 introduces amendments to CTA 2010.

40. Paragraph 16 inserts a new Part 7ZA, comprising new sections 269ZA to 269ZO, into CTA 2010.

41. New section 269ZA gives an overview of the new Part 7ZA which provides for restrictions in the amount of certain deductions that can be made in computing taxable total profits.

42. New section 269ZB sets out how the new restriction applies where trading losses are carried forward and can only be set against later profits from the same trade (section 269ZB(2)). These are all trade losses arising before 1 April 2017 (pre-1 April 2017) and certain types trade losses arising after 1 April 2017 (post-1 April 2017) such as those arising from uncommercial activities. The maximum that can be deducted under this section (the “relevant maximum”) is set out in section 269ZB(3). It is the sum of the proportion (if any) of the annual £5m allowance that the company has designated to be set against carried-forward trading profits (see section 269ZB(5)) plus 50% of the company’s trading profits in excess of that proportion of the annual allowance (“relevant trading profits”, defined in new section 269ZE). Section 269ZB(6) ensures that the sum of the trading deductions allowance and the non-trading deductions allowance (see new section 269ZC) cannot exceed the total deductions allowance available to the company for the period.

43. New section 269ZC has the same effect as section 269ZB, but in respect of non-trading loan relationship deficits that can be carried forward and set only against non-trading profits of later periods. These are pre-1 April 2017 non-trading loan relationship deficits and those arising at any time to a company that is a charity. Section 269ZC(6) ensures that the sum of the trading deductions allowance and the non-trading deductions allowance cannot exceed the total deductions allowance available to the company for the period.

44. New section 269ZD sets out how the amount of profit that can be relieved by carried-forward losses is determined where relief is given against total profits of a later period. The maximum amount of carried-forward losses that can be set against total profits is the difference between the “relevant maximum” and the amounts given under sections 269ZB and 269ZC (see section 269ZD(2)). The types of carried-forward relief involved (“relevant deductions”) are set out at section 269ZD(3). The “relevant maximum” is the sum of the company’s share of the annual deductions allowance plus 50% of the company’s total profits in excess of its share of the annual deductions allowance (section 269ZD(4)).

45. New section 269ZD(6) specifies that the amount of a company’s deductions allowance is computed in accordance with either new section 269ZG where the company is a member of a group or new section 269ZL otherwise.

46. New section 269ZE sets out how to calculate “relevant trading profits” and “relevant non-trading profits” for the purposes of sections 269ZB and 269ZC respectively.

"Relevant trading profits" is the difference between "qualifying trading profits" and the "trading profits deductions allowance"; and "relevant non-trading profits" is the difference between "qualifying non-trading profits and the "non-trading profits deductions allowance". The two types of qualifying profit are computed in accordance with section 269ZE(3).

47. New section 269ZE(3) contains 5 steps:

- Step 1 is to compute the company's total profits, without any reduction for:
    a. pre-1 April 2017 trade losses;
    b. post-1 April 2017 trade losses that can be set only against profits of the same trade, (for example those arising from uncommercial activities);
    c. pre-1 April 2017 non-trading deficits from loan relationships; or
    d. non-trading deficits from loan relationships arising at any time to companies that are charities.
- Step 2 is to identify any amounts that can be relieved against total profits (such as group relief for current year losses), ignoring reliefs for carried-forward losses that are subject to the loss restriction ("relevant deductions", see 269ZD(3)) or losses carried back from a later accounting period that are set against total profits ("excluded deductions", see new section 269ZE(5)).
- Step 3 is to divide the profits computed under step 1 into 'trade' and 'non-trade' profits.
- Step 4 is then to apply the reliefs identified at step 2 to reduce the "trade" and "non-trade profits" but without reducing either amount below zero. This gives the final amounts of the company's "qualifying trading profits" and "qualifying non-trading profits" (step 5).

48. New section 269ZE(4) excludes from total profits for these purposes any income from distributions within the scope of Part 9A of CTA 2009. However, where that income constitutes trading income within Part 3 of CTA 2009 it will not be excluded from total profits for the purposes of computing the carried-forward losses that the company can use.

49. New section 269ZF sets out how to calculate "relevant profits" for the purposes of Part 7ZA. This is the difference between the total profits at Step 1 of section 269ZE(3), and the sum of:

    a. the total deductions at Step 2 of section 269ZE(3) and
    b. the deductions allowance for the period.

"Relevant profits" cannot be less than zero (section 269ZF(2)).

50. New section 269ZG sets out how to calculate the deductions allowance for a company that is part of a group. The group may allocate a share of the group's annual £5m allowance to the company (see new sections 269ZH to 269ZK) and in addition the company may have a proportion of its own annual allowance (for a part of a period when it was not a member of a group) - but in aggregate a company can never receive an allowance greater than £5m for any period of 12 months (section 269ZG(2)).

51. New section 269ZH sets out the arrangements for determining and allocating a group deductions allowance. The section enables a group to make a "group allowance nomination" whereby a nominated company is appointed by the members of a group (section 269ZH(1)(b)). All members of the group must agree to the nomination (section 269ZH(1)(b) and section 269ZH(6)). The nomination can take effect before the date it is made (see section 269ZH(5)). Where the nomination is in effect throughout an accounting period of the nominated company, the group will have a total allowance of £5m for that accounting period (section 269ZH(2)); otherwise the allowance is reduced proportionately (section 269ZH(3)). If the nominated company's accounting period is less than 12 months the allowance is again reduced proportionately (section 269ZH(4)).

52. New section 269ZH(7) sets out the circumstances in which the group allowance nomination ceases to have effect.

53. New section 269ZI sets out certain requirements for submission of a "group allowance allocation statement". The statement must be filed by the nominated company no later than 12 months after the end of the accounting period (section 269ZI(4)) or a later period if an officer of HMRC allows it (section 269ZI(5)).

54. New section 269ZJ sets out the circumstances in which a revised group allowance allocation statement may be submitted. The time limit for doing so is the later of:

- 12 months from the filing date for the company tax return for the nominee's accounting period and
- the time when any enquiry into that return is finalised (section 269ZJ(4)),

A revised allocation statement may be submitted at a later time if an officer of HMRC allows.

55. New section 269ZK sets out the requirements for what must be included in a group allowance allocation statement. The total amounts allocated must not exceed the "group deductions allowance" for the nominee's accounting period (section 269ZK (6)) and the amount allocated to a company must not exceed the proportion of that allowance due for the period in which the company is a group member (section 269ZK(5)). If the amounts allocated exceed these limits, the statement must be amended (section 269ZK(7) and (8)). If it is not amended, an officer of HMRC may make an amendment and must notify each company (section 269ZK(9) and (10)). The normal time limits for amendment of a company tax return do not apply where the

amendment is a consequence of the submission of a group allowance allocation statement (section 269ZK(11)).

56. New section 269ZL provides for the deductions allowance for a company that is not a member of a group. The allowance is £5m for an accounting period of 12 months, reduced proportionately for any accounting period that is less than 12 months.

57. New section 269ZM requires a company to specify the amount of its deductions allowance in its company tax return for the accounting period.

58. New section 269ZN requires a company to amend its company tax return if it has specified an amount of deductions allowance, trading profits deductions allowance or non-trading profits deductions allowance that is excessive. HMRC has the power to make assessments to recover tax where the amount of a deductions allowance is excessive.

59. New section 269ZO sets out the meaning of a group for the purposes of the deductions allowance. It is based on but wider in scope than the definition used in Part 5 CTA 2010 for group relief purposes. A group comprises the ultimate parent and its subsidiary companies. The ultimate parent is a company that is a parent of another company where no other company is the parent of both companies (see section 269ZO(3)),

60. New section 269ZO(4) specifies that a company (A) is a parent company of another (B) if:

- B is a 75% subsidiary of A;
- A is beneficially entitled to at least 75% of B's profits available for distribution to equity holders; or
- A would be beneficially entitled to at least 75% of any of B's profits available for distribution to equity holders on a winding up.

61. New section 269ZO(5)) defines equity holders as for group relief (see chapter 6 of Part 5 CTA 2010).

62. New section 269ZO(7)(a) provides that in the case of a company without ordinary share capital, the tests in section 269ZO(4) are instead applied to any holding or interest which provides economic rights that correspond to those provided by ordinary share capital ("corresponding ordinary holding," see section 269ZO(8)). The tests can also be applied to an unincorporated association (section 269ZO(7)(b)) and to ownership through entities (other than companies), trusts or arrangements (section 269ZO(7)(c)).

63. Paragraph 17 amends section 269C CTA 2010 which is part of the legislation on the restriction of certain deductions for banking companies (bank loss restriction) in Part 7A CTA 2010. The amendment makes it clear that for banking companies, the Part 7A legislation applies in addition to Part 7ZA (general loss restriction).

64. Paragraph 18 amends section 269CA CTA 2010 (which covers the restriction for pre-1 April 2015 trading losses) so that the definition of "relevant trading profits" used for

the purposes of the bank loss restriction is the same as that used for general loss restriction (see section 269ZE).

65. Paragraph 19 amends section 269CB CTA 2010 (which covers the restriction for pre-1 April 2015 non-trading deficits from loan relationships) so that the definition of "relevant non-trading profits" used for the purposes of the bank loss restriction is the same as that used for general loss restriction (see section 269ZE).

66. Paragraph 20 amends section 269CC CTA 2010 (which covers the restriction for pre-1 April 2015 expenses of management) so that the definition of "relevant profits" used for the purposes of the bank loss restriction is the same as that used for general loss restriction (see section 269ZF). The amendment also specifies that the maximum expenses of management that can be relieved ("relevant maximum") is the difference between 25% of the "relevant profits" and the amounts of any relief given for:

- pre-1 April 2017 trade losses;
- post-1 April trade losses that can be set only against profits of the same trade, (for example those arising from uncommercial activities);
- pre-1 April 2017 non-trading deficits from loan relationships; and
- non-trading deficits from loan relationships arising at any time to companies that are charities.

67. Paragraph 21 omits section 269CD CTA 2010 which is no longer required as the definitions of "relevant trading profits" "relevant non-trading profits" and "relevant profits" used are the same as for the general loss restriction (see sections 269ZE and 269ZF).

68. Paragraph 22 amends section 269CN CTA 2010 to bring the definitions of "relevant trading profits" "relevant non-trading profits" and "relevant profits" in line with the definitions for the general loss restriction (see sections 269ZE and 269ZF).

Part 3: Group relief for carried-forward losses

69. Paragraph 23 inserts a new Part 5A, comprising new sections 188A to 188T, into CTA 2010.

70. New section 188A (Chapter 1) introduces the new Part 5A of CTA 2010, which brings in a new relief named "group relief for carried-forward losses".

71. New section 188B provides an overview of Chapter 2 of Part 5A which covers the surrender of a company's carried-forward losses.

72. New section 188C permits a company to surrender certain types of carried-forward losses (specified in section 188C(1)) for use by another group company as relief for carried-forward losses. These are losses arising on or after 1 April 2017 that are subject to the restriction but that can be carried-forward and set against a company's total profits. For example, trading losses carried forward under new section 45A of CTA 2010 may be surrendered under Part 5A, but trading losses carried-forward under new section 45B cannot as these can only be set against profits of the same

trade. The surrender is effected by way of consent to one or more claims (section 188C(4)).

73. New section 188D prevents the surrender of any carried-forward losses arising before 1 April 2017 and any qualifying charitable donations that are treated as expenses of management.

74. New section 188E prevents the surrender of losses under Part 5A if the company has the capacity to use the losses against its own profits. For example, where the company has carried-forward losses but has chosen not to use these up to the maximum limit set in section 269ZD(2).

75. New section 188F prevents a company surrendering losses under this Part where it has no assets capable of producing income at the end of the period. This is to prevent groups maintaining otherwise dormant companies in order to access their losses.

76. New section 188G applies certain restrictions to the amount of loss that may be surrendered by a UK resident company. A loss may not be surrendered if it is attributable to an overseas permanent establishment and relief for that loss could be obtained in the territory where the permanent establishment is situated.

77. New section 188H applies certain restrictions to the amount of loss that may be surrendered by a non-UK resident company trading in the UK through a permanent establishment in the UK. A loss may only be surrendered by an EEA-resident company if conditions A and B are met and by any other company if conditions A, B and C are met (see below).

- Condition A requires that the losses must arise from an activity in respect of which the company is within the charge to UK corporation tax in the period in which the loss was made;
- Condition B requires that the loss is not attributable to any activity that is exempt for double taxation purposes;
- Condition C requires that the loss cannot be relievable against profits of any person in any other territory.

78. New section 188I applies the effect of section 109 of CTA 2010 (which is within Part 5 that covers group relief) to group relief for carried-forward losses, such that a loss may not be surrendered by a dual resident company if certain conditions are met.

79. New section 188J gives an overview of Chapter 3 of Part 5A that covers claims for group relief for carried-forward losses.

80. New section 188K sets out the requirements for making a claim for group relief for carried-forward losses. These are based on the requirements for making a claim under Part 5 CTA 2010 (group relief) and are as follows:

- the surrendering company consents to the claim;

- there is a period ("the overlapping period") that is common to both the period to which the claim relates and the period for which the losses are surrendered (see new section 188R); and
- during this period, the "group condition" is met (see new section 188L)

81. New section 188K(3) specifies that a company may not make a claim for relief under Part 5A where there are carried-forward losses (see section 188C(1)) that have not been relieved in full against the company's total profits, or where it makes a claim under section 45(4A) CTA 2010, section 45B(5) or section 458(1) CTA 2009 for trading losses or non-trading deficits from loan relationships not to be set against trading or non-trading profits (as appropriate).

82. New section 188L sets out the requirements for a company to be considered a member of a group for these purposes ("the group condition"). The requirements are the same as for group relief under Part 5 of CTA 2010. The group condition is met if the surrendering company and claimant company are members of the same group (see section 188L(2)) and both are UK related (see section 134 CTA 2010).

83. New section 188L(2) specifies that two companies are members of the same group if one is a 75% subsidiary of the other or both are 75% subsidiaries of a third company. 75% subsidiary is defined in section 1154(3) CTA 2010. But a company is not treated as a 75% subsidiary unless the parent is beneficially entitled to at least 75% of the subsidiary's profits or assets on winding-up available for distribution to equity holders (see section 188L(6)). Equity holders are defined as for group relief (see Chapter 6 of Part 5).

84. New section 188M permits an amount claimed to be set against the total profits of the claimant company subject to the restriction in section 269ZD (see section 188M(3)(c)). Relief is to be given after all other forms of relief apart from relief for losses carried back from a later period (sections 188M(4) and (5)). For this purpose the claimant company is treated as having made all available claims for certain losses carried back from a later period (section 188M(6)).

85. New section 188N sets out certain limits on the amount that may be surrendered under Part 5A. The amount that may be surrendered is the lower of the amounts derived under new sections 188O and 188P.

86. New section 188O determines the "unused part" of the "surrenderable amount". It identifies the overlapping period and the "surrenderable amount" for that period, and then deducts any prior surrenders made for that same period (ie: the amounts already surrendered as group relief for carried-forward losses) to give the "unused part". The overlapping period is the period that is common to the accounting periods of the surrendering company and the claimant company (see new section 188R).

87. New section 188P sets out how to determine the unrelieved part of the claimant company's available total profits. As with the unused part of the surrenderable amount, the overlapping period must be identified and the profits for that period must be calculated. The amount against which relief can be allowed is the profit for the overlapping period less any amounts of group relief for carried-forward losses previously claimed for that same period.

88. New section 188Q provides an ordering rule where two or more claims are made at the same time. These are treated as made in such order as the company or companies making them elect, or as an officer of HMRC directs where there is no election.

89. New section 188R sets out how to identify the overlapping period for the purposes of sections 188O and 188P. This is the period that is common to the accounting periods of the surrendering company and the claimant company.

90. New section 188S sets out the treatment for corporation tax purposes of any payment made between the companies in respect of group relief for carried-forward losses. The payment is not taken into account for corporation tax purposes if it does not exceed the amount of the agreed loss.

91. New section 188T provides definitions.

Part 4: Minor and consequential amendments

92. Paragraph 24 amends section 826 of the Income and Corporation Taxes Act 1988 (ICTA). It sets out how to compute interest on tax overpaid where the company claims relief for a terminal loss against earlier profits under new section 45F of CTA 2010.

93. Paragraphs 25 to 38 make consequential amendments to Schedule 18 of Finance Act (FA) 1998 to introduce the necessary returns, claims and other administrative requirements for giving effect to group relief for carried-forward losses.

94. Paragraph 39 amends section 1223 of CTA 2009. Taken together with the amendment made by paragraph 6(2)(b) it ensures that section 1223 applies correctly where expenses of management are eligible to be carried forward and set against total profits of a later accounting period.

95. Paragraphs 40 to 45 make consequential changes to CTA 2010 to expand references to section 45 of CTA 2010 to also refer to sections 45A and/or 45B as appropriate.

96. Paragraph 46 amends section 104 of CTA 2010, which is part of the group relief legislation. This is an amendment relating to non-trading losses on intangible fixed assets that is consequential to the change made by paragraph 5.

97. Paragraph 47 amends the list in section 137 of CTA 2010 of deductions to be given after group relief under Part 5. That list is expanded to include relief for a non-trading loan relationship deficit set against profits of the deficit period or an earlier period, and group relief for carried-forward losses.

98. Paragraph 48 amends section 189 of CTA 2010 to add group relief for carried-forward losses to the priority rule in the provisions about relief for qualifying charitable donations.

Part 5: Commencement etc

99. Paragraph 49 sets out the commencement rule. The changes take effect for accounting periods beginning on or after 1 April 2017. Where an accounting period begins before 1 April 2017 and ends after 1 April 2017 the period is treated as two separate accounting periods and profits and losses are apportioned to the two periods.

Background note

100. The clause will modernise how corporation tax loss relief is given by increasing the flexibility over the profits that future carried-forward losses can be relieved against whilst ensuring that businesses pay tax in each accounting period that they make substantial profits.

101. Currently losses can be set against the company's profits of the period in which the loss arose, or surrendered as group relief in the same period, with a fairly wide degree of flexibility. However, losses carried forward to a later period are more restricted. In particular, trading losses can only be set against later profits of the same trade and non-trading deficits on loan relationships can only be set against non-trading profits. Carried-forward amounts cannot be surrendered as group relief.

102. These reforms make two main changes. Firstly, they increase the company's flexibility to set off carried-forward losses, either against the company's own total profits in later periods, or in the form of group relief in a later period. Secondly, they limit the amount of profit against which carried-forward losses can be set to a maximum of 50% of the company's total profits for the period. Each group (or a company that is not part of a group) will have an annual allowance of £5m profits. Carried-forward losses can be set against that amount without restriction. The 50% restriction applies to profits above the £5m annual allowance.

103. No changes are made to relief for in-year losses or in-year group relief, and to losses carried-back to an earlier period: they can still be set off against all available profits of the same period. There is also no change to the treatment of allowable losses under the chargeable gains legislation.

104. The rules will apply to losses arising in the form of trading losses, expenses of management, non-trading loan relationship deficits, UK property business losses and non-trading losses on intangible fixed assets.

105. Existing anti-avoidance rules covering loss buying, deduction buying and 'loss refresh' will be amended to reflect the changes set out above. Additional anti-avoidance rules will be put in place to prevent exploitation and abuse of the new flexibility.

106. The new rules will apply to all losses arising on or after 1 April 2017. Losses arising before that date will remain subject to the existing rules and cannot benefit from the increased flexibility; but they will be subject to the restriction on the amount of profit that can be relieved by carried-forward losses.

107. If you have any questions about this change, or comments on the legislation, please contact Claire White on Telephone: 03000 545597 or email: claire.white@hmrc.gsi.gov.uk or Clare Dunne on Telephone: 03000 585961 or email: clare.e.dunne@hmrc.gsi.gov.uk.

Clause 21 and Schedule 7: Corporate interest restriction

Summary

1. This clause introduces a restriction on the amount of interest and other financing amounts that a company may deduct in computing its profits for corporation tax purposes. The legislation takes effect from 1st April 2017.

Details of the clause and Schedule

2. Clause 21 introduces the Schedule.

Schedule 7

Part 1: Introduction

3. Paragraph 1 sets out an overview of the Schedule and provides brief details about the contents of each Part of the Schedule. Parts 2 to 6 contain the main rules by which any interest restriction is calculated. In particular, paragraph 1(5) introduces key terms defined in Part 4 involving "tax-interest". This is a company's or group's interest and similar amounts which are included in the UK tax computations. These are the amounts that are potentially restricted under these provisions.

4. Parts 7 and 8 define key concepts. In particular, paragraph 1(8) introduces key terms defined in Part 7 involving "tax-EBITDA". This is a company's or a group's taxable earnings before interest tax depreciation and amortisation, and is an important part of the calculation of an interest restriction. These are the amounts that form the basis of the worldwide group's interest capacity for the period, and hence determine the amount of tax-interest amounts that may be deducted.

5. Part 9 contains anti-avoidance provisions. Parts 10 and 11 deal with commencement and consequential amendments. Part 12 contains an index of defined terms.

6. Paragraph 2 sets out the meaning of certain terms used in the Schedule. Those terms are described by reference to a "period of account" for a "worldwide group". Throughout this legislation "period of account" is used to describe the period by reference to which the group draws up its accounts. That period may not necessarily match the accounting periods used by some of the companies within the group. The term "accounting period" is used to refer to the period by reference to which a company computes its profits chargeable to UK corporation tax.

Part 2: The Reporting Company and the Interest Restriction Return

7. Part 2 contains provisions that set out how relevant amounts connected with the legislation are to be returned, and how the process of administering the interest restriction is to be handled.

8. Paragraph 3 provides for the appointment of a "reporting company" for a period of account by a member of a worldwide group. The appointment must be made after the end of the period of account but no later than six months after the end of that period (paragraph 3(3)). The notice of appointment must be signed by a majority of eligible group members (paragraph 3(4)). The reporting company must be an "eligible company" (paragraph 3(5)).

9. Paragraph 4 permits HMRC to appoint an eligible company as the reporting company where the members of the worldwide group have not done so.

10. Paragraph 5 permits HMRC in certain circumstances to appoint a different reporting company, in place of the company appointed under either paragraph 3 or paragraph 4.

11. Paragraph 6 requires that where a reporting company is appointed for a period of account, it must so notify each company that was a UK group company at any time during the period of account. A UK group company, defined in paragraph 69, is a member of the group within the scope of UK corporation tax.

12. Paragraph 7 requires the reporting company to make an "interest restriction return". This return sets out the amounts of interest and other financing amounts that are to be disallowed or reactivated, and how they are allocated to companies in a group. The time limits for making the return are set out in paragraph 7(5) and 7(7).

13. Paragraph 8 permits the reporting company to submit a revised interest restriction return, and sets out circumstances where a reporting company must submit a revised interest restriction return.

14. Paragraph 9 sets out the meaning of a "consenting company" and a "non-consenting company". A "consenting company" is a company in a group that has agreed to accept the allocation of disallowed amounts made to it in the interest restriction return submitted by the reporting company. All other companies in the group are "non-consenting" companies.

15. Paragraph 10 provides that if a company is a signatory to the appointment of a reporting company under paragraph 3 it is therefore deemed to be a consenting company, unless it expressly makes a statement to the contrary under paragraph 3(6) when the reporting company is appointed, or revokes its consent by giving a notice under paragraph 9(2)(b).

16. Paragraph 11 sets out the meaning of "reporting company", "interest restriction return" and "return period" for the purposes of the schedule.

17. Paragraph 12 permits the reporting company to elect on behalf of the group that the group ratio method should be used to compute the group's interest disallowance.

18. Paragraph 13 permits the reporting company to elect to submit an abbreviated return if the worldwide group is not subject to interest restrictions (see paragraph 14(3)).

19. Paragraph 14 sets out what must be included in an interest restriction return. Paragraph 14(2) sets out the requirements of the full return. Paragraph 14(3) sets out the requirements of an abbreviated return.

20. Paragraph 15 sets out the detail of the calculations that must be included in a full interest restriction return.

21. Paragraph 16 sets out what information must be included in a statement of allocated interest restrictions. This statement sets out what amounts of interest restriction will be applied to each company for the period. This statement must be included in the full return where there are amounts to be restricted for the period.

22. Paragraph 17 sets out the meaning of a "pro-rata share" of the total disallowed amount for a period of account. This sets the limit on the amounts of disallowance that can be allocated to "non-consenting" companies. It also forms the basis of the amounts to be restricted where no interest restriction return has been submitted. The pro-rata allocation is based on the proportion that a company's net tax-interest bears to the total of the net tax-interest expense amounts across the group for the period of account.

23. Paragraph 18 sets out how a company allocates a "pro-rata share" to its own accounting periods. The worldwide group's "period of account" used in computing the total disallowance and the allocated shares may not necessarily coincide with the corporation tax accounting period for every company in the group. Apportionment will therefore be necessary.

24. Paragraph 19 sets out what information must be included in a statement of allocated interest reactivations. An "interest reactivation" arises when an amount disallowed in one period of account could potentially be deductible in a later period of account because the group's tax-EBITDA in that later period is sufficient to permit a deduction of more than the interest arising in that period.

25. Paragraph 20 sets out how to calculate the amount available for reactivation by a company for a period of account of the group. Any reactivation will take effect in the "specified accounting period", which is the first accounting period that overlaps with the group's period of account in which the company was a part of the group.

26. The starting point ("A") is the total amount that has been disallowed under these rules by that company that is brought forward at the start of the specified accounting period. There are then four possible adjustments in relation to amounts that it must disallow in the current accounting period (amounts B to E). B and C deal with amounts disallowed and reactivated in the specified accounting period in respect of an earlier period of account of the worldwide group. D and E deal with amounts disallowed and reactivated in the specified accounting period in respect of a period

of account of another worldwide group before the company joined the worldwide group that is the subject of the reactivation calculation.

27. Paragraph 21 permits the use of estimated amounts in the interest restriction return if necessary and requires disclosure of the amounts that are estimates.

28. Paragraph 22 sets out what information must be provided by members of the group to the reporting company. It also requires the reporting company to send a copy of the interest restriction allocation to all relevant companies. A "relevant company" is a company that was a UK group company (defined in paragraph 69) at any time in the group's period of account. In all cases the requirement is enforceable between the parties involved.

29. Paragraph 23 sets out what information may be required by a group company from other group companies, where a reporting company has not been appointed. Again, the requirement is enforceable between the parties involved.

30. Paragraph 24 provides HMRC with the power to make a determination where a reporting company has failed to make a compliant interest restriction return by the filing deadline and HMRC considers that a disallowance should be made. The disallowances is shared between UK group companies on a pro rata basis. In each case HMRC must inform the company of its disallowance and notify the reporting company.

Part 3: Disallowance and reactivation of tax- interest amounts

31. Paragraph 25 sets out how tax deductions are disallowed where a full interest restriction return is submitted (paragraph 26 covers the situation where only an abbreviated return, or no such return, is submitted). Paragraph 25(2) specifies that a company must disallow deductions in the amounts set out in the return. There is further provision in paragraph 27 as to which deductions must be disallowed.

32. Paragraph 25(3)-(5) covers the situation where a non-consenting company does not agree to be bound by the amount allocated to it in the return (a "non-consenting company", as defined in paragraph 9). This might be the case if it disagrees with the way the amount to be allocated has been calculated. In such a case, the company must disallow a pro-rated amount as allocated to the accounting period under paragraph 18. The distinction between consenting and non-consenting companies is made to help the group manage possible conflicts of interest where a member of the group has a significant shareholder who holds a minority interest in the company, or where insolvency arrangements come into effect.

33. Paragraph 26 sets out how tax deductions are disallowed where only an abbreviated interest restriction return, or no such return, is submitted (paragraph 25 covers the situation where a full return is submitted). This paragraph takes effect after 12 months have elapsed from the end of the period of account. Paragraph 26(5) specifies that a company must disallow deductions in any accounting period in accordance with the amount of disallowance due to it under the pro-rating rules in paragraph 18.

It must do so by amending its company tax return (paragraph 26(6)) within three months (ie: by 15 months from the end of the period of account). Paragraph 28(8) states that where HMRC exercises its power (see paragraph 24) to determine the amount of disallowance for an accounting period of a company, then the determined amount is to be disallowed.

34. Paragraph 27 sets out how to identify the amounts to be restricted under paragraphs 25(2), 25(5) or 26(5). Paragraph 27(2) sets out the default order in which amounts are disallowed. Paragraph 27(3) allows a company to elect out of the default order and choose what tax-interest expense amounts it disallows. These rules are necessary so that amounts can be automatically disallowed by the action of paragraph 32(2), without any intervention by the company, while allowing a company flexibility to decide which amounts are to be restricted if it so wishes.

35. Paragraph 28 provides that any deduction that has been disallowed under paragraphs 25 and 26 may be carried forward to a later period where it may potentially be the subject of a "reactivation". Paragraph 28(3) stops the carry-forward of disallowed trading expenses once the company ceases to trade or the trading activities have become small or negligible. Paragraph 28(4)-(5) applies in a similar way where the trade becomes uncommercial and is not carried on in the exercise of a statutory function (within the meaning of section 44 of CTA 2010). Paragraph 28(6) specifies, for the avoidance of doubt, that if a disallowed deduction is reactivated and allowed in a subsequent period, then it is extinguished and cannot be carried forward again.

36. Paragraph 29 provides for disallowed amounts to be reactivated and allowed in later periods. Paragraph 29(1) allows the reactivation of amounts brought forward only in a period for which a full interest restriction return has been submitted (see paragraphs 11 and 14) and where that return includes a statement of allocated interest reactivations (see paragraph 14(2)(f)(iii)). Paragraph 29(2)-(4) requires a company that has an accounting period to which a reactivation is allocated to give effect to that allocation.

37. Paragraph 30 sets out the amounts to be reactivated when required to do so under paragraph 29. Paragraph 30(2) sets out the default order in which amounts are reactivated where the company does not exercise its right to choose. This is necessary so amounts can be automatically reactivated by the action of paragraph 32(2), without any intervention by the company. Paragraph 30(3) allows a company to elect out of the default order and choose what tax-interest expense amounts it reactivates.

38. Paragraph 31 covers the uncommon situation where a company, in relation to one of its accounting periods, must disallow a deduction of that period and also bring into account some reactivated deduction carried forward from an earlier period. The amounts of disallowance and reactivation must in effect be set off against each other, with only the net result being given effect.

39. Paragraph 32 applies where, as a result of an interest restriction return being submitted, the amount of chargeable profits shown on a company's corporation tax

return is changed (or the return is incorrect in any other way). The company concerned is treated as having amended its return accordingly.

Part 4: Tax-interest amounts

40. Paragraph 33 sets out the meaning of the term "tax-interest expense amount" by reference to three conditions, only one of which needs to be met to satisfy the definition. In particular the amount must be a relevant loan relationship debit (paragraph 34), a relevant derivative contract debit (paragraph 35) or a financing cost implicit in amounts payable under a relevant arrangement, which includes finance leases, debt factoring and service concession arrangements accounted for as a financial liability (paragraph 33(5)). Paragraph 33(7) onwards sets out the treatment of a "disregarded period", which is where the company's accounting period does not exactly align with the group's period of account.

41. Paragraph 34 sets out the meaning of "relevant loan relationship debits". These are debits brought into account under the loan relationship provisions provided they are not excluded debits. A debit will be excluded if it is in respect of an exchange loss or impairment loss.

42. Paragraph 35 sets out the meaning of "relevant derivative contract debits". These are certain debits brought into account under the derivative contract provisions, depending on the underlying subject matter of the derivative. A debit will be excluded if it is in respect of an exchange loss or impairment loss.

43. Paragraph 36 sets out the meaning of "tax-interest income amounts" by reference to four conditions, only one of which needs to be met to satisfy the definition. In particular the amount must be a relevant loan relationship credit (paragraph 37), a relevant derivative contract credit (paragraph 38), a financing cost implicit in amounts receivable under a relevant arrangement which includes finance leases, debt factoring and service concession arrangements accounted for as a financial asset, (paragraph 36(5)) or an amount receivable for providing a guarantee (paragraph 36(6)). Paragraph 36(8) onwards set out the treatment of a "disregarded period" which is where the company's accounting period does not exactly align with the group's accounting period.

44. Paragraph 37 sets out the meaning of "relevant loan relationship credits". These are credits brought into account under the loan relationship provisions provided they are not excluded credits. A credit will be excluded if it is in respect of an exchange loss or impairment loss.

45. Paragraph 38 sets out the meaning of "relevant derivative contract credits". These are certain credits brought into account under the derivative contract provisions, depending on the underlying subject matter of the derivative. A credit will be excluded if it is in respect of an exchange loss or impairment loss.

46. Paragraph 39 provides that certain interest payments to charity will be excluded from the "tax-interest expense amount". These are payments made to a charity parent

under a loan relationship where the company would be able to claim relief on any donation it made to the parent under section 190 of CTA 2009.

47. Paragraph 40 provides for double taxation relief. It does this by excluding from the "tax-interest income amount" any amount to the extent it consists of "notional untaxed income". The paragraph sets out the formula used to calculate this amount, which is the item of income, multiplied by the corporation tax payable on it after double tax relief and divided by the corporation tax payable before such credit.

48. Paragraph 41 sets out the meaning of the "net tax-interest expense" of a company. This is calculated by subtracting the company's "tax-interest income amounts" (paragraph 36) from its "tax-interest expense amounts" (paragraph 33). This can be a negative amount.

49. Paragraph 42 sets out the meaning of the "worldwide group's aggregate net tax-interest expense". This is the sum of each relevant company's "net tax-interest expense amount" for the period. This cannot be a negative amount.

50. Paragraph 43 sets out the meaning of "impairment loss". This is important for looking at which credits and debits are excluded from the definition of "tax-interest" (see, for example, paragraph 35(3)(b)).

Part 5: Interest Capacity

51. Paragraph 44 defines the "interest capacity" of a worldwide group for a period of account. Interest capacity is the aggregate of the interest allowance of the period and any unused interest allowance carried forward from an earlier period that is available in the current period. However this is subject to a *de minimis* amount of £2m per annum if that gives a bigger capacity. "Interest allowance" is defined in Part 6 of the Schedule.

52. Paragraph 45 sets out how much interest allowance of a period ("the originating period") is available in a later period for the group. It is nil if a full interest restriction return has not been submitted for the period of account (paragraph 45(5) and (6)). Otherwise it is the lower of two amounts: A and B:

- "A" is a measure of how much interest allowance is available because it has not yet been used up. See paragraph 46.
- "B" is a measure of how much interest allowance is available because it has not yet expired (the carry-forward of unused interest allowance is subject to a five year time limit). See paragraph 47.

53. Paragraph 46 determines the extent to which interest allowance is "used", for the purpose of calculating of how much interest allowance of an originating period is available in a later period. Interest allowance is 'used' where it allows the group to obtain a deduction for tax-interest amounts. Paragraph 46(2) sets out how much interest allowance is used in the originating period, and paragraph 46(3)-(5) sets out how much interest allowance of the originating period is used in a later "receiving"

period. The lower of these two amounts is the amount of interest allowance that has been "used".

54. Paragraph 46(3) sets out the amount of the interest allowance from the originating period that is used in a receiving period. It is the amount calculated in paragraph 46(4), but this is limited so that it cannot exceed the total amount of the allowance from the originating period that is available in the receiving period (paragraph 46(5)).

55. Paragraph 46(4) defines "the relevant part of the aggregate net tax-interest expense of the group for the receiving period". This is the amount of the interest expense of the receiving period that is not covered or franked by either: (i) the interest allowance of the receiving period; or (ii) the interest allowance of any period that is earlier than the originating period, that is carried forward and used in the receiving period. It is therefore the amount of the interest expense of the receiving period left over that can consume the interest allowance carried forward from the originating period.

56. The formula used can give a negative amount where the amount of interest allowance of the receiving period exceeds the aggregate net tax-interest of the receiving period. In such a case, the amount calculated is set to nil by paragraph 46(5).

57. Paragraph 47 determines the extent to which interest allowance is "unexpired", for the purpose of calculating of how much interest allowance of an "originating period" is available in a later period under paragraph 45. The rules set out how the five year limit for carrying forward unused interest allowance should be applied. Paragraph 47(2) and (3) sets out the circumstances where, respectively, all or none of the interest allowance of the originating period is unexpired in a later "receiving period". The remainder of the paragraph deals with situations where part is unexpired.

58. Paragraph 47(4), (6), and (8) describes three different scenarios. There is a different result for each scenario, as laid out respectively in paragraph 47(5), (7) and (9). Note that that the result in paragraph 47(9) is the lower of the amounts given by paragraphs 47(5) and 47(7).

59. To understand the different scenarios, it can be helpful to think of the notional period that would result from moving the originating period forward five years.

- Paragraph 47(4): the receiving period falls entirely within the notional period.
- Paragraph 47(6): the notional period falls entirely within the receiving period.
- Paragraph 47(8): the receiving period overlaps the notional period, but starts after the notional period starts and ends after the notional period ends.

60. Paragraph 47(5) determines the amount of interest allowance for the originating period that is unexpired in the receiving period where paragraph 47(4) applies. This

is an amount equal to the interest allowance of the originating period to the extent (if any) that it exceeds the aggregate net tax-interest expense for the originating period, reduced by a fraction. The fraction is the number of days in the notional period that fall after the start of the receiving period, divided by the total number of days in the originating period. This effectively expires the amount of interest allowance generated in the part of the originating period that falls more than five years before the receiving period starts.

61. Paragraph 47(7) determines the amount of interest allowance for the originating period that is unexpired in the receiving period where paragraph 47(6) applies. In the circumstances described in paragraph 47(6), all of the interest allowance from the originating period is "in time" to be used for the start of the receiving period. However not all of the interest expense in the receiving period can access the allowance. So paragraph 47(7) prevents the inappropriate set off of interest allowance from the originating period against interest expense that arises more than five years after the originating period ends. This is achieved by looking at the aggregate net tax-interest expense in the receiving period to the extent it exceeds the interest allowance of that period, and excluding on a pro-rata basis the expense that arises more than five years after the originating period ends

62. The amount calculated under paragraph 47(7) is equal to the aggregate net tax-interest expense of the receiving period to the extent (if any) that it exceeds the interest allowance for the receiving period, reduced by a fraction. The fraction is the number of days in the receiving period that fall before the end of the notional period, divided by the total number of days in the receiving period.

63. The calculation could give an amount that exceeds the total interest allowance of the originating period. However, the calculation can never lead to an inappropriately large amount of interest allowance being available in a later period because of the way it feeds into paragraph 45(4) and then paragraph 45(2), which will ensure that the amount available cannot exceed the total amount of interest allowance for the originating period.

64. Paragraph 47(9) determines the amount of interest allowance of the originating period that is unexpired in the receiving period where paragraph 47(8) applies. In this case only part of the interest allowance from the originating period is in time and only part of the interest expense of the receiving period is in time. So both partial amounts must be calculated (the partial amount of interest allowance under paragraph 47(5) and the partial amount of interest expense under paragraph 47(7)) and the lower amount used.

Part 6: Interest Allowance

65. Paragraph 48 defines the interest allowance for a period as, by default, the amount given by the "fixed ratio method" (paragraph 49) or, by election, the amount given by the "group ratio method" (paragraph 50).

66. Paragraph 49 sets out the calculation of the interest allowance by the fixed ratio method. It is the lower of two amounts. The first is 30% of a measure of the group's

aggregate tax-EBITDA. The second is a cap based on the "adjusted net group-interest expense" of the group (defined at paragraph 57).

67. Paragraph 50 sets out the calculation of the interest allowance by the group ratio method. It is the lower of two amounts. The first is a proportion ("the group ratio percentage") of a measure of the group's taxable earnings. The second is a cap based on the "qualifying net group-interest expense" of the group (see paragraph 59), the calculation of which differs from the cap in paragraph 49.

68. Paragraph 50(3) and (4) sets out how the group ratio percentage is determined. It is the ratio of a measure of the worldwide group's interest expense to a measure of its worldwide earnings. It is set to 100% where it would otherwise be higher, negative or the formula for calculating it would be mathematically undefined.

Part 7: Definition of concepts used in Part 6

69. Paragraph 51 sets out the meaning of the key term "aggregate tax-EBITDA" for the worldwide group in respect of a period of account. This total is used in the fixed ratio method in Paragraph 49 in determining any restriction under the fixed ratio method and the group ratio method.

70. Paragraph 52 sets out the meaning of "tax-EBITDA" for an individual company in respect of a period of account. In particular, it identifies particular amounts in respect of the period of account in question. The resultant amounts form the basis for the calculation of aggregated tax-EBITDA at paragraph 51.

71. The amounts are identified through satisfying either condition A or condition B. Condition A covers amounts that are brought into account by the company in determining its taxable profits for the period. Condition B extends this to also include amount that would be so brought into account if they company had sufficient taxable profits in the period. This ensures that amounts leading to a tax loss for the period are included in the definition, and as a result means that tax-EBITDA can be a positive or negative amount for a particular company. Certain amounts are excluded from conditions A and B (see paragraph 53).

72. Paragraph 52(6) to 52(8) also sets out the rules for calculation where the company does not have a single, complete accounting period which coincides with the period of account of the worldwide group.

73. Paragraph 53 provides details of the amounts to be excluded in arriving at a company's tax-EBITDA figure for a period of account. In particular, it excludes:

- Tax-interest income and tax-interest expense amounts (as defined in Part 4).
- Allowances and charges in connection with capital expenditure under the Capital Allowances Act 2001.
- Certain amounts of intangibles debits under the Intangible Fixed Asset rules (Part 8 of the Corporation Tax Act 2009) which relate to amounts

capitalised in the company's accounts, and credits representing the reversal of such amounts.

- Losses (such as trading losses, property losses, losses on the disposal of shares, miscellaneous losses, non-trading losses on intangible fixed assets, but excluding capital losses), non-trade loan relationship deficits, management expenses from an earlier or later accounting period.

- Group relief (including consortium relief) except to the extent of any claim of group relief from a company outside of the group.

74. Tax-EBITDA is to be calculated on the basis of including net chargeable gains under the Taxation of Chargeable Gains Act 1992. As a result, paragraph 53(3) provides that capital losses are only taken into account in the period in which they are actually deducted from a chargeable gain.

75. Paragraph 54 provides further interpretation for the purposes of paragraph 53 in respect of the treatment of intangible fixed assets. This specifies certain debits arising in respect of intangible fixed assets which are always excluded from tax-EBITDA. It also specifies certain debts and credits in respect of intangible fixed assets which are excluded to the extent that they reflect debit and credit amounts that would have been excluded previously.

76. Paragraph 55 adjusts for circumstances where the corporation tax charge is reduced by reason of a credit for foreign tax. An amount derived by the formula at paragraph 55(3) is treated as 'notional untaxed income' (as in the calculation of tax-interest income, see paragraph 40) and will not form part of the company's adjusted corporation tax earnings within paragraph 52(2).

77. Paragraph 56 sets out the meaning of "the net group-interest expense" of a worldwide group for a period of account. This comprises the amounts in respect of "relevant interest expense matters" and "relevant interest income matters" as recognised in the group's financial statements as items of profit or loss for the period.

78. Paragraph 57 sets out the meaning of "relevant interest expense matters" and "relevant interest income matters". This aims to mirror the types of item that would be included within the scope of tax-interest expense amounts (see paragraph 33), and tax-interest income amounts, (see paragraph 36). So, for example, it includes amounts which are loan relationships of a company within the group and also specific arrangements that would be treated as loan relationships of a company under UK tax rules.

79. Paragraph 58 provides further interpretation for the purposes of paragraph 57.

80. Paragraph 59 sets out the meaning of "adjusted net group-interest expense" of a worldwide group for a period of account. This is based on the net group-interest expense of the group, adjusted for certain items.

- Paragraph 59(3)(a) and 59(4)(a) makes adjustments for amounts of interest and other items that are capitalised in the carrying value of an asset or liability of the company.

- Paragraph 59(3)(b) and 59(4)(b) makes adjustments for amounts in respect of debt releases and modifications of debt that would be excluded from tax under section 322 and 323A of the Corporation Tax Act 2009.

- Paragraph 59(4)(c) makes adjustments to exclude amounts of dividends payable on preference shares that are recognised as a liability in the group's financial statements.

81. Paragraph 60 sets out the meaning of qualifying net group-interest expense.

Part 8: Interpretation

82. Paragraph 61 sets out the meaning of the key terms "worldwide group" and "ultimate parent". To be an "ultimate parent" the entity will need to be a relevant entity which is not a consolidated subsidiary of another relevant entity. The "worldwide group" will then be the ultimate parent and all of its consolidated subsidiaries.

83. Paragraph 62 sets out the meaning of a "relevant entity" for the purposes of paragraph 61. This covers three categories of entity:

- Condition A covers corporate entities. This does not include Limited Liability Partnerships or foreign partnerships.

- Condition B extends the first category for entities where the members have no automatic entitlement to profits of the entity.

- Condition C extends the first category for entities which have shares or other interests which are listed on a recognised stock exchange and are sufficiently widely held.

84. Paragraph 63 sets out the meaning of "consolidated subsidiary" and "non-consolidated subsidiary". This provides that a subsidiary company held at fair value (and not consolidated on a line-by-line basis) is a 'non-consolidated subsidiary'. A non-consolidated subsidiary will not be a member of a parent's group.

85. Paragraph 64 provides for determining whether the identity of the worldwide group has changed when the entities which constitute the worldwide group change over time. This is done by reference to who the ultimate parent is at a given point in time.

86. Paragraph 65 sets out the meaning of a "relevant public body". The paragraph lists specific bodies which fall into this definition but also includes any other body which

acts under any enactment for public purposes and not for its own profit. Some of these bodies cannot be a "relevant entity" (see paragraph 62(7)).

87. Paragraph 66 provides for the treatment of "stapled entities". Paragraph 66(3) sets out when an entity is to be treated as "stapled" to another and deems them to be consolidated subsidiaries of another entity.

88. Paragraph 67 provides for business combinations where, absent this paragraph, two entities would each be treated as an ultimate parent despite their being treated as a single economic entity under international accounting standards. The paragraph has effect as if both entities were consolidated subsidiaries of a deemed parent.

89. Paragraph 68 sets out the meaning of "service concession arrangement".

90. Paragraph 69 sets out the meaning of a "UK group company". This covers UK resident companies and non-resident companies which have a permanent establishment in the UK. These are the members of a worldwide group that may be subject to disallowances or reactivations of tax-interest expense amounts.

91. Paragraph 70 sets out the definition of "relevant accounting period".

92. Paragraph 71 sets out the meaning of "financial statements" and "period of account" for a worldwide group. These will be based on the consolidated financial statements for a multi-company worldwide group and on the entity accounts for a single-company worldwide group where these are drawn up and are considered 'acceptable'.

93. Paragraph 72 explains what is meant by 'acceptable' financial statements and the consequence of such statements not being drawn up for a worldwide group. Acceptable statements are drawn up under International Accounting Standards (IAS), UK generally accepted accounting practice or in accordance of the accounting principles and policies of Canada, China, India, Japan, South Korea or the United States of America. Financial statements that do not materially differ from IAS statements are also acceptable. HMRC may by regulations update the circumstances in which accounts are considered to be 'acceptable'.

94. Where financial statements are drawn up and they are not acceptable, then the schedule applies on the assumption that IAS financial statements had been drawn up.

95. Paragraph 73 deals with the case that acceptable financial statements have been prepared but either include the results of companies that are not in the group or do not include the result of companies that are in the worldwide group. This could arise where the accounts are prepared under an accounting framework that differs to IAS. In this case, the accounts are assumed to be prepared so be aligned with the composition of the worldwide group, which is defined by reference to IAS, see paragraph 61(4).

96. Paragraph 74 deals with the case the ultimate parent prepares accounts for a period and it is not the ultimate parent for the whole of the period. In this case the ultimate parent is treated as if it had instead prepared financial statements for the period for which it was the ultimate of the worldwide group in question.

97. Paragraph 75 deals with the case where the worldwide group does not prepare consolidated accounts but the ultimate parent does prepare its own financial statements. In this case, IAS accounts are treated as having been drawn up.

98. Paragraph 76 deals with the case that a multi-company worldwide group does not prepare consolidated financial statements, or a single-company worldwide group does not prepare entity accounts and where paragraph 75 is not relevant. In this case it treats the ultimate parent as preparing financial statements for the period for which no accounts have been prepared. Where this period extends more than 12 months, it is treated as preparing financial statements for each 12 month period.

99. Paragraph 77 sets out the meaning of "IAS financial statement" of a worldwide group.

100. Paragraph 78 sets out the meaning of "recognised" in financial statements. This clarifies that where an amount is included as part of another amount which is recognised in the financial statements, than that amount is also regarded as being recognised. In addition, where an amount is expressed in a currency other than sterling then it is to be translated into sterling based on the average rates for the period.

101. Paragraph 79 contains further interpretation for the Schedule.

102. Paragraph 80 governs the making of regulations under the Schedule, by Statutory Instrument.

Part 9: Anti-avoidance

103. Paragraph 81 is an anti-avoidance rule. This applies where there are arrangements that seek to obtain a tax advantage and that tax advantage derives, in whole or in part, from the interest restriction rules. The effect of that arrangement is that the tax advantage is counteracted.

Part 10: Commencement and transitional provisions

104. Paragraph 82 sets out the commencement rules, the main commencement provision being that the rules will have effect for periods of account commencing on or after 1 April 2017. Where the group draws up accounts (or is so treated as doing so) which straddle 1 April 2017, the rules apply as if accounts were drawn up for two separate periods, one ending 31 March 2017 and another starting on 1 April 2017.

105. Where it is just and reasonable to do so, groups may take accounts that have been prepared and apportion amounts to the respective notional periods; but if such an approach is not just or reasonable, the rules should have effect on the assumption that accounts had been prepared for the respective notional periods.

106. Paragraph 83 makes transitional provision by excluding amounts that are being brought into account under the Change of Accounting Practice Regulations 2004 (S.I. 2004/3271) from the rules where the change of accounting policy occurred in a period

that commenced before 1 April 2017. In particular, such amounts will be left out of account of both tax-interest and tax-EBITDA amounts.

107. Paragraph 84 makes transitional provision by excluding amounts that are being brought into account under the transitional rules as a result of the changes made to the loan relationship and derivative contract rules (Parts 5 and 7 of the Corporation Tax Act 2009) made by Finance (No.2) Act 2015. In particular, such amounts will be left out of account of both tax-interest and tax-EBITDA amounts.

Part 11: Consequential amendments

108. Paragraph 85 repeals Part 7 of TIOPA 2010 (Tax Treatment of Financing Costs and Income, commonly referred to as the "Debt Cap"), which is superseded by the interest restriction rules. The main rule is that the current Debt Cap legislation will cease to have effect for periods of account commencing on or after 1 April 2017.

109. Paragraph 86 applies where the group draws up accounts (or is so treated) which straddle 1 April 2017. The rules for the repeal of Part 7 of TIOPA 2010 apply as if accounts were drawn up for two separate periods, one ending 31 March 2017 and another starting on 1 April 2017, in line with the general commencement provision in paragraph 82.

Part 12: Index of defined expressions

110. Part 12 sets out an index of defined expressions.

Background note

111. This legislation has its origins in the G20/OECD project to tackle Base Erosion and Profit Shifting (BEPS) in relation to the taxation of international groups of companies. The BEPS project identified a number of key risks to be tackled. It was noted that BEPS risks in the area of interest payments may arise in three basic scenarios:

- Groups placing higher levels of third party debt in high tax countries.
- Groups using intragroup loans to generate interest deductions in excess of the group's actual third party interest expense.
- Groups using third party or intragroup financing to fund the generation of tax exempt income.

112. To address these risks, Action 4 of the OECD's Action Plan on Base Erosion and Profit Shifting, published in 2013, called for recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense. Following several rounds of discussions and public consultation, the OECD published recommendations on preventing base erosion through the use of interest expense in October 2015.

113. The recommended approach is based on a fixed ratio rule which limits an entity's net deductions for interest and payments economically equivalent to interest to a percentage of its taxable earnings before interest, taxes, depreciation and amortisation (EBITDA).

114. Recognising that some groups are highly leveraged with third party debt for non-tax reasons, the recommended approach proposes a group ratio rule alongside the fixed ratio rule. This would allow an entity with net interest expense above a country's fixed ratio to deduct interest up to the level of the net interest to EBITDA ratio of its worldwide group.

115. The recommended approach also allows countries to supplement the fixed ratio rule and group ratio rule with other provisions that reduce the impact of the rules on entities or situations which pose a lower BEPS risk, such as:

- A *de minimis* threshold which carves-out entities which have a low level of net interest expense. Where a group has more than one entity in a country, it is recommended that the threshold be applied to the total net interest expense of the local group.
- An exclusion for interest paid to third party lenders on loans used to fund public-benefit infrastructure projects, subject to conditions. In these circumstances, an entity may be highly leveraged but, due to the nature of the projects and the close link to the public sector, the BEPS risk is reduced.
- The carry forward of disallowed interest expense and/or unused interest capacity (where an entity's actual net interest deductions are below the maximum permitted) for use in future years. This will reduce the impact of earnings volatility on the ability of an entity to deduct interest expense. The carry forward of disallowed interest expense will also help entities which incur interest expenses on long-term investments that are expected to generate taxable income only in later years, and will allow entities with losses to claim interest deductions when they return to profit.

116. This legislation looks to implement the OECD's recommendations as follows.

117. The rules will operate on a worldwide group basis for each period of account of the group's ultimate parent. This will allow groups to manage any restriction across their businesses. The rules will apply to the net interest expense within the charge to CT, including other similar financing costs. Groups with less than £2 million of net interest expense within the scope of Corporation Tax per annum will not need to apply the rules. All groups will continue to be able to deduct current period net interest expenses and similar financing costs up to that amount.

118. The Fixed Ratio Rule will limit the amount of net interest expense that a worldwide group can deduct against its taxable profits to 30% of its taxable "EBITDA" – earnings before interest, taxes, depreciation and amortisation. A modified debt cap within the new rules will ensure the net interest deduction does not exceed the total net interest expense of the worldwide group.

119. The Group Ratio Rule allows a 'group ratio' to be substituted for the 30% figure. The group ratio is based on the net interest expense to EBITDA ratio for the worldwide group based on its consolidated accounts. Interest payable to shareholders and other related parties, and interest on instruments with equity-like features are not reflected in the group ratio. The full Group Ratio Rule will be included in a subsequent draft of the legislation.

120. The Public Benefit Infrastructure Exemption (PBIE) provides an exemption for qualifying interest expense incurred by qualifying companies on funds invested in long-term infrastructure projects for the public benefit. The PBIE will not provide exemption for interest payable to shareholders and other related parties (except in the case of some existing loans), nor where the lender has recourse to income or assets other than those connected with the public benefit infrastructure. The PBIE will be included in a subsequent draft of the legislation.

121. There are rules to help address timing differences between interest expense and EBITDA. Amounts of restricted interest are carried forward indefinitely. They are deducted in a later period if there is sufficient interest allowance. Unused interest allowance can be carried forward for up to five years.

122. There are special rules to deal with particular issues, for example: derivatives, fair value movements, changes of accounting policy, the Patent Box and other tax incentives, related parties, joint ventures, leases, securitisation vehicles, Real Estate Investment Trusts (REITs), payments to charities, the Oil and Gas tax regime, Double Taxation Relief, and the Northern Ireland Corporation Tax rate. Some of these rules are not in the accompanying draft legislation but will be included in a subsequent draft.

123. There is a regime-wide anti-avoidance rule.

124. If you have any questions about this change, please contact the Corporate Interest Restriction team on email: interest-restriction.mailbox@hmrc.gsi.gov.uk or telephone: 03000 569068.

Clause 22 and Schedule 8: Museum and gallery exhibitions

Summary

1. This clause and Schedule introduces a relief from corporation tax for qualifying museum and gallery exhibitions.

Details of the clause and Schedule

2. The clause brings in a Schedule which:

- Introduces a new relief for museum and gallery exhibitions;
- Provides for the consequential amendments to other parts of the Taxes Acts as a result of the new relief.
- Provides for the commencement of the new museum and gallery exhibitions relief.

Part 1: Amendment of CTA 2009

3. <u>Paragraph 1</u> introduces <u>new Part E</u> to Corporation Tax Act 2009 (CTA 2009).

Chapter 1

4. <u>Chapter 1</u> contains <u>sections 1218ZA to 1218ZAD</u> which set out the overview of the relief and interpretation of: 'Exhibition', 'Primary production company' and, 'Secondary production company'.

5. <u>Section 1218ZAA</u> defines what is meant by 'exhibition:

- An exhibition is a curated, planned, public display of an organised collection of objects, works and artefacts, which are considered to be of scientific, historic, cultural or artistic interest. A single object or work can make up an entire exhibition. The exhibition must be easily identifiable as a separate and distinct entity in its own right.
- The general public must have admittance to the exhibition, whether or not they are charged for admission. Restricting admittance entirely to an exhibition, for example, by membership requirements or a private viewing does not constitute admittance for the general public. A single session, for example, a restricted fundraising event will not put an exhibition outside the scope of the relief, although any costs associated

with the preparation of the exhibition specifically for private viewing will not be eligible for relief.

- An exhibition will not qualify for relief if it is organized in connection with a competition of any kind, or its main purpose or one of its main purposes is to sell anything displayed. The sale of catalogues, posters or other merchandise associated with the exhibition will not exclude an exhibition from relief (but the costs of producing catalogues and merchandise are not allowable core expenditure). Exhibitions to specifically advertise or promote goods or services are excluded but, depending on the facts, sponsorship of an exhibition may not necessarily exclude an exhibition. Live performances by people and displays of anything alive (e.g. animals) are not exhibitions for the purposes of this relief.

6. Section 1218ZAB defines a 'touring exhibition:

- The exhibition must be held at two or more geographically distinct venues (i.e. not in the same building).
- At least 25% of the objects, works and artefacts displayed at the first venue must be displayed at every subsequent venue at which the exhibition is held. This is to ensure that the touring exhibition remains the same exhibition in form but allowing for museums and galleries to supplement it with items complimenting the exhibition from their own collections.
- The period between the de-installing of the exhibition at one venue and the installation of the exhibition at the next venue must not exceed 6 months.
- There must be a primary production company for the exhibition (see 1218ZAC) and that company must be within the charge to corporation tax. For example, if the primary production company is outside the UK then it is not within the charge to corporation tax and a secondary production company cannot claim the touring rate of relief, although it may be able to claim the non-touring rate of relief for qualifying costs.

7. Section 1218ZAC sets out the general rules that govern whether a company is a primary production company in relation to a qualifying exhibition.

- The company must be actively engaged in decision-making, be responsible for putting on the exhibition from the start of the production process through running and de-installation and closing of the exhibition at the venue. Where there are two or more venues it must be responsible for the production of the exhibition at the first of those venues.

- The company must make an effective creative, technical or artistic contribution to the exhibition and directly negotiate for, contract for and pay for rights goods and services in relation to that exhibition.
- There can only be one primary production company in relation to the exhibition. Only one company may make a claim in relation to a qualifying exhibition. Partnerships are therefore not eligible for relief.
- If there is more than one primary production company that meets the conditions of a primary production company then it is that company most directly engaged in the activities set out in 1218ZAC that is the primary production company. This will be a matter of fact. However, if no company meets those conditions then there is no primary production company in relation to the exhibition.

8. Section 1218ZAD sets out the general rules that govern whether a company is a secondary production company in relation to a qualifying exhibition.

- There may be more than one secondary production company for an exhibition if it is held at two or more venues.
- A secondary production company cannot be a primary production company. It must be responsible for the production, running and closing of the exhibition at the venue (see 1218ZAD(4)).
- If there is more than one company that meets the conditions of a secondary production company in relation to a particular venue then it is that company most directly engaged in the activities set out in 1218ZAD at a venue that is the secondary production company at that venue. This will be a matter of fact. However, if no company meets those conditions then there is no secondary production company in relation to the exhibition at the venue.

Chapter 2

9. Chapter 2 sets out the taxation activities of the production company.

10. Section 1218ZB sets out how a company may make a claim for the additional deduction. A company making the claim for relief must treat each qualifying exhibition as a separate trade, this only applies to qualifying companies. A primary production company is treated as beginning to carry on the separate exhibition trade at the beginning of the production process at the first venue at which the exhibition is held or, if earlier at the time of the first receipt by the company of any income from the exhibition (see section 1218ZBB for what represents income from the production

of an exhibition). The primary production company ceases to carry on that separate trade when the exhibition closes at the last venue at which it is held, if there is a tour. A secondary production company is treated as beginning to carry on the separate exhibition trade either at the beginning of the production stage of the exhibition at the venue where it is a secondary production company or, at the first receipt by the company of any income from the production of the exhibition. For a secondary production company the trade ceases when it closes at the last venue for which it is the secondary production company.

11. Section 1218ZBA sets out how the profits and losses of the separate exhibition trade are calculated for the first period of account and any subsequent periods.

12. Section 1218ZBB sets out what is income for the purposes of the calculation of the profits or losses of the separate exhibition trade. Income may include: receipts from the sale of tickets or rights in the exhibition, royalties or other payments for use of the exhibition or aspects of it (including loan of exhibits), specific grants paid to produce the exhibition.

13. Section 1218ZBD sets out the rules of when costs are taken to have been incurred for the purposes of the relief. For example any amounts not paid, unless subject to an unconditional obligation to pay may not be included in the calculation of the relief.

14. Section 1218ZBE outlines the circumstances in which pre-trading expenditure, including expenditure on developing an exhibition before it was 'green lit', may be treated as expenditure of the separate exhibition trade, once that trade commences.

15. Section 1218ZBF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must take into account all relevant circumstances.

Chapter 3

16. Chapter 3 provides for how a company qualifies for relief

17. Section 1218ZCA provides the rules for determining how a company qualifies for relief.

- A company must be a primary production company or a secondary production company for the qualifying exhibition.
- The company must be a charitable company which maintains a museum or gallery, or a wholly owned subsidiary company of a charity which maintains a museum or gallery, or a wholly owned subsidiary company of a local authority which maintains a museum or gallery.
- The company must intend from the outset that the exhibition is for the general public (see 1218ZAA).
- A 'museum or gallery' includes a library or archive and also includes a site where a collection of objects which are considered to be of scientific,

historic, artistic or cultural interest is exhibited out doors or partly outdoors, for example a sculpture park.

- There is a requirement that a minimum EEA expenditure is incurred to qualify for the relief. At least 25% of the qualifying expenditure must be on goods or services that are provided from within the EEA (see 1218ZCC).
- A company will not be a qualifying company if it is involved in tax avoidance arrangements (see 1218ZCM).

18. Section 1218ZCD provides the rules for what qualifies as core expenditure.

- Core expenditure means expenditure on the activities directly involved in producing the exhibition at a relevant venue, such expenditure may include curator fees, deinstalling and closing (but see 1218ZCD(3)) . Core expenditure will not include indirect expenditure such as marketing, raising of finance, or general legal services. A relevant venue is one where the company's activities in relation to the exhibition form part of the company's separate exhibition trade (see 1218ZB).
- Development expenditure that precedes production will not be allowable if the production does not get 'green-lit', in other words the production must have permission and approval to proceed. The intention is to separate speculative expenditure from expenditure undertaken in the knowledge that the decision has been taken to go ahead with the exhibition.
- If the period between opening and closing an exhibition at any relevant venue exceeds 12 months then the costs of deinstalling and closing are not eligible core expenditure.
- Expenditure on the storage of exhibits, objects and works for an exhibition held at just one venue (not touring) is not core expenditure. However, -where a company incurs expenditure on the storage of exhibits for an exhibition held at two or more venues that expenditure may qualify provided that the storage is off-site, -and the storage period does not exceed 4 months.
- Running costs from the day of opening will not be eligible for relief. For example invigilation costs when the exhibition is up and running are not allowable.

- The costs of purchasing exhibits, works and objects will not be qualifying core expenditure. Similarly the costs of 'commissioning to collect' are not allowable costs for the purposes of the relief.
- Expenditure on infrastructure costs are not qualifying core expenditure unless that expenditure is incurred solely for the purposes of the exhibition. For example, if the museum or gallery has been repainted that cost is not a qualifying cost unless there has been a requirement for the exhibition to be painted a particular colour.

19. Section 1218ZCE sets out how a company may claim for the additional deduction. A company that makes the claim must treat each qualifying exhibition trade as separate for the accounting period concerned. Claims are made in respect of an accounting period.

20. Section 1218ZCF provides that a company may claim an additional deduction based on its qualifying expenditure. For the first period of account in which the separate exhibition trade is carried on, the additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure, or 80% of the total amount of qualifying expenditure. For subsequent periods of account, the amount of the additional deduction is the lesser of qualifying expenditure which is EEA expenditure or 80% of the total amount of qualifying expenditure minus any additional deductions given for previous periods.

21. Section 1218ZCG defines 'qualifying expenditure' and also provides that where expenditure is not otherwise relievable under other parts of the tax code, for example on entertainment, then it is not qualifying expenditure. Furthermore where relief has been given on expenditure relating to other creative industry reliefs (for example film or television) or, R&D expenditure credit then that expenditure is not eligible for relief. This prevents a company claiming relief for the same expenditure under different regimes. Section 1218ZCG(1)(c) sets out that expenditure is only qualifying expenditure if it is incurred on or before 31 March 2022.

22. Section 1218ZCH provides that where a company qualifies for museums and galleries exhibition tax relief and has a surrenderable loss then that company may claim a museums and galleries exhibition tax credit for the period. The whole or part of the loss may be surrendered. The rates of relief are: 25% for touring exhibitions and, 20% for other exhibitions.

23. Section 1218ZCI defines a surrenderable loss and a relevant unused loss and sets out how the available loss and any loss carried forward are to be calculated.

24. Section 1218ZCJ provides that where a company is entitled to a museums and galleries exhibition tax credit for a period, and it claims that credit, the Commissioners for HM Revenue and Customs will pay the credit to the company. However where there are any other outstanding liabilities of the company (for example VAT, corporation tax or PAYE) then the credit is first applied against those

outstanding liabilities. If the company's tax return is enquired into no payment of the credit needs to be made before the enquiries are complete.

25. Section 1218ZCK prescribes that the maximum amount of tax credit that may be payable to a company is £100,000 in respect of a touring exhibition and £80,000 in respect of other non-touring exhibitions.

26. Section 1218ZCL sets out that any costs which remain unpaid 4 months after the end of an accounting period are ignored for that period.

27. Section 1218ZCM sets out that a company does not qualify for relief if there are any tax avoidance arrangements relating to the production.

28. Section 1218ZCN sets out that where a transaction is attributable to arrangements entered into otherwise for genuine commercial reasons to inflate the amount of a claim then that transaction is disregarded when computing the additional deduction.

Chapter 4

29. Chapter 4 concerns the losses of the separate exhibition trade.

30. Section 1218ZDA provides that losses made before the completion period of a separate trade are only available to be carried forward to be set against the profits of the separate exhibition trade.

31. Section 1218ZDB provides for how losses are to be treated in the completion period.

32. Section 1218ZDC provides for how terminal losses are treated and the circumstances in which terminal losses can be transferred.

Chapter 5

33. Chapter 5 sets out the rules for entitlement to relief.

34. Section 1218ZE sets out the conditions for claiming provisional relief, such as a company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for the period a statement of the planned amount of EEA expenditure and that amount of expenditure meets the condition in section 1218ZCC.

35. Section 1218ZEA allows for the claw back of provisional relief where it subsequently appears that the EEA condition will not be met. It sets out what a company must do if it no longer qualifies for relief and also what to do if it ceases to carry on the separate exhibition trade.

Chapter 6

36. Section 1218ZF allows for the amendments of sections of Part 15E by regulations.

37. Section 1218ZFA sets out the interpretation of certain expressions within Part 15E.

Part 2: Consequential amendments

38. Paragraph 2 sets out the consequential amendments to ICTA.

39. Paragraphs 3 to 6 set out the consequential amendments to FA 1998 to accommodate museums and galleries tax relief.

40. Paragraph 7 sets out an amendment to CAA2001.

41. Paragraph 8 sets out an amendment to FA2007.

42. Paragraphs 9 to 14 set out amendments to CTA2009.

43. Paragraph 15 sets out an amendment to FA2009.

44. Paragraphs 16 to 18 set out amendments to CTA 2010 in respect of the Northern Ireland rate.

45. Paragraph 19 sets out an amendment to FA2016 in respect of tax advantages constituting the grant of state aid.

Part 3: Commencement

46. Paragraphs 20 to 21 set out that all amendments made by the Schedule have effect in relation to accounting periods beginning on or after 1 April 2017. Where an accounting period straddles the 1 April date the profits of the trade are to be apportioned between a deemed accounting period ending on 31 March 2017 and one commencing on 1 April 2017 on a just and reasonable basis.

47. Paragraph 7 sets out the separate commencement provisions in respect of the Corporation Tax (Northern Ireland) Act 2015.

Background note

48. The new tax relief for museum and gallery exhibitions will allow qualifying companies engaged in the production of exhibitions to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Only charitable museums or galleries or their wholly owned subsidiaries, or a wholly owned subsidiary of a local authority which maintains a museum or gallery are within the scope of this relief. A charity must be within the charge to corporation tax (this does not mean that a charity has to pay corporation tax to qualify).

49. Both the additional deduction and the payable credit are calculated on the basis of EEA core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100 of qualifying core expenditure and the payable tax credit is 25% of losses surrendered for touring exhibitions and 20% for other exhibitions.

50. The credit is based on the company's qualifying expenditure on the production of a qualifying exhibition. This expenditure must be on activities directly involved in producing the exhibition. Qualifying expenditure will not include indirect costs such as: financing, marketing, running costs after the exhibition opens, infrastructure costs, exhibit acquisition costs and accountancy and legal fees.

51. At least 25% of the qualifying expenditure must be on goods or services that are provided for from within the EEA.

52. The relief is capped at a maximum of £100,000 payable credit per exhibition for touring exhibitions and a maximum payable tax credit of £80,000 for other exhibitions. This is equivalent to an exhibition with £500,000 of qualifying expenditure (assuming that 80% or more of that expenditure takes place in the EEA)

53. Expenditure incurred on or after 1 April 2022 will not qualify for relief unless this date is extended. In 2020 the government will review the tax relief and set out plans beyond 2022.

54. Exhibitions, whose main purpose, or one of the main purposes, is to advertise goods and services, includes a competition, items for sale, live performances or display of live animals or plants will not qualify for relief.

55. If you have any questions or comments on the legislation, please contact Kerry Pope on 03000 585740 (email: kerry.pope@hmrc.gsi.gov.uk).

Clause 23: Grassroots sport

Summary

1. This clause introduces a corporation tax deduction for contributions to grassroots sports. The deduction will have effect in relation to expenditure incurred by companies on or after 1 April 2017.

Details of the clause

2. Subsection (1) amends the overview in section 1(2) of the Corporation Tax Act 2010 (CTA 2010) to refer to the new Part 6A.

3. Subsection (2) introduces a new Part 6A into CTA 2010, comprising new sections 217A to 217D.

4. New Section 217A(1) sets out how a payment made by a company which is 'qualifying expenditure' is allowed as a deduction against the company's total taxable profits, when calculating the corporation tax chargeable for the accounting period in which the payment is made.

5. New Section 217A(2) explains that the payment can only be deducted from the company's total taxable profits once all other corporation tax reliefs other than charitable donations relief, group relief and group relief for carried forward losses have been given for the relevant accounting period.

6. New Section 217A(3) provides that an unlimited deduction is allowed for a payment by a ''sport governing body'', which is later defined in new section 217C(1).

7. New Section 217A(4)(a) provides that a company that is not a sport governing body at the time of the payment is allowed an unlimited deduction if the payment is made to a sport governing body.

8. New Section 217A(4)(b) explains that where a company is not a sport governing body, and directs its payment directly to grassroots sport, rather than through a sport governing body, a different set of rules apply. These rules relate to ''direct payments'' by companies that are not sport governing bodies, and are set out in new sections 217A(6) and (7).

9. New Section 217A(5) provides that a company cannot claim a deduction for a payment that is made out of an amount it has received and has not brought into account in computing its taxable profits. This could arise, for example, where a company has made a payment to a sport governing body. The company will deduct that amount from its taxable profits, but the receipt may not necessarily be taxable in the hands of the sport governing body. In that case the sport governing body could not itself claim a deduction.

10. New Section 217A(6) provides the general rule that the deduction cannot reduce the company's total profits to below nil for the relevant accounting period.
11. New Section 217A(7) provides that total direct payments by a company are allowed up to and equal to the annual maximum deductible amount specified in the legislation in new section 217A(8).
12. New Section 217A(8) provides that that where a company makes a payment that would qualify but is greater than the annual maximum deductible amount, a deduction may be allowed only for the part of the total expenditure that does not exceed the annual maximum.
13. New Section 217A(9) explains that where a company is not a sport governing body, and makes a direct payment to grassroots sports, rather than through a sport governing body, it can only receive a deduction up to an annual threshold of £2,500. Any direct payments to grassroots sport above this threshold will not qualify for a deduction against corporation tax profits. This subsection also sets out that this threshold is reduced proportionately where the relevant accounting period is less than 12 months.
14. New Section 217A(10) gives the Treasury power to make regulations to increase the amount specified in new section 217A(8).
15. New Section 217B gives the circumstances in which expenditure can be defined as ''qualifying expenditure''.
16. New Section 217B(1) requires two conditions to be met. First, the payment must be charitable in nature – charitable purposes under charity law include the advancement of amateur sport. The payment must also facilitate participation in amateur sport. Second, no deduction is otherwise available. This prevents a deduction for any payment that would already qualify as an expense of a trade, or as a donation to a charitable body or a Community Amateur Sports Club (CASC).
17. New Section 217B(2)(a) explains that 'participation' for the purposes of the definition in new Section 217(B) does not include paid players or participators in the sport, but does include paid facilitators, including coaches and officials.
18. New Section 217B (2)(b) sets out the meaning of ''eligible sports'' for the purposes of a deduction under subsection (1)(a).
19. New Section 217C(1) defines a ''sport governing body'' as any such body designated for these purposes by regulations made by the Treasury.
20. New Section 217C(2) provides that a body may be designated under Treasury regulations by reference to its inclusion in a list of sport governing bodies maintained by a separate body as specified in the regulations, and for any future changes to that list to automatically take effect from the point of their inclusion in that list.
21. New Section 217C(3) provides that regulations made under new section 217C(2) may be retrospective, but not to times earlier that 1 April 2017.

22. New Section 217D ensures that the deduction will only apply where routes for deductions through charitable donations (including CASCs) under Part 6 of CTA 2010 are not available.

23. Subsection (3) sets out the commencement provision. The new rules apply to qualifying expenditure incurred on or after 1 April 2017.

24. Subsection (4) provides the commencement rule for accounting periods that straddle 1 April 2017.

Background note

25. This clause extends the circumstances in which contributions to grassroots sports can be deducted from the taxable profits of corporation tax payers. Companies will be able to make deductions for all contributions to grassroots sports through recognised sport governing bodies, and deductions of up to £2,500 in total annually for direct contributions to grassroots sports. Sport governing bodies will be able to make deductions for all their contributions to grassroots sports.

26. This clause will make it easier for corporation tax payers to receive a deduction for contributions to grassroots sports, thereby encouraging sports participation at a local level, and reducing administrative burdens for some organisations which currently make contributions to grassroots sports.

27. This clause will not affect existing routes for tax-deductible expenditure to support grassroots sports. Currently, deductions can be made as sponsorship or as charitable donations (including payments to Community Amateur Sports Clubs). A deduction cannot be claimed under these new rules where it could be claimed under those existing rules.

28. If you have any questions about this change, or comments on the legislation, please contact Rawfiah Choudry on 03000 559 565 (email: rawfiah.choudry@hmrc.gsi.gov.uk).

Clause 24: Profits from the exploitation of patents: cost-sharing arrangements

Summary

1. This clause amends the rules in part 8A Corporation Tax Act 2010 (CTA 2010) (which provide a lower rate of Corporation Tax on profits from the exploitation of patents and similar intellectual property (IP)) where the IP is developed under a cost-sharing arrangement (CSA) – an arrangement where two or more persons share the costs and income from their research and development. The result is that the company's own contribution to the development work drives the amount of profit benefiting from the reduced rate.

2. The changes have effect for accounting periods beginning on or after 1 April 2017.

Details of the clause

3. Subsection 2 of the clause introduces a new Section 357BLEA to CTA 2010.

New section 357BLEA

4. Subsections (1) and (2) of new Section 357BLEA deal with a situation where the company makes payments under the CSA to a person with which it is unconnected either because that person carries out R&D itself for the company, or because that person has contracted out R&D to someone other than the company.

5. If, in turn, the company receives payments from an unconnected person under the CSA for R&D it carries on itself, or subcontracts to another person, then when its R&D fraction is calculated the payments it makes are offset against its receipts.

6. Subsections (3) – (6) of new Section 357BLEA make similar provisions concerning payments under the CSA by the company to, and receipts from, connected persons (and payments or receipts in respect of the acquisition of IP, or of an exclusive licence to IP) allowing such payments and receipts again to be offset in calculating the R&D fraction.

New Section 357GC

7. Subsection 3 of the clause replaces section 357GC of CTA 2010, which defines a cost-sharing arrangement, with a new section 357GC and new sections 357CGA and 357CGB.

8. The definition in new section 357GC differs from the old one in two main respects. First, there is no requirement that one of the parties to the CSA owns IP, or has an exclusive licence to it. This recognizes that the CSA may, at the outset, have no IP but may intend to develop it. Secondly, there is no requirement that the participants'

income is proportionate to its participation. The Patent Box rules were extensively amended in Finance Act 2016 (FA2016) ensuring a direct link between a company's contribution to R&D and the amount of income from the IP that is subject to the reduced rate of tax.

9. Subsections (3) and (5) of new section 357GC provide that qualifying IP rights, and exclusive licenses to such rights, held by any member of the CSA are treated as being held by the company (so that they can qualify the company for relief under the Patent Box, and income from them can come within the Patent Box so far as the company is concerned).

10. Subsections (4) and (6) of new section 357GC set out when such rights (or licenses) are treated as new IP, meaning that they come under the new Patent Box rules introduced by FA2016. This occurs when either the company or the rights owner or licensee joins the CSA on or after 1 April 2017, or when the IP or licence is new itself (eg acquired or applied for on or after 1 July 2016).

11. Subsections (7) – (10) of new section 357GC set out the treatment of direct development costs, subcontracted expenditure and acquisition/ licensing costs under the CSA incurred by persons other than the company. These are treated as subcontracted costs of the company or as its acquisition/ licensing costs.

New Section 357GCA

12. This new section deals with various situations in which the company makes payments and becomes entitled to benefit from IP held within the CSA. The company is treated in calculating the R&D fraction as having acquired IP. This prevents the new Patent Box rules on acquisitions being circumvented by companies entering into CSAs and getting the use of IP but not actually owning or licensing the IP. There are three cases.

- Subsection (1) applies where the company makes a payment to another person who holds IP and the two enter into a CSA.
- Subsection (2) applies where the company joins an existing CSA, and makes a payment to another person who is part of the CSA and holds IP.
- Subsection (3) applies where, within an existing CSA, the company makes a payment to another party to the CSA who holds rights and thereby becomes entitled to some additional benefit. This might be a greater income share under the CSA, or it may be entitlement to exploit further rights.

13. In each case, a just and reasonable amount of the payment is treated as acquisition expenditure in the R&D fraction.

New Section 357CGB

14. This new section deals with the converse situation to that addressed in new section 357CGA, ie where a company receives a payment and another person becomes

entitled to benefit, within a CSA, from IP which the company holds. An amount of the payment is treated as relevant IP income. Again, there are three cases.

- Subsection (1) applies where the company receives a payment from another person and the two enter into a CSA.
- Subsection (2) applies where the company is part of a CSA and receives a payment from another person who joins the CSA.
- Subsection (3) applies where, within an existing CSA, the company receives a payment from another person and that party to the CSA which thereby becomes entitled to some additional benefit. This might be a greater income share under the CSA, or it may be entitlement to exploit further rights.

15. In each case a just and reasonable amount of the amount received is treated as relevant IP income.

Background note

16. The UK Patent Box gives companies a reduced rate of tax on their profits from patents and similar intellectual property (IP). It is intended to provide incentives for companies to patent IP developed in the UK and ensure new and existing patents are further developed and commercialised in the UK

17. The Organisation for Economic Cooperation and Development (OECD) has been coordinating a multinational effort to address Base Erosion and Profit Shifting (BEPS) - tax planning by multinational enterprises that exploits gaps and mismatches in tax rules to artificially shift profits to low tax locations where there is little or no economic activity. This has resulted in a new internationally harmonised framework for preferential IP regimes (like the UK's Patent Box). This framework applies from 1 July 2016.

18. The central point is that for a business to gain the benefit of a preferential regime, it should have conducted the substantial activities which generated the income benefiting from that regime. The agreed approach uses R&D expenditure as a proxy for substantial activity and links benefits to the requirement to have undertaken the R&D expenditure incurred to develop the IP. This is referred to as the nexus approach.

19. Following a consultation launched on 22 October 2015, in December 2015 draft legislation set out proposed modifications to the UK Patent Box to implement this new approach. The government considered views expressed in the consultation and FA 2016 included revised legislation. Specific rules addressing CSAs were proposed in the consultation but not included in FA2016. The additions and amendments proposed now address CSAs.

20. If you have any questions about this change, or comments on the legislation, please contact David Harris on 03000 586834 (email: david.harris@hmrc.gsi.gov.uk).

Clause 25 and Schedule 9: Trading profits taxable at the Northern Ireland rate: SMEs

Summary

1. Once commenced, the Northern Ireland Corporation Tax regime provided for in Part 8B of the Corporation Tax Act 2010 will allow a Northern Ireland rate of corporation tax to apply to certain trading income arising in Northern Ireland. The existing rules provide that a small or medium-sized enterprise (SME) is a Northern Ireland company, or a Northern Ireland firm in the case of a partnership, if it is a Northern Ireland employer, which means having at least 75% of their employment time and costs in Northern Ireland.

2. This clause introduces a schedule that amends the definitions of "Northern Ireland company" and "Northern Ireland firm" to allow an SME that is not a Northern Ireland employer but which has a Northern Ireland trading presence to elect to be a Northern Ireland company or a Northern Ireland firm. If it does so, it must identify Northern Ireland profits and losses to which the Northern Ireland rate applies according to the rules for a large company or large firm as set out in Chapter 7 of Part 8B. Changes are also made to widen the scope of who is a member of a company's or firm's workforce for the purposes of determining whether the company or firm is a Northern Ireland employer.

Details of the clause and Schedule

Clause 25 and Schedule 9: Trading profits taxable at the Northern Ireland rate: SMEs

3. The clause introduces Schedule 9 which contains amendments of and relating to Part 8B of Corporation Tax Act 2010 (CTA 2010) which deals with trading profits taxable at the Northern Ireland rate.

4. Schedule 9 amends CTA 2010 and the Capital Allowances Act 2001 (CAA 01) in relation to SMEs trading in Northern Ireland that are not Northern Ireland employers.

5. Paragraph 2 makes consequential amendments to section 357H(5) of CTA 2010, which introduces the purpose of Chapter 7 of Part 8B, to reflect the changes made by the schedule.

6. Paragraph 3 amends section 357KA of CTA 2010 which sets out the meaning of a "Northern Ireland company". To be a "Northern Ireland company", a company previously needed to carry on a qualifying trade in the period and meet either the

SME or large company condition. Paragraph 3 renames the SME condition "the SME (Northern Ireland employer) condition". This condition is met where an SME is a Northern Ireland employer as defined at section 357KD. Paragraph 3 introduces a new condition which gives the option for a company that meets the SME limb of the SME condition but is not a Northern Ireland employer and is not a disqualified close company to elect to use the large company rules and allocate profits and losses to a Northern Ireland Regional Establishment (NIRE) which are chargeable at the Northern Ireland rate. This is known as the "SME (election) condition".

7. Paragraph 3, subparagraph (6) inserts section 357KA(3A) which sets out how an election to meet the "SME (election) condition" should be made.

8. Paragraph 4 amends section 357KE(2) which sets out the workforce conditions a company must meet to be a Northern Ireland employer. The amendment made means that for the purposes of the workforce conditions members of a company's workforce include individual participators in the company where the company is a close company or would be a close company if it were UK resident.

9. Paragraph 4, subparagraph 3 inserts new subsections (7A) to (7E) in section 357KE. (7A) provides the meaning of the term participator in this context. New subsection (7B) provides that in calculating working time for the purposes of the workforce conditions, a participator's time is also included where it is spent providing services to a person other than a company and condition A or B as set out at subsections (7C) and (7D) is met. These changes are made to ensure that the NI employer test takes account of time spent by a participator where services he provides or rights the company has acquired from him contribute (directly or indirectly) to the company's income.

10. Paragraph 5 inserts section 357KEA which defines the new notion of "a disqualified close company". A company is a disqualified close company if the company is a close company at any time in the period and two conditions, A and B, are met. Condition A is that the company has a NIRE in the period as a result of tax avoidance arrangements. Condition B is that 50% or more of working time spent in the United Kingdom is working time spent by participators in the company otherwise than in Northern Ireland or 50% or more of the company's workforce expenses attributable to working time in the United Kingdom is attributable to working time spent by participators in the company otherwise than in Northern Ireland.

11. Paragraphs 6 and 7 make consequential amendments to Chapter 6 of Part 8B, which provides the core rules for determining the Northern Ireland profits and losses of a SME company that is a Northern Ireland employer, to reflect the changes made by paragraph 3.

12. Paragraph 9 extends the scope of Chapter 7 of Part 8B, which provides the core rules for a large company to determine its Northern Ireland profits and losses, so that those rules also apply to a company which is a Northern Ireland company by virtue of the new SME (election) condition.

13. Paragraphs 10 and 11 amend Chapter 8 of Part 8B, which deals with the calculation of Northern Ireland profits or losses where the company holds intangible fixed assets for the purposes of a trade carried on by it in Northern Ireland, to provide that the rules for large companies are extended to SMEs which have elected to be a Northern Ireland company under the provision made by the schedule.

14. Paragraphs 12 and 13 similarly amend Chapter 15 of Part 8B which modifies the operation of Part 8A of CTA 2010 (profits from the exploitation of patents etc.) in relation to a Northern Ireland company, to reflect the changes made by the schedule and extend the application of the rules for large companies to a company which is a Northern Ireland company by virtue of the new SME (election) condition.

15. Paragraph 14 deals with partnerships. Amendments are made to the meaning of a "Northern Ireland firm" at section 357WA of CTA 2010. A firm is a "Northern Ireland firm" if the firm carries on a qualifying partnership trade in the period and the "SME (Northern Ireland employer) partnership condition ", "the large partnership condition" or the new "the SME (election) partnership condition" is met. In much the same way as an election by an SME company, the "SME (election) partnership condition" allows a firm to elect for the large partnership rules to apply where the firm is a SME in relation to the firm's accounting period, has a NIRE but is not a Northern Ireland employer and is not a disqualified firm in relation to that period. Section 357WA(4) is amended to reflect the amendments made by new section 357WBA, which is inserted by paragraph 15 of the schedule.

16. Paragraph 15 inserts new section 357WBA. As it stands under the rules in Part 8B the question of whether a firm is a Northern Ireland employer is answered by applying the workforce conditions which apply to a company in sections 357KD and 357KE as modified by section 357WA(4) and (5). The amendments made by paragraph 15 change this aspect of the structure of Part 8B to provide a standalone test for partnerships, and provide a change to the current rules by extending the scope of the workforce of a firm for these purposes to include an individual who is a partner.

17. Paragraph 15 also inserts new section 357WBB which provides that in this context partner includes a person who is entitled to a share of the income of the firm and that in calculating working time for the purposes of the workforce conditions, an individual partner's time is also included where it is spent providing services to a person other than the firm and condition A or B as set out at subsections (3) and (4) is met. These changes mean the Northern Ireland employer test for partnerships takes account of time spent by a partner where services he provides or rights the firm has acquired from him contribute (directly or indirectly) to the firm's income.

18. Paragraph 15 also inserts section 357WBC to define a "disqualified firm". A firm is disqualified if two conditions, A and B, are met. Condition A is that the firm has a NIRE in the period as a result of tax avoidance arrangements. Condition B is that 50% or more of the working time spent in the United Kingdom is working time spent by individual partners otherwise than in Northern Ireland or 50% or more of the workforce expenses attributable to working time in the United Kingdom is

attributable to working time spent by individual partners otherwise than in Northern Ireland.

19. Paragraph 16 is a consequential amendment reflecting the renaming of the "SME partnership condition" to the "SME (Northern Ireland employer) partnership condition".

20. Paragraph 17 amends section 357WD of CTA 2010 to provide that the rules in Chapter 7 of Part 8B as modified by that section for determining the Northern Ireland profits or losses of a trade which apply to large partnerships are extended to SME partnerships which are Northern Ireland firms by virtue of the new SME (election) partnership condition.

21. Paragraph 18 amends section 357WE because section 357WD as amended by paragraph 15 no longer contains the concept of a firm which is a SME.

22. Paragraphs 19 and 20 amend section 357WF which modifies Chapter 8 (intangible fixed assets) and section 357WG which modifies Chapter 15 (profits arising from the exploitation of patents) in their application to NI firms to take account of the new category of Northern Ireland firm by virtue of the SME partnership (election) condition.

23. Paragraphs 22, 23 and 24 amend the Capital Allowances Act 2001 to reflect the changes made by the schedule to the various terms used in relation to Northern Ireland companies.

24. Paragraph 25 makes an amendment to deal with the changes to terminology made by paragraphs 21 in the transitional provision relating to capital allowances in Schedule 1 to the Corporation Tax (Northern Ireland) Act 2015.

Background note

25. In March 2015, Parliament passed the Corporation Tax (Northern Ireland) Act 2015 which, subject to commencement regulations, will devolve corporation tax rate setting powers to the Northern Ireland Assembly. The government has committed to commencing the regime if the Northern Ireland Executive demonstrates its finances are on a sustainable footing.

26. Under the current rules, an SME company or SME firm which has 75% or more of its employment time and costs in Northern Ireland has all of its qualifying trading profits taxed at the Northern Ireland rate. Otherwise an SME has all trading profits taxed at the UK corporation tax main rate.

27. Changes made by the Schedule give an option for an SME which does not meet this employment test but has a trading presence in Northern Ireland to elect to be a Northern Ireland company (or a Northern Ireland firm in the case of a partnership) by virtue of the SME (election) condition and so have the Northern Ireland rate apply to its Northern Ireland profits and losses. In that case the SME company or firm will

use the large company rules for identifying those profits and losses to which the Northern Ireland rate applies.

28. Changes are also made to minimize abuse of the rules for SMEs by maintaining the regime's focus on genuine economic activity in Northern Ireland.

If you have any questions about this change, or comments on the legislation, please contact James Coward on 03000 579560 (email: [ct.devolution@hmrc.gsi.gov.uk])

Clause 26: Trading profits taxable at the Northern Ireland rate: minor amendments

Summary

1. Once commenced, the Northern Ireland corporation tax regime provided for in Part 8B of the Corporation Tax Act 2010 will allow a Northern Ireland rate of corporation tax to apply to certain trading income arising in Northern Ireland. This clause makes minor amendments to Part 8B and to a provision in the Capital Allowances Act 2001 relating to Northern Ireland corporation tax.

Details of the clause

2. Clause 26 makes minor amendments to Part 8B of the Corporation Tax Act 2010, in subsection (2) to change the relevant Minister's name, and in subsection (3) to correct a minor drafting error in section 357QB.

3. Clause 26, subsection (4) makes a minor amendment to paragraph 2 of Schedule A1 to the Capital Allowances Act 2001 to remedy a drafting error in paragraph 10 of Schedule 1 of the Corporation Tax (Northern Ireland) Act 2015 which made changes to Schedule A1.

Background note

4. In March 2015, Parliament passed the Corporation Tax (Northern Ireland) Act 2015 which, subject to commencement regulations, will devolve corporation tax rate setting powers to the Northern Ireland Assembly. The government has committed to commencing the regime if the Northern Ireland Executive demonstrates its finances are on a sustainable footing.

5. Clause 26 makes minor amendments to the regime, first to update the rate setting power in section 357IA to reflect a change in title of the Minister of Finance and Personnel to the Minister of Finance resulting from a Determination made by the First Minister and Deputy First Minister of Northern Ireland on 1 March 2016. The section also corrects two minor drafting errors made in the 2015 Act.

6. If you have any questions about this change, or comments on the legislation, please contact James Coward on 03000 579560 (email: ct.devolution@hmrc.gsi.gov.uk).

Clause 27: Substantial shareholding exemption

Summary

1. This clause simplifies the conditions applying to the substantial shareholdings exemption (SSE). The SSE provides an exemption from corporation tax for capital gains and losses realised on the disposal of certain shareholdings. It has effect for disposals of substantial shareholdings on or after 1 April 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (TCGA)

3. Subsection 2 removes the requirement for the company making the disposal (the "investing company") to satisfy the requirements in paragraph 18 of Schedule 7AC TCGA before any gain or loss will be exempt from corporation tax, and makes consequential changes to the rest of the Schedule. The effect of omitting paragraph 18 is that the investing company does not have to be a sole trading company or a member of a trading group at any time before or after the disposal.

4. Subsection 3 extends the period during which the investing company needs to have satisfied the requirement that it has held a substantial shareholding in the company invested in for at least 12 months from two years before the disposal to six years before the disposal. This change allows companies to make an exempt disposal of shares up to five years after their interest in the company invested in falls below 10% of its ordinary share capital.

5. Subsection 4 removes the general requirement that the company invested in must be a qualifying company immediately after the disposal if that disposal is to be exempt from corporation tax. A qualifying company is a trading company or the holding company of a trading group or a trading subgroup. This requirement will only continue to apply in cases where the disposal is to a person connected with the investing company. Whether a person is connected with the investing company is determined in accordance with section 1122 of the Corporation Tax Act 2010. The requirement is retained where the disposal is to a connected person because in those circumstances that the investing company is likely to be able to influence whether the company invested in continues to trade.

6. Subsection 5 of the clause is the commencement rule. The changes made by this measure apply to disposals of a substantial shareholding that occur on or after 1 April 2017.

Background note

7. The SSE was introduced in 2002 with the aim of eliminating the potential double taxation of trading profits in a company or sub-group being disposed of when these are realised by the shareholder by way of a disposal of their shareholding rather than, for example, by way of a dividend which would be exempted from tax in the hands of a corporate shareholder, and to facilitate the restructuring of groups without triggering a tax charge.

8. The government announced at Budget 2016 that it would consult over the summer of 2016 on a possible reform of SSE provisions. This consultation sought views on the extent to which the exemption could be simplified, made more certain, and how it could be updated to reflect changes to the domestic and international tax landscape since its introduction in 2002. The changes introduced by this measure represent the government's response to parts of that consultation.

9. If you have any questions about this change, or comments on the legislation, please contact Corey Herbertson on 03000 542955 (email: :corey.herbertson@hmrc.gsi.gov.uk).

Clause 28: Substantial shareholding exemption: institutional investors

Summary

1. This clause introduces a form of the substantial shareholdings exemption (SSE) that has fewer qualifying conditions for companies that are wholly or partly owned by certain institutional investors. The SSE provides an exemption from corporation tax for capital gains and losses realised on the disposal of certain shareholdings. The measure provides for an exemption without regard to the nature of the business activities of either the company making the disposal or the company in which it has a substantial shareholding. Partial exemption is given where the interest of qualifying institutional investors in the ordinary share capital of the company making a disposal is between 25% and 80%. It has effect for disposals of substantial shareholdings on or after 1 April 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (TCGA)

3. Subsection 2 inserts new paragraph 3A of the Schedule which sets outs when the new exemption is available and how much of a gain or loss is exempt where the company making the disposal ("the investing company") is partly owned by qualifying institutional investors.

4. New subparagraphs (1) and (2) of paragraph 3A provide that the provisions of the new paragraph apply to an investing company if it has disposed of shares (or an interest in shares) in another company in which it had a substantial shareholding ("the company invested in") but SSE does not otherwise apply to that disposal because the company invested in fails to meet the requirements in paragraph 19 of the Schedule. Those requirements are that the company invested in is a sole trading company, or the holding company of a trading group or a trading sub-group at the specified times.

5. New subparagraph (3) provides that any gain or loss on the disposal is exempt if qualifying institutional investors own at least 80% of the ordinary share capital of the investing company.

6. New subparagraph (4) provides for a proportionate part of the gain or loss to be exempt if qualifying institutional investors own between 25% and 80% of the ordinary share capital of the investing company.

7. New subparagraphs (5) to (8) set out how the ownership of a company by qualifying institutional investors is to be calculated. Ownership is based on holdings of ordinary share capital in a company, and this can be held directly by the qualifying

institutional investor, or indirectly through other entities, including through other companies.

8. New sub-paragraph (7) provides an exception to this general rule in the case of a listed company. A qualifying investor will not be regarded as having indirect ownership of the investing company to the extent that it is necessary to trace its ownership through a company whose shares are listed on a recognised stock exchange. The effect of this rule is that a qualifying institutional investor is treated as holding an interest in the ordinary shares of a listed company; but it is not treated as doing so in the investing company if that company is a subsidiary or joint venture company partly owned by the listed company, or a the listed company has a lesser investment in its shares.

9. New subparagraph (8) ensures that where the shares of a company are subject to either a sale and repurchase agreement ('repo') or a stock lending arrangement, those arrangements are disregarded for the purposes of determining whether a qualifying institutional investor has a direct or indirect interest in the shares of the investing company.

10. New subparagraph (9) sets out the types of investor that are qualifying institutional investors for the purpose of the new exemption. Certain collective investment schemes will only be regarded as qualifying institutional investors if they meet a requirement that their shares or units are 'widely marketed' to appropriate investors, or have been approved as qualifying for their special tax status by HM Revenue and Customs. A charity will be a qualifying institutional investor if it has satisfied the conditions set out in Part 1 of Schedule 6 to the Finance Act 2010. It is a common feature of the qualifying institutional investors listed that their status under UK tax law means they are exempt from tax on chargeable gains where they dispose of an asset directly.

11. New subparagraph (10) provides a power for the Treasury to make regulations to amend the list of qualifying institutional investors, by adding or removing a class of investor, or by imposing or varying conditions which must be met by any class of investor.

12. Subsection 3 of the clause inserts new sub-paragraphs (1A) to (1C) into paragraph 8 of Schedule &AC TCGA. These provide that the requirement for a substantial shareholding to be at least 10% of the ordinary share capital of the company invested in is relaxed for the purposes of the new exemption if the shareholding, although less than 10%, was acquired for more than £50 million. This ensures that major investments by qualifying institutional investors in very large projects will qualify for exemption.

13. Subsections 4 and 5 of the clause make further changes consequential to the provisions of subsection 3.

14. Subsection 6 of the clause is the commencement rule. The changes made by this measure apply to disposals of a substantial shareholding that occur on or after 1 April 2017.

Background note

15. The SSE was introduced in 2002 with the aim of eliminating the potential double taxation of trading profits in a company or sub-group being disposed of when these are realised by the shareholder by way of a disposal of their shareholding rather than, for example, by way of a dividend which would be exempted from tax in the hands of a corporate shareholder, and to facilitate the restructuring of groups without triggering a tax charge.

16. The government announced at Budget 2016 that it would consult over the summer of 2016 on a possible reform of SSE provisions. This consultation sought views on the extent to which the exemption could be simplified, made more certain, and how it could be updated to reflect changes to the domestic and international tax landscape since its introduction in 2002. The consultation also sought views on the impact SSE is having on the UK's competitiveness as a holding company location for global investors. The changes introduced by this measure represent the government's response to that part of that consultation.

17. The government will consider whether further powers are required for the operation of the measure, in particular to ensure that the investing company can supply information to HMRC regarding the shareholdings of its investors who are qualifying institutional investors.

18. If you have any questions about this change, or comments on the legislation, please contact Corey Herbertson on 03000 542955 (email: corey.herbertson@hmrc.gsi.gov.uk)

Clause 29: Employee shareholder shares: amount treated as earnings

Summary

1. This clause removes the Income Tax relief in respect of shares received in return for entering into an Employee Shareholder agreement on or after 1 December 2016.

Details of the clause

2. Subsection 1 amends section 226A of Income Tax (Earnings and Pensions) Act (ITEPA) 2003 so that the amount treated as earnings from employment is equal to the market value of the shares acquired. This subsection also omits section 226A(3) ITEPA 2003 which contains now-redundant computational rules, and references to other sections in ITEPA 2003 which are omitted by subsection 2. Paragraph (d) of this subsection makes clear that the rules at section 226A(7) ITEPA 2003 for determining the market value of shares apply only for the purposes of deciding whether that section applies. They do not apply for the purposes of determining the amount treated as earnings under subsection (2).

3. Subsection 2 omits sections 226B to 226D ITEPA 2003 which are no longer required. These sections provide relief from Income Tax on £2,000 worth of shares acquired by an employee as consideration for entering into an Employee Shareholder agreement. They also contain associated anti-avoidance provisions.

4. Subsection 3 makes consequential changes to other sections in ITEPA 2003 following the repeal of sections 226B to 226D.

5. Subsection 4 makes consequential changes to the Corporation Tax Act (CTA) 2009 following the amendments to ITEPA 2003 made by subsections 1 to 3.

6. Subsection 5, 6 and 7 contain the commencement provisions.

Background note

7. This clause removes the Income Tax relief and hence also the National Insurance Contributions relief which applies to the first £2,000 worth of Employee Shareholder shares received by an individual.

8. Clauses 30 and 31 make corresponding changes to the Income Tax relief afforded to consideration received on a buy-back of Employee Shareholder shares and to the Capital Gains Tax exemption and relief on disposal of Employee Shareholder shares.

9. The independent advice received by an individual before entering into an Employee Shareholder agreement continues to be tax-free.

10. These clauses do not affect the reliefs available to the employer company.

11. The Income Tax reliefs and Capital Gains Tax exemption or relief are no longer available with effect from 1 December 2016 on any shares acquired in consideration of an Employee Shareholder agreement entered into on or after that date. Any individual who has received independent advice regarding entering into an Employee Shareholder agreement before 23 November 2016 still had the opportunity to receive the tax advantages currently available, provided they entered into the agreement on or before 30 November.

12. Any individual who received independent advice on 23 November 2016 before 1:30pm, had the opportunity to receive the tax advantages currently available provided they enter into the Employee Shareholder agreement on 1 December. Any individual who receives independent advice on entering into an Employee Shareholder agreement after 1:30pm on 23 November will not have the opportunity to receive the tax advantages previously available.

13. This clause does not affect the availability of the status itself; it simply removes most of the tax benefits associated with accepting the status. However, the government has announced its intention to close the status to new users at the earliest opportunity.

14. This clause is part of the government's wider policies of sustainability and fairness in the system of tax reliefs. There is evidence suggesting that the Employee Shareholder status is not being used as intended by companies.

15. If you have any questions about this change, or comments on the legislation, please contact Ben Martin on 03000 520630 (email: benjamin.martin@hmrc.gsi.gov.uk)

Clause 30: Employee shareholder shares: abolition of CGT exemption

Summary

1. This clause removes the Capital Gains Tax exemption and relief associated with shares received in return for entering into an Employee Shareholder agreement on or after 1 December 2016.

Details of the clause

2. Subsection 2 amends section 58 of the Taxation of Chargeable Gains Act (TCGA) 1992 (spouses and civil partners). It removes references to exempt Employee Shareholder shares by restoring the section to its form before Finance Act 2013.

3. Subsection 3 amends the definitions provided in section 149AA TCGA 1992. Following the repeal of section 236B TCGA 1992, section 149AA needs to contain its own free-standing relevant definitions.

4. Subsection 4 omits sections 236B to 236F TCGA 1992 which are no longer required. These sections provide for the exemption and relief from Capital Gains Tax which applies in specified circumstances to shares received as consideration for entering into an Employee Shareholder agreement. They provide for the exemption to be limited to a relief on gains of up to £100,000 in some circumstances, and for relevant anti-avoidance provisions.

5. Subsection 5 makes a consequential amendment to section 236G TCGA 1992. Following the repeal of section 236B TCGA 1992, section 236G can no longer rely on that section for the meaning of 'Employee Shareholder agreement'.

6. Subsection 6, 7 and 8 contain the commencement provisions.

Background note

7. This clause removes the Capital Gains Tax exemption and relief which apply to the first £50,000 worth of Employee Shareholder shares received by an individual.

8. Clauses 29 and 31 make corresponding changes to the Income Tax reliefs on the receipt of the first £2,000 worth of Employee Shareholder shares, and on the consideration received on a buy-back of Employee Shareholder shares.

9. The independent advice received by an individual before entering into an Employee Shareholder agreement continues to be tax-free.

10. These clauses do not affect the reliefs available to the employer company.

11. The Income Tax reliefs and Capital Gains Tax exemption or relief have no longer been available with effect from 1 December 2016 on any shares acquired in consideration of an Employee Shareholder agreement entered into on or after that date. Any individual who received independent advice regarding entering into an Employee Shareholder agreement before 23 November 2016 still had the opportunity to receive the tax advantages previously available, provided they entered into the agreement on or before 30 November.
12. Any individual who received independent advice on 23 November 2016 before 1:30pm, had the opportunity to receive the tax advantages previously available provided they entered into the Employee Shareholder agreement on 1 December. Any individual who receives independent advice on entering into an Employee Shareholder agreement after 1:30pm on 23 November will not have the opportunity to receive the tax advantages currently available.
13. This clause does not affect the availability of the status itself; it simply removes most of the tax benefits associated with accepting the status. However, the government has announced its intention to close the status to new users at the earliest opportunity.
14. This clause is part of the government's wider policies of sustainability and fairness in the system of tax reliefs. There is evidence suggesting that the Employee Shareholder status is not being used as intended by companies.
15. If you have any questions about this change, or comments on the legislation, please contact Ben Martin on 03000 520630 (email: benjamin.martin@hmrc.gsi.gov.uk)

Clause 31: Employee shareholder shares: purchase by company

Summary

1. This clause removes the Income Tax relief afforded to consideration received on a buy-back of Employee Shareholder shares received in return for entering into an Employee Shareholder agreement on or after 1 December 2016.

Details of the clause

2. Subsection 1 omits section 385A Income Tax (Trading and Other Income) Act (ITTOIA) 2005 (no charge to tax on purchase by company of exempt Employee Shareholder shares).

3. Subsection 2, 3 and 4 contain the commencement provisions.

Background note

4. This clause removes the provision which ensures that, when a company buys Employee Shareholder shares back from an Employee Shareholder, the consideration is not a distribution in the shareholder's hands

5. Clauses 29 and 30 make corresponding changes to the Income Tax relief on the receipt of the first £2,000 worth of Employee Shareholder shares, and to the Capital Gains Tax exemption and relief on disposal of Employee Shareholder shares.

6. The independent advice received by an individual before entering into an Employee Shareholder agreement continues to be tax-free.

7. These clauses do not affect the reliefs available to the employer company.

8. The Income Tax reliefs and Capital Gains Tax exemption or relief have no longer been available with effect from 1 December 2016 on any shares acquired in consideration of an Employee Shareholder agreement entered into on or after that date. Any individual who received independent advice regarding entering into an Employee Shareholder agreement before 23 November still had the opportunity to receive the tax advantages previously available, provided they entered into the agreement on or before 30 November.

9. Any individual who received independent advice on 23 November 2016 before 1:30pm, had the opportunity to receive the tax advantages previously available provided they entered into the Employee Shareholder agreement on 1 December. Any individual who receives independent advice on entering into an Employee

Shareholder agreement after 1:30pm on 23 November will not have the opportunity to receive the tax advantages currently available.

10. This clause does not affect the availability of the status itself; it simply removes most of the tax benefits associated with accepting the status. However, the government has announced its intention to close the status to new users at the earliest opportunity.

11. This clause is part of the government's wider policies of sustainability and fairness in the system of tax reliefs. There is evidence suggesting that the Employee Shareholder status is not being used as intended by companies.

12. If you have any questions about this change, or comments on the legislation, please contact Ben Martin on 03000 520630 (email :benjamin.martin@hmrc.gsi.gov.uk)

Clause 32 and Schedule 10: Employment income provided through third parties

Summary

1. This clause introduces a number of amendments, and new sections, to the employment income provided through third parties' rules in Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). This includes new charges, effective from 6 April 2017, and comprehensive double taxation relief, generally effective from 9 December 2010. This clause also introduces a new charge on outstanding loans from disguised remuneration schemes (the loan charge). This will apply to loans made after 5 April 1999 that are outstanding on 5 April 2019. There are several exemptions and the charge can be postponed in certain circumstances.

2. The Schedule introduced by this clause has four parts, as follows:

- Part 1 sets out the changes to strengthen Part 7A of ITEPA 2003, including new charges and the double taxation relief provisions;
- Part 2 sets out the conditions, exclusions and postponements for the new loan charge;
- Part 3 details some consequential amendments to other parts of the Taxes Acts due to the changes in both Part 1 and Part 2; and
- Part 4 sets out when all the changes and provisions will commence.

Details of the clause and Schedule

3. This clause introduces the Schedule.

Schedule 10: Part 1: Amendments to ITEPA 2003

4. Paragraph 1 provides that Part 1 of the Schedule amends Part 7A ITEPA 2003 (Part 7A).

Close companies

5. Paragraph 2 inserts new sections 554AA to 554AE, which provide for a new and additional gateway, the close companies' gateway, to be included at the beginning of Part 7A. If the conditions of either the existing gateway at section 554A of Part 7A or the new close companies' gateway are met a Part 7A charge can arise.

6. New section 554AA provides that a Part 7A charge will arise where all the conditions of new subsection (1) are met. Broadly, this requires there to be an arrangement to reward an employee, who also has a material interest in a close company, where the

employer enters into a relevant transaction and a third party takes a relevant step. New subsections (2) to (8) define some of the terms used in new subsection (1).

7. New section 554AB defines the relevant transaction in new section 554AA, as, broadly, a payment, or other transfer of value, in the same way as existing section 554C of Part 7A. The payment by the employer must meet the conditions of new section 554AB for the close companies' gateway to apply.

8. New section 554AC excludes distributions, and certain commercial transactions, that aren't connected with an avoidance arrangement from being a relevant transaction in new section 554AB. If the payment by the employer meets the conditions of this section the close companies' gateway will not apply.

9. New section 554AD adds further definitions used in the close companies' gateway at new section 554AA. New subsections (1) to (11) apply to the close companies' gateway in the same way subsections 554A(2) to (12) apply to the existing gateway at section 554A of Part 7A. The only difference is at new subsections (7) and (8), which prevents the close companies' gateway applying to transactions taken between the entities in a group of companies wholly owned by a Limited Liability Partnership.

10. New section 554AE defines "director" to include a shadow director for the purposes of new section 554AA.

11. Paragraphs 3 and 4 make consequential amendments to reflect the close companies' gateway to Part 7A inserted by paragraph 2.

Loans: transferring, releasing or writing off

12. Paragraph 5 amends section 554C of Part 7A to ensure a Part 7A charge will arise where loans are transferred or released.

13. Sub-paragraph (2) inserts new subsection 554C(1)(aa) which puts beyond doubt that section 554C of Part 7A applies where a third party receives a right to a payment, or an asset, and a related payment, or asset transfer, has been made to the relevant person. A relevant person, which is often the employee, is defined by subsections 554C(2) and 554C(3) of Part 7A. It also inserts new subsection 554C(1)(ab) which provides that a Part 7A charge will now arise where a loan, or right to payment, is written off, or released, by a third party.

14. Sub-paragraph (3) inserts new subsection 554C(3A) which defines "loan" for the purposes of subsection 554C(1) of Part 7A.

15. Paragraph 6 amends subsection 554A(4) of Part 7A so that the release, or write off, of a loan by a third party doesn't give rise to a Part 7A charge where it occurs on, or after, the death of the employee where the main gateway at section 554A of Part 7A is met.

16. Paragraph 7 inserts new section 554OA. It provides that a Part 7A charge does not arise where an employment-related loan, as defined in Chapter 7 of Part 3 of ITEPA 2003, is transferred to a new employer, unless the transfer is connected to a tax avoidance arrangement.

17. Paragraph 8 makes a consequential amendment to subsection 554Z(10) of Part 7A to ensure that loan transfers are treated as involving a sum of money.

18. Paragraph 9 amends subsection 554Z12(1) of Part 7A so that the release, or write off, of a loan by a third party doesn't give rise to a Part 7A charge where it occurs on, or after, the death of the employee.

Exclusions: payments in respect of tax liability

19. Paragraph 10 inserts new section 554XA which will ensure that a Part 7A doesn't arise where a payment of tax is made to HM Revenue and Customs (HMRC) using funds which are held by trustees under an arrangement which falls within Part 7A.

20. New subsection (1) sets out the conditions for this exclusion to apply. The payment of tax must be made either directly to HMRC or indirectly within 60 days.

21. New subsection (2) lists the taxes that can be paid under this exclusion, and also makes clear that only liabilities from the existing arrangement can be met. Any payments of liabilities not arising from the arrangement will not qualify for the exclusion.

22. New subsection (3) makes clear that a provisional payment of tax will not qualify for this exclusion; the payment must be a final payment to meet an undisputed liability.

Double taxation

23. Paragraph 11 amends section 554Z2 of Part 7A so that a Part 7A charge doesn't arise where the new section 554AA is met but there is also a charge under the loans to participators rules by virtue of section 459 of the Corporation Tax Act 2010 (loans treated as made to a participator), or a charge to income tax where a loan to a participator is released.

24. Paragraph 12 substitutes section 554Z5 of Part 7A with the new section 554Z5. This ensures that where there are two income tax charges that relate to the same underlying money, or asset, the later charge is reduced to nil when the earlier charge is paid in full.

25. New subsection (1) sets out that this section only applies where there is an overlap between a Part 7A charge and an earlier income tax charge.

26. New subsection (2) prevents new section 554Z5 from applying where relief is already provided for under the transitional rules in paragraph 59 of Schedule 2 to the Finance Act 2011, which normally apply where the taxpayer and HMRC have entered into a qualifying settlement agreement.

27. New subsection (3) provides the double taxation relief and ensures that the Part 7A charge can't be reduced below nil and result in a repayment of tax.

28. New subsections (4) to (5) provide that where the earlier tax liability is due and payable, the relief under this section only applies if the earlier tax liability has been paid in full before the later tax liability arises.

29. New subsection (6) defines an overlap in a similar way to the existing section 554Z5 of Part 7A.

30. New subsections (7) and (8) ensure that where relief under this section has been given it will continue to apply to any later overlapping Part 7A charges.

31. New subsection (9) defines the reference to the employee A in new subsection (1), and ensures this section doesn't apply where the income tax liability arises only under section 175 of ITEPA 2003 (benefit of taxable cheap loan treated as earnings).

32. New subsection (10) sets out how the value of the relevant step is calculated and new subsection (11) makes clear that the double taxation relief only applies where there has been a final payment of an undisputed tax liability.

33. Paragraph 13 inserts the new sections 554Z12A to 554Z12E. New sections 554Z12A to 554Z12C provide relief from double taxation where there is more than one unpaid liability relating to the same underlying money or asset. New sections 554Z12D and 554Z12E relate to provisional payments of tax.

34. New section 554Z12A defines when new section 554Z12B applies. This is similar to the new section 554Z5 and requires there to be an overlap between the two charges. The main difference is that the earlier tax liability must be unpaid at the time the later charge arises.

35. New section 554Z12B sets out how the double taxation relief is calculated, and how the double taxation relief is given and in what order.

36. New subsections (1) and (2) define the overlapping tax liability of each of the two separate charges.

37. New subsections (3) and (4) provide relief where the earlier of the two liabilities is paid. The total of the tax and late payment interest paid is set off against the later tax liability and, if there is any amount remaining, then against the late payment interest.

38. New subsections (5) and (6) provide relief in the same way as new subsections (3) and (4) but where the later of the two liabilities is paid.

39. New subsections (7) to (10) apply where there is a single later Part 7A charge that overlaps with multiple earlier liabilities. New subsections (7) and (8) define when new subsection (10) applies and new subsection (9) calculates the relief. Broadly, each of the individual overlaps must be identified and the tax liability quantified. Then the tax paid to meet the single Part 7A liability is apportioned against each of the individual overlap liabilities, and late payment interest on them, to provide relief.

40. New section 554Z12C defines a provisional payment of tax and makes clear that the double taxation relief in new section 554Z12B only applies where there has been a final payment of tax.

41. New section 554Z12D provides for a provisional payment of tax to be used to meet one of the overlapping liabilities in new section 554Z12B. Where this happens the provisional payment can no longer be repaid, as it has been used as a final payment,

and the relief at new section 554Z12B applies to prevent double taxation. The person liable for the charges must apply to HMRC for the provisional payment to be used for this other purpose.

42. New section 554Z12E allows a provisional payment of tax of one liability to be simultaneously used as a provisional payment of tax of another liability provided they relate to the same underlying money or asset.

43. New subsection (1) sets out that this section can only apply where there is more than one unpaid liability by referring to the conditions of new section 554Z12B.

44. New subsections (2) and (3) allow the provisional payment of one of the charges to also be treated as a provisional payment of the other charge. The effect of this is to prevent late payment interest accruing on both liabilities.

45. New subsection (4) allows for the same scenario as in new subsections 554Z12B(7) to (10); a single Part 7A charge overlaps with multiple earlier charges. Where that arises the provisional payment should be apportioned to the other charges on a just and reasonable basis.

46. New subsections (5) to (7) ensure that where the provisional payment of tax is repaid it is treated as never having applied to for the purposes of calculating late payment interest.

Schedule 10: Part 2: Loans and quasi-loans outstanding on 5 April 2019

47. Part 2 of the Schedule introduces the new charge on outstanding disguised remuneration loans. It contains the charging provisions, sets out the exemptions and the process and circumstances for postponement.

Relevant step

48. Paragraph 14 deems the outstanding loan balance to be a relevant step, which means all the provisions within Chapter 2 of Part 7A apply to the outstanding loan balance.

49. Sub-paragraphs (1) to (3) deem loans that are outstanding to be a relevant step within Part 7A, taken by the person who has made the loan. The relevant step occurs on 5 April 2019 unless a postponement has been granted. The taking of a relevant step will result in a tax charge arising under Part 7A, where the other gateway conditions in section 554A of Part 7A or new section 554AA are met.

50. Sub-paragraphs (4) and (5) ensure the relevant sections of Part 7A apply identically to the loan charge.

51. Sub-paragraph (6) makes clear that the loan charge date is subject to later paragraphs that may either postpone the loan charge or prevent it from applying.

Meaning of “loan”, “quasi-loan” and “approved repayment date”

52. Paragraph 15 sets out the meaning and definition of some of the terms used in this Part.

53. Sub-paragraph (1) defines a loan.

54. Sub-paragraphs (2) and (3) defines a quasi-loan. This is a similar definition to the definition of a loan transfer in new subsection 554C(1)(aa).

55. Sub-paragraphs (4) and (5) make clear that the loans and quasi-loans that have been replaced are within the scope of the loan charge.

56. Sub-paragraph (6) defines "approved repayment date".

Meaning of "outstanding": loans and quasi-loans

57. Paragraphs 16 and 17 set out the how the outstanding loan, and quasi-loan, balance is calculated. For both, the starting point is the initial amount lent, plus any further amounts lent, which is then reduced by any repayments.

58. Paragraph 16 sets this principle out for loans in sub-paragraphs (1) and (2). Sub-paragraphs (3) and (4) require repayments to be only in money after 16 March 2016, and provides that any repayments (whenever made) will be ignored in the calculation if they are made as part of a further avoidance arrangement.

59. Paragraph 17 sets out the same underlying principle for quasi-loans. Where the quasi-loan is a money debt the same conditions as for loans in paragraph 16 apply. However, quasi-loans also include situations where the right to repayment is in an asset, so paragraph 17 sets out how the principle applies and what repayments are acceptable.

"Approved fixed term loan": application and conditions

60. Paragraphs 18 to 21 set out when a postponement for an "approved fixed term loan" will be granted and how an application can be made.

61. Paragraph 18 defines an "approved fixed term loan". The loan must have been made before a certain date and have certain conditions that cannot have been changed. The loan must also have been approved by HMRC under paragraph 19.

62. Paragraph 19 sets out when the person due to pay the loan charge can apply for approval, and what information they must provide.

63. Paragraphs 20 and 21 set out the two conditions, only one of which must be met, to qualify for approval. Paragraph 20 sets out the condition for loans where regular repayments of principal have been made. Paragraph 21 sets out the commercial terms condition that can apply to loans that don't meet the existing exclusion at section 554F of Part 7A.

Exclusions

64. Paragraphs 22 to 28 set out the exclusions from the loan charge.

65. Paragraph 22 amends section 554F of Part 7A so that any loans that met the conditions of section 554F of Part 7A when the loan was made will be excluded from the loan charge.

66. Paragraphs 23 and 24 set out the exclusion for loans made under an employee benefit package available to employees. This closely follows the existing exclusion at section 554G of Part 7A.

67. Paragraph 25 sets out the exclusion for loans used to purchase employment-related securities. This closely follows the existing exclusion at subsections 554N(13) to (16) of Part 7A.

68. Paragraph 27 amends section 554O of Part 7A so that any loans that met the conditions of section 554O of Part 7A when the loan was made will be excluded from the loan charge.

69. Paragraph 28 is an exclusion from the loan charge unrelated to any existing exclusion in Part 7A. It applies to loans made before 9 December 2010 used to purchase shares in the unlisted employer, and provides that the loan charge will not apply to such a loan if it is repaid within 12 months from when the shares are sold.

Duty to provide loan balance information to B

70. Paragraph 29 creates an obligation on the parties of an arrangement that is within the scope of the loan charge to provide information to the employer. This will help ensure the employer has the right information to calculate the outstanding loan balance and decide if the loan charge applies.

71. Sub-paragraph (1) defines which loans are within the scope of the obligation to provide information to the employer.

72. Sub-paragraph (2) requires both the employee and the third party to provide the information within one month after the loan charge applies.

73. Sub-paragraph (3) defines the information that must be provided, which is everything the employer needs to decide if the loan charge applies.

74. Sub-paragraph (4) defines the loan charge date and ensures this takes into consideration any postponements.

75. Sub-paragraphs (5) and (6) require the employer and third party to inform HMRC if they were unable to contact the employer.

76. Sub-paragraph (7) defines some of the terms used in sub-paragraph (1).

Accelerated payments

77. Paragraph 30 allow the loan charge to be postponed where the relevant person has paid an Accelerated Payment.

78. Sub-paragraph (1) sets out the conditions that must be met in order for the postponement to apply.

79. Sub-paragraphs (2) to (4) defines some of the terms used in sub-paragraph (1) and also require the Accelerated Payment to be related to the same arrangement.

80. Sub-paragraphs (5) and (6) give effect to the postponement and ensure, if the Accelerated Payment is repaid, the loan charge applies 30 days after the Accelerated Payment is repaid.

81. Sub-paragraph (7) defines how the claim to postponement must be made.

Double taxation

82. Paragraphs 31 to 33 make provision to prevent double taxation.

83. Paragraph 31 disapplies the loan charge where there is also a charge under the loans to participators rules by virtue of section 459 of the Corporation Tax Act 2010 (loans treated as made to a participator), and that charge has been paid in full before 5 April 2019.

84. Paragraphs 32 and 33 prevent a benefit under the cheap taxable loans rules in Chapter 7 of Part 3 of ITEPA 2003 applying once the loan charge has arisen on the same underlying loan.

Remittance basis

85. Paragraphs 34 to 38 make amendments to the existing remittance basis rules in Part 7A to make reference to the loan charge.

86. Paragraphs 35 and 36 amend sections 554Z9 and 554Z10 of Part 7A to ensure the loan charge is taxable specific income in the tax year the loan charge arises or when it is later remitted to the UK.

87. Paragraphs 37 and 38 make consequential amendments to sections 554Z11 and 554Z11A of Part 7A to include the additions made in paragraphs 35 and 36.

Supplementary

88. Paragraphs 39 to 42 make consequential amendments to Part 7A to include references to the loan charge.

Schedule 1: Part 3: Amendments to ITTOIA 2005, CTA 2009 and FA 2011

89. Part 3 of the Schedule makes minor consequential amendments.

90. Paragraphs 43 and 44 amend the Income Tax (Trading and Other Income) Act 2005 and the Corporation Tax Act 2009 to add the additional close companies' gateway to the definition of an employee benefit scheme.

91. Paragraph 45 amends paragraph 59 of Schedule 2 to the Finance Act 2011 to include the loan charge. This will ensure that the relief under that paragraph extends to the loan charge.

Schedule 1: Part 4: Commencement

92. Part 4 of the Schedule sets out when the provisions in the other Parts of the Schedule commence. The majority of the changes in Part 1 of the Schedule will apply from 6

April 2017. The new double taxation relief provisions at new sections 554Z12A to 554Z12C will apply from the commencement of Part 7A on 9 December 2010. Part 2 of the Schedule will apply from Royal Assent of this Bill. The consequential amendments in Part 3 of the Schedule will apply from 1 April 2017, 6 April 2017 or Royal Assent of this Bill, as appropriate.

Background note

93. These changes are part of a package of proposals announced at Budget 2016 to tackle existing and prevent future use of disguised remuneration avoidance schemes. The first part of the package was legislated in the Finance Act 2016 and this clause introduces the next part of the package.

94. The future use of schemes will be prevented by strengthening the current rules. The existing use of schemes will be tackled by the introduction of a new charge on disguised remuneration loans that were made after 5 April 1999 and remain outstanding on 5 April 2019. Comprehensive provisions to ensure there is no double taxation are also being introduced. All of these changes were subject to a technical consultation that ran from 10 August 2016 to 5 October 2016.

95. These changes will help to meet the government's objective of tackling tax avoidance and will ensure that users of disguised remuneration avoidance schemes pay their fair share of tax and National Insurance contributions.

96. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Policy Team by email: employmentincome.policy@hmrc.gsi.gov.uk .

Clause 33 and Schedule 11: Trading income provided through third parties

Summary

1. This clause introduces new provisions to counter the avoidance of income tax and National Insurance contributions (NICs) by the self-employed. The measure will have effect from 6 April 2017. The measure also introduces a charge to tackle the existing use of these schemes, which will charge to tax any loan amounts that are sourced from the avoidance arrangements and remain outstanding on 5 April 2019.

Details of the clause

2. Subsection (1) introduces amendments to the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

3. Subsection (2) inserts new sections 23A to 23D of ITTOIA.

4. New section 23A sets out the circumstances in which a charge under section 23B will arise, together with relevant definitions.

5. Section 23A(1) sets out the circumstances where section 23B will apply if:

    - a person, referred to as "T", is or has been carrying on a trade, referred to subsequently as the "relevant trade". This includes those trading through a partnership;
    - T is either party to an arrangement on his own account, or the arrangements will affect or relate to T and are connected with the "relevant trade";
    - The purpose of the arrangements is to provide a "relevant benefit" to T, or any person who has been or is currently connected with T; and
    - The relevant benefit arises, or is derived from, or is connected with, the whole or part of a payment (referred to as the "relevant payment") that is made by T, or another person, to a relevant third person and to which either of two conditions A (see section 23A(5)) or B (see section 23A(6)) are met.

6. Section 23A(2) further defines a "relevant benefit". The purpose is to cover a benefit of any description. It therefore covers any kind of payment be that a loan, any transfer of money's worth or any other benefit. It will also apply to situations where a person, not T, takes on a liability of someone, referred to as "C" who is, or has been,

connected with T so that the benefit still arises to that person "C".

7. Section 23A(3) extends the meaning of a "loan".

8. Section 23A(4) defines a "relevant third person" as meaning one of two things:

- T acting as a trustee; or
- Any person other than T.

9. Section 23A(5) sets out that Condition A is satisfied when a payment is brought into account as a deduction in calculating the profits of the relevant trade. This includes any deduction made in calculating the amount liable to tax on T's share of a partnership's trading profits.

10. Section 23A(6) sets out that Condition B is satisfied in either of two circumstances:

- Firstly, broadly that the payment is effectively consideration for goods or services received as part of the relevant trade; or
- There is some other connection, between the relevant payment and the provision of goods and services in the course of the relevant trade.

11. Section 23A(7) ensures that the section applies to professions and vocations as well as to trades, and is a frequently used provision throughout Part 2 of ITTOIA.

12. Section 23A(8) is an anti-avoidance provision, which disregards arrangements that have a purpose to secure that section 23A does not apply.

13. Section 23A(9) ensures that where arrangements are disregarded by section 23A(8) a relevant benefit is treated as arising on or after 6 April 2017 if the effect of the arrangements would have been for the relevant benefit to arise before that date.

14. Section 23A(10) defines arrangement for the purposes of this section. It is drawn from other anti-avoidance legislation and will include any agreement, understanding, scheme, settlement, trust, transaction or series of transactions (whether these are legally enforceable or not).

15. Section 23A(11) applies the definition of "connected" in section 993 Income Tax Act 2007 with the exception of section 993(4). This is to ensure that where T is in partnership, T is then not automatically connected with the other members of the partnership.

16. Section 23A(12) is designed to ensure that where there are arrangements, then all the circumstances are considered as a whole in determining how the anti-avoidance provisions are to be interpreted.

17. Section 23A(13) provides a signpost to Schedule 10 which introduces a charge in respect of loans etc outstanding on 5 April 2019.

18. New section 23B sets out the tax treatment of "relevant benefits".

19. Section 23B(1) ensures that references to "relevant benefits" include not only those arising to T but also to anyone who is, or has been connected with T.

20. Section 23B(2) defines the "relevant benefit amount". It includes any payment, loan or the value of any other benefit.

21. Section 23B(3) treats the amount of the relevant benefit as profits of the relevant trade, for income tax purposes, in the tax year in which the benefit arises. If the relevant trade ceases in a tax year before the relevant benefit arises then the relevant benefit is treated as a profit of the trade in the tax year the trade ceased.

22. Section 23B(4) then defines when section 23B(3) does not apply. This is to ensure that where the relevant benefit is a loan then it will not be a relevant benefit if it is a normal commercial loan and there is no tax avoidance arrangement.

23. Section 23B(5) and (6) provides further interpretation concerning the value of a relevant benefit.

24. New section 23C sets out further definitions as to what constitutes a "tax avoidance arrangement".

25. New section 23D sets out provisions defining when a relevant benefit is provided to a person other than T or a person connected with T.

26. Section 23D(2) sets out the circumstances in which this section will apply. All the following must apply:

    - Firstly, a payment, benefit or loan is provided to a person as a consequence of the arrangements mentioned in section 23A(1)(b),
    - That person is not T, nor anyone connected with T, nor anyone previously connected with T, and
    - Any of the enjoyment conditions are met in relation to the payment, benefit or loan.

27. Section 23D(3) determines that the payment, benefit or loan is to be treated as having been provided to T (or, if appropriate, someone who is, or has been, connected to T). The time the relevant benefit arises is determined by sections 23A and 23B regardless of when the enjoyment conditions are met.

28. Section 23D(4) sets out the "enjoyment conditions". These are:

    - Firstly, that the third party benefit (in whole or part) can be calculated so as to be for T's benefit at some point in time,
    - The provision of the benefit can operate to either increase the value of any asset which T holds, or which are held for the benefit of T,
    - T actually receives, or is entitled to receive, at any time a benefit which is provided or derived, either now or in the future, from the third party

benefit,

- Where the third party benefit is a sum of money, including a loan, then T becomes beneficially entitled to any or part of the sum by the exercise, in whatever sequence, of powers by any person, with consent or otherwise, and

- Lastly, again where the third party benefit is a sum of money, including a loan, T can control, directly or indirectly, in any manner the application of that sum, or any part of it.

29. Section 23D(5) deals with cases where the above enjoyment conditions are met in relation to part only of the payment, benefit or loan so that that part is treated as a separate payment, benefit or loan for the purposes of section 23D(2) and (3).

30. Any references to T in section 23D(4) include any person who is or has been connected with T (section 23D(6)).

31. Section 23D(7) ensures that when the enjoyment conditions are to be determined then consideration must be given to the effect of all relevant circumstances and the substantial result in relation to any sum.

32. Subsection (3) makes an amendment to section 7(2) of ITTOIA by adding words to ensure that amounts treated as profits by the changes introduced here are within the income charged under Part 2 of ITTOIA.

33. Subsection (4) sets out the commencement provision. The amendments made by this clause are to have effect in relation to payments, benefits or loans provided to a person on or after 6 April 2017.

34. Subsection (5) inserts Schedule 11 which introduces a loan charge on certain amounts outstanding on 5 April 2019.

Schedule 11: Trading income provided through third parties: loans etc. outstanding on 5 April 2019

35. Schedule 11 introduces a new charge on outstanding loans provided through third parties. It contains the charging provisions and the process and circumstances for postponement.

36. Paragraph 1 is the operative provision that applies sections 23A to 23D ITTOIA 2005 to loans etc. outstanding on 5 April 2019.

37. Paragraph 1(1) treats a loan or quasi-loan, as referred to in paragraph 1(2), as a relevant benefit to which sections 23A to 23D ITTOIA 2005 apply.

38. Loans or quasi-loans will be caught by the provisions if the loan, or quasi-loan, was made on or after 6 April 1999, but before 6 April 2017, and it remained outstanding immediately before the end of 5 April 2019. This provision looks at what is

outstanding at the end of the day on 5 April 2019.

39. Paragraph 1(3) determines how the relevant benefit provisions in new section 23B(2) apply to loans or quasi-loans. The relevant benefit amount is measured by reference to the amount of the loan or quasi-loan that is outstanding immediately before either

- the end of the approved repayment date (see later for definition), if the benefit is an approved fixed term loan on 5 April 2019, or
- the end of 5 April 2019 in any other case.

40. Paragraph 1(3)(b) and (c) then specifies that the outstanding amount is brought into charge to tax in the 2018/19, unless there is a later approved repayment date.

41. Paragraph 2 defines the meaning of loan, quasi-loan and the approved repayment date for the purposes of the schedule. Paragraph 2(1) defines loans as including any form of credit and any payment that is purported to be made by way of a loan.

42. Quasi-loans are defined by reference to circumstances where a person acquires a right, referred to as the acquired debt. That right could be a right to a payment or a transfer of assets and there is any connection between the acquisition of that right and a payment, by way of loan or otherwise to T, or where there is a transfer of assets to T. In those circumstances it is deemed there is the provision of a quasi-loan to T, paragraph 2(2) and 2(3).

43. There are provisions that where the loans or quasi-loans are replaced by other loans or quasi-loans then these replacement loans or quasi-loans remain caught by these rules, paragraph 2(4) and 2(5).

44. Paragraph 2(6) defines the term “approved repayment date” as meaning the date which is stated in the terms of the loan at the time the application for the approval was made, and is the date when the whole of the loan must be repaid.

45. To ensure consistency with sections 23A to 23D ITTOIA 2005 paragraph 2(7) confirms that the references to T, persons connected to T, now or at any time, and the definition of “connected” are all consistent with their meanings in section 23A(1) for the purposes of paragraphs 2, 3, 4 and 9.

46. Paragraphs 3 and 4 define the meaning of “outstanding” loans and quasi-loans. The first point is that loan or quasi-loan is outstanding if the amount of the “relevant principal amount”, for a loan, or the amount of the “initial debt”, for quasi-loans, exceeds any “repayment amount”.

47. For a loan the definition of “relevant principal amount” is in paragraph 3(2) and is the original amount lent plus any further amounts which have been subsequently added to the principal. Excluded, however will be any capitalised interest that has been added to the principal of the loan.

48. “Repayment amounts” will include any amount of the principal that has been repaid prior to 5 December 2016 plus any payments of money made by T on or after 5

December 2016 that are repayments of the principal amount, paragraph 3(3). Certain repayments on or since 5 December 2016 may be disregarded if there is any connection between the payment and a tax avoidance arrangement. The arrangement which brought the loan about is excluded from the disregard provision, paragraph 3(4).

49. Paragraph 3(5) to 3(8) sets out the meaning of tax avoidance arrangement and how it is determined that a payment has a connection with a tax avoidance arrangement. This includes looking not only at one arrangement in isolation but also a series of arrangements where the tax avoidance occurs at one end of the series. It is irrelevant whether the person making the payment is aware of the avoidance arrangement or not. There is a main purpose test in paragraph 3(7).

50. Paragraph 4 deals with the meaning of quasi-loans. Much of the detail of the paragraph follows that in paragraph 3. There are some distinctions.

51. Paragraph 4(2) defines how the "initial debt amount" is calculated. It is the total of an amount equal to the value of the debt when acquired plus the value of any additional debt that occurs on the acquisition of further rights, either to a payment or a transfer of assets, as referred to in paragraph 2(3)(a) and (b). The value to be used is defined in paragraph 4(3).

52. Paragraph 4(4) defines "repayment amount" for the purposes of quasi-loans. Similar to the provision for loans this includes any amount that reduces the initial debt amount prior to 5 December 2016. It also includes money payments, made by T, on or after 5 December 2016 will be taken into account. Where the acquired debt, or additional amount, is a right to the transfer of assets, and the assets have been transferred the market rule applies to value the asset at the time of the transfer.

53. Paragraph 4(5) applies to disregard any payment or transfer where a tax avoidance arrangement is connected to the payment or transfer. As in the loans section the original arrangement that created the quasi-loan is excluded from this disregard rule.

54. Paragraph 5 defines the meaning of "approved fixed term loan". In essence this term will apply where, following an application to Commissioners of HMRC, a qualifying loan is approved. The term applies specifically to the circumstances applying, at any time, on 5 April 2019. The approval process is further governed by the provisions in paragraph 6.

55. A loan must meet three conditions to be a "qualifying loan", (paragraph 5(2)):

- It must have been made before 9 December 2010,
- Its term cannot exceed 10 years, and
- It must not be an excluded loan

56. A loan will be excluded if it is a replacement loan or the terms have been altered so that it would meet the 10 year term condition or the date on which the whole loan must be repaid is postponed, paragraph 5(3).

57. Paragraph 6 provides for applications to be made to HMRC to seek approval of a qualifying loan. The application has to be made to an officer of Revenue and Customs (paragraph 6(1)).

58. There are two main conditions to be satisfied as part of the approval process. These are, firstly a qualifying payments condition and secondly, a commercial terms condition (paragraph 6(2)).

59. Applications can only be made in 2018, although an officer of Revenue and Customs can accept an application made after that date if the officer considers that it is reasonable for the liable person to make a late application (paragraphs 6(3) and 6(4)).

60. Applications have to be made in a form and manner, containing such information as may be prescribed and applicants must be notified of the decision on an application, paragraph 6(5) and 6(6).

61. Paragraph 7 provides that the qualifying payments condition is met in relation to a qualifying loan if repayments of the principal of the loan have been made at intervals not exceeding 53 weeks. These repayments must be made during the relevant period which commences when the loan was made and ends with the date on which the application for approval is made.

62. Paragraph 8 sets out a number of legs to the commercial terms condition. The initial condition requires that it has to be reasonable to assume that if the qualifying loan had been made in the ordinary course of a lending business then its terms would be comparable to any terms that would have been available to the public at large. The alternative condition is that the qualifying loan was made in the ordinary course of a lending business. In addition the borrower must have complied with the terms of the loan, in all material respects.

63. Paragraph 8(2) defines what is meant by an ordinary lending business in this context.

64. Paragraph 9 details how the loan charge provisions interact with the accelerated payment regime. To have effect it is essential to have an accelerated payment that is a relevant charge, paragraph 9(1)(c), and which is defined at paragraph 9(2). The ability of T to make a claim depends on the circumstances at the point the loan charge arises. For example, T has an outstanding loan of £100,000 at the end of 5 April 2019 and he has paid an Accelerated Payment, relating to a relevant charge, of say £40,000 prior to 5 April 2019. Provided T has repaid at least £60,000 of that loan (so that the amount of the outstanding loan is equal to or less than the amount of the accelerated payment), T can make a claim under paragraph 9 to postpone the time at which the relevant benefit is deemed to have arisen to 30 days after any part of the accelerated payment is repaid.

65. Paragraph 10 is a double taxation provision. In these circumstances the objective is to ensure that where tax has already been paid in respect of a relevant benefit then relief is given against any subsequent charge arising on the outstanding loans. This is likely to occur where T has settled any enquiry and paid any tax due.

Background note

66. These changes have been introduced to tackle avoidance by the self-employed and those trading through a partnership where their taxable income has been replaced by loans and other non-taxable amounts to avoid tax. The objective is to ensure that the full earnings of the self-employment remain part of the individual's taxable income subject to income tax and National Insurance Contributions and that attempts to circumvent this position and still reward the individual are ignored.

67. The changes are part of the continued strategy by the government to clamp down on avoidance by people who continue to attempt to avoid paying tax and NICs on the money they earn. There are part of a suite of measures first announced at Budget 2016 and were the subject of consultation in the summer of 2016.

68. If you have any questions about this change, or comments on the legislation, please contact the Business Tax Policy team by email at: businessprofits.admin@hmrc.gsi.gov.uk.

Clause 34: Disguised remuneration schemes: restriction of income tax relief

Summary

1. This clause denies deductions in computing an employer's taxable profits for contributions to a disguised remuneration tax avoidance scheme unless any associated charge to PAYE and NICs is paid within a specified time. It has effect for contributions made, or to be made, on or after 6 April 2017.

Details of the clause

2. Subsection (1) sets out that section 38 ITTOIA 2005 is to be amended.
3. Subsection (2) inserts new subsection (1A) into section 38 ITTOIA 2005. This sets out an additional condition to obtain a deduction under section 38. No deduction will be allowed for an employee benefit contribution in any accounting period that begins more than 5 years after the end of the period in which the contribution is made.
4. Subsection (3) inserts new subsections (2AA) and (2AB) into section 38 of ITTOIA 2005. Subsection (2AA) makes section 38(2) subject to section 38(1A) and (2AB). Subsection (2AB) makes section 38(2) subject to a further condition set out at (3C) to (3F).
5. Subsection (4) inserts new subsections (3A), (3B), (3C), (3D), (3E) and (3F) into section 38 of ITTOIA 2005.
6. New section 38(3B) sets out that, where section 38(3C) applies, a deduction previously disallowed under section 38(2) can only be allowed for a subsequent period in so far as it is a qualifying amount, defined in new section 38(3D).
7. New section 38(3C) sets out that the new conditions apply where the provision of qualifying benefits leads to both an employment income tax charge and an NIC charge.
8. New section 38(3D) sets out a condition for an amount to be a "qualifying amount". The condition is that the relevant tax charges have to be paid before the end of the relevant period (see new section38(3E) for definitions of these two terms.
9. New sections 38(3E) and 38(3F) set out necessary definitions.
10. Subsection (5) inserts new subsection (3G). This ensures that the new rules will apply to a deduction which can be characterised as remuneration but which also meets the description of a contribution to a disguised remuneration avoidance scheme. The deductibility of this amount will be considered only under section 38 and not under another provision, such as section 36, that would apply to amounts of remuneration.

11. Subsections (6) and (7) set out the date from which the new measure takes effect.

Background note

12. Section 38 of ITTOIA 2005 sets out the conditions under which income tax relief may be allowed for an employee benefit contribution. Section 38(2) of ITTOIA 2005 currently allows a deduction to be claimed for employee benefit contributions when a qualifying benefit is paid out of those contributions.

13. This measure adds further conditions – it will deny deductions in computing an employer's taxable profits for contributions to an employee benefit scheme unless any associated charge to PAYE and NICs is paid within 12 months of the end of the relevant period. The relevant period is that for which the employer seeks a deduction in computing their taxable profits. The restrictions will also apply where a payment of remuneration is or becomes an employee benefit contribution.

14. The measure will also impose an overarching time limit such that if the employer does not claim a deduction within 5 years of the end of the period in which the contribution is made, that amount cannot be deducted when computing taxable profits.

15. These changes have been introduced as part of a package of measures to further deter the use of disguised remuneration avoidance schemes.

16. If you have any questions about this change, or comments on the legislation, please contact the Business Profits Team by email at businessprofits.admin@hmrc.gsi.gov.uk

Clause 35: Disguised remuneration schemes: restriction of corporation tax relief

Summary

1. This clause denies deductions in computing an employer's taxable profits for contributions to a disguised remuneration tax avoidance scheme unless any associated charge to PAYE and NICs is paid within a specified time. It has effect for contributions made, or to be made, on or after 1 April 2017.

Details of the clause

2. Subsection (1) sets out that section 1290 of CTA 2009 is to be amended.

3. Subsection (2) inserts new subsection (1A) into section 1290 of CTA 2009. This sets out an additional condition to obtain a deduction under section 1290. No deduction will be allowed for an employee benefit contribution in any accounting period that begins more than 5 years after the end of the period in which the contribution is made.

4. Subsection (3) inserts new subsections (2A) and (2B) into section 1290 of CTA 2009. Subsection (2A) makes section 1290(2) subject to section 1290(1A) and (2B). Subsection (2B) makes section 1290(2) subject to a further condition set out at (3C) to (3F).

5. Subsection (4) inserts new subsections (3A), (3B), (3C), (3D), (3E) and (3F) into section 1290 of CTA 2009.

6. New section 1290(3B) sets out that, where section 1290 (3C) applies, a deduction previously disallowed under section 1290(2) can only be allowed for a subsequent period in so far as it is a qualifying amount, defined in new section 1290(3D).

7. New section 1290(3C) sets out that the new conditions apply where the provision of qualifying benefits leads to both an employment income tax charge and an NIC charge.

8. New section 1290(3D) sets out a condition for an amount to be a "qualifying amount". The condition is that the relevant tax charges have to be paid before the end of the relevant period (see new section 1290(3E) for definitions of these two terms.

9. New sections 1290(3E) and 1290(3F) set out necessary definitions.

10. Subsection (5) inserts new subsection (3G). This ensures that the new rules will apply to a deduction which can be characterised as remuneration but which also meets the description of a contribution to a disguised remuneration avoidance scheme. The

deductibility of this amount will be considered only under section 1290 and not under another provision, such as section 1288, that would apply to amounts of remuneration.

11. Subsections (6) and (7) set out the date from which the new measure takes effect.

Background note

12. Section 1290 of CTA 2009 sets out the conditions under which corporation tax relief may be allowed for an employee benefit contribution. Section 1290(2) of CTA 2009 currently allows a deduction to be claimed for employee benefit contributions when a qualifying benefit is paid out of those contributions.

13. This measure adds further conditions – it will deny deductions in computing an employer's taxable profits for contributions to an employee benefit scheme unless any associated charge to PAYE and NICs is paid within 12 months of the end of the relevant accounting period. The relevant accounting period is that for which the employer seeks a deduction in computing their taxable profits. The restrictions will also apply where a payment of remuneration is or becomes an employee benefit contribution.

14. The measure will also impose an overarching time limit such that if the employer does not claim a deduction within 5 years of the end of the accounting period in which the contribution is made, that amount cannot be deducted when computing taxable profits.

15. These changes have been introduced as part of a package of measures to further deter the use of disguised remuneration avoidance schemes.

16. If you have any questions about this change, or comments on the legislation, please contact the Business Profits Team by email at businessprofits.admin@hmrc.gsi.gov.uk

Clause 36: First year allowance for expenditure on electric vehicle charging points

Summary

1. This clause introduces a new tax relief for eligible expenditure on electric charge-point equipment. The relief has effect for transactions on or after 23 November 2016.

Details of the clause

Capital Allowances Act 2001 Part 2: Plant and Machinery Allowances

2. Subsection 2 amends section 39 to introduce a new first year allowance in section 45EA to the Capital Allowances Act (CAA) 2001.

3. Subsection 3 inserts a new Section 45EA which provides tax relief for the purchase of electric vehicle charge-points.

4. New subsection 45EA(1) defines the type of expenditure which qualifies for the relief.

5. New subsection 45EA(2) defines the type of charge-point to which the relief applies and limits the scope of the relief to plant or machinery which installed only for charging electric vehicles.

6. New subsection 45EA(3) defines the relevant period when the relief will be claimable.

7. New subsection 45EA(4) provides the Treasury with a power to extend the relevant period by secondary legislation.

8. New subsection 45EA(5) defines electric vehicles and charge-points.

9. Subsection 4 amends section 46 of the CAA 2001 to introduce a new general exclusion in section 46(1).

10. Subsection 5(a) amends section 52(3) to set out the amount of qualifying expenditure which qualifies for relief under new section 45EA.

11. Subsection 5(b) inserts two new subsections into section 52. New subsections 52(3A) and (3B) provide the Treasury with a power to amend by secondary legislation the amount of qualifying expenditure that qualifies for the relief.

Background note

12. This tax relief has been introduced to support the development and installation of electric charge-point equipment for electric vehicles to promote the wider uptake of such vehicles. It will encourage the use of cleaner vehicles by making electric charge-points a more common feature on the high street.

13. The measure complements the 100% FYA for cars with low carbon dioxide (CO2) emissions, and the 100% FYA for cars powered by natural gas, biogas and hydrogen.

14. HM Revenue and Customs (HMRC) will publish guidance after Royal Assent about the operation of the relief.

15. If you have any questions about this change, or comments on the legislation, please contact Tunde Ojetola on 03000 585916 (email:tunde.ojetola@hmrc.gsi.gov.uk).

Clause 37: Co-ownership authorised contractual schemes: capital allowances

Summary

1. This clause introduces the option for the operator of a co-ownership authorised contractual scheme (CoACS) to elect for an administrative simplification when complying with the capital allowances legislation. The election can be made for periods that start on or after 1 April 2017.

Details of the clause

2. Subsection 1 introduces new Sections into Chapter 20 of Part 2 of Capital Allowances Act (CAA) 2001, which concerns plant and machinery.

Section 262AA

3. Subsections 1 and 2 ensure that when considering the qualifying activity of each participant in the scheme, you must take account of the qualifying activity carried on by all of the participants viewed collectively.

4. Subsection 3 states that subsection 2 only applies, in relation to a participant, to the extent that the participant is chargeable to tax on the qualifying activity.

5. Subsection 4 provides that when considering the qualifying activity of the scheme, no account need be taken of the taxable status of the participants.

Section 262AB

6. Subsections 1, 2 and 3 state that the operator of the scheme may make an election, the election must specify an accounting period and that period may not be longer than 12 months or start before 1 April 2017.

7. Subsections 4, 5 and 6 state that the election applies to that first accounting period and all subsequent periods, is irrevocable and must be made by notice to an officer of Revenue and Customs.

Section 262AC

8. Subsection 1 states that this section applies where an accounting period is covered by a valid election. It also defines "the relevant period" for the scheme.

9. Subsection 2 provides that the operator of the scheme is to calculate the allowances for the relevant period based on the assumptions listed in Subsection 3.

10. Subsection 3 lists the assumptions which the operator of the scheme must use to calculate the allowances.

11. Subsections 4 and 5 require the operator to allocate those allowances to the participants in the scheme based on proportionality of the allowances and on a just and reasonable basis.

12. Subsection 6 sets some parameters for what just and reasonable means.

13. Subsection 7 provides that the scheme must do separate calculations and allocations if it has more than one qualifying activity.

14. Subsection 8 prohibits the participant from claiming allowances for the qualifying activity carried on through the scheme, except those allocated by the operator.

15. Subsections 9, 10 and 11 define tax written-down value.

Section 262AD

16. Subsection 1 states that this section applies if an election has been made.

17. Subsection 2 states that for the purposes of Sections 61(1) and 196(1) CAA, a participant in the scheme at the start of an election is treated as having disposed of any property that was subject to that scheme; and the disposal value is the tax written-down value.

18. Subsections 3 and 4 define "tax written-down value" for the purpose of subsection 2.

Section 262AE

19. Subsection 1 lists the conditions needed for this section to apply.

20. An election has been made.

21. Property that consists of a fixture ceased to be owned by the scheme

22. The operator had to account for a disposal value because the property had ceased to be owned by the scheme.

23. The current owner owns the fixture as a result of incurring capital expenditure.

24. Subsection 2 states that the current owner's qualifying expenditure is nil unless the disposal value statement requirement is met and otherwise limits the qualifying expenditure to the assumed disposal value.

25. Subsection 3 defines "the disposal value statement requirement".

26. Subsection 4 ensures that Sections 185 and 187A CAA do not apply in these circumstances.

27. Subsection 5 states that the assumed disposal value referred to in Subsection 2 is the disposal value brought into account by virtue of Section 262AC(3)(h).

Section 262AF

28. Section 262AF sets out a number of interpretations for terms used in Sections 262AA to 262AF.

Background note

29. Co-ownership authorised contractual schemes (CoACS) are a type of collective investment scheme which are transparent for tax purposes. That means that, for example, the income arising from investments in the CoACS is the income of its investors.

30. Under the current legislation it can be administratively burdensome, in some circumstances, for participants in a CoACS to comply with their obligations. This measure significantly reduces those burdens.

31. HM Revenue and Customs (HMRC) will publish guidance about this measure after Royal Assent of Finance Bill 2017.

32. This clause is one of three clauses relating to CoACS which clarify the process for calculating any capital allowances which may be claimed by investors in CoACS, introduce new requirements for information which the operator of a CoACS must provide to investors and to HMRC and introduce new rules to clarify what is to be treated as an investor's income when a CoACS has invested in an offshore fund.

33. If you have any questions about this change, or comments on the legislation, please contact Jim Rogers on 03000 588833 (email: jim.a.rogers@hmrc.gsi.gov.uk).

Clause 38: Co-ownership authorised contractual schemes: information requirements

Summary

1. This clause gives the Treasury the power to make regulations requiring the operator of a co-ownership authorised contractual scheme (CoACS) to provide information to investors and to HM Revenue and Customs (HMRC).

Details of the clause

2. Subsection 1 enables the Treasury to make regulations requiring the operator of a CoACS to provide information to participants in the scheme and to HMRC.

3. Subsection 2 sets out for what purpose the Treasury may make regulations requiring information to be provided to investors in the CoACS.

4. Subsection 3 sets out a non-exhaustive list of what kind of information the Treasury may require the operator of a CoACS to provide to HMRC.

5. Subsections 4 to 10 contain supplementary provisions and definitions.

Background note

6. Co-ownership authorised contractual schemes (CoACS) are a type of collective investment scheme which are transparent for tax purposes. That means that, for example, the income arising from investments in the CoACS is the income of its investors. A CoACS is not subject to tax itself, but the operator of the CoACS holds information which would help its investors to comply with their own tax obligations and assist HMRC in its functions.

7. This measure will enable the Treasury to make regulations requiring operators of CoACS to provide investors with sufficient information to complete their tax returns and to provide certain information to HMRC.

8. Draft regulations made pursuant to this provision are being published alongside this clause.

9. This clause is one of three clauses relating to CoACS which clarify the process for calculating any capital allowances which may be claimed by investors in CoACS, introduce new requirements for information which the operator of a CoACS must provide to investors and to HMRC and introduce new rules to clarify what is to be treated as an investor's income when a CoACS has invested in an offshore fund.

10. If you have any questions about this change, or comments on the legislation, please contact Colin Strudwick on 03000 585275 (email: colin.strudwick@hmrc.gsi.gov.uk).

Clause 39: Co-ownership authorised contractual schemes: offshore funds

Summary

1. This clause gives the Treasury the power to make regulations about how participants in a co-ownership authorised contractual scheme (CoACS) are to be treated for income tax and corporation tax purposes where the CoACS has invested in an offshore fund.

Details of the clause

2. Subsection 1 enables the Treasury to make regulations concerning the income tax position of participants in a CoACS in relation to investments in an offshore fund.

3. Subsection 2 sets out a non-exhaustive list of what those regulations might provide for, including what may be allocated as the income of participants and the time income tax is due.

4. Subsections (3) to (7) contain supplementary provisions and definitions.

Background note

5. Co-ownership authorised contractual schemes (CoACS) are a type of collective investment scheme which are transparent for tax purposes. That means that, for example, the income arising from investments in the CoACS is the income of its investors.

6. This measure will enable the Treasury to make regulations requiring CoACS to allocate certain amounts as the income of participants in the accounting period in which those amounts accrue to the CoACS. Regulations will also bring those amounts within the charge to tax.

7. Draft regulations made pursuant to this provision are being published alongside this clause.

8. This clause is one of three clauses relating to CoACS which clarify the process for calculating any capital allowances which may be claimed by investors in CoACS, introduce new requirements for information which the operator of a CoACS must provide to investors and to HMRC and introduce new rules to clarify what is to be treated as an investor's income when a CoACS has invested in an offshore fund.

9. If you have any questions about this change, or comments on the legislation, please contact Colin Strudwick on 03000 585275 (email: colin.strudwick@hmrc.gsi.gov.uk).

Clause 40 and Schedule 12: Deemed domicile: income tax and capital gains tax

Summary

1. This clause and Schedule amend the Income Tax Acts and the Taxation of Chargeable Gains Act (TGCA) 1992, with the effect that certain non-domiciled individuals will be treated as if they were domiciled in the UK for the purposes of income tax and capital gains tax from the start of the 2017-18 tax year.

2. There are two categories of individual who will be affected by this rule: those who are domiciled outside the UK and who were born in the UK with a UK domicile of origin; and those who have been resident in the UK for at least 15 of the preceding 20 tax years.

Details of the clause

3. Subsection 1 amends Chapter 2A of Part 14 of the Income Tax Act 2007 by inserting new section 835BA. This is the deemed domicile rule.

4. Subsection 835BA(1) provides that the section applies for the Income Tax Acts or for all the parts of the Taxation of Chargeable Gains Act (TGCA) 1992 which are relevant to an individual's domicile status.

5. Subsection 835BA (2) provides that any individual who is not domiciled in the UK is to be regarded as domiciled in the UK if they meet either of two conditions.

6. Subsection 835BA (3) provides the first of these two conditions, Condition A. This is that the individual was born in the UK with a UK domicile of origin and is resident in the UK for tax purposes in the relevant tax year.

7. Subsection 835BA (4) provides the second of these two conditions, Condition B. This is that the individual has been resident in the UK in at least 15 out of the 20 years preceding the relevant tax year

8. Subsection 835BA (5) provides that condition B is not met if the individual has not been resident in the UK after 5 April 2017.

9. Subsection (2) of the Clause provides that Schedule 12 includes further provisions which apply for the purposes of this section and new section 835BA.

Schedule 12

Part 1: Application of Deemed Domicile Rule

10. Paragraph 1 of Schedule 12 amends the Income and Corporation Taxes Act (ICTA)1988

11. Paragraph 1(1) amends section 266A of ICTA which provides the tax treatment of employer paid life assurance premiums. Its effect is that anyone deemed UK domiciled for tax under new section 835BA of ITA 2007 is treated in the same way as someone domiciled in the UK.

12. Paragraph 1(2) provides that the amendment made by paragraph 1(1) takes effect on 6 April 2017.

13. Paragraph 2 introduces the amendments to the Taxation of Chargeable Gains Act (TCGA) 1992.

14. Paragraph 3(1) amends section 16ZA TGCA which provides the tax treatment of capital losses incurred by non-uk domiciled individuals.

15. Paragraph 3(2) sets out the amendments made to subsections (1) to (3) to the making of an election under section 809B of ITA 2007 for use of the remittance basis and the tax years affected by this election after they become domiciled in the UK. Failure to make such an election could adversely affect any claim for foreign losses that have accrued. Further subsections (4), (5) and (6) in this paragraph advise that the deemed domicile rule will apply and that changes will commence from the start of tax year 2017-18. Finally, if any election for claiming losses under the remittance basis is made under section 16ZA of TCGA 1992 and the individual subsequently becomes UK domiciled then section 16ZB and 16ZC will not have effect by virtue of this election.

16. Paragraph 4(1) outlines the changes made to section 16ZB after an election for claiming losses has been made under section 16ZA to remit foreign chargeable gains in the subsequent year after they arise.

17. Paragraph 4(2) provides that the amendment made by paragraph 4(1) takes effect from the start of the 2017-18 tax year.

18. Paragraph 5(1) provides the changes made to section 16ZC after an election has been made under section 16ZA to remit foreign chargeable gains.

19. Paragraph 5(2) provides that the changes in paragraph 5 will come into effect from the start of the 2017-18 tax year.

20. Paragraph 6(1) amends section 69 of TGCA, covering the residence of trustees of settlements. Paragraph 6(1) applies the new deemed domicile test in section 835BA of ITA for the purpose of determining the domicile of the settlor for the purposes of that section.

21. Paragraph 6(2) provides that the amendments made by paragraph 6(1) take effect in relation to settlements created on or after 6 April 2017.

22. Paragraph 7(1) provides that the deemed domicile rule in new section 835 BA applies for the purposes of section 86, TCGA. This means that settlors with interests in such settlements and who are deemed UK domiciled for tax purposes under new section 835BA will be subject to Capital Gains Tax under section 86 in the same way as settlors domiciled in the UK under general law.

23. Paragraph 7(2) provides that the amendments made by paragraph 7(1) take effect on 6 April 2017.

24. Paragraph 8(1) amends section 275 of TCGA, by the insertion of a new subsection 3A, which provides that the new deemed domicile test in 835BA will apply for the purposes of 275(1) (l) (iii). This means that the location of foreign currency bank accounts held by an individual deemed UK domiciled for tax purposes under new section 835BA will be treated as being located in the UK.

25. Paragraph 8(2) provides that the amendment made by paragraph 8(1) takes effect on 6 April 2017.

26. Paragraph 9(1) amends Schedule 5A by the insertion of a new subsection 3A, which provides that the new deemed domicile test in 835BA will apply for the purposes of settlements with a foreign element.

27. Paragraph 9(2) provides that the amendment made by paragraph 9(1) takes effect in relation to settlements created on or after 6 April 2017.

28. Paragraph 10(1) amends the Income Tax (Earnings & Pensions) Act (ITEPA) 2003.

29. Paragraph 10(2) amends section 355 of ITEPA, covering deductions for corresponding payments by non-domiciled employees with foreign employers. Paragraph 10(2) applies the new deeming section 835BA ITA into section 355 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK under general law.

30. Paragraph 10(3) amends section 373 of ITEPA, covering non-domiciled employees' travel costs where the related duties are performed in the UK. Paragraph 10(3) applies new section 835BA ITA to section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK.

31. Paragraph 10(4) amends section 374 of ITEPA, covering non-domiciled employees' spouses' travel costs and expenses where an employee's related duties are performed in the UK. Paragraph 10(4) applies the new section 835BA ITA on deeming to section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK.

32. Paragraph 10(5) amends section 376 of ITEPA covering non- domiciled employees' foreign accommodation and subsistence costs and expenses. It applies the new

section 835 BA ITA 2007 to section 376 so that an individual deemed domiciled under that section will be treated the same as an individual domiciled in the UK.

33. Paragraph 10(6) provides that all the amendments made by paragraph 10 take effect on 6 April 2017.

34. Paragraph 11 introduces the amendments to ITA.

35. Paragraph 12 deals with section 476 ITA. Section 476 provides the rules for determining whether a settlor meets Condition C in section 475. Section 475 determines the residence of trustees for income tax purposes. Paragraph 12 (1) amends section 476(2) (b) and section 476(3) (b) so that the treatment of a settlor treated as domiciled by new section 835BA will be the same as that for a settlor domiciled in the UK.

36. Paragraph 12(2) provides that the amendments made by paragraph 12(1) take effect for deaths and settlement made on and after 6 April 2017.

37. Paragraph 13 deals with section 718 ITA. Section 718 covers the meaning of a `person abroad` for the purpose of Chapter 2 of Part 13 ITA -Transfer of Assets Abroad legislation (ToAA).

38. Paragraph 13(1) amends section 718(1) (b) so that the treatment of an individual affected by the deemed domicile rule in new section 835BA will be the same as that for an individual domiciled in the UK.

39. Paragraph 13(2) provides that the amendments made by paragraph 13(1) take effect on 6 April 2017.

40. Paragraph 14 introduces the amendments made to the remittance basis in Chapter A1 of Part 14 of ITA.

41. Paragraph 14(2) amends section 809B ITA so that a claim to the remittance basis cannot be made by anyone affected by section 835BA.

42. Paragraph 14(3) consequentially amends section 809C ITA so that individuals who are deemed domiciled in the UK by virtue of new section 835BA because they have been resident in the UK for at least 15 of the preceding 20 years will not be liable to pay the Remittance Basis Charge.

43. Paragraph 14(4) amends section 809E ITA (application of the Remittance Basis without a claim), so that the treatment of an individual affected by new section 835BA under section 809E will be the same as that for an individual domiciled in the UK.

44. Paragraph 14(5) makes further provision to remove any references in section 809H to the `17 years` residence test.

45. Paragraph 14(6) provides that the amendments made by paragraph 9(1)-(5) take effect on 6 April 2017.

46. Paragraph 15(1) will apply if section 10A of the TCGA 1992, as originally enacted is applicable to an individual and if the year of return is 2017-18.

47. Paragraph 15(2) provides that the amendments made under paragraphs 14(2) have no effect on paragraph 15(1) cases where `foreign chargeable gains` accrue in an intervening year.

48. Paragraph 15(3) provides that where an individual makes a remittance basis claim in a paragraph 15(1) case, he will not be liable to pay the remittance basis charge or lose entitlement to personal allowances.

49. Paragraph 15(4) sets out the statutory definitions of `year of return`, `intervening year` and "foreign chargeable gains" for the purposes of paragraphs 15.

50. Paragraph 16(1) applies to cases where section 10A substituted by paragraph 119 of FA 2013 applies in relation to an individual.

51. Paragraph 16(2) disapplies the effect of the amendment in the `period of return` made under paragraphs 14(2), and where the related `temporary period of non-residence` began before 8 July 2015.

52. Paragraph 16(3) provides that where an individual makes a remittance basis claim in a paragraph 16(1) case, he will not be liable to pay the remittance basis charge or lose entitlement to personal allowances.

53. Paragraph 16(4) provides that the definition of `foreign chargeable gain` for the purposes of paragraph 16 is the same as in section 12(4) TGCA.

54. Paragraph 16(5) advises that part 4 Sch 45 FA 2103 explains the meaning of the terms “temporary period of non-residence “and “period of return".

55. Paragraph 17(1) deals with the residence of personal representatives. Paragraph 17(1) amends section 834 ITA so that the residence of the personal representatives of individuals affected by new section 835BA will be the same as that for an individual domiciled in the UK.

56. Paragraph 17(2) provides that all the amendments made by paragraph 17 will take effect from the start of the 2017-18 tax year.

Part 2: Protection of overseas trusts

57. Paragraph 18 of the Schedule amends Schedule 5 to TGCA (provisions supplementing section 86 of TGCA 1992) by inserting new paragraph 5A.

58. New paragraph 5A (1) provides that section 86 TGCA does not apply in relation to a tax year – referred to as 'the particular year' – where certain conditions are met. These are that:

- the tax year is 2017-18 or later;
- the settlor is not domiciled in the UK at the time when the settlement

was created;

- where a settlement is created on or after 6 April 2017, that settlement was created when the settlor was not deemed domiciled in the UK under section 835BA ITA for the purposes of section 86(1)(c);
- there is no time in the particular year when the settlor is either domiciled in the UK or treated as domiciled in the UK by virtue of 835BA ITA because they were born in the UK with a UK domicile of origin throughout that tax year;
- no property or income has been provided directly or indirectly for the purposes of the settlement by the settlor, or any trust of which the settlor is a beneficiary or settlor, since 6 April 2017 (or the date of creation of the settlement if later) whilst the settlor is treated as domiciled in the UK by virtue of s 835BA ITA as a result of being UK resident for at least 15 of the previous 20 tax years.

59. New paragraph 5A(2) provides that, when considering property or income provided for the purposes of the settlor, the following should be disregarded:

- any property or income which is provided on arms' length terms;
- any property or income provided in pursuance of a liability which was incurred by any person before 6 April 2017; and
- any property or income which is provided to meet any excess of the settlement's administration and taxation expenses for the year over its income.

60. Paragraph 19(1) of the Schedule amends TGCA by inserting new sections 87D to 87J.

Section 87D: Sections 87 and 87A: disregard of capital payments to non-residents

61. New section 87D(1) provides that, in applying sections 87 and 87A TGCA to a settlement, any capital payments within new subsection 87D(2) should be disregarded, including a part of such a payment, subject to conditions set out in new subsection 87D(3) and new subsection 87E.

62. New section 87D(2) provides that any capital payment is within this subsection where it is made in a tax year by a trustee to a beneficiary who is not resident in the UK at all times within that tax year.

63. New section 87D (3) provides that new subsection 87D (1) does not apply to a capital payment, or a part of such a payment, where the recipient beneficiary is a close family member (as defined in new subsection 87H), the payment is received on or

after 6 April 2017 and the settlor is resident in the tax year when the payment was received.

Section 87E: Sections 87 and 87A: disregarded payments to temporary non-resident

64. New subsection 87E(1) applies where:

- no account is taken of a capital payment, or part of such a payment, for the purposes of section 87 and 87A TGCA as a result of new subsection 87D;
- the recipient beneficiary is a temporarily non-resident individual; and
- the payment or part payment is received when the recipient beneficiary is temporarily non-resident.

Where these conditions are met, new subsection 87E(1) provides that the payment or part payment is treated as received in the beneficiary's period of return and that it should be treated accordingly for the purposes of sections 87 and 87A.

65. New subsection 87E(2) provides that the terms 'temporarily non-resident', 'temporary period of residence' and 'period of return' as used in new subsection 87E have the same meaning as they do for the purposes of part 4 of Schedule 45 to Finance Act 2013.

Section 87F: Sections 87 and 87A: disregarded payments in year settlement ends

66. New subsection 87F(1) provides that new subsection 87F applies where the settlement ceases to exist in a tax year, two or more beneficiaries receive capital payments, or a part of such payments, from the trustees and at least one of the recipients is, and at least one is not, a non-resident beneficiary.

67. New subsection 87F(2) provides that the capital payments referred to in new subsection 87F(1) are not within new subsection 87D(2) to the extent that they are received by a non-resident beneficiary.

68. New subsection 87F (3) defines the term 'non-resident beneficiary' as a beneficiary who is not resident in the UK at any time in that tax year.

Section 87G: Cases where settlor liable for section 87 charge on closely-related beneficiary

69. New subsection 87G(1) provides that new subsection 87G(2) applies where:

- chargeable gains are treated as accruing to an individual in a tax year by section 87 or section 89(2) TGCA;

- the beneficiary is a close family member as defined in new subsection 87H of the settlor at any time in the tax year;
- the settlor is resident in the UK any time in the tax year; and
- either the beneficiary is not resident in the UK throughout the tax year or the beneficiary was taxed on the remittance basis and no gains are remitted to the UK in that tax year.

70. New subsection 87G (2) provides that the settlor is liable to tax on those gains as if they had accrued to the settlor in the tax year.

71. New subsection 87G(3) provides that if the settlor is liable to tax on gains because of new subsection 87G(2) and the tax is paid, they are entitled to recover that amount from the beneficiary or from any trustee of the settlement.

72. New subsection 87G(4) provides that, in recovering the amount referred to in new subsection 87G(3), the settlor can ask HMRC to provide a certificate showing the amount of the gain and the amount of tax which has been paid. This certificate is conclusive any evidence of the facts stated in it.

Section 87H: Meaning of 'close member of the settlor's family'

73. New subsection 87H(1) defines the term 'close family member' for the purposes of new subsections 87D, 87G and 87I as a settlor's spouse or civil partner, a settlor's child or a child of a settlor's spouse or civil partner who is aged under 18.

74. New subsection 87H(2) provides that two people living together as spouses are if they were spouses and that two people of the same sex living together as civil partners are treated as civil partners.

Section 87I: Non-UK resident settlements: attribution of gains to onward gifts

75. New subsection 87I(1) provides that new subsection 87I(2) applies in relation to a settlement if the following conditions are met:

- a capital payment (the 'original payment') is received by a person (the 'original beneficiary') from a trustee in a tax year;
- the trustees are not resident in the UK at any time in the tax year;
- either the original beneficiary is not a close member of the settlor's family in that year, or if they are a close member of the settlor's family in that year, the settlor is not resident in the UK in that year;
- the original beneficiary makes a gift (the 'onward payment') to a person (the 'subsequent recipient') either within three years of the day containing the start time, or before the original payment is received in

anticipation of receiving the original payment;

- the subsequent recipient is resident in the UK in the tax year when the subsequent recipient receives the onward payment; and
- where the particular tax year is a tax year in the period which begins with the start of the tax year when the original payment is received and ends with the end of the tax year in which the subsequent beneficiary receives the onward payment, the original beneficiary is not resident in the UK throughout the particular year or the remittance basis applies to the original beneficiary for the particular tax year.

76. New subsection 87I (2) provides that sections 87, 87A and 89 and new subsection 87I (1) (a) have the same effect as they would if the subsequent recipient were a beneficiary of the settlement who has received a capital payment from the trustees at whichever is the earlier of the time when the onward payment was made and the tax year in which the settlement ceases to exist.

77. New subsection 87I (2) also provides that sections 87, 87A and 89 and new subsection 87I (1) (a) have the same effect as they would if that capital payment were the same amount as whichever is the lower of the amount of the onward payment or the amount of the original payment after it is reduced by the tax-producing amount of any relevant payment.

78. New subsection 87I(3) provides that, for the purposes of new subsection 87I(1)(d), where the original payment is a capital payment other than one treated as received under new subsection 87I (2), the start time is the time when the original payment is received, and (b) if the original payment is a capital payment that is treated as received because of the operation of subsection (2) on a previous occasion, the start time is that time provided by this subsection as the start time.

79. New subsection 87I (4) provides that new subsection 87I (1) (d) applies without the reference to the time before the end of 3 years beginning with the day containing the start time, in situations where the onward payment is made as part of any arrangements which amount to arrangements for the whole or part of the amount of a capital payment which the trustees actually make for ultimate receipt by a beneficiary who is not the recipient of that payment.

80. New subsection 87I(5) defines the term 'relevant payment' for the purposes of new subsections 87I(2)(b)(ii) and 87I(6) as either a gift made by a subsequent recipient after receipt of the original payment but before the onward payment is made, or, in cases where gains are treated under section 87 or section 89 TGCA as accruing to the original beneficiary as a result of the receipt of the original payment, any amount of those gains remitted to the UK in a tax year when the original beneficiary was taxed on the remittance basis.

81. New subsection 87I(6) defines the term 'tax-producing amount' of a relevant payment for the purposes of new subsection 87I (2) (b) (ii) as the amount on which a person is

chargeable to capital gains tax as a result of new subsection 87I (2) (for relevant payments within new section 87I(5)(a)), and the amount remitted (for relevant payments within new subsection 87I (5) (b)).

82. New subsection 87I(7) defines the terms 'arrangements', 'gift' and 'make' in connection with a gift as used in new subsection 87I.

Section 87J: Sections 87 and 87A: disregard of payments to migrating beneficiary

83. New subsection 87J(1) provides that a capital payment, or a part of such a payment, is disregarded if it falls within new subsection 87J (2) for the purposes of sections 87 and 87A as they apply to a settlement for a particular tax year.

84. New subsection 87J(2) provides that a capital payment is within this subsection where it meets the following conditions:

- if it is received by a beneficiary of the settlement in or before the particular tax year;
- if the beneficiary is resident in the UK in the tax year when the payment is received;
- if the beneficiary is not resident in the United Kingdom in the particular tax year;
- to the extent that it has not been matched under section 87A TGCA with either the section 2(2) amount for any tax year before the particular tax year, but not earlier than the tax year 2017-18, in which the beneficiary is resident in the United Kingdom, or the section 2(2) amount for any earlier tax year.

85. Paragraph 19(2) of the Schedule makes consequential amendments to section 87B (1) TGCA.

86. Paragraph 19(3) replaces the reference to section 87C in section 89(3) TCGA with a reference to new subsection 87I.

87. Paragraph 19(4) of the Schedule provides that the new subsections 87D and 87E have effect in relation to payments received in 2017-18 or a later tax year (except as provided in new subsection 87D(3)) and, in relation to payments received before the tax year 2017-18, in the tax year 2017-18 and later tax years.

88. Paragraph 19(5) of the Schedule provides that the new subsection 87F has effect in relation to payments received in the tax year 2017-18 or a later tax year.

89. Paragraph 19(6) of the Schedule provides that the new subsection 87G has effect in relation to chargeable gains treated as accruing in or after the tax year 2017-18 as a result of capital payments received, or treated as received, in or after that tax year.

90. Paragraph 19(7) of the Schedule provides that the new subsection 87H, and the amendments in sections 87B and 89, have effect for the tax year 2017-18 and later tax years.

91. Paragraph 19(8) of the Schedule provides that the new subsection 87I has effect in relation to onward payments made on or after 6 April 2017, even in cases where the original payment is received (or treated as received) before that date.

92. Paragraph 19(9) of the Schedule provides that the new subsection 87J has effect where the particular tax year is the tax year 2017-18 or a later tax year.

93. Paragraph 20 of the Schedule amends Finance Act 2008 (Remittance Basis: trusts etc.) by inserting new paragraph 172 into Part 2 of Schedule 7 to that Act. This applies a deeming provision equivalent to that in section 835BA (3) to certain paragraphs of that Part.

Part 3: CGT: Rebasing

94. Paragraph 21 provides that a person who was a non- UK domiciled remittance basis user prior to 2017-18 and becomes treated as UK domiciled under the 15 out of 20 rule from 6 April 2017 may, in computing the gain or loss accruing on the disposal of an asset on or after then, treat the acquisition cost of the asset as its value at 5 April 2017 (“rebasing”) provided that during the person’s ownership the asset was not situated in the UK in the period 16 March 2016 to 5 April 2017 (the “relevant period”), and the person remains deemed domiciled under the 15 out of 20 rule at all times until disposal.

95. Paragraph 22 provides that assets brought to, or received or used in the UK are treated as not situated in the UK under certain circumstances.

96. Paragraph 23 provides that a person may elect for rebasing not to apply to a disposal. An election must be made and once done will be irrevocable.

Part 4: Cleansing of Mixed Funds

97. Paragraph 24 (1) introduces Part 4 of the Schedule which enables individuals who have previously been taxed on the remittance to rearrange their overseas funds so that they will be able to bring money to the UK without being subject to the rules which normally apply for remittance basis purposes.

98. Paragraph 24(2) will disapply section 809R(4) ITA to any transfer of funds made between two overseas accounts, one of is a mixed fund, provided certain conditions are met. A mixed fund is defined in section 809Q(6) of that Act as money or other property containing or deriving from a mixture of income, gains and capital or income, gains and capital from different tax years.

99. These conditions are provided in subsections (a) to (f) of paragraph 28(2) of the Schedule. These are that

- the transfer is a transfer of money which made at any time during the

2017-18 tax year or the 2018-19 tax year;

- the transfer is made from an account which is a mixed fund
- the transfer is made into a different receiving account;
- the transfer is nominated as a transfer for the purposes of this paragraph 26(2);
- at the time when the transfer is made, no other transfer has been so nominated from that mixed fund into the receiving account; and
- the transfer is made by a qualifying individual.

100. Paragraph 24(3) defines a qualifying individual for these purposes. These are that the individual in question

- was taxed on the remittance basis in any tax year before 2017-18; and
- was not born in the UK with a UK domicile of origin.

101. Paragraph 24(4) provides that the terms 'mixed fund' and 'offshore transfer' have the same definition as they do in section 809R (4).

Background note

102. The clause is related to a series of reforms announced at the summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law. It will broadly align the existing Inheritance Tax deemed domicile provisions for individuals with the proposed changes for income tax and capital gains tax.

103. This clause provides that those individuals who are not domiciled in the UK will be deemed to be UK domiciled for tax purposes if they are either resident in the UK for 15 of the past 20 tax years, or if they are born in the UK with a UK domicile of origin and return to the UK having obtained a domicile of choice elsewhere.

104. They will be taxed on any arising worldwide income and gains in the same way as UK domiciles. At the same time the existing IHT deeming provisions will be aligned with the new 15 out 20 rule.

105. Transitional protections will be given where an individual becomes deemed-UK domicile under the 15 out of 20 rule in April 2017, including the facility to rebase offshore assets for CGT purposes. The new rules will also ensure that any non-dom who sets up a qualifying trust before becoming deemed domiciled would not pay Income Tax /CGT on income/gains in the trust, as long as they did not receive a benefit from the trust. However, once a benefit is taken, CGT would be payable on trust gains and income tax on family benefits received.

106. There will also be a facility for remittance basis taxpayers to rearrange their overseas mixed funds to allow them to remit clean capital from overseas ahead of income and gains.

107. If you have any questions about this change, or comments on the legislation, please contact Aidan Close on 03000 585255 (email: aidan.close@hmrc.gsi.gov.uk).

Clause 41: Deemed domicile: inheritance tax

Summary

1. This clause amends the inheritance tax (IHT) legislation relating to individuals who will be treated as domiciled in the United Kingdom. The amendment will provide that an individual will be treated as domiciled for IHT purposes if they have been resident in the UK for at least 15 out of the previous 20 tax years rather than 17 out of the 20 tax years ending with the tax year in question. The clause also introduces a separate rule to provide that an individual born in the UK with a UK domicile of origin who has acquired a domicile of choice elsewhere will be treated as domiciled for IHT purposes if at any time they are resident in the UK and have been resident in the UK in at least one out of the two previous tax years.

2. The changes will take effect from the start of the 17-18 tax year on 6 April 2017.

Details of the clause

3. Subsection 1 amends section 267(1) of the Inheritance Tax Act (IHTA) 1984 to insert new paragraph (aa). This sets out another situation in which an individual is treated as being domiciled in the UK. It relates to individuals who are formerly domiciled residents, a phrase that is explained in paragraph 12 below.

4. Subsection 1 also makes an amendment to section 267(1)(b). The amendment reduces the time for which an individual has to be resident in the UK in order to be treated as being domiciled here for the tax year in which a relevant time falls. Rather than being resident in the UK in not less than 17 of the 20 years of assessment ending with that in which the relevant time falls, an individual will have to be resident in the UK only for at least 15 of the 20 tax years immediately preceding the tax year in question. However, a person who would otherwise satisfy the test will not be deemed domiciled if they are non UK resident in that tax year and have been non-resident for the previous three consecutive tax years.

5. Subsection 2 omits subsection 267(3)

6. Subsection 3 makes an amendment to section 267(4) by substituting "any year of assessment" with "any tax year".

7. Subsection 4 makes amendments to section 48(3) of the Inheritance Tax Act (1984). New section 48(3E) provides that any foreign assets settled into trust by a formerly domiciled resident while they were domiciled outside the UK will, no longer be treated as excluded property for a tax year in which the formerly domiciled resident is resident in the UK.

8. Subsection 5 makes an amendment to section 64 of the Inheritance Tax Act (1984) to ensure that the provision at section 64(1B) does not apply if the settlor meets the conditions in new section 48(3E). This means that long-retained income that is

invested abroad (or in authorised unit trusts or open ended investment companies) cannot be excluded property while the settlor is a formerly domiciled resident.

9. Subsection 6 makes an amendment to section 65 of the Inheritance Tax Act (1984) to ensure that tax is not charged under this section if property that was settled by an individual who then became a formerly domiciled resident subsequently becomes excluded property once more by virtue of the fact the settlor is no longer resident in the UK.

10. Subsection 7 makes an amendment to section 82 of the Inheritance Tax Act (1984) so that the tests in s82 are aligned with the test under new section 48(3E). This will ensure that where there is property to which section 80 or section 81 applies then not only must the settlor of the first or second settlement as appropriate not have been a UK domiciliary when the settlement was made, but they must also not be a formerly domiciled resident in the tax year concerned in order for foreign property to benefit from excluded property status.

11. Subsection 8(a) makes an amendment to the definition of "foreign owned" in section 272 of the Inheritance Tax Act (1984). Property settled by a formerly domiciled resident cannot be foreign owned.

12. Subsection 8(b) defines the term "formerly domiciled resident". This means an individual who was born in the UK, with a UK domicile of origin and who was resident in the UK for the tax year and at least one of the two immediately preceding tax years.

13. Subsection 9 contains the commencement provision and provides that the amendments will take effect in relation to times after 5 April 2017 subject to subsections (10) to (12).

14. Subsection 10 inserts a transitional provision to ensure that a person leaving the UK before 6 April 2017 will not be subject to the 15/20 test provided that they do not return.

15. Subsection 11 also ensures that the 15/20 test will not be relevant in determining the excluded property status of property added to a settlement before 6 April 2017.

16. Subsection 12 preserves the transitional provisions as originally enacted in section 267(3) to the extent that they are still needed to determine the excluded property status of property added to a settlement on or before 9 December 1974.

Background note

17. The clause is related to a series of reforms announced at the Summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law. It will broadly align the existing Inheritance Tax deemed domicile provisions for individuals with the proposed changes for income tax and capital gains tax.

18. The new rules will also ensure that individuals who are born in the UK, with a UK domicile of origin at birth and who reside in the UK are treated for tax purposes in the same way as an individual domiciled in the UK under general law. It also means

that when an individual who was born in the UK and who had a UK domicile of origin has created a trust whilst they were non domiciled, that trust will be subject to IHT, whilst they are UK resident, in the same way as a trust which had been created by somebody who was domiciled in the UK.

19. HM Revenue and Customs (HMRC) will produce updated guidance to support these changes at their commencement date.

20. If you have any questions about this change, or comments on the legislation, please contact Aidan Close on 03000 585255 (email: aidan.close@hmrc.gsi.gov.uk).

Clause 42 and Schedule 13: Overseas property with value attributable to UK residential property

Summary

1. This clause and Schedule extend the scope of Inheritance Tax (IHT) to residential properties situated in the UK where they are held through overseas structures. It does so by amending the definition of excluded property in the Inheritance Tax Act (IHTA) 1984 which has the effect of excluding any property of such individuals from IHT where it is situated outside the UK.

2. The extended charge will be effective from 5 April 2017.

Details of the clause

3. Clause 42 introduces Schedule 13.

Details of the Schedule

4. Paragraph 1 of Schedule 13 inserts new Schedule A1 to IHTA.

5. Paragraph 1 of new Schedule A1 provides that property is not excluded property where it falls within any of three categories set out in paragraphs 2 to 4 of the Schedule. This applies both where :

   - the beneficial owner of the property is an individual domiciled outside the UK; and

   - the property is held in a settlement where the settlor was domiciled outside the UK when the settlement was made.

6. Paragraph 2 sets out the first of these categories of property which is any right or interest in a close company attributable to a UK residential property interest.

7. Subparagraph 2(1) provides that paragraph 2 applies to any rights or interests of a participator in a close company where its value is directly or indirectly attributable to a UK residential property interest. The term ' UK residential property interest' is defined in paragraph 8 of the new Schedule.

8. Subparagraph 2(2) provides that the value of a right or interest in subparagraph 2(1) is directly or indirectly attributable to a UK residential property where it is attributable as a result of one or more qualifying interests. It is not necessary for the

qualifying interest to be owned directly by the close company referred to in subparagraph 2(1).

9. Subparagraph 2(3) defines the term 'qualifying interest' for the purposes of paragraph 2(2) as either a right or interest in a close company or an interest in a partnership.

10. Subparagraph 2(4) provides that, in applying subparagraph 2(3), any qualifying interest in a close company will be ignored where its value is less than 1% of the total rights or interests in that company. It also provides that any qualifying interest in a partnership will be ignored where its value is less than 1% of the total interests in that partnership.

11. Subparagraph 2(5) provides that, in determining the value of rights or interests in a close company for the purpose of subparagraph 2(1), the liabilities of the close company are to be attributed to all the property it holds on a rateable basis.

12. Paragraph 3 sets out the second category of property which is an interest in a partnership.

13. Subparagraph 3(1) provides that paragraph 3 applies to an interest in a partnership to the extent that its value is directly or indirectly attributable to a UK residential property interest.

14. Subparagraph 3(2) provides that the value of an interest in a partnership in subparagraph 3(1) is directly or indirectly attributable to a UK residential property interest where it is attributable as a result of one or more qualifying interests. It is not necessary for the qualifying interest to be owned directly by the partnership in subparagraph 3(1).

15. Subparagraph 3(3) provides that a qualifying interest for the purposes of subparagraph 3(2) has the same meaning as it does in subparagraph 2(3). Further, it provides that subparagraph 2(4) which disregards minor qualifying interests applies for the purposes of subparagraph 3(2).

16. Subparagraph 4 sets out the third category of property which is loans.

17. Subparagraph 4(1) provides that paragraph 4 applies to any rights of a creditor in a relevant loan. It also applies to money or money's worth which is used or made available as collateral or security for a relevant loan. The term 'relevant loan' is defined in subparagraph 4(4).

18. Subparagraph 4(2) provides that paragraph 4 also applies to a participator's right or interest in a close company and to an interest in a partnership to the extent that its value is attributable to any rights of a creditor or to any collateral or security for a relevant loan.

19. Subparagraph 4(3) provides that for the purposes of subparagraph 4(2) the value of a right or interest in a close company or a partnership is attributable to the rights of a creditor or to collateral or security for a relevant loan only where it is attributable as a result of a qualifying interest. The qualifying interest need not be directly owned by the close company or partnership in question.

20. Subparagraph 4(4) defines the term 'relevant loan' for the purposes of paragraph 4 as any loan to the extent that money or money's worth is made available to finance the acquisition of a UK residential property interest by an individual, partnership or trustee or the maintenance or improvement of such an interest in a partnership or a settlement. It also includes any loan used to finance the acquisition, either by an individual or a trustee, of a right or interest in a close company, or an interest in a partnership, to the extent that the loan is used to finance the acquisition of a UK residential property interest by a close company or a partnership or the maintenance or improvement of a UK residential property interest t which is owned by a close company or a partnership.

21. Subparagraph 4(5) provides that the term 'qualifying interest' has the same meaning in in subparagraph 4(3) as it does in subparagraphs 2(3). Further, it provides that subparagraph 2(4) which disregards minor qualifying interests applies for the purposes of subparagraph 4(3).

22. Subparagraph 5 concerns disposals and repayments.

23. Subparagraph 5(1) provides that paragraphs 5 applies to:

    - property which is consideration, in money or otherwise, for the disposal of an interest or right in a close company or an interest in a partnership or of a relevant loan;

    - any money or money’s worth paid for a creditor's interest in a relevant loan; and

    - any property which directly or indirectly represents the consideration for a disposal of an interest or right in a close company or an interest in a partnership or a relevant loan or paid for a creditor's interest in, a relevant loan.

24. Subparagraph 5(2) provides that where paragraph 5 applies to property other than relevant settled property, such property is not excluded property for IHT purposes for the two-year period. Further, if it is held within a qualifying foreign currency account within the meaning of section 157 IHTA, section 157 IHTA will not apply for the two-year period. The two-year period is defined in subparagraph 5(3).

25. Subparagraph 5(3) defines the term 'two-year period' as used in subparagraph 5(1) as the period of two years following the date of a disposal or the date of a payment as defined in subparagraph 5(1).

26. Subparagraph 5(4) provides that, where paragraph 5 applies to relevant settled property, sections 65(7), 65(7A) and 65(8) IHTA are disapplied, with the effect that an exit charge will arise where property ceases to be comprised in the settlement or a disposition is made. Relevant settled property is defined in subparagraph 5(5).

27. Subparagraph 5(5) defines 'relevant settled property as property which is 'relevant property' as defined in section 58 IHTA but ignoring section 58(1)(f).

28. Paragraph 6 introduces a targeted anti-avoidance rule which applies where arrangements are entered into where the sole or main purpose of doing so is to avoid or minimise the effect of subparagraphs 1 or 5.

29. Paragraph 7 provides for the application of double taxation arrangements.

30. Subparagraph 7(1) provides that nothing within any double taxation arrangement will prevent a person from being liable for IHT by virtue of paragraphs 1 or 5 where no tax is charged on a transfer of value under the law of a territory outside the United Kingdom or where there is such a tax but its effective rate is 0%.

31. Subparagraph 7(2) defines 'double taxation relief arrangements' as arrangements having effect under section 158(1) IHTA and 'effective rate' as the rate found by expressing the tax chargeable as a percentage of the amount by reference to which it is charged.

32. Part 3 of the Schedule provides for the interpretation of certain terms used in new Schedule A1.

33. Subparagraph 8 defines a UK residential property interest.

34. Subparagraph 8(1) provides that a residential property interest is an interest in UK land which consists of or includes a dwelling or which subsists under contract for an off-plan purchase.

35. Subparagraph 8(2) defines certain terms used in subparagraph 8(1). 'Interest in UK land' has the meaning given by paragraph 2 of Schedule B1 to TCGA; 'the land' in relation to an interest in UK land which is an interest subsisting for the benefit of land, is a reference to the land for the benefit of which the interest subsists; 'dwelling' has the meaning given by paragraph 4 of Schedule B1 to TCGA and 'contract for an off-plan purchase' has the meaning given by paragraph 1(6) of Schedule B1 to TCGA.

36. Paragraph 9 defines the term 'close company' as a company within the meaning of the Corporation Tax Acts which is a close company for the purpose of those Acts or would be a close company if resident in the UK. Further, it defines the term 'participator' as any person who is (or would be if the company were resident in the UK) a participator in relation to a close company within the meaning given by section 454 of the Corporation Tax Act 2010. Further, it provides that rights and interests in a close company include references to rights and assets of the company available for distribution among the participators in the event of a winding-up or in any other circumstances.

37. Paragraph 10 defines the terms 'partnership' as a partnership within the Partnerships Act 1890, a limited partnership registered under the Limited Partnership Act 1907, a limited liability partnership formed under the Limited Liability Partnerships Act (Northern Ireland) 2002 or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom.

38. Paragraphs 2 to 6 of Schedule 13 make consequential amendments to IHTA.

39. Paragraph 7 of Schedule 13 provides the commencement provision for the new clause and Schedule

40. Subparagraph 7(1) provides that the amendments made to IHTA have effect on or after 6 April 2017.

41. Subparagraph 7(2) provides that subparagraph 5(1) of the Schedule does not apply to disposals of property before 6 April 2017 or to payments of money or money's worth made before 6 April 2017.

Background note

42. At Summer Budget 2015, the government announced its intention of extending IHT to UK residential property held by a non-domiciled individual through an overseas structure. This proposal was the subject of public consultation between 19 August and 20 October 2016 and the government published its formal response on 5 December.

43. Under IHTA, an individual who is domiciled outside the UK is not liable to tax on any property they own which is situated overseas, unlike UK domiciled individuals who are liable to IHT on their worldwide property. This difference in treatment has been used by some non-doms as a means of avoiding IHT by holding UK residential properties indirectly through overseas structures such as companies, trusts and partnerships. This clause and Schedule extends the scope of IHT to include such properties.

44. If you have any questions about this change, or comments on the legislation, please contact Aidan Close on 03000 585255 (email: aidan.close@hmrc.gsi.gov.uk).

Clause 43 and Schedule 14: VAT: zero-rating of adapted motor vehicles etc

Summary

1. This clause introduces legislation that will tighten up the VAT relief on the supply of motor vehicles which are substantially and permanently adapted or designed for disabled wheelchair users. The aim of this legislative change is to reduce the high levels of fraud in this area.

Details of the clause and schedule

2. Clause 43 introduces Schedule 14.

Adaptation of a qualifying motor vehicle

Schedule 14: Paragraph 1

3. Subparagraph 1 introduces the amendment to Schedule 8 to VATA 1994 (zero rating), Group 12 (drugs, medicines, aids for the handicapped etc). Suppliers of goods and services covered in this group are zero rated.

4. Subparagraph 2 replaces item 2A of Group 12 with Items 2A and 2B which describe supplies of motor vehicles which will qualify for the zero rate. The new Item 2A states that for a vehicle to qualify for this relief, when sold to an individual, it must meet certain criteria and new Item 2B states that for a vehicle to qualify for this relief, when sold to a charity, it must meet certain criteria. The criteria is that

- The vehicle must not be able to carry more than 12 persons and must be designed or substantially and permanently adapted to enable the disabled individual to travel in the vehicle.
- The individual must be a disabled wheelchair user or disabled stretcher user.
- The vehicle must be for the disabled individual's personal or domestic use.
- If in the case of new item 2B the charity must make available a previously described vehicle to a previously described person.

Three year rule and requirements

Paragraph 2

5. This paragraph amends the Notes to Group 12. The Notes provide instructions on how specific aspects of the Items should be applied or interpreted. The amendments are specific to the zero rating of supplies of motor vehicles covered under Item 2f and new Item 2A of Group 12.

6. Subparagraph (a) omits Note (5L) to group 12, which provided assistance in interpreting and applying Item 2A prior to this amendment is omitted as it is irrelevant to the application of the new Item 2A.

7. Subparagraph (b) inserts new Notes (5M) to (5U)

8. Notes (5M) to (5P) together provide that, in respect of supplies made in the UK, only one supply of a motor vehicle in every three years to a disabled individual can qualify for the zero rate ("the three year rule"). The calculation of the relevant three year period is to run back from the date a zero-rated vehicle is made available to that individual. The application of the three year period is subject to the exceptions described in Note (5P).

9. Notes (5Q) and (5R) make the zero rating of the supply conditional on the provision of information by the supplier and the provision to the supplier of certification of the individual's eligibility.

10. Note (5S) directs the form and content etc. of the information and certification required under (5Q).

11. Note (5T) provides definitions for the purposes of the preceding new notes. In particular its definitions of reckonable zero-rated supplies, acquisitions and importations have the effect that the three year rule is will only be activated where previous zero-rated supplies etc. which have occurred within three years of the delivery of the current vehicle, have also occurred after 1 April 2017.

12. Note (5U) confirms that the term 'travel in it' used in Item 2A and 2B includes adaptations that enable the disabled individual to drive the vehicle.

Penalty

Paragraph 3

13. Paragraph 3 imposes a penalty on a person who provides an incorrect certificate of eligibility.

Minor Amendments

Paragraph 4 – 8

14. Paragraph 4 to 8 amends Schedule 8 to replace 'handicapped' wherever it occurs with 'disabled'. This has been updated to comply with current Government language guidelines.

Commencement date

Paragraph 9

15. Paragraph 9 sets out the commencement date for the changes mentioned above.

Background note

16. It was announced at Autumn Statement 2012 that the government would carry out a review of this relief to ensure it was meeting its policy objectives. HMRC collected evidence and it became apparent that the relief was open to abuse.

17. Therefore a consultation was launched on 30 June 2014 to establish whether the relief should be reformed and, if so, how this could best be done. There was overwhelming support to reform the relief and the vast majority of the proposals put forward in the consultation were supported by a range of respondents, including disabled individuals, charities representing disabled individuals and motor dealers.

18. Following publication of the responses document in December 2014, in which the government set out its intentions for reform, HMRC has worked closely with external stakeholders to ensure the amendments to legislation do not negatively affect genuine beneficiaries of this relief.

19. If you have any questions on this change or comments on the legislation, please contact Chris Maudsley on 03000 518538 or Christopher.maudsley@hmrc.gsi.gov.uk.

Clause 44: Insurance premium tax: standard rate

Summary

1. This clause increases the standard rate of insurance premium tax (IPT) from 10% to 12% with effect from 1 June 2017, and introduces new implementation arrangements for this increase.

Details of the clause

2. Subsection 2, subject to the following subsections, applies the new rate to insurance premiums that are treated as received by an insurer under a taxable insurance contract on or after 1 June 2017.

3. Subsection 3 dis-applies the new rate to premiums falling within subsection 4 unless those premiums are treated as received by an insurer under a taxable insurance contract on or after 1 June 2018. Thus any premium received on or after that date will be subject to the new rate regardless of when the period of cover began.

4. Subsection 4 applies to a premium in respect of a risk for which the period of cover begins before the 1 June 2017 and therefore will not be subject to the new rate.

5. Subsection 5 refers to supplementary rules detailed in clause 45.

Background note

6. IPT, either at the standard rate or higher rate, is accounted for on most general insurance premiums. Most taxable premiums are subject to the standard rate, the higher rate of 20% is applicable to certain insurance when it is sold alongside specified goods, such as motor vehicles and domestic appliances. The higher rate also applies to all travel insurance. Some insurance is exempted from IPT, including: reinsurance; long term insurance (e.g. life & pensions); insurance covering risks situated outside the UK; and insurance associated with international transportation and trade.

7. This clause increases the standard rate by 2% from 10% to 12% and will apply to insurance premiums treated as received on or after 1 June 2017 which relate to risks for which the period of cover under the terms of a taxable insurance contract begins on or after that date. From 1 June 2018 the new rate applies to all premiums, regardless of when the period of cover began for the risks insured under the contract.

8. If you have any questions about this change, or comments on the legislation, please contact Helen West on 03000 585836 (email: helen.west@hmrc.gsi.gov.uk).

Clause 45: Insurance premiums attributable to more than one period of cover etc

Summary

1. This clause follows on from clause 44, which increases the standard rate of insurance premium tax (IPT) from 10% to 12% with effect from 1 June 2017, and introduces new implementation arrangements for this increase. This clause contains supplementary rules.

Details of the clause

2. Subsections 1 and 2 apply to premiums received on or after 1 June 2017 which are attributable partly to risks covered before 1 June 2017 and partly to risks covered on or after that date. The proportion of the premium relating to risks for which the period of cover begins on or after 1 June 2017 is treated as a separate premium and will be liable to the new rate.

3. Subsection 3 applies where a premium is in respect of a contract providing cover for a standard rate risk, and additionally a risk for which the standard rate is not chargeable. In those circumstances, the premium is taxable at the new rate to the extent that the part of it attributable to the standard rate risk is for cover which begins on or after 1 June 2017.

4. Subsection 4 dis-applies subsection 3 for an excepted premium within the meaning of section 69A of Finance Act 1994, which deals with 'de minimis' rules for certain premiums.

5. Subsection 5 requires that any attribution of premium required under the subsections above must be calculated to give a just and reasonable result.

6. Subsection 6 and 7 deal with definitions.

Background note

7. IPT, either at the standard rate or higher rate, is accounted for on most general insurance premiums. Most taxable premiums are subject to the standard rate, the higher rate of 20% is applicable to certain insurance when it is sold alongside specified goods, such as motor vehicles and domestic appliances. The higher rate also applies to all travel insurance. Some insurance is exempted from IPT, including: reinsurance; long term insurance (e.g. life & pensions); insurance covering risks situated outside the UK; and insurance associated with international transportation and trade.

8. This clause supplements clause 44 which increases the standard rate of IPT by 2% from 10% to 12%, by providing rules which deal with premiums relating to risks for

which the periods of cover under taxable insurance contracts span the rate change. This ensures that the new rate is applied fairly to such circumstances.

9. If you have any questions about this change, or comments on the legislation, please contact Helen West on 03000 585836 (email: helen.west@hmrc.gsi.gov.uk).

Clause 46: Petroleum revenue tax: elections for oil fields to become non-taxable

Summary

1. This clause removes the conditions for opting fields out of Petroleum Revenue Tax (PRT) so that opting out can be achieved by a simple election. The measure has effect from 23 November 2016.

Details of the clause

2. Subsection 1 amends Schedule 20B of Finance Act 1993 so that the procedure for opting a field out of the PRT regime is changed to a simple election. The election must be made in writing by the responsible person, who must notify HM Revenue and Customs (HMRC) of the election. The election will be deemed to be made on the date that the notification was sent to HMRC, and will have effect for the first chargeable period beginning after it is made. No allowable loss that accrues from that oil field will be an unrelievable field loss. It removes the existing paragraphs 2 to 12 of Schedule 20B.

3. Subsection 2 allows for the legislation to be treated as coming into force on 23 November 2016.

Background note

4. Petroleum Revenue Tax (PRT) was permanently zero-rated at the 2016 Budget. However, participators still have to submit returns, which are complex and time-consuming. Many participators find the existing process to opt fields out to be too complex and expensive.

5. This measure has been introduced to reduce administrative burdens for companies in the UK oil and gas industry by making it simpler to opt fields out of the PRT regime. It builds on the government's support for the UK oil and gas industry and supports HMRC commitment to reduce administrative burdens for business by £400m by 2019-20.

6. The measure removes the conditions for opting out so that a responsible person for a field can opt out by making an election and notifying HMRC. The election will come into effect from the first chargeable period beginning after the election is made.

7. If you have any questions about this change, or comments on the legislation, please contact Nicola Garrod on 03000 589251 (email: nicola.garrod@hmrc.gsi.gov.uk).

Clause 47: Landfill Tax: taxable disposals

Summary

1. This clause will amend Part 3 of Finance Act (FA) 1996 to introduce changes to the definition of what constitutes a taxable disposal for Landfill Tax purposes. The requirements that a taxable disposal is a disposal of material as waste and made by way of landfill will be removed and provision is made for new exemptions to be introduced to ensure that the existing scope of the tax remains unchanged. The reforms will have effect after Royal Assent on a day to be appointed by Treasury Order.

Details of the clause

2. Subsection (1) provides for amendments to Part 3 of FA 1996.

3. Subsection (2) amends section 40 of FA 1996 to set a new definition of what constitutes a taxable disposal, including that a charge to tax arises where there is a 'qualifying disposal' rather than a 'taxable disposal'.

4. Subsection (3) makes consequential amendments to section 45(2) of FA 1996, replacing the expression "landfill disposal" with "qualifying disposal".

5. Subsection (4) amends section 46 of FA 1996 to provide that the power to make an Order under this section may be exercised to confer exemptions. New sections 46(2)(a) and (b) provide further detail about what may be included in the Order. For example, the exemptions may be made by reference to where in a landfill site material is disposed of and the nature of the material or the purpose for which it is disposed. Subsection (4) also reproduces at new sections 46(2)(c) and 46(2A) the existing power for the Commissioners to confer exemptions by issuing certificates.

6. Subsection (5) removes section 64 of FA 1996 which contained reference to material disposed of as waste.

7. Subsection (6) replaces section 65 of FA 1996 with a new section 65 and provides details of when a disposal of material is a "qualifying disposal". A disposal is a qualifying disposal if material is deposited on the surface of land, on a structure set into the surface or deposited under the surface of land.

8. Subsection (7) removes section 65A of FA 1996.

9. Subsections (8) and (9) make consequential amendments to section 70 and 71 of FA 1996 respectively, replacing "disposal of material by way of landfill" with "qualifying disposal".

10. Subsection (10) removes paragraphs 1A and 1B of Schedule 5 to FA 1996.

11. Subsection (11) inserts a new paragraph 1C into Schedule 5 to FA 1996 to provide the power for the Commissioners to make regulations requiring the operator of a landfill site to retain information and provide copies or information to the Commissioners.

12. Subsection (12) makes consequential amendments to Schedule 5 to FA 1996, replacing "landfill disposal" with "qualifying disposal".

13. Subsection (13) makes consequential amendments to Schedule 36 to FA 2008, replacing "landfill disposal" with "qualifying disposal".

14. Subsection (14) makes consequential amendments to Schedule 23 to FA 2011, replacing "landfill disposal" with "qualifying disposal".

15. Subsections (15) and (16) make provision for commencement, transitional and savings provisions.

Background note

16. Landfill Tax was introduced on 1 October 1996 to discourage the disposal of waste to landfill, and encourage more sustainable ways of managing waste.

17. In response to ongoing challenges by a number of landfill operators, Budget 2016 announced a consultation on changes to the criteria for determining when Landfill Tax is due. A consultation paper was published in May 2016 setting out proposals to amend the criteria, acknowledging that a number of new exemptions would be required to avoid inadvertently extending the scope of the tax.

18. HMRC shared a list of the proposed exemptions with key stakeholders during the consultation period and subsequently shared a simplified list reflecting feedback from the consultation.

19. The definition of what constitutes a taxable disposal will be amended by this clause and the requirement that taxable material has to be waste disposed by way of landfill will be removed. The Landfill Tax (Prescribed Landfill Site Activities) Order 2009 will be revoked and new exemptions will be set out in secondary legislation using the new Order making powers being added to section 46 of FA 1996. The disposal area of a landfill site will be clearly defined and any material deposited there will be taxable unless covered by one of the newly introduced exemptions.

20. The measure will provide greater clarity and certainty to the Landfill Tax liability of activities carried out by landfill site operators in England, Wales and Northern Ireland.

21. As Landfill Tax was devolved to Scotland in April 2015 these changes will not apply to disposals made at landfill sites in Scotland. It is intended that, from April 2018, Landfill Tax will be devolved to Wales. These changes will apply to disposals made at landfill sites in Wales until the tax is devolved.

22. If you have any questions about this change, or comments on the legislation, please contact Daniel Taylor on 03000 585973 (email: daniel.taylor@hmrc.gsi.gov.uk)

Clause 48: Remote gaming duty: freeplay

Summary

1. This clause amends the remote gaming duty (RGD) provisions in Part 3 of the Finance Act 2014 (FA14) to make certain freeplays chargeable with duty. The amendment has effect for RGD accounting periods beginning on or after 1 August 2017.

Details of the clause

Clause 48: Remote gaming duty: freeplay

2. Subsection (1) introduces an amendment to the RGD provisions in Part 3 of FA14.

3. Subsection (2) amends section 159 of FA14, which defines 'gaming payments' for the purpose of RGD, to substitute new subsections (4), (5), (6) and (7). The new subsection (4) imposes a value for duty purposes on any offer that allows a person to participate in remote gaming for free, or at a reduced cost. Where someone makes use of such an offer they will be deemed to have paid the amount that would have been required without the offer. The new subsection (5) provides for the participant's deemed payment under subsection (4) to be treated as being made at the time they take part in the gaming, and to be treated as not returned to the participant or used as a prize. The new subsection (6) provides for the Commissioners of HMRC to specify, by secondary legislation, additional ways of treating payments deemed to have been made under subsection (4). The new subsection (7) provides for section 159 to have effect subject to the provisions of section 159A.

4. Subsection (3) introduces a new section to FA14, 159A, and the concept of "conditional winnings".

5. Subsection (1) of this new section 159A provides that an amount is not to be treated as a "gaming payment" under section 159 if it meets both of the conditions to qualify as "relievable funds" as defined in subsections (2) and (3).

6. Subsection (2) of section 159A requires that the money has been won from participation in gaming by means of a freeplay or, that it has been won from participation in gaming by means of a payment from money that can only be used for participating in gaming. Subsection (3) defines the second qualifying condition and requires that an amount can only qualify as "relievable funds" if it is money that can only be used for participation in gaming.

7. Subsections (4) and (5) of new section 159A combine to provide that where a person participates in gaming by means of a freeplay, and that freeplay has itself been won from gaming in which no alternative benefit was offered, the use of that freeplay will not be treated as a gaming payment under section 159.

8. Subsection (6) of section 159A provides that where a payment is made from money that includes both "relievable" and "non-relievable funds" the amount of the payment that

exceeds the amount of relievable funds will be treated as a gaming payment under section 159.

9. Subsection (7) of section 159A defines money for the purposes of that section.

10. Subsection (4) amends section 160 of FA14 to limit the definition of a prize in that section so that where winnings are credited to a person's account, only winnings in the form of money can be treated as a prize. Section 160 is further amended so that it is to have effect subject to the provisions of section 160A.

11. Subsection (5) inserts a new section, section 160A, in the FA14 that makes provision about prizes in the form of a freeplay. Subsection (1) of that new section provides that where a freeplay is given as a prize by the gaming provider, that freeplay will have nil value as a prize for the purpose of calculating a gaming provider's RGD profits. Subsection (2) makes valuation provisions for a prize in the form of a voucher that is obtained from an unconnected person, and which may be used in exchange for a freeplay or other benefit. For the purpose of calculating a gaming provider's profits for RGD the value of such a prize is the cost of obtaining it from that person, but only when used other than in exchange for a freeplay. Otherwise, the value is nil. Subsection (3) provides a definition of "freeplay" and "freeplay offer" for the purpose of the new section 160A.

12. Subsection (6) amends the definition of "game of chance" in section 188 so that for the purposes of RGD a game is not a game of chance if no person pays or is required to pay any amount in respect of or on account of or in connection with any person's participation in the game.

13. Subsection (7) amends the Index of expressions in section 190 to take account of the amended definition of game of chance introduced by subsection (6).

14. Subsection (8) provides for the regulation-making powers under new section 159(6) to be exercised subject to the affirmative procedures in section 194(5).

15. Subsection (9) provides that the changes made by this section will have effect for RGD accounting periods that begin on or after 1 August 2017.

Background note

16. Gambling operators make use of a range of incentives and promotions including free bets, freeplays and other similar discounts and offers. For the purpose of this measure these are collectively referred to as freeplays.

17. This amendment has been introduced to bring the treatment of freeplays for RGD more into line with the treatment of freeplays for general betting duty. This will mean that remote gaming freeplays that are staked by a customer will, in certain circumstances, have a value for the purpose of calculating an operator's remote gaming profit. This will also mean that freeplays that are given out by an operator cannot be treated as prizes and will have no value for the purposes of calculating the profit.

18. HM Revenue and Customs (HMRC) will update the RGD guidance to reflect this change.

19. If you have any questions about this change, or comments on the legislation, please contact Brian O'Kane on 03000 588011 (email: brian.okane@hmrc.gsi.gov.uk).

Clause 49: Tobacco products manufacturing machinery: licensing scheme

Summary

1. This clause amends part 8 of the Tobacco Products Duty Act (TPDA) 1979 to introduce new legislation requiring owners and leasers of tobacco manufacturing machinery to secure a licence for each machine. The scheme is due to take effect from 1 April 2018.

Details of the clause

2. Subsection (1) inserts a new section 8V in the TPDA 1979.

3. Subsection (2) provides for regulations made under the new powers to be subject to the negative procedure.

Section 8V: Tobacco products manufacturing machinery: licensing scheme

4. Subsection (1) defines the machinery covered by the scheme.

5. Subsection (2) describes the prohibitions that may be made in respect of this machinery and grants the power for such machinery to be forfeit if the prohibitions are breached.

6. Subsection (3) and Subsection (4) provide regulation making powers for the operation of the scheme.

7. Subsection (5) provides that the regulations may make provision about the circumstances in which the Commissioners may grant a licence to an applicant. It also provides that the regulations may specify the form and manner of an application, make provision about surrendering and transferring licences and make provision about electronic communications.

Background note

8. This clause has been introduced to give HM Revenue and Customs (HMRC) additional powers to tackle the evasion of excise duty on tobacco products through the control and ownership of tobacco products manufacturing machinery and to help prevent the illicit manufacture of tobacco products.

9. At Autumn Statement 2015 the government announced that HMRC would launch a formal consultation on the implementation of Article 6 of the Framework Convention on Tobacco Control Illicit Trade Protocol, which includes the requirement to license tobacco manufacturing machinery. This is the final element of the Protocol which needs to be implemented in the UK. A formal consultation concerning Article 6 ran from 20 February 2016 to 25 May 2016.

10. HMRC intends to accept licence applications for each machine from 1 January 2018, and the scheme is due to take effect from 1 April 2018.

11. If you have any questions about this change, or comments on the legislation, please contact Mark Palmer on 03000 587928 (email :mark.t.palmer@hmrc.gsi.gov.uk).

Clause 50: Cigarettes: minimum excise tax

Summary

1. This clause introduces a new Minimum Excise Tax (MET) on cigarettes to have effect through Finance Bill 2017.

Details of the clause

2. Subsection (1) amends Tobacco Products Duty Act 1979 (TPDA).
3. Subsection (2) makes a minor amendment to section 6(5)(a) TPDA to include a MET amount per thousand cigarettes as well as the usual application of duties.
4. Subsection (3) amends the first row of the table contained in Schedule 1 to the TPDA to provide for a MET for cigarettes per thousand cigarettes if this amount is higher than the usual application of duties.
5. Subsection (4) provides for a MET on cigarettes to have effect through Finance Bill 2017.

Background note

6. This clause introduces a MET on cigarettes to support public health objectives, tackle the very cheapest cigarettes and promote fiscal sustainability. The government announced at Budget 2016 that a MET would be introduced in Finance Bill 2017. This follows a formal consultation with stakeholders.
7. A MET will set a minimum level of excise duty for any packet of cigarettes. This means that the total excise duty on a packet of cigarettes is the higher of either the MET, or the usual application of duties.
8. The rate of the MET will be announced at Budget 2017.
9. If you have any questions about this change, or comments on the legislation, please contact Louise Shelton on 03000 588068 (email: louise.shelton@hmrc.gsi.gov.uk).

Clause 51: Soft Drinks Industry Levy

Summary

1. This clause establishes a new tax called the Soft Drinks Industry Levy (the levy) and provides that HM Revenue & Customs (HMRC) will be responsible for its collection and management.
2. Clauses 52 to 56 set out which soft drinks will be subject to the levy and the nature of exempt soft drinks.
3. Clauses 57 to 61 set out the main rules for how the levy will operate. These include who is required to pay the levy, who is exempt from paying the levy, when liability to the levy arises and how exports can attract a credit for the levy.
4. Clauses 62 to 68 set out all of the registration requirements for the levy.
5. Clauses 69 to 75 set out all of the administration and enforcement provisions supporting the levy.
6. Clauses 76 to 78 set out some general provisions relating to the levy.

Background note

7. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
8. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
9. HMRC will be responsible for administering the new tax.
10. Draft secondary legislation will be published in early 2017.
11. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 52: "Soft drink" and "package"

Summary

1. This clause provides a definition of 'soft drink' and 'package'. Clause 54 sets out that a drink must be a packaged soft drink for the Soft Drinks Industry Levy (the levy) to be chargeable on it.

Details of the Clause

2. Subsection 1 provides a definition of a soft drink for the purposes of the levy.
3. Subsection 2 defines 'non-alcoholic beverage' for the purposes of subsection 1.
4. Subsection 3 defines 'prepared in a specific manner' for the purposes of the levy.
5. Subsection 4 defines 'packages' for the purposes of a person packaging a soft drink. If any further preparation is required before it can be consumed, the soft drink is not 'packaged' for the purposes of the levy.

Background note

6. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
7. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
8. HMRC will be responsible for administering the new tax.
9. Draft secondary legislation will be published in early 2017.
10. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 53: Meaning of “prepared drink”

Summary

1. This clause sets out provisions that determine the dilution ratios that will apply to any beverage which requires dilution to become a ‘prepared drink’ under the Soft Drinks Industry Levy (the levy). It is at the drink’s appropriate diluted volume that its contents will be assessed against the ‘sugar content condition’ in clause 55.

Details of the Clause

2. Subsection 1 sets out a definition of ‘prepared drink’ for the purposes of clause 55 and relates to the soft drink when it is ready to be consumed. It therefore refers both to soft drinks that are packaged ready to be consumed and those which are ‘prepared in a specified manner’ as set out in clause 52(3) and require preparation in a specified manner in accordance with a ‘relevant dilution ratio’.

3. Subsection 2 sets out that the ‘relevant dilution ratio’ referred to above will be based on the dilution ratio or other, e.g. nutritional, information stated on the soft drink’s packaging. However, in the circumstances set out in Subsections 3 and 4 below, the dilution ratio will be determined by Her Majesty’s Revenue and Customs (HMRC).

4. Subsection 3 describes the situation where it is not possible to determine a dilution ratio from information stated on the soft drink’s packaging. Under subsection 2 above, HMRC will have the power to determine a dilution ratio for such a drink.

5. Subsection 4 describes the situation where a soft drink does have information stated on its packaging regarding a dilution ratio but it is reasonable to assume the ratio has been set at a level with the main purpose, or one of the main purposes, of avoiding the levy. Under subsection 2 above, HMRC will have the power to determine a dilution ratio for such a drink.

6. Subsection 5 allows HMRC to make regulations specifying the ‘dilution ratios’ referred to in subsection 2(b) above. The regulations would also determine the criteria against which to determine whether avoiding the levy (as set out in subsection 4 above) is the main purpose, or one of the main purposes, of setting a particular dilution ratio.

Background note

7. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

8. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

9. HMRC will be responsible for administering the new tax.

10. Draft secondary legislation will be published in early 2017.

11. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 54: Meaning of 'chargeable soft drink'

Summary

1. This clause provides a definition of a 'chargeable soft drink' in respect of the Soft Drinks Industry Levy (the levy). It specifies that a 'chargeable soft drink' must be a packaged soft drink (as defined in clause 52), that it must meet the 'sugar content condition' (as defined in clause 55) and is not exempt (as defined in clause 56).

2. Clause 57 sets out that the levy will apply to chargeable soft drinks.

Background note

3. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

4. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

5. HMRC will be responsible for administering the new tax.

6. Draft secondary legislation will be published in early 2017.

7. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 55: Sugar content condition

Summary

1. This clause sets out the 'sugar content condition' in respect of the Soft Drinks Industry Levy (the levy) which must be met for a packaged soft drink to be a 'chargeable soft drink' as set out in clause 54. The levy only applies to chargeable soft drinks as set out in clause 57.

Details of the Clause

2. Subsection 1 sets out when a drink will meet the sugar content conditions. The 5g refers to the total sugar content of the drink, not just the added sugar ingredients. The 100ml refers to the 'prepared drink' (as defined in clause 53). For example, the sugar content of a dilutable drink will be measured at diluted proportions.
3. Subsection 2 defines added sugar ingredient.
4. Subsection 3 specifically excludes fruit juice, vegetable juice and milk from being considered an added sugar ingredient.
5. Subsection 4 gives the Commissioners of Revenue and Customs (HMRC) the power to make regulations to prescribe what is to be treated as a fruit juice, vegetable juice or milk for the purposes of subsection 3 above.
6. Subsection 5 provides that the total sugar content of the drink (as referred to in subsection 1 above) is to be defined by reference to a designated food labelling obligation.
7. Subsection 6 defines 'designated food labelling obligation' by reference to information that is on packaging and is imposed by legal requirements. Subsection 6 also provides a power for HMRC to make regulations designating which obligations will be a 'designated food obligation'.

Background note

8. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
9. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be

subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

10. HMRC will be responsible for administering the new tax.

11. Draft secondary legislation will be published in early 2017.

12. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 56: Exempt soft drinks

Summary

1. This clause sets out the categories of soft drinks that will be exempt from the Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsection 1 lists each category of exempt soft drink. With regards to drinks which are used for medicinal or other specified purposes, this will include beverages that are of the kind considered 'Foods for Specified Groups'. This will mean that baby formulas, as well as a range of products used to treat dietary conditions, will be exempt from the levy.
3. Subsection 2 sets out that for a 'milk-based drink' to be exempt from the levy, it must contain a minimum of 75ml of milk per 100ml of 'prepared drink'. The definition of 'prepared drink' is set out in clause 53.
4. Subsection 3 provides that a 'milk substitute drink' must have a specified amount of calcium and must meets any conditions in regulations made under subsection 6 below.
5. Subsection 4 provides that an 'alcohol substitute drink' means a drink which must be similar to a particular kind of alcoholic beverage and which meets any conditions in regulations made under subsection 6 below.
6. Subsection 5 provides a definition of 'alcoholic beverage'.
7. Subsection 6 sets out that HMRC may make regulations specifying further criteria for determining what is to be treated as an 'exempt soft drink'.
8. Subsection 7 is self-explanatory.

Background note

9. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
10. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be

subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

11. HMRC will be responsible for administering the new tax.
12. Draft secondary legislation will be published in early 2017.
13. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 57: Charge to soft drinks industry levy

Summary

1. This clause sets out when liability for the Soft Drinks Industry Levy (the levy) arises.

Details of the Clause

2. Subsection 1 sets out that the levy will begin applying to a 'chargeable event' from the 6 April 2018 onwards.
3. Subsections 2 & 3 set out when the 'chargeable event' takes place for chargeable soft drinks (as defined by clause 54) packaged in the UK. Under subsection 2, the chargeable event occurs when chargeable soft drinks are removed from the premises where they were packaged. If goods (liable for the levy under subsection 2) are made available to be given away for free or sold while still on the premises where they were packaged, subsection 3 provides that the chargeable event for those goods is the time that they were made available to be given away for free or sold.
4. Subsection 4 sets out when the 'chargeable event' takes place for chargeable soft drinks (as defined by clause 54) that are imported into the UK. Here, the chargeable event occurs when the goods are received in the UK by the 'first recipient'.
5. Subsection 5 sets out that the 'first receipt' (by the first recipient referred to in subsection 3 above) takes place when the goods are delivered to the 'taxable importer's' place of business. An import takes place when the goods are brought into the UK from any country outside of the United Kingdom.
6. Subsections 6 & 7 defines the 'relevant person' as a person who is in business selling chargeable soft drinks (either by wholesale, retail or for consumption on or in the vicinity of the premises on which they were sold) chargeable soft drinks (as defined by clause 54).
7. Subsection 8 sets out that the levy does not arise where a person is eligible for the small producer exemption set out in clause 60.
8. Subsection 9 sets out that 'taxable person' is someone that is liable to be registered for the levy under clauses 63 and 65.

Background note

9. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

10. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
11. HMRC will be responsible for administering the new tax.
12. Draft secondary legislation will be published in early 2017.
13. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 58: Liability to pay the levy

Summary

1. This clause sets out who is liable to pay the Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsection 1 sets out that for drinks packaged in the UK it is the taxable person who packages the soft drinks that is liable to pay the levy.

3. Subsection 2 sets out that for drinks imported into the UK it is the first recipient of the soft drinks that is liable to pay the levy.

Background note

4. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

5. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

6. HMRC will be responsible for administering the new tax.

7. Draft secondary legislation will be published in early 2017.

8. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 59: Levy rates

Summary

1. This clause sets out the rates that apply under the Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsections 1 & 2 set out the two rates at which the levy will be charged. One rate applies to drinks which have a sugar content of 8g and above of total sugar per 100ml of 'prepared drink'. Another rate applies to chargeable soft drinks that have a sugar content above 5g but less than 8g of total sugar per 100ml of 'prepared drink'. 'Prepared drink' is defined in clause 53 and refers to the drink when suitable to be consumed, including a dilutable drink once diluted.

Background note

3. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
4. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
5. HMRC will be responsible for administering the new tax.
6. Draft secondary legislation will be published in early 2017.
7. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 60: Small producer exemption

Summary

1. This clause sets out an exemption from the Soft Drinks Industry Levy that can be claimed by small producers of soft drinks.

Details of the Clause

2. Subsections 1 and 2 set out that the levy is not due in relation to chargeable soft drinks which are produced by a 'small producer'.

3. Subsection 3 provides that a person 'produces' drinks if they are packaged for marketing under the 'producer's' name or business name, or another name used in accordance with a license granted to the producer.

4. Subsections 4 provides who is a 'small producer'.

5. Subsection 5 defines the 'relevant day'.

Background note

6. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

7. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

8. HMRC will be responsible for administering the new tax.

9. Draft secondary legislation will be published in early 2017.

10. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 61: Export Credit

Summary

1. This clause sets out that HMRC can provide that a person who is liable to pay the Soft Drinks Industry Levy (the levy) will be able to obtain a credit against liability in respect of exported soft drinks.

Details of the Clause

2. Subsection 1 sets out that the Commissioners of Revenue and Customs (HMRC) may make regulations providing for a credit against the levy for exports of drinks on which liability to the levy has arisen.

3. Subsection 2 sets out that the regulations made under this provision may provide that the person eligible to claim tax credits on exported soft drinks is the person who was liable to pay the levy on those drinks. The regulations may also provide that the credit is to be claimed as part of the process for accounting for the levy.

4. Subsection 3 sets out that regulations made under this provision may specify where entitlement to a tax credit is conditional on a claim being made by the relevant taxable person, and set out other conditions, including the period and the way in which a claim can be made. Provision is made for regulations to require any claim for a tax credit to be evidenced in a manner set out by HMRC, including prescribing any records and documents that are required for the making and evidencing of a claim. Provision is made for the tax credit to be withdrawn and liability subsequently adjusted in circumstances where the claimant has failed to comply with the relevant obligations. This subsection also makes provision for regulations to deal with the treatment of tax credits where the liable person ceases to trade in chargeable soft drinks. Provision may be made to treat the sale or provision of chargeable soft drinks on passenger transport leaving the UK as exports for the purposes of claiming a tax credit, subject to regulations specifying what conditions must be met.

5. Subsection 4 sets out that the definition of liable person is as is set out under section 8 subsection (1) and sets out the definition for ‘prescribed’ in accordance with regulations under this section.

Background note

6. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

7. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
8. HMRC will be responsible for administering the new tax.
9. Draft secondary legislation will be published in early 2017.
10. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 62: The register

Summary

1. This clause sets out that the Commissioners of Revenue and Customs (HMRC) will keep a register of all persons who are registered for the Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsection 1 sets out that HMRC will establish and maintain the register of persons registered for the levy.

3. Subsection 2 sets out that HMRC may determine what information needs to be included in the register.

Background note

4. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

5. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

6. HMRC will be responsible for administering the new tax.

7. Draft secondary legislation will be published in early 2017.

8. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 63: Liability to register: producers and packagers

Summary

1. This clause sets out the categories of person who are liable to register for the Soft Drinks Industry Levy (the levy) when the volume of chargeable drinks produced or imported into the UK over a set period exceeds the registration threshold or the small producer threshold. It also provides for voluntary registration for certain small producers.

Details of the Clause

2. Subsection 1 sets out that a person is liable to register if they package any chargeable soft drinks in the preceding 12 months. Or if, at any time, they form an expectation that they are going to package any soft drinks in the next of 30 days.
3. Subsection 2 sets out that the requirement to register in subsection 1 does not apply to a person if they both produce and package soft drinks and the level of their production does not exceed the small producer threshold set out in subsection 3
4. Subsection 3 sets out that a person is liable to register if they produce chargeable soft drinks and if the volume that they have produced over the preceding 12 months exceeds the threshold. They are also required to register if, at any time, they form an expectation that they are going to exceed the threshold within a period of 30 days.
5. Subsection 4 sets out the timing rules for determining when soft drinks are produced for the purposes of the small producer threshold.
6. Subsection 5 sets out that for the purposes of the small producer threshold, a producer must aggregate the quantity of all chargeable soft drinks they have produced including dilutable drinks at diluted volumes.
7. Subsections 6 & 7 require any person to aggregate the volume of chargeable soft drinks produced by any connected persons with the volume of chargeable soft drinks they produce when determining if the level of their aggregated output is below the small producer threshold. 'Connected persons' are defined by section 1122 of the Corporation Taxes Act 2010.
8. Subsection 8 specifies that an 'unregistered person' is a person that is not registered for the levy.
9. Subsection 9 defines the term 'produce' in this section in accordance with clause 60.

Background note

10. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

11. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

12. HMRC will be responsible for administering the new tax.

13. Draft secondary legislation will be published in early 2017.

14. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 64: Voluntary registration: small producers

Summary

1. This clause sets that the Commissioners of HM Revenue & Customs (HMRC) must register a small producer, who does not package, if the small producer asks to be registered for the levy and if they otherwise meet the criteria for registration or the criteria for a small producer.

Details of the Clause

2. Subsection 1 sets out that where an unregistered person applies to be registered for the levy and they produce but do not package chargeable soft drinks and is not liable to be registered under clause 63 HMRC must register that person.

3. Subsection 2 makes provision for the HMRC to make regulations specifying the form and manner under which an application can be made.

Background note

4. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

5. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

6. HMRC will be responsible for administering the new tax.

7. Draft secondary legislation will be published in early 2017.

8. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 65: Liability to register: importers

Summary

1. This clause sets out when someone becomes liable to be registered for the Soft Drinks Industry Levy (the levy) in respect of importing soft drinks.

Details of the Clause

2. Subsection 1 sets out that an unregistered person becomes liable to be registered for the levy if they are the 'first recipient' of any chargeable soft drinks (as defined by clause 54) over the previous 12 months or believe they will import any chargeable soft drinks over the next 30 days.

3. Subsection 2 states that 'first receiver' has the same meaning as in clause 57.

Background note

9. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

10. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

11. HMRC will be responsible for administering the new tax.

12. Draft secondary legislation will be published in early 2017.

13. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 66: Notification of liability and registration

Summary

1. This clause sets out further provisions concerning registration for the Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsections 1 & 2 provide that any person who is liable to be registered for the levy must notify HM Revenue and Customs (HMRC) within 30 days of their liability to register arising.

3. Subsections 3 & 4 provide that where HMRC are satisfied that a person is liable to be registered, they will register that person from the date that they became liable to be registered.

4. Subsection 5 gives HMRC the power to make regulations concerning how the notification of a liability to register is to be made and what information is to be included in the notification.

Background note

5. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

6. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

7. HMRC will be responsible for administering the new tax.

8. Draft secondary legislation will be published in early 2017.

9. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 67: Cancellation of registration

Summary

1. This clause specifies when a person's registration for the Soft Drinks Industry Levy (the levy) must and can be cancelled. It makes provision for various matters that may arise in connection with registration such as wrongful registration, cancellation of registration (both compulsory and by election) and the effective date of such cancellation. These provisions also specify the timescales for the notification and execution of various matters relating to cancellation of registration.

Details of the Clause

2. Subsections 1 & 2 require HM Revenue and Customs (HMRC) to cancel a registration if the registered person requests it and HMRC are satisfied that they are no longer required to be registered. The cancellation will take effect on the day the registered person requested the cancellation or any later date which the registered person and HMRC agree to. The cancellation cannot take effect from a date prior to the date that the request for the cancellation was made.

3. Subsections 3 & 4 provide that HMRC may cancel any registration if they are satisfied that the registered person is not required to be registered. The cancellation will take effect on the day that the registered person ceased to be required to be registered or any later date which the registered person and HMRC agree to.

4. Subsections 5 & 6 provide that HMRC may not cancel any registration, from any time, if the registered person is required to be registered.

5. Subsections 7 & 8 provide that HMRC may cancel a registration if they are satisfied that the registered person was not required to be registered from the date they were registered. The cancellation will take effect on the day that the person was registered.

Background note

10. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

11. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be

subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

12. HMRC will be responsible for administering the new tax.

13. Draft secondary legislation will be published in early 2017.

14. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 68: Correction of the register

Summary

1. This clause gives the Commissioners of Revenue and Customs (HMRC) the power to make regulations concerning the amending or correcting of details held on the Soft Drinks Industry levy register, as set out in clause 62. These regulations may also require persons who are registered for the levy, or are required to be registered for the levy, to notify HMRC of any changes in their circumstances which need to be reflected in the register.

Background note

2. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
3. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
4. HMRC will be responsible for administering the new tax.
5. Draft secondary legislation will be published in early 2017.
6. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 69: Payment, collection and recovery and Schedule 15: Recovery and overpayments

Summary

1. This clause and schedule set out the regulations the Commissioners of Revenue and Customs (HMRC) can make, to support the payment, collection and recovery of the Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsection 1 sets out that the Commissioners may make regulations that support the payment, collection and recovery of the levy.

3. Subsection 2 sets out that the regulations may require people who are liable to be registered to keep accounts for the purposes of the levy and make returns in a form and manner specified by the HMRC. It also sets out that HMRC can make regulations to determine tax periods for which payment of the levy is to be made and can set out the times at which these payments are to be made as well as methods of payment. It further sets out that HMRC require the amounts payable by reference to tax periods to be determine by or under regulations and which set out how calculation errors in accounting for the levy are to be corrected.

4. Subsection 3 sets out that further provisions may be made through regulations regarding the requirement to submit returns including the period they apply to, information to be included, timeframes for submitting and the method of submission.

5. Subsection 4 introduces schedule 15 which sets out further provisions about recovery and overpayments.

Schedule 15

7. Paragraph 1 provides for the levy to be recoverable as a debt due to the Crown.

8. Paragraph 2 allows HMRC to assess the amount of levy due in certain circumstances including where it appears to HMRC that an amount which they cannot ascertain is due and where the person from whom the amount is due has made a relevant default. The relevant default for these purposes are defined as a failure to comply with the requirement to register under subsection (16), failure to comply with the regulations to correct the register under subsection (18), failure to make a return or failure to keep documents or provide facilities necessary to verify returns as required by regulations under subsection (19), the making of an incomplete or incorrect return, or the unreasonable delay in complying with a requirement, leading to a relevant default within sub-paragraphs (a) to (d). Under these circumstances, HMRC may make an assessment of the levy due to the best of their ability and notify the person.

HMRC can also asses the amount of levy due where the amount of levy can be ascertained and notify the person.

9. Paragraph 3 sets out when sub-paragraph (2) should apply, as being where an assessment made under sub-paragraph 2 (3) or (5) should have exceeded the amount already assessed by HMRC. Sub-paragraph 2 allows HMRC to make a supplementary assessment and to notify a person.

10. Paragraph 4 applies where an amount has been assessed as due under the levy and notified to a person under sub-paragraph (2) or (3). The amount is recoverable on the basis that it is an amount due for the levy from that person. This Sub-paragraph does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

11. Paragraph 5 establishes time limits within which HMRC may issue assessments under sub-paragraphs 2 and 3 and sets out that this must be the within the relevant period. This relevant period is 4 years from the end of the tax period to which the assessment relates or is extended to 20 years in a case where the assessment is due from a person and involves the deliberate loss of levy or involves the person failing to comply with the requirement to register under subsection (16) or of regulations under Subsection (18) to correct the register. The meaning of deliberate in Sub-paragraph (3) is defined as a deliberate inaccuracy in documentation given to HMRC by the person or their representatives.

12. Paragraph 6 sets out that a notification of an assessment to a person's representative is to be treated as a notification to the person for whom the representative acts. This paragraph also sets the meaning of representative and defines it as being either persons personal representative, a person's trustee in bankruptcy, interim or permanent trustee or liquidator, any person holding office as receiver in relation to that person or any of that person's property and any other person acting in a representative capacity in relation to that person.

13. Paragraph 7 sets out that where a person has paid more levy than was properly due, HMRC will repay that amount if the person submits a claim. HMRC have the power to make regulations to specify how the claim is made.

14. Paragraph 8 sets out the time limits for making a claim for a repayment over overpaid levy. It also provides that HMRC may refuse to make a repayment where it would unjustly enrich the claimant. HMRC have the power to make regulations that would set out a framework for determining whether a repayment would constitute unjust enrichment.

15. Paragraph 9 sets out that where HMRC have made a repayment for overpaid levy but some or all of that repayment was not properly due, HMRC may assess to recover that amount to the best of their ability and notify the person. HMRC can also asses the amount of levy due where the amount of levy can be ascertained and notify the person.

16. Paragraph 10 sets out that where HMRC have assessed to recover an excessive claim for a repayment, and it is later identified that the level of the assessment should have

been greater, HMRC have the power to make a supplementary assessment in order to recover the full correct amount of over-repaid levy.

17. Paragraph 11 applies where an amount has been assessed as due under the levy and notified to a person under sub-paragraph (9) or (10). The amount is recoverable on the basis that it is an amount due for the levy from that person. This sub-paragraph does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

Background note

18. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

19. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
20. HMRC will be responsible for administering the new tax.

21. Draft secondary legislation will be published in early 2017.

22. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 70: Penalties: failure to notify etc.

Summary

1. This clause provides for penalties to apply to persons who fail to notify a liability to register for the Soft Drinks Industry Levy (the levy) by amending Schedule 41 of the Finance Act 2008. Schedule 41 introduced an aligned penalty regime for failing to notify chargeability to tax, liability to register for tax etc., across a range of taxes and duties including income tax; capital gains tax; corporation tax; value added tax (VAT); insurance premium tax; environmental taxes and excise duties.

Details of the Clause

2. Subsection 1 sets out that this clause will amend schedule 41 of the Finance Act 2008.

3. Subsection 2 adds the levy to the list of taxes and duties to which Schedule 41 of the Finance Act 2008 applies. Schedule 41 provides that a penalty is payable if a person fails to comply with an obligation to notify HM Revenue & Customs (HMRC) that they are liable to tax, and tax has been lost as a result. The framework takes into account the behaviour of the taxpayer by having three categories of failure. The two more serious ones are modelled on those for inaccurate returns – "deliberate and concealed" and "deliberate without concealment". In both cases, a penalty will only be charged where HMRC have strong evidence to demonstrate the behaviour to a high degree of probability. The third category applies in other cases of failure, where a penalty would be payable unless the taxpayer could show that they have a reasonable excuse for the failure, which would include where they had reasonable grounds for believing that the obligation did not arise. For each of these categories of failure, different standard amounts of penalty are payable, expressed as a percentage of potential lost revenue. A framework is laid down for reductions to penalties for prompted and unprompted disclosure with definitions. The standard amounts of penalty would be reduced if the failure is disclosed to HMRC.

4. Subsections 3, 4 & 5 amend schedule 41 of Finance Act 2008 to provide for a penalty to be payable where a person acquires possession of, or deals in, chargeable soft drinks on which payment of the levy is outstanding.

5. Subsection 6 amends schedule 41 of Finance Act 2008 to provide that certain types of possession and dealing with chargeable soft drinks on which the levy is outstanding to be classed as "deliberate and concealed" or "deliberate but not concealed".

6. Subsection 7 amends schedule 41 of Finance Act 2008 to define potential lost revenue in the case of a person who acquires possession of or deals in chargeable soft drinks on which the levy is unpaid, as an amount equal to the amount of levy due on the chargeable soft drinks.

7. Subsection 8 amends schedule 41 of Finance Act 2008 to provide for the definition of "relevant act or failure" in to apply to the levy.

8. Subsection 9 amends schedule 41 of Finance Act 2008 to provide that where a person acquires possession of or deals in chargeable soft drinks, this includes doing so on the person's behalf. As such a penalty may be payable by the person. However, the person is not liable to a penalty in respect of any action by the person's agent where HMRC, or (on appeal) the First-tier tribunal, is satisfied that the person took reasonable care to avoid it.

Background note

9. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

10. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

11. HMRC will be responsible for administering the new tax.

12. Draft secondary legislation will be published in early 2017.

13. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 71: Penalties: failure to comply with requirements relating to returns

Summary

1. This clause sets out that a penalty may apply as a result of a failure to submit a Soft Drinks Industry Levy (the levy) return (as required by clause 69). It will do this by amending Schedule 24 of the Finance Act 2007 and Schedule 55 of the Finance Act 2009 to apply to the levy.

Details of the Clause

2. Subsection 1 adds the levy to the list of taxes and duties to which Schedule 24 (penalties for errors) of the Finance Act 2007 applies.

3. Subsection 2 explains that Schedule 55 (penalty for failure to make returns) of the Finance Act 2009 will be amended.

4. Subsection 3 adds the levy to the table outlining levels of penalties in relevant circumstances in schedule 55 of the Finance Act 2009.

5. Subsection 4 add the levy to the definition of 'penalty date' as set out in schedule 55 of the Finance Act 2009.

6. Subsection 5 adds the levy to the list of taxes and duties to which schedule 56 to FA 2009 (penalty for failure to make payments on time) applies.

7. Subsection 6 adds the levy to the table in schedule 56 to FA 2009, which sets out the amount of tax in respect of which a penalty is due, and the date after which the penalty is incurred.

8. Subsection 7 makes clear that the amendments come into force in accordance with regulation made by HM Treasury.

9. Subsection 8 sets out that the relevant sections 106 of FA 2009 (penalties for failure to make returns: commencement) will apply to the levy.

10. Subsection 9 sets out that the relevant sections 107 of FA 2009 (penalties for failure to pay tax) will apply to the levy

.Background note

11. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of

added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

12. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

13. HMRC will be responsible for administering the new tax.

14. Draft secondary legislation will be published in early 2017.

15. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 72: Interest

Summary

1. This clause sets out that the late payment interest may apply to persons who were required to be registered for, and pay, the Soft Drinks Industry Levy, but did not do so. It does this by amending Schedule 53 of the Finance Act 2009. Schedule 53 sets out provisions for charging late payment interest in relation to a range of taxes and duties which HMRC collect.

Background note

2. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

3. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

4. HMRC will be responsible for administering the new tax.

5. Draft secondary legislation will be published in early 2017.

6. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 73: Information and records and Schedule 16: Requirements to keep records etc: penalties

Summary

1. This clause makes provision about the powers of HM Revenue and Customs (HMRC) to obtain information from businesses in respect of The Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsection 1 applies the identified parts of Schedule 36 of the Finance Act 2008 which provide HMRC with a range of powers to obtain information to the levy, these powers already apply to income tax, capital gains tax and VAT.

3. Subsection 2 provides that HMRC have the power to make regulations concerning what records need to be kept for the purposes of the levy and for how long.

4. Subsection 3 explain that a duty to preserve records is complied with by preserving them by any form or mean, or by preserving the information contained in them subject to any conditions and exceptions to this general rule in writing by HMRC.

5. Subsections 4 & 5 provide that HMRC have the power to direct (a 'direction') a taxable person to keep any particular records but only where there are reasonable grounds for believing that that those records relate to levy that might not be paid.

6. Subsection 6 specifies how the 'direction' provided by subsection 4 is to be made.

7. Subsection 7 provides that HMRC may require the directed taxable person to retain the records specified in the direction for up to 6 years.

8. Subsection 8 introduces Schedule 16 which sets out the penalties that apply where a person fails to comply with the relevant regulations.

Schedule 16

9. Paragraph 1 provides that a penalty may apply where a person fails to comply with regulations regarding record keeping. It sets out the rate at which a penalty is calculated, which varies depending upon whether there have been other recent record-keeping failures.

10. Paragraph 2 provides that a penalty may apply where a person fails to comply with a specific direction from HMRC concerning record keeping. It also sets out the level of such a penalty.

11. Paragraph 3 provides that HM Treasury have the power to make regulations to alter the level of the penalties that are provided by this Schedule.

12. Paragraph 4 provides that a penalty will not apply where a taxable person has a reasonable excuse. It also specifies that a lack of funds to pay the levy cannot be considered a reasonable excuse.

13. Paragraph 5 sets out provisions for how and when HMRC can assess for and must notify a person about a penalty.

14. Paragraph 6 provides that HMRC may apply a further penalty if it later transpires that the original penalty should have been greater.

15. Paragraph 7 provides that any penalty is to be treated as levy due from the person.

16. Paragraph 8 provides time limits for raising penalties.

17. Paragraph 9 sets out that a notification of a penalty to a person's representative is to be treated as a notification to the person for whom the representative acts. This paragraph also sets out the meaning of representative as being either a person's personal representative, a person's trustee in bankruptcy, interim or permanent trustee or liquidator, any person holding office as receiver in relation to that person or any of that person's property and any other person acting in a representative capacity in relation to that person.

Background note

18. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

19. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

20. HMRC will be responsible for administering the new tax.

21. Draft secondary legislation will be published in early 2017.

22. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 74: Power to make further provision about enforcement

Summary

1. This clause gives the Commissioners of Revenue and Customs (HMRC) the power to make regulations setting out further provisions regarding the enforcement of the Soft Drinks Industry Levy (the levy).

Details of the Clause

2. Subsection 1 provides that HMRC may make further regulations concerning enforcement of the levy.
3. Subsection 2 sets out which type of enforcement powers the regulations referred to in subsection 1 above may provide. Examples include the power to inspect premises, inspect business records, examine and take samples of soft drinks.
4. Subsection 3 sets out that the regulations referred to in subsection 1 above may enable any provision with the Customs & Excise Management Act 1979 (CEMA) to be applied.

Background note

5. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
6. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
7. HMRC will be responsible for administering the new tax.
8. Draft secondary legislation will be published in early 2017.

9. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 75: Appeals etc. and Schedule 17: Appeals and reviews

Summary

1. This clause introduces Schedule 17 which sets out how appeals and reviews operate regarding an assessment or decision raised by HM Revenue & Customs (HMRC) in respect of the Soft Drinks Industry Levy (the levy). Parts of the schedule require further detail to be added before the legislation is introduced to Parliament.

Schedule 17

2. Paragraph 1 sets out which decisions an appeal can be brought against. Further detail will added here before the legislation is introduced to Parliament.

3. Paragraphs 2 to 7 provide for a right of review of various decisions by HMRC and the procedures which shall apply to the review process. It lists those matters in respect of which a review of any decision made by HMRC may be sought upon written request. These will be set out by paragraph 1. The paragraph provides that generally a written request for review of a decision must be made within 30 days of the decision being given, sets out when HMRC have a duty to undertake a review and allows them to withdraw, vary or confirm their decision. It also sets out under which circumstances a further review may be sought and provides that where HMRC do not formally respond within 45 days to a request to review a decision, that decision shall be taken to be confirmed.

4. Paragraphs 8 to 10 provide that an appeal may be made to an appeal tribunal in respect of decisions reviewed by HMRC (or so deemed) and sets out the conditions that must be fulfilled for an appeal to be entertained. In particular, before an appeal can be heard, these require the appellant to have paid or deposited with HMRC any amount under appeal, although this requirement may be waived in cases of financial hardship.

Background note

5. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

6. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar

drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

7. HMRC will be responsible for administering the new tax.

8. Draft secondary legislation will be published in early 2017.

9. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 76: Regulations: death or incapacity of person carrying on a business

Summary

1. This clause gives the Commissioners of HM Revenue and Customs (HMRC) the power to make regulations that provide continuity in respect of the Soft Drinks Industry Levy (the levy) in the event that a person running a business that is registered for the levy dies or becomes incapacitated.

Details of the Clause

2. Subsection 1 gives HMRC the power to make regulations in the event that a person running a business that is registered for the levy dies or becomes incapacitated.
3. Subsection 2 sets out that the regulations may allow HMRC to treat a person that has taken over a business registered for the levy as the person who was running it.

Background note

4. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

5. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

6. HMRC will be responsible for administering the new tax.

7. Draft secondary legislation will be published in early 2017.

8. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 77: Interpretation

Summary

1. This clause sets out a range of definitions for terms used in this legislation for the Soft Drinks Industry Levy.

Background note

2. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.

3. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.

4. HMRC will be responsible for administering the new tax.

5. Draft secondary legislation will be published in early 2017.

6. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 78: Regulations

Summary

1. This clause sets out general provisions about the regulations that can be made under the powers in this Part.

Details of the Clause

2. Subsection 1 sets out that regulations made under the powers in this part may make different provision for different purposes, and for provisions incidental, consequential, supplementary or transitional in nature.
3. Subsection 2 sets out that regulations made under the powers in this part are to be made by statutory instrument.
4. Subsection 3 sets out that regulations made under powers in clause 53 are subject to the negative procedure in the House of Commons.
5. Subsection 4 provides that any regulations made for the purposes of the levy may be annulled by the House of Commons within 40 days of being made. If they are not annulled by a motion to annul within 40 days then the regulations are automatically laid.

Background note

6. The Soft Drinks Industry Levy was announced at Budget 2016. The levy is aimed at producers and importers of soft drinks containing added sugar. It will help tackle childhood obesity by encouraging the reformulation of drinks to reduce levels of added sugar, as well as portion size reduction and the marketing of low sugar alternatives.
7. The levy will apply to the producers and importers of these types of drinks and will apply from April 2018. It will have a lower rate which will apply to added sugar drinks with a total sugar content of 5 grams or more per 100 millilitres and a higher rate for drinks with 8 grams or more per 100 millilitres. It will not apply to any drink where no sugar is added. Milk-based drinks and milk substitute drinks will not be subject to the levy. While alcoholic drinks with an ABV of up to 1.2% are within scope of the levy, the government is making provision to exclude certain drinks that fall within this category from the levy. The government will set out the rates payable for each levy band at Budget 2017.
8. HMRC will be responsible for administering the new tax.
9. Draft secondary legislation will be published in early 2017.

10. If you have any questions about this change, or comments on the legislation, please email: indirecttax.projectteam@hmrc.gsi.gov.uk

Clause 79: Fulfilment Businesses: Carrying on a third country goods fulfilment business

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. Clause 79 sets out those businesses in scope of the new scheme.

Clause 79: Carrying on a third country goods fulfilment business

3. Subsection (1) defines what is meant by a fulfilment business and sets out who is in scope of the scheme.
4. Subsection (2) outlines the conditions referred to in Subsection 1. The goods must not have been already supplied by definition of the VAT Act 1994 at the point they are stored by the fulfilment business, and they must be goods that are being offered for sale.
5. Subsection (3) specifically excludes businesses for whom activities set out in section 1(1), namely storage, are incidental. This includes delivery companies for whom storage of goods is incidental.
6. Subsection (4) defines the term 'third country goods'.
7. Subsection (5) defines the term 'established' for the purposes of subsection 1.

Background note

8. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
9. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

10. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.
11. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk)

Clause 80: Fulfilment Businesses: Requirement for approval

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. Following on from Clause 79, Clause 80 sets out that to be registered in the scheme, a person carrying on a fulfilment business will need approval from HMRC.

Clause 80: Requirement for approval

3. Subsection (1) imposes a restriction on the carrying on of a fulfillment business other than in accordance with an approval from HMRC.
4. Subsection (2) provides that HMRC may approve a person to carry on a fulfilment business only if HMRC is satisfied that a person is fit and proper to do so.
5. Subsection (3) provides that HMRC may attach conditions and restrictions to the approval for the carrying on of a fulfilment business. These conditions and restrictions can include lengths of time for which the approval will last.
6. Subsection (4) allows HMRC to vary or revoke the terms of an approval for a reasonable cause. This may be done at any time.
7. Subsection (5) defines 'approved person' as a person who is approved by HMRC to carry on a fulfilment business.

Background note

8. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
9. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.
10. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

11. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk)

Clause 81: Fulfilment Businesses: Register of approved persons

Summary

1. These clauses introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. Clause 81 sets out that HMRC will hold and may publish a register of registered fulfilment businesses.

Details of the clause

3. Subsections (1) (2) (3) and (4) provide that HMRC must maintain a register of all registered fulfilment businesses. This register will be made available to the public by such means considered appropriate, including the internet. This will enable anyone doing business with a fulfilment business storing third country goods to make a check that they are registered with HMRC.

Background note

4. The purpose of the register would be to allow businesses to check whether they are dealing with compliant fulfilment businesses.

5. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

6. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

7. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

8. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk)

Clause 82: Fulfilment Businesses: Regulations relating to approval, registration etc

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. Clause 82 provides for regulations to be made in relating to approval, registration etc under the scheme.

Details of the clause

3. This clause allows HMRC to make regulations regarding the approval, registration and obligations of fulfilment businesses. It also allows HMRC to make specific regulatory provisions in certain circumstances.

4. Subsection (1) allows for regulations covering the approval and registration process, the variation or revocation of any approval or registration or condition or restriction attached to it, the register required to be maintained under HMRC, the general carrying on of a fulfilment business and other obligations to be imposed upon approved persons.

5. Subsection (2) allows for regulations to make provisions that applications and communications with the Commissioners are to be made electronically, regulating the procedure for the approval and registration of companies and requiring approved persons to keep and make available for inspection specified records.

Background note

6. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

7. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

8. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

9. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk)

Clause 83: Fulfilment Businesses: Offence

Summary

1. These clauses introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. Clause 83 links to Clause 79 and Clause 80 and sets out that it will be an offence to trade as a fulfilment business without approval.

Details of the clause

3. Subsection (1) sets out that trading as a fulfilment business without approval is an offence.

4. Subsections (2) and (3) explain that it is a defence that a person did not know and had no reasonable grounds to suspect that they were carrying on a third country goods fulfilment business without approval.

5. Subsection (4) sets out the sanctions that can be imposed for an offence under this section on summary conviction.

6. Subsection (5) sets out the sanctions that can be imposed for an offence under this section on indictment.

7. Subsection (6) sets out a transitional provision until such time as section 154(1) of the Criminal Justice Act 2003 commences.

Background note

8. Introduction of Clause 83 is subject to clearance by the Home Affairs Committee.

9. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

10. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

11. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

12. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk)

Clause 84: Fulfilment Businesses: Forfeiture

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. Clause 84 sets out that goods are liable to forfeiture if they are stored by a fulfilment business which is not approved under Clause 80.

Details of the clause

3. Subsections (1) and (2) provide that any goods that are stored in a fulfilment business that is being carried on without approval are liable to forfeiture under the relevant provisions of the Customs and Excise Management Act 1979.

Background note

4. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

5. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

6. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

7. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk).

Clause 85 and Schedule 18: Fulfilment Businesses: Penalties

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. Clause 85 provides for penalties under the scheme including powers to make regulations and links to Schedule 18.
3. Schedule 18 provides for a penalty for carrying on a business without approval.

Details of the clause

4. Subsection (1) explains that the penalty for carrying on a third country fulfilment business without approval is laid out in Schedule 1.
5. Subsection (2) allows for HMRC to make regulations imposing penalties for contraventions of conditions imposed upon approved persons. These penalties will be additional to that set out in Schedule 1.
6. Subsection (3) provides that any penalties imposed by regulations cannot exceed £3000.
7. Subsection (4) allows for any regulations made under this clause to make provisions for the assessment and recovery of the penalties specified.
8. Subsection (5) allows for regulations to be made making provision for joint and several liability for corporate groups.

Schedule 18: Third country goods fulfilment businesses: penalty

9. Schedule 18 sets out the liability to penalty for a person carrying out a third country goods fulfilment business without approval. It outlines the amount of the penalty, reductions for disclosure, assessment, reasonable excuse, liability for officers in a company and double jeopardy. It also defines the maximum amount and the definition of the "appeal tribunal".

Liability to penalty

10. Paragraph 1 sets out that a person carrying out a third country goods fulfillment business without approval is liable to a penalty.

Amount of penalty

11. Paragraph 2 sub-paragraphs (1) to (3) set out the levels of penalty that can be charged, depending on whether the offence is considered deliberate and concealed, deliberate but not concealed or otherwise. Sub-paragraph (4) defines "deliberate and concealed" and "deliberate but not concealed".

Reductions for disclosure

12. Paragraph 3 sub-paragraph (1) provides for reductions in penalties for disclosure.

13. Paragraph 3 sub-paragraph (2) describes how a person may disclose a contravention by advising HMRC, assisting in highlighting additional contraventions and providing all records requested.

14. Paragraph 3 sub-paragraph (3) describes how a disclosure will be considered "unprompted" if it is notified to HMRC prior to them identify a contravention. All other cases will be considered "prompted".

15. Paragraph 4 provides that following disclosure the Commissioners must reduce the penalty to reflect the quality of the disclosure. It also sets out the minimum levels of the penalties. The amount that the penalty can be reduced by depends upon the quality of the disclosure and whether it is prompted or unprompted.

Special reduction

16. Paragraph 5 allows HMRC to reduce the amount of the penalty where special circumstances apply.

Assessment

17. Paragraph 6 provides for the assessment of a penalty and outlines how this assessment will be made. This provides that HMRC will notify the person by way of a penalty notice, setting out the reason for the penalty. Penalties raised will be due thirty days after the date of issue of the penalty notice. Two or more contraventions may be assessed as one contravention for the purpose of raising a penalty. A penalty must be raised within 12 months of HMRC discovering the contravention.

Reasonable excuse

18. Paragraph 7 provides that a penalty will not be levied for non-deliberate contraventions if a person is able to demonstrate that they have a valid excuse. Paragraph 7 however makes clear that a valid excuse does not encompass a person entrusting someone else to fulfil their obligations.

Companies: Officer's liability

19. Paragraph 8 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.

Double Jeopardy

20. Paragraph 9 provides that a penalty will not be levied for a contravention for which a person has already been convicted of an offence.

The maximum amount

21. Paragraph 10 allows for regulation to change the maximum amount of a penalty under paragraph 2(1) (Amount of Penalty) where Her Majesty's Treasury consider 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 Regulations containing the new amount come into force.

Appeal Tribunal

22. Paragraph 11 defines the term 'appeal tribunal'.

Background note

23. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

24. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

25. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

26. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk).

Clause 86: Fulfilment Businesses: Appeals

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. Clause 86 sets out the appeal and review provisions for the scheme.

Details of the clause

3. Subsection (1) provides for amendments of the Finance Act 1994 for the purposes of ensuring decisions made under these clauses are subject to review and appeal.

4. Subsection (2) inserts a new paragraph (paragraph 'gc') as to the meaning of a 'relevant decision' as provided for in section 13(2) of the Finance Act 1994 so that a decision to issue a penalty is subject to review and appeal.

5. Subsection (3) inserts a new paragraph (paragraph '9B') to Schedule 5 to the Finance Act 1994 so that any decision as to approval or the conditions under which a person is approved is a decision falling within Schedule 5 to the Finance Act 1994 for the purposes of review and appeal.

Background note

6. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

7. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

8. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

9. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk).

Clause 87: Fulfilment Businesses: Regulations

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. Clause 87, along with regulations made under Clause 82, sets out how secondary legislation for the scheme will be made.

Details of the clause

3. Subsection (1) sets out how separate regulations relating to the specific aspects of the scheme will be made.

4. Subsections (2) and (3) set out that regulations will be made by statutory instrument subject to annulment to a resolution of the House of Commons.

5. Subsection (4) clarifies that the provisions of this clause do not apply to regulations made under section 11 (namely the commencement orders).

Background note

6. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

7. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

8. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

9. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk).

Clause 88: Fulfilment Businesses: Interpretation

Summary

1. These clauses introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).

2. Clause 88 contains definitions of terms used in these clauses.

Details of the clause

3. Subsection (1) provides for the meaning of 'approved person' and 'the Commissioners'.

4. Subsections (2), (3) and (4) provide for when two or more companies will be considered to be members of a group company.

Background note

5. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.

6. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.

7. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.

8. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk).

Clause 89: Fulfilment Businesses: Commencement

Summary

1. Clauses 79 to 89 introduce new legislation requiring third country goods fulfilment businesses to be registered to trade by HM Revenue and Customs (HMRC).
2. Clause 89 provides for commencement of the scheme by regulations.

Details of the clause

3. Subsection 1 sets out that the clauses will come into force on a day appointed by HMRC by statutory instrument.
4. Subsection 2 allows for HMRC to appoint different clauses to come into force on different days.

Background note

5. Regulations will provide that the clause will have effect on 1 April 2018. Existing fulfilment house businesses should apply to register with HMRC by 30 June 2018. New fulfilment house businesses, established after 30 June 2018, will need to apply to register 45 calendar days in advance of the date they intend to commence trading.
6. The Fulfilment House Due Diligence Scheme is part of a package of measures announced at Budget 2016 that will disrupt and deter abuse by some overseas businesses selling goods to UK customers via online marketplaces.
7. These are draft clauses for legislation to be introduced in Finance Bill 2017 to implement the Fulfilment House Due Diligence Scheme. Fulfilment businesses in the UK will have to register with HM Revenue and Customs (HMRC) from 2018, keep certain records and carry out robust due diligence checks on their overseas customers. This will make it more difficult for non-compliant overseas businesses to trade in the UK and will enable HMRC to identify and tackle them more easily. HMRC will publish the register to allow businesses to check whether they are dealing with compliant fulfilment businesses.
8. There will be secondary legislation which will outline the records and due diligence checks that fulfilment businesses will be expected to keep in respect to their overseas customers.
9. If you have any questions about this change, or comments on the legislation, please contact Martin Jones on 03000 593311 (email: martin.jones@hmrc.gsi.gov.uk).

Clause 90 and Schedule 19: Partial closure notices

Summary

1. This clause and schedule amends the Taxes Management Act 1970 and Schedule 18 of the Finance Act 1998 and introduces a new power to allow HM Revenue and Customs (HMRC) and its customers to resolve matters during a tax return enquiry ahead of full closure through the issue of Partial Closure Notices.

2. The clause and schedule will come into effect when the Act is passed and will apply in relation to any enquiry which has not been concluded on that date by means of a closure notice under existing provisions.

Details of the clause

3. Clause 90 introduces Schedule 19.

Details of the schedule

4. Paragraph 1 introduces amendments to the Taxes Management Act 1970 (TMA).

5. Paragraph 2 amends section 9A. The amendments to subsections (5)(a) and (b), and new subsection (c), have the effect that, where notice of enquiry is given as a result of a taxpayer amendment (under section 9ZA) and following the issue of a Partial Closure Notice relating to the amendment, or a Final Closure Notice, the enquiry is limited to matters to which the taxpayer amendment relates.

6. Paragraph 3 amends section 9B. The amendments to subsections (1), (3), (3)(a), (3)(b), and (4) allow any taxpayer amendment that relates to any matters in an open enquiry to be concluded by Partial or Final Closure Notice.

7. Paragraph 4 amends section 9C. The amendments to subsections (1), (2) and (4) allow the amendment of a self-assessment during an enquiry to prevent loss of tax in relation to matters that have not been concluded by a Partial Closure Notice.

8. Paragraph 5 amends section 12ZM. The amendments to subsections (4)(a) and (b) and new subsection (c) have the effect that, where notice of enquiry is given as a result of a taxpayer amendment (under section 12ZK) and following the issue of a Partial Closure Notice relating to the amendment, or a Final Closure Notice, the enquiry is limited to matters to which the taxpayer amendment relates.

9. Paragraph 6 amends section 12ZN. The amendments to subsections (1), (3), 3(a), 3(b), and (4) allow any taxpayer amendment that relates to any matters in an open enquiry to be concluded by Partial or Final Closure Notice.

10. Paragraph 7 amends section 12AC. The amendments to subsections (5)(a) and (b), and new subsection (c), have the effect that, where notice of enquiry is given as a result of a taxpayer amendment (under section 12ABA) and following the issue of a Partial Closure Notice relating to the amendment, or a Final Closure Notice, the enquiry is limited to matters to which the taxpayer amendment relates.

11. Paragraph 8 amends section 12AD. The amendments to subsections (1), (3), (3)(a), (3)(b) and (5) allow any partnership amendment that relates to any matters in an open enquiry to be concluded by Partial or Final Closure Notice

12. Paragraph 9 amends section 12B. The amendments to subsection (1)(b)(i), which defines one of the dates by reference to which the relevant day (until which records are to be kept) is determined, have the effect that the date defined by this subsection is the date on which a Final Closure Notice is issued, even if a Partial Closure Notice has previously been issued.

13. Paragraph 10 amends section 28ZA. The amendments to subsections (1) and (5), and have the effect that any question relating to matters in an enquiry under sections 9A(1) or 12AC(1) may be referred jointly to the tribunal until either a Partial or Final Closure Notice is issued in relation to the matter.

14. Paragraph 11 amends section 28ZD. The amendment to subsection (1)(a), which is replaced by new subsection (1)(a) and (aa), and to subsection (1)(b), has the effect that neither Partial nor Final Closure Notices may be issued relating to questions referred under section 28ZA while subject to proceedings.

15. Paragraph 12 amends section 28A. The amendments to subsections (1), (2), (3), (4) and (6) plus new subsections (1A),(1B), (7) and (8) define closure of enquiries into personal or trustee returns and Non-resident Capital Gains Tax returns. Sections 28A(1A) and (1B) introduce a new procedure to close any matter in an enquiry with the issue of a Partial Closure Notice in advance of a Final Closure Notice. Section 28A(4) extends the right to taxpayers to apply to the tribunal for a direction that HMRC issue a Partial Closure Notice in relation to any matter. Section 28A(8) explains that existing Taxes Acts references to 'closure notice' under this section now refer to Partial or Final Closure Notices.

16. Paragraph 13 amends section 28B. The amendments to subsections (1), (2), (3), (5) and (7) plus new subsections (1A), (1B), (8) and (9) define closure of enquiries into partnership returns. Sections 28B(1A) and (1B) introduce a new procedure to close any matter in an enquiry with the issue of a Partial Closure Notice in advance of a Final Closure Notice. Section 28B(5) extends the right to the taxpayer to apply to the tribunal for a direction that HMRC issue a Partial Closure Notice in relation to any matter. Section 28B(9) explains that existing Taxes Acts references to "closure notice" under this section now refer to Partial or Final Closure Notices.

17. Paragraph 14 amends section 29. The amendments to subsection (5)(b) and new subsections (5)(b)(i) and (ii) concern the second of the two conditions, either of which must be satisfied before a discovery assessment may be made if a return has been delivered in respect of the relevant year of assessment. The effect of the amendments is that, where a notice of enquiry has been given, this second condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to the situation mentioned in subsection (1) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

18. Paragraph15 amends section 29A of TMA1970. The amendment to subsection (5)(b) and new subsections (5)(b)(i) and (ii) for Non-Resident Capital Gains Tax disposals concern the second of the two conditions, either of which must be satisfied before a discovery assessment may be made if a return has been delivered in respect of the relevant year of assessment. The effect of the amendments is that, where a notice of enquiry has been given, this second condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to the situation mentioned in subsection (1) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

19. Paragraph 16 amends section 30. The amendment to subsection (5)(b) concerns one of the dates by which the time limit for an assessment under section 30 to recover overpayment of tax is determined. The effect is that the date in subsection (5)(b) is determined by reference to the issue of a Final Closure Notice.

20. Paragraph 17 amends section 30B. The amendments at subsections (6)(a) and (b) and new subsection (6)(c) refer to partnership statements and concern the second of the two conditions, either of which must be satisfied before a discovery assessment may be made if a return has been delivered in respect of the relevant year of assessment. The effect of the amendments is that, where a notice of enquiry has been given, this second condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to the situation mentioned in subsection (1) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

21. Paragraph 18 amends section 31. The amendment to subsection (2) has the effect that where there is an appeal in an open enquiry against a section 9C amendment of a self-assessment, the appeal cannot proceed further until a Partial or Final Closure Notice has been issued in respect of the matter(s) related to the amendment.

22. Paragraph 19 amends section 59AA. The amendment to subsection (8)(a) refers to the time limit for a repayment under section 59AA where there is an enquiry into the Non-Resident Capital Gains Tax return. It has the effect that the repayment need not be made before a Final Closure Notice is issued. (Subsection 8(b) however is unchanged and allows for provisional repayment to be made).

23. Paragraph 20 amends section 59B. The amendment to subsection (4A)(a) refers to the time limit for a repayment where there is an enquiry into a return. It has the effect that the repayment need not be made before a Final Closure Notice is issued.

(Subsection (4A)(b) however is unchanged and allows for provisional repayment to be made.)

24. Paragraph 21 amends paragraph 2(3)(b) of Schedule 3ZA, which specifies the date when an amount is payable or repayable where a self-assessment is amended by a taxpayer during an enquiry and the amendment takes effect when a (Partial or Final) Closure Notice is issued. The amendment has the effect that the amount is payable or repayable within 30 days of the Partial or Final Closure Notice.

Finance Act 1998: Schedule 18

25. Paragraph 22 introduces amendments to Schedule 18 to Finance Act 1998.

26. Paragraph 23 amends paragraph 30. The amendment at sub-paragraph (1) and new sub-paragraph (6)(a) and (b) allow the amendment of a self-assessment during an enquiry to prevent loss of tax in relation to matters that have not been concluded by a Partial Closure Notice.

27. Paragraph 24 amends paragraph 31. The amendments to subsections (1), (3)(b), (4)(a) and (5) allow any company amendment that relates to any matters in an open enquiry to be concluded by Partial or Final Closure Notice.

28. Paragraph 25 amends paragraph 31A. The amendments to sub-paragraphs (1) and (5) have the effect that during an open enquiry any questions in relation to matters arising in the enquiry may be referred jointly to the tribunal until either a Partial or Final Closure Notice is issued in relation to the matter.

29. Paragraph 26 amends paragraph 31C. Sub-paragraph (1)(a) is replaced by sub-paragraph (1)(a) and (aa) and sub-paragraph (1)(b) is amended, with the effect that neither Partial nor Final Closure Notices may be issued relating to questions referred under paragraph 31A while subject to proceedings.

30. Paragraph 27 amends paragraph 32. The amendments to sub-paragraph (1), which is substituted by (1), (1A) and (1B), and to sub-paragraphs (2) and (4), define closure of enquiries into company returns. Sub-paragraphs (1A) and (1B) introduce a new procedure to close any matter in an enquiry with the issue of a Partial Closure Notice in advance of a Final Closure Notice.

31. Paragraph 28 amends paragraph 33. The amendments to sub-paragraphs (1) and (3) extend the right to a company to apply to the tribunal for a direction that HMRC issue a Partial Closure Notice in relation to any matter.

32. Paragraph 29 amends paragraph 34. The amendments to sub-paragraphs (1) and (2) have the effect that a Partial or Final Closure Notice must state the officer's conclusions and either state that no amendment to the return is required, or make the amendments that are required.

33. Paragraph 30 amends paragraph 44. The amendment replaces sub-paragraph (1)(b) with new sub-paragraphs (1)(b)(i) and (ii) concern a condition which must be satisfied before a discovery assessment or determination may be made if a company

tax return has been delivered in respect of the relevant year of assessment. The effect of the amendments is that, where a notice of enquiry has been given, this condition now refers to what the officer could reasonably have been expected to be aware of when a Partial Closure Notice relating to situation mentioned in paragraph 41(1) or (2) was issued or (if no such notice was issued) when a Final Closure Notice was issued.

34. Paragraph 31 amends paragraph 88. The amendments to sub-paragraphs (3)(b) and (4)(b) have the effect the relevant amounts stated in a return will be conclusive when a Partial Closure Notice relating to the amounts has been issued.

Tax Credits Act 2002

35. Paragraph 32 amends Section 20. The amendments to subsections (2)(f) and (3)(b) have the effect that HMRC has a period of one year from each revision of a person's income tax liability for a tax year (whether the revision is as a consequence of a Partial Closure Notice or a Final Closure Notice) to decide whether to revise its decision on that person's entitlement to a tax credit for that year.

FA 2008: Schedule 36

36. Paragraph 33 amends Schedule 36 (information and inspection powers). Paragraphs 21(4) and 21ZA(3) are amended so as to refer to 'matters' to which the taxpayer notice relates in regard to providing information or documents.

Commencement

37. Paragraph 34 relates to commencement date of this Schedule. The amendments made by this Schedule relate to any enquiries under sections 9A, 12ZM or 12AC of TMA 1970, or under Schedule 18 FA 1998, which have not been concluded by means of a closure notice under existing provisions following the day on which this Act is passed.

Background note

38. The measure was announced at Autumn Statement 2014 and consulted on 18 December 2014. It allows HMRC to conclude discrete matters in an enquiry into a Self-Assessment (SA) or Corporation Tax Self-Assessment (CTSA) tax return where more than one issue is open. This will be done by the issuing of a Partial Closure Notice ahead of the final closure of an enquiry.

39. As summarised in the responses document on 28 September 2015, taxpayers requested a reciprocal power on the basis of fairness. The government has agreed and, accordingly, taxpayers will be able to apply to the tribunal for a direction requiring HMRC to issue a Partial Closure Notice in relation to a matter.

40. HMRC will issue PCNs only in enquiries where a customer's tax affairs are complex or where there is avoidance or large amounts of tax at risk.

41. If you have any questions about these changes, or comments on the legislation, please contact Jim Fedigan 03000 547075 (email: jim.fedigan@hmrc.gsi.gov.uk).

Clause 91: Errors in taxpayers' documents

Summary

1. This clause amends Schedule 24 to Finance Act 2007, which provides for penalties to be charged in respect of inaccuracies in taxpayers' documents where those inaccuracies are the result of careless or deliberate behavior by the taxpayer. The clause provides that where a person receives advice in relation to certain tax avoidance arrangements, they cannot rely on that advice to demonstrate they have taken reasonable care to avoid an inaccuracy arising from their use of the arrangements in certain circumstances. These occur where: that advice is received from or commissioned by a person connected to the arrangements; does not take account of the person's individual circumstances; or is given by a person not having the expertise necessary to give it. The clause will come into effect when the Act is passed and will apply to inaccuracies in documents relating to tax periods which begin on or after 6 April 2017 and end on or after the day the Act is passed.

Details of the clause

2. Clause 91 introduces new paragraphs into Schedule 24 to Finance Act 2007.

3. Clause 91(1) provides for Schedule 24 to be amended.

4. Clause 91(2) introduces new paragraphs 3A and 3B.

5. New Paragraph 3A(1) provides that Paragraph 3A applies when a person gives HMRC a document containing an inaccuracy which leads to an understatement of tax, a false or inflated loss or a false or inflated claim for repayment of tax and the inaccuracy relates to certain tax avoidance arrangements.

6. New Paragraph 3A(2) provides that it is presumed that a relevant inaccuracy was careless unless, either the inaccuracy was deliberate, or the person shows they took reasonable care to avoid inaccuracy.

7. New Paragraph 3A(3) provides that when determining whether a person has taken reasonable care to avoid an inaccuracy, no account is to be taken of evidence showing that the person relied on disqualified advice.

8. New Paragraph 3A(4) defines disqualified advice.

9. New Paragraph 3A(5) provides that advice will not be treated as disqualified as long as the person has taken reasonable steps to determine whether or not the advice is disqualified and, at the time the document containing the inaccuracy is submitted, reasonably believes the advice not to be disqualified.

10. New Paragraphs 3B(1) and(2) provide for the definition of those tax arrangements to which the new paragraphs apply.

11. New Paragraph 3B(3) provides that (while the new paragraphs may also apply to other arrangements) arrangements meeting any of a range of five conditions set out in new paragraph 3B(4) are to be taken to fall within the scope of the new paragraphs.
12. New Paragraph 3B(4) defines those conditions as: the arrangements are ones which under the Disclosure of Tax Avoidance Schemes legislation (DOTAS) are disclosed disclosable arrangements; the arrangements are notifiable under the VAT Avoidance Disclosure Regime (VADR); the arrangements are ones which have been counteracted under the General Anti-Abuse Rule (GAAR); the arrangements have been counteracted by the issue of a Follower Notice to the person; and the arrangements are ones which have been counteracted by reference to an avoidance-related rule (TAAR).
13. New Paragraphs 3B(5)-(7) include further definitions relevant to whether arrangements fall within the conditions in new paragraph 3B(4).
14. New Paragraph 3B(8) includes definitions for the purposes of new paragraph 3B.
15. Clause 91(3) inserts new sub-paragraph (6) into paragraph 18 of Schedule 24 to provide that new paragraph 3A applies where a document is given to HMRC on behalf of a person as it applies where a document is given to HMRC by the person.
16. Clause 91(4) contains the commencement provisions for the clause.
17. Clause 91(5) provides for the definition of "tax period" as it is used in clause 1(4).

Background note

18. Tax avoidance takes money away from public services and places disproportionate demands on the government's resources. The government's objective is to influence and promote behavioural change in the minority of taxpayers who benefit financially from the use of avoidance schemes. The aim of the clause is to act as a disincentive to entering into tax avoidance. It ensure that those who submit documents that contain inaccuracies in relation to their use of avoidance schemes cannot sidestep a penalty by claiming they took reasonable care based on advice which is supplied by those not qualified to give it or who are themselves connected to the avoidance in question. The clause will come into effect when the Act is passed and will apply to inaccuracies in documents relating to tax periods which begin on or after 6 April 2017 and end on or after the day the Act is passed.
19. If you have any questions about this change, or comments on the legislation, please contact Gary Coombs on 03000 589577 (email: gary.coombs@hmrc.gsi.gov.uk).

Clause 92 and Schedule 20: Penalties for Enablers of Defeated Tax Avoidance

Summary

1. This clause introduces a new penalty for any person who enables the use of tax avoidance arrangements which are later defeated. Enablers are those who design, market or otherwise facilitate tax avoidance. Arrangements are defeated either in the Courts or the Tribunal or where otherwise counteracted. The penalty charged will be equal to the amount of consideration received or receivable by an enabler for their role in enabling the tax avoidance arrangements which were defeated. Where an enabler has enabled more than one person to implement the same proposal for arrangements, further rules will apply to determine when the penalties will be charged.

2. The new penalty will apply to steps taken by an enabler in respect of a taxpayer's arrangements on or after the date of Royal Assent to the Finance Act 2017. Any action of a person carried out before this date is disregarded for the purpose of determining whether that person enabled an arrangement.

3. This clause also introduces new powers for HMRC to, in certain circumstances, publish details of those who have been required to pay any assessed enabler penalty.

Details of the clause and Schedule

Clause 92: Penalties for Enablers of Defeated Tax Avoidance

4. Clause 92 introduces Schedule 20.

Schedule 20

Part 1: Liability to Penalty

5. Paragraph 1 provides that a penalty is payable by each person who has enabled another person to enter into or use abusive tax arrangements which are later defeated.

Part 2: "Abusive" and "Tax Arrangements": Meaning

6. Paragraph 2(1) defines "tax arrangements" for the purpose of this Schedule.

7. Paragraph 2(2) defines "abusive" for the purpose of this Schedule. Paragraph 2(3) sets out the circumstances that must be considered in determining whether arrangements are "abusive" for the purposes of this Schedule.

8. Paragraph 2(5), (6) and (7) provide examples of circumstances which might indicate that tax arrangements are abusive or not abusive. The examples are not exhaustive.

9. Paragraph 2(8) provides that the Treasury may, by regulations, set out the procedure for the GAAR Advisory Panel to consider whether the arrangements in question are "abusive" for the purposes of this Schedule.

Part 3: "Defeat" in Respect of Abusive Tax Arrangements

10. Part 3 provides the rules concerning when abusive tax arrangements are considered to be defeated. This will be by reference to a decision of the courts or a tribunal, or absent this, where the tax advantages sought to be obtained by the arrangements have been counteracted by adjustments to the tax position of, or assessment of, the person who has entered into them and those adjustments or assessment can no longer be varied on appeal or otherwise.

11. Paragraph 3 defines "defeat" in respect of abusive tax arrangements to be where Condition A or B is met.

12. Paragraph 4(1) defines Condition A. It applies where a person who has entered into abusive tax arrangements, or a person on their behalf, gives a specified document to HMRC on the basis that a tax advantage arose from the arrangements concerned, the tax advantage has been counteracted and that counteraction is final.

13. Paragraph 4(2) to (4) defines "counteracted", "final", "adjustments" and "making" adjustments for the purpose of paragraph 4.

14. Paragraph 5(1) defines Condition B. It applies where condition A does not apply and HMRC has made an assessment to counteract a tax advantage which it is reasonable to assume arises as a result of abusive tax arrangements and that counteraction is final.

Part 4: Persons Who "Enabled" the Arrangements

15. Part 4 provides the rules concerning who is an enabler. It sets out the types of actions that define enablers (and those actions that are not caught by the legislation). The giving of second-opinion advice which only provides an opinion on arrangements designed or marketed by others and that does not contribute to the design of the arrangements does not make the adviser an enabler. Advice which goes on to suggest how the arrangements could be modified to achieve the intended or other tax advantages would constitute enabling unless the reasonable conclusion to draw from reading that advice is that the person giving it is recommending that the modified arrangements should not be implemented.

16. Paragraph 6 describes five different activities which would make a person an "enabler" of arrangements for the purposes of paragraph 1. The circumstances in which a person will fall within one of those descriptions is set out in paragraphs 7 to 11.

17. Paragraph 7 sets out the circumstances in which a person is a "designer" of arrangements for the purposes of paragraph 6. This includes a person who is responsible for the design of arrangements or a proposal for arrangements that have been implemented.

18. Paragraph 7(2) explains that a person providing advice used in the design of the arrangements will not fall within the definition of "designer" of arrangements unless the advice is "relevant advice" and the "knowledge condition" is met.

19. Paragraph 7(3) defines "relevant advice" as advice which suggests arrangements or alterations to proposed arrangements with a view to designing arrangements in such a way that a tax advantage or greater tax advantage might be expected to arise from them.

20. Paragraph 7(4) defines the "knowledge condition". This ensures that a person who is unaware, and could not reasonably be expected to be aware, that their advice contributes or is likely to contribute to the design of abusive tax arrangements is not an enabler and will not face a penalty under this clause.

21. Paragraph 7(5) prevents advice being "relevant advice" in circumstances where the adviser suggests arrangements or alterations to proposed arrangement if the advice can reasonably be read as recommending against implementation of the arrangements or modified arrangements.

22. Paragraph 8 explains that a person who is to any extent responsible for the organisation or management of the arrangements is a "manager" of arrangements for the purposes of paragraph 6.

23. Paragraph 9 sets out circumstances in which a person is to be treated as having "marketed" arrangements to another person for the purpose of paragraph 6.

24. Paragraph 10 sets out circumstances in which a person who enters into the arrangements or transactions forming part of the arrangements is an "enabling participant" for the purpose of paragraph 6.

25. Paragraph 11 explains that a person who provides a financial product listed in paragraph 11(3), to enable arrangements to be implemented is a "financial enabler" for the purpose of paragraph 6 if that person knew or could reasonably be expected to know that the purpose of obtaining such a financial product was to participate in abusive tax arrangements. The Treasury may by regulation amend the list of financial products in paragraph 11(3).

26. Paragraph 12 excludes certain persons from being an enabler. A person who would otherwise be regarded as an enabler of arrangements is not to be so regarded in relation to those arrangements if they enter into them. Where that person is a company, any company in the same group will not be an enabler.

27. Paragraph 13 provides that the Treasury may, by regulations, add to the categories of enabler or provide that a person who would otherwise be an enabler is not to be treated as an enabler for the purposes of this Schedule.

Part 5: Amount of Penalty, Appeals Etc.

28. Paragraph 14 provides that for each person who enabled arrangements mentioned in paragraph 1 the penalty payable is the total value of all the consideration received or receivable for anything done by that person to enable the arrangements.

29. Paragraph 14(2) provides that particular consideration received or receivable by a person may only be taken into account once in calculating a penalty payable by that person under this Schedule.

30. Paragraph 15(2) provides that consideration paid or payable for anything done by a person who enabled the arrangements but which is paid or payable to some other person is to be treated as received or receivable by that enabler for the purposes of calculating a penalty.

31. Paragraph 15(3) excludes any amount charged in respect of value added tax from being classed as consideration.

32. Paragraph 16 outlines the process for the assessment of a penalty, the responsibilities of HMRC in respect of that penalty and the deadline for paying a penalty.

33. Paragraph 16(4) explains that if HMRC does not have the information to establish the total value of all consideration received or receivable by the enabler for enabling the abusive tax arrangements, but HMRC has taken all reasonable steps to obtain the information, HMRC can make a reasonable estimate the amount of that consideration.

34. Paragraph 17 provides that where more than one person has implemented the same proposal for arrangements by entering into abusive tax arrangements which are substantially the same, HMRC must refrain from issuing assessments to charge penalties under paragraph 1 until it can reasonably conclude that more than half of the arrangements implementing the proposal have been defeated.

35. Paragraph 17(4) provides that where an enabler of any such arrangements which have already been defeated specifically asks, a penalty can be assessed on that enabler notwithstanding the provision for deferral of the assessment of that penalty made by paragraph 17.

36. Paragraph 18 provides that HMRC may not assess a penalty under paragraph 1 more than two years after the date on which the arrangements are defeated except where paragraph 17 prevents a penalty from being assessed before that time. In such circumstances HMRC may assess the penalty at any time within two years from the date on which HMRC is permitted to assess the penalty under paragraph 17.

37. Paragraph 18(5) provides that where a penalty is imposed by paragraph 31 in relation to a declaration made under paragraph 30, the time limit for assessing any penalty

under paragraph 1 is two years from the date on which the false declaration penalty was imposed.

38. Paragraph 19 provides that HMRC may at its discretion stay, compound, reduce or remit a penalty under paragraph 1.

39. Paragraph 20 provides that a person may appeal against HMRC's decision that a penalty is payable or the amount of the penalty.

40. Paragraph 21(1) provides that an appeal is to be treated in the same way as an appeal against an assessment of the tax to which the defeated arrangements relate.

41. Paragraph 21(2) provides that payment of the penalty does not have to be made before the appeal has been determined.

42. Paragraph 22 provides that the tribunal may affirm or cancel HMRC's decision that a penalty is payable and affirm or otherwise vary, in any way in which HMRC could vary, the decision of HMRC as to the amount of the penalty.

43. Paragraph 22(3) provides that the tribunal may rely on paragraph 19 to the same extent as HMRC, or to a different extent if it thinks that HMRC's decision in respect of the application of that paragraph was flawed.

44. Paragraphs 23 and 24 explain a person is not liable to a penalty under paragraph 1 if and to the extent, in respect of conduct, they have been assessed to a penalty under any provision other than paragraph 1 or they have been convicted of an offence.

45. Paragraph 25 makes consequential amendments to section 103ZA of the Taxes Management Act 1970 to add a reference to a penalty under paragraph 1.

Part 6: Information

46. Part 6 sets out HMRC's information and inspection powers for the purpose of this Schedule.

47. Paragraph 26 provides that Schedule 36 to the Finance Act 2008 applies for the purposes of this Schedule by making the changes described in paragraphs 27 to 29.

48. Paragraph 30 provides that where a legal professional cannot provide information by virtue of that information being privileged they will instead be able to provide HMRC or the tribunal with a declaration that the advice given does not make them an enabler or otherwise liable to a penalty under paragraph 1.

49. Paragraph 30(4) provides that the content and form of the declaration may be prescribed in regulations. Regulations under this power will only be able to provide for a declaration that does not in itself breach legal professional privilege. It is intended that one form of such a declaration will consist of a list of activities that do not constitute enabling. The legal professional will declare that the advice they provided falls within one or more of the listed activities but will not specify which. This will ensure that such a declaration does not contain information which would

involve the legal professional specifying the actual nature of the advice given in breach of legal professional privilege.

50. Paragraph 30(5) provides that paragraph 30(1) does not apply where HMRC or the tribunal is satisfied that the declaration contains information which is incorrect.

51. Paragraph 31 inserts new section 98D into the Taxes Management Act 1970 to provide for a penalty for fraudulently or negligently giving any incorrect information in a declaration under paragraph 30.

Part 7: Publishing Details of Persons Found Liable to Penalties

52. Paragraph 32(1) provides that HMRC in certain circumstances may publish information about a person who is assessed to a penalty under paragraph 1 which has become final.

53. Paragraphs 32(2) and (3) set out what can be published and the manner in which that information can be published.

54. Paragraphs 32(4) to (9) provide for the actions HMRC must perform before publishing such information, restrictions placed on when such information can be published and explain when a penalty becomes "final".

Part 8: General

55. Paragraph 33(1) defines "tax" for the purpose of this Schedule.

56. Paragraph 33(2) provides that the Treasury may, by regulations, amend paragraph 33(1) to add or remove a tax.

57. Paragraph 34 defines "tax advantage" for the purpose of this Schedule.

58. Paragraph 35(1) defines "abusive tax arrangement", "arrangements", "business", "the Commissioners", "company", "the GAAR advisory panel", "group" "HMRC", "tax" and "tax advantage" for the purpose of this Schedule.

59. Paragraph 36 provides for any regulations under this Schedule to be made by statutory instrument and sets out the processes for making such regulations.

60. Paragraph 37 provides that this Schedule takes effect from Royal Assent to the Finance Act 2017 in respect only of actions of an enabler carried after that date.

Background note

61. At Budget 2016, the government signaled its intention to explore options to introduce downsides for those who enable or otherwise facilitate tax avoidance so that they also bear some risk. A consultation was published on 17 August and ran to 12 October 2016. It received significant engagement from individuals, businesses and representative bodies.

62. This clause supports the government's objective to influence and promote behavioral change in the minority of tax agents, intermediaries and others who design, market or facilitate the use of abusive tax arrangements. It will ensure that enablers of abusive arrangements can be held accountable for their activities, while ensuring that the vast majority of professionals who provide clients with advice on genuine commercial arrangements will not be impacted.

63. The penalty will apply to any person who, after the clause comes into effect, enables another person to enter into abusive tax arrangements which have later been defeated. Defeat and enabling are defined in the legislation and do not include the provision of second-opinion advice on arrangements or a proposal for arrangements designed or made available by others provided no modifications are suggested to the arrangements or, if modifications are suggested, there is a recommendation that the modified arrangements are not implemented.

64. The penalty will apply where the defeated arrangements are abusive. Arrangements will be treated as abusive if they meet a 'double reasonableness test'. This will ensure that the clause does not inhibit genuine commercial transactions. External scrutiny will be provided by the GAAR Advisory Panel, and any penalty HMRC decides to charge having considered the Panel opinion in relation to the arrangements in question or substantially similar arrangements will be appealable.

65. If you have any questions about this change, or comments on the legislation, please contact Ellen Roberts on 03000 594918 (email: ellen.roberts@hmrc.gsi.gov.uk).

Clause 93 and Schedule 21: Disclosure of tax avoidance schemes: VAT and other indirect taxes

Summary

1. This clause and schedule replaces the regime for disclosure of VAT avoidance schemes to HM Revenue and Customs (HMRC). It moves the primary responsibility for disclosing schemes from users to promoters of arrangements. It also extends the scope of the disclosure regime to include insurance premium tax, all duties of excise, landfill tax, aggregates levy, climate change levy and customs duties. The clause makes provision for tests to apply, known as hallmarks, to determine if arrangements need to be disclosed. These will be set in regulations. The clause comes into effect on 1 September 2017.

Details of the clause and Schedule

Clause 93: Disclosure of Avoidance Schemes: VAT and Other Indirect Taxes

2. Clause 93 introduces Schedule 20 and repeals Section 58A and Schedule 11A to the Value Added Tax Act 1994.

Schedule 21: Part 1: Duties to Disclose Avoidance Schemes Etc.

3. Paragraph 3 defines the arrangements and proposals which must be disclosed to HMRC.

4. Paragraph 4 provides that HMRC may apply to the Tribunal for an order that arrangements or proposals are notifiable. The Tribunal can only make such an order if it is satisfied that the arrangements or proposals accord with the definitions provided in Paragraph 3.

5. Paragraph 5 provides that where HMRC has grounds for suspicion that arrangements or proposals are notifiable, they may apply to the Tribunal for an order that the arrangements or proposals are treated as if they are notifiable.

6. Paragraph 5(3) provides that the Tribunal may only grant such an order if it is satisfied that HMRC has taken all reasonable steps to determine whether the

arrangements or proposals are notifiable and has reasonable grounds for believing them to be notifiable.

7. Paragraph 6 defines the circumstances when a person obtains a VAT advantage

8. Paragraph 7 defines the circumstances when a person obtains a tax advantage from arrangements for all of the relevant taxes except VAT

9. Paragraph 8(2) defines a 'promoter' of a notifiable proposal as a person with **any** responsibility for the design of the proposed arrangements, not just the person primarily responsible for the design; anyone who makes a 'firm approach' to another person with the object of making the proposal available to that person; and anyone who makes the proposal available for implementation by another.

10. Paragraph 8(3) defines a promoter of notifiable arrangements as a person who is a promoter of a notifiable proposal which a person then implements; or a person responsible for any part of the design of the arrangements, or who organizes or manages the arrangements.

11. Paragraph 8(4) defines those businesses that can be promoters.

12. Paragraph 10 defines a firm approach as a 'marketing contact' when the arrangements have been 'substantially designed' and explains these concepts.

13. Paragraph 11 provides that regulations may be made to determine what information a promoter of a notifiable proposal must provide to HMRC. The required information must be provided within 31 days. Paragraph 12 makes the same provision in respect of promoters of notifiable arrangements.

14. Paragraph 13 provides that where there is more than one promoter of a proposal, or of a proposal substantially the same as those already disclosed, only one person is required to disclose the relevant information to HMRC. This applies provided that person gives HMRC the name and address of any other promoter, or the other promoters are given the scheme reference number, and those promoters hold the information which is disclosed to HMRC. Paragraph 14 makes the same provision in respect of notifiable arrangements.

15. Paragraph 17 provides that where a person engages in a transaction which is part of notifiable arrangements, that person must disclose the relevant information to HMRC within 6 days of the first transaction, if the only promoter or promoters of the arrangements belong outside the UK.

16. Paragraph 18 provides that if there is no promoter of notifiable arrangements and no client of the promoter in the UK, any person who engages in a transaction which is part of the arrangements must disclose the required information to HMRC.

17. Paragraph 21 provides that where information about a proposal or arrangements has been provided to HMRC but there is a change in one or more of the details, the promoter must inform HMRC of the changes within 30 days. If there is more than one promoter and a promoter who did not make the initial disclosure changes his or her name or address, that person is required to provide the new address to HMRC.

18. Paragraph 22 provides that when a person gives the required information about notifiable proposals or arrangements, HMRC may issue a reference number to anyone who is a promoter of the proposal or arrangements.

19. Paragraph 22(3) explains that by giving a reference number in relation to notifiable arrangements or a notifiable proposal, HMRC is not to be seen as endorsing, approving or agreeing the proposal or arrangements in any way.

20. Paragraph 23 provides that the promoter of notifiable arrangements must forward the reference number to any client to whom he is providing services in connection with the arrangements within 30 days. The exception to this is when the promoter is also providing services to the client in respect of a notifiable proposal which is substantially the same and the promoter has already given the client the reference number.

21. Paragraph 24 provides that where the client might reasonably be expected to be aware of anyone else who is party to the arrangements, and who might obtain a tax advantage in relation to them, he should pass the reference number and any other required information to that person.

22. Paragraph 26 provides that anyone who is party to notified arrangements must inform HMRC of the fact by advising them of the scheme reference number and any other details as may be required. Paragraphs 26(3) and 26(4) allow HMRC to determine how such information must be provided to them in regulations or in a document under those regulations.

23. Paragraph 27 provides that a promoter of notifiable arrangements must provide details to HMRC of the clients in connection with those arrangements. The information required is to be prescribed in regulations.

24. Paragraph 31 provides that HMRC may issue a notice requiring a person they believe to be an introducer in relation to a proposal which is or may be notifiable, to provide them with specified information within 11 days.

25. Paragraph 33 provides that where a promoter is required to notify clients of a scheme reference number, or a user of a scheme is required to forward the number to another person who they believe to be party to the arrangements, HMRC may specify that further information must also be provided.

26. Paragraph 36 allows HMRC to publish details of notified proposals and arrangements. HMRC may not publish details which identify users of the arrangements, but promoters who also used the arrangements may be identified in their capacity as promoter.

    Paragraph 37 provides that where details of arrangements are published under paragraph 36 and there is a subsequent ruling in a Tribunal or court about those arrangements which cannot be further appealed, HMRC must publish details of that ruling.

Part 2: Penalties

27. Paragraph 39 provides for an initial penalty to be charged of up to £600 per day for a failure by a promoter, client or another person party to the arrangements to meet a requirement under this Schedule. In the case of a failure to meet any other requirement under this Schedule, a penalty can be charged of up to £5,000 per day.

28. Paragraph 39(4) details when a failure to meet an obligation occurs for the purposes of a penalty.

29. Paragraph 40 provides that, when deciding the level of penalty, all relevant factors must be taken into account.

30. Paragraph 40(2) provides that these factors include the amount of fees earned by a promoter in respect of arrangements, or the amount of any tax advantage sought by a party to arrangements.

31. Paragraph 40(4) provides that a penalty of up to £1 million can be issued for any failure by a promoter, or another person when there is no promoter or no promoter in the UK, to inform HMRC about notifiable proposals or arrangements if the maximum penalty chargeable under Paragraph 39(1)(a)(i) appears to be inappropriately low, taking into account the relevant considerations in Paragraph 40(2).

32. Paragraph 44 provides for a penalty of up to £5,000 for each scheme a person party to arrangements fails to correctly disclose to HMRC.

33. Paragraph 44(3) provides for that penalty to be up to £7,500 per scheme if the person has failed to make another such disclosure in the preceding 36 months.

34. Paragraph 44(4) provides for that penalty to be up to £10,000 per scheme if the person has failed to make two or more such disclosures in the preceding 36 months.

35. Paragraph 45 provides that a penalty in respect of an initial period is to be decided by the First-tier Tribunal on application by an authorised officer of HMRC.

36. Paragraph 46 provides that HMRC may charge a penalty for continued failure to comply with a requirement under the Schedule or a failure by a party to the arrangements to notify HMRC of the scheme reference number.

37. Paragraph 47 provides that a person may appeal against a penalty charged by HMRC.

38. Paragraph 48 provides that a person who satisfies HMRC, or a Tribunal, that there was a reasonable excuse for the failure to meet an obligation under the Schedule is not liable to a penalty.

39. Paragraph 50 provides that where a user of arrangements has to notify HMRC because there is no promoter in the UK, any legal advice relied on by the person which was obtained by a monitored promoter is not to be taken into account when deciding if there was a reasonable excuse.

Background note

40. This clause reforms the way indirect tax avoidance is notified to HMRC so that it more closely resembles the regime for disclosure of avoidance of direct taxes (Disclosure of Tax Avoidance Schemes, or DOTAS) and places the primary responsibility for disclosing schemes to HMRC on scheme promoters. This forms an important part of the government's fight against tax avoidance by giving HMRC earlier and more comprehensive details about VAT and other indirect tax avoidance schemes as they emerge, and provides a coherent approach to the requirements to disclose tax avoidance schemes.

41. The clause also extends the scope of the disclosure regime to encompass for the first time all duties of excise, insurance premium tax, landfill tax, aggregates levy, climate change levy and customs duties. This will allow HMRC early insight into emerging avoidance in these areas and better enable them to take any action required to counter those trends.

42. If you have any questions about this change, or comments on the legislation, please contact Pete Woodham on 03000 586533 (email: peter.woodham@hmrc.gsi.gov.uk).

Clause 94 and Schedule 22: Requirement to correct certain offshore tax non-compliance

Summary

1. Clause 94 introduces a Requirement to Correct (RTC) for taxpayers who have undeclared past UK tax liabilities in respect of their offshore interests. The taxpayer will be expected to review their offshore interests and correct any UK tax irregularities by disclosing the relevant information to HM Revenue and Customs (HMRC).

2. Failure to carry out the necessary correction on or by 30 September 2018 in relation to their offshore matters will render taxpayers liable to a new penalty as a result of their ''failure to correct'' (FTC).

3. The corrections must be made in respect of Income Tax, Capital Gains Tax and Inheritance Tax which involve offshore matters. The matters requiring correction result from failures by taxpayers such as:

    - Failure to notify chargeability to tax
    - Failure to make and deliver a return
    - Delivering an inaccurate document (for example, a return) to HMRC

Details of the clause and Schedule

Schedule 22: Part 1: Liability for Penalty for Failure to Correct

4. Paragraphs 1-2 create a penalty for those who have "relevant offshore tax non-compliance" at the end of tax year 2016-17 and who 'fail to correct' it within the 'requirement to correct' period starting on 6 April 2017 and ending on 30 September 2018 (RTC period).

5. Paragraph 3 sets out the conditions determining whether a person has "relevant offshore tax non-compliance" at the end of the 2016-17 tax year, The conditions are:

    - Offshore tax non-compliance has not been fully corrected before the end of the tax year 2016-17 (Condition A);
    - The offshore tax non-compliance that has not been fully corrected by

that time involves a potential loss of revenue (Condition B); and

- On 6 April 2017 HMRC would have been able to assess the person concerned to the tax liability which should have otherwise been disclosed and corrected (condition C).

6. Paragraph 4 defines 'tax non-compliance' and "offshore tax non-compliance". Offshore tax non-compliance means tax non-compliance involving an offshore matter or an offshore transfer. Tax non-compliance means any of:

- A failure to notify chargeability to income tax or capital gains tax before the required date (paragraph 4(2)(a)).
- A failure to deliver a return, or any other document required to establish a person's liability to tax, before the required date (paragraph 4(2)(b)).
- Delivering a return or any other document to HMRC that contains an inaccuracy causing an understatement of tax liability, a false or inflated statement of loss or an inflated claim to a repayment of loss (paragraph 4(2)(c)).

7. Paragraphs 5-7 set out the circumstances where "offshore tax non-compliance" involves 'an offshore matter' or 'an offshore transfer'. Paragraph 5 defines those terms in relation to the "tax non-compliance" described in paragraph 4(2)(a) of the Schedule (failure to notify chargeability to income tax or capital gains tax). Paragraph 6 does so in relation to paragraph 4(2)(b) of the Schedule (failure to deliver a return or other document). Paragraph 7 correlates to paragraph 4(2)(c) of the Schedule (delivering an inaccurate return or document). The definitions in paragraphs 5-7 differ only as required to meet the particular circumstances covered by paragraph 4(2)(a)-(c) of the Schedule and as necessary for the purposes of Income Tax, Capital Gains Tax and Inheritance Tax. In summary:

- It is 'an offshore matter' if the tax at stake relates to income arising outside the UK, assets situated outside the UK, activities carried out wholly or mainly outside the UK, or anything that has the effect of any of these.
- It is 'an offshore transfer' if it is not an offshore matter and the "applicable condition" is met (which varies depending upon the tax in question).

8. Paragraph 8 provides that references to 'tax' in the Schedule mean income tax, capital gains tax, and inheritance tax, but excludes capital gains tax on certain capital gains payable by companies as part of their corporation tax liability.

9. Paragraph 9 explains what is required to correct a failure relating to an offshore matter or transfer and how that inaccuracy may be corrected. As with paragraphs 5-7, bespoke adaptations are necessary to meet the circumstances covered in paragraph

4(2)(a)-(c) and for the purposes of the tax in question. Broadly, correcting a failure is done by providing relevant information to HMRC by means of:

- Delivering to HMRC the document that should have been given to HMRC such as a notice of chargeability to tax or tax return;
- Using a facility provided by HMRC for that purpose; or
- Telling an officer of HMRC in the course of an enquiry, or another method agreed with HMRC.

Part 2: Amount of Penalty

10. Paragraph 10 specifies the maximum FTC penalty as 200% of the potential lost revenue (PLR) relating to the relevant offshore tax non-compliance that has not been corrected within the RTC period.

11. Paragraph 11 determines the PLR attributable to the offshore tax non-compliance. The calculation of the PLR in relation to each of the circumstances covered in paragraph 4(2)(a)-(c) is done by reference to rules for calculating PLR in the corresponding circumstances in Schedule 41 to the Finance Act 2008 (for paragraph 4(2)(a)), Schedule 55 to the Finance Act 2009 (for paragraph 4(2)(b)) and Schedule 24 to the Finance Act 2007 (for paragraph 4(2)(c)). In circumstances where Schedules 24, 41 and 55 to the Finance Acts 2007-2009 do not wholly distinguish offshore matters and offshore transfers from other matters (onshore matters) for the purposes of determining the PLR used for the amount of the penalties set out in those Schedules, paragraph 11(3)-(5) requires such an apportionment to be made on a just and reasonable basis to identify the PLR relating offshore tax non-compliance for the purposes of this Schedule and the PLR relating to tax non-compliance involving onshore matters (which is irrelevant for the purposes of this Schedule).

12. Paragraph 12 requires HMRC to reduce the FTC penalty if the person discloses the matters listed in paragraph 12(1) (such matters are within the scope of paragraph 4(2)(a)-(c)). The amount of the reduction must reflect the quality of the disclosure (including its timing, nature and extent) but cannot reduce the penalty below 100% of the PLR. Paragraph 12(2) specifies that a person makes a disclosure for the purposes of paragraph 12 by-

    - Telling HMRC about the failure;
    - Giving HMRC reasonable help in resolving the matter (for example, quantifying an inaccuracy in a document);
    - Informing HMRC of any person who acted as an enabler of the offshore non-compliance;
    - Allowing HMRC access to records related to the non-compliance, and the enabling, if applicable.

13. Paragraph 13 provides that, in special circumstances, HMRC may reduce or stay a penalty, or agree a compromise in relation to penalty proceedings. Special circumstances do not include ability to pay, or that loss of revenue due to underpayment by one taxpayer is balanced by overpayment by another.

14. Paragraph 14 describes the statutory procedure for assessing the penalty, and sets a deadline of 30 days from the notification to the taxpayer for payment of the penalty. HMRC may make supplementary assessments if a previous penalty assessment is found insufficient due to an underestimate of liability to tax. An assessment may be amended where there has been an overstatement of liability to tax but does not affect the original penalty payment deadline.

15. Paragraph 15 specifies the periods of time within which an assessment of the RTC penalty in accordance with paragraph 14 must be made. The relevant period is the period of 12 months beginning with the end of the appeal period defined in paragraph 15 in respect of each of the circumstances described in paragraph 4(2)(a)-(c) or the other times specified in relation to those circumstances by paragraph 15.

16. Paragraph 16 gives a right to appeal against the decision to charge a penalty, or the amount of the penalty.

17. Paragraph 17 ensures that penalty appeals are to be treated in the same way as appeals against an assessment to tax. A person cannot be required to pay a penalty before an appeal against it is determined.

18. Paragraph 18 gives the First-Tier or Upper-Tier tribunal power to affirm or cancel HMRC's penalty decision and to affirm the amount of the penalty or substitute a different amount (provided HMRC had the power to set that revised amount of penalty).

19. Paragraph 19 provides that no liability to the FTC penalty arises if the person satisfies HMRC or a relevant tribunal that the person has a reasonable excuse for the failure. Paragraphs 19(2) and (3) provide that certain circumstances must not be accepted as reasonable excuses.

20. Paragraph 20 ensures against 'double jeopardy' and provides that a person is not liable to a RTC penalty in respect of conduct (which includes a failure to act) if the person has already been convicted of an offence or assessed to a penalty for that conduct under a different provision (apart from a penalty under paragraph 6 of Schedule 55 to the Finance Act 2009 (failure to submit a return which is overdue by 12 months or more)). Where a person is liable for both the FTC penalty and a penalty under paragraph 5 of schedule 55 to the Finance Act 2009 (failure to submit a return which is overdue by 6 months or more) the amount of which has been determined by reference to a liability to tax, the aggregate of the penalties must not exceed 200% of the liability to tax.

21. Paragraph 21 applies certain provisions in the Taxes Management Act 1970 (TMA) for the purposes of this Part of the Schedule. The relevant TMA provisions relate to:

- responsibility of company officers (section 108);

- want of form (section 114);
- delivery and service of documents (section 114).

Part 3: Further provisions relating to the Requirement to Correct

22. Paragraph 22 extends, until 5 April 2021, the period in which HMRC may assess a person to tax in respect of relevant offshore tax non-compliance where the normal assessment period for assessing the tax concerned would otherwise expire during the period beginning with 6 April 2017 and ending with 4 April 2021.

23. Paragraph 23 amends paragraphs 2, 3 and 5 of Schedule 21 to the Finance Act 2015 (penalties in connection with offshore asset moves) so that a person will be liable to a penalty under Schedule 21 to the Finance Act 2015 if the person is aware that there is relevant offshore tax non-compliance in relation to their affairs and moves an asset between territories after this Schedule comes into force, and before the end of the RTC period.

24. Paragraph 24 amends paragraphs 2, 3, 5, 6 and 19 of Schedule 22 to the Finance Act 2016 (asset-based penalty for offshore inaccuracies and failures) and inserts paragraph 6A to that Schedule so that a person upon whom a penalty under paragraph 1 of this Schedule is imposed may also be subject to the asset based penalty if, during the RTC period, the person was aware that, at the end of the 2016-17 tax year, the person had relevant offshore tax non-compliance to correct. Only one asset-based penalty may be imposed in relation to an asset by reference to a RTC penalty.

25. Paragraph 25 amends sections 103ZA and 107A of the TMA 1970. The amendment to section 103ZA adds the FTC penalty to the list of penalties excluded from the provisions in sections 100-103 of the TMA 1970 about the determination of, time limits and right to appeal penalties (those matters are covered by paragraphs 14-18 of the Schedule). The amendments to section 107A ensure that the RTC penalty (and interest) can be recovered from any one or more of the trustees liable to the penalty (but not a person who first became a trustee after the end of the RTC period (30th September 2017).

26. Paragraph 26 provides that HMRC may publish information about a person who incurs one or more FTC penalties involving PLR exceeding £25,000 or if the person incurs 5 or more FTC penalties. Only FTC penalties relating to failure to correct relevant offshore tax non-compliance existing at the end of the 2016-17 tax year of which the person was aware at any time during the RTC period are taken into account. Information cannot be published before the time limit for appealing the penalty has expired or, in the event of an appeal, finally determined; and cannot be published for the first time more than one year after those times. Publication must stop after one year from the date of first publication. FTC penalties that are reduced to the minimum permitted amount under paragraph 12 of the Schedule or reduced to

nil or stayed under paragraph 13 cannot be relied upon to justify publication. Before publication, HMRC must advise the person concerned that publication is being considered and allow the person to make representations about whether the person's details should be published. The information that HMRC may publish is-

- The person's name and address (or registered office)
- The nature of any business carried on by the person
- The amount of penalty/penalties and the PLR in question
- The periods or times the offshore non-compliance occurred that they failed to correct within the RTC period
- Any other information the Commissioners deem necessary to make the person's identity clear.

27. Paragraph 27 allows the Treasury to amend the amount specified in paragraph 26(2)(b) and provide that regulations made under this paragraph must be made by Statutory Instrument (SI).

Part 4: Supplementary

28. Paragraph 28 defines "HMRC", "tax period" and "UK" for the purposes of the Schedule and provides that references to making a return or doing anything in relation to a return include amending a return etc. and makes provision concerning the delivery of documents etc. It also provides that references to an assessment to tax in relation to inheritance tax, are to a determination and that expressions used in relation to Income Tax, Capital Gains Tax and Inheritance Tax have the same meanings as in the enactments relating to those taxes. Also included is an index of terms defined elsewhere in the Schedule.

Background note

29. This legislation has been introduced to support the government's commitment to tackling offshore tax evasion whilst promoting tax compliance.

30. The objective is to get taxpayers with undeclared UK tax relating to offshore interests into a compliant position. At the end of the RTC period (30 September 2018) there will be simplified and tougher sanctions for offshore tax evasion. The clause and schedule will introduce an obligation for taxpayers to put past affairs in order and strongly penalise those who do not meet this requirement. In doing so, the clause and schedule will drive taxpayers with offshore interests who are unsure whether they have declared the right UK tax to review their affairs to either:

- Satisfy themselves they are compliant, or

- Correct the non-compliance by disclosing the relevant information to HMRC.

31. If you have any questions about this change, or comments on the legislation, please contact Steve Manning on 03000 535682 (email: steve.manning@hmrc.gsi.gov.uk).

Clause 95: Penalty for transactions connected with VAT fraud

Summary

1. This clause introduces a new penalty for participating in VAT fraud into the VAT Act 1994. This will be enacted by the insertion of a new section 69C to the VAT Act, which will give HMRC the power to apply a penalty where a person has entered into a transaction connected with fraudulent evasion of VAT; and they knew or should have known of that connection (known as 'the knowledge principle'). The penalty will be 30% of the potential lost VAT, that being the amount of VAT denied under the knowledge principle. A new section 69D provides that the penalty liability can be attributable to company officers where they personally knew or should have known that the relevant transactions were connected with fraud. A new section 69E allows HMRC to name those liable to a penalty under section 69C. This clause takes effect from Royal Assent.

Details of the clause

Section 69C – Transactions connected with VAT fraud

2. <u>Subsection (2)</u> of the clause will insert the new sections 69C, 69D and 69E to the VAT Act 1994.

3. <u>69C</u> sets out the circumstances under which a taxable person becomes liable to a penalty because they knew or should have known that their transactions were connected with VAT fraud.

4. <u>69C(1)</u> sets out when a penalty will apply. The penalty will apply when there is a supply for VAT purposes and three conditions (A-C), detailed below, are met.

5. <u>69C (2)-(4)</u> set out the three conditions. Condition A is that the transaction was connected with a fraudulent evasion of VAT. This evasion by another taxable person can occur either before or after the transaction to which the penalty applies, as it is not uncommon for the default to occur afterwards in missing trader fraud cases. The Court of Appeal judgment in *The Commissioners for Her Majesty's Revenue & Customs v Mobilx Ltd (in administration), Blue Sphere Global Ltd and Calltel Telecom Ltd &* Anr [2010] EWCA Civ 517 concluded that the knowledge principle applies regardless of the timing of the fraudulent VAT default. Condition B is that the trader knew or should have known that the transaction was connected with the fraudulent evasion. Condition C is that HM Revenue & Customs ('HMRC') have issued a denial decision

in relation to the above which prevents the taxable person from relying on a VAT right on the basis of relevant EU case law.

6. 69C (5) stipulates that "VAT right," referred to in (4)(a), means the right to deduct input VAT; the right to apply a zero rate to an intra-community transaction or any other VAT right relating to a supply.

7. 69C (6) sets out the relevant European case law. The relevant cases are joined Cases C-439/04 and C440/04 Axel Kittel v Belgian State; Belgian State v Recolta Recycling (concerning the denial of the right to deduct input VAT); and Case C-273/11 Mecsek-Gabona Kft v Nemzeti Ado-es Vamhivatal Deldunantuli Regionalis Ado Foigazgatosaga (concerning the denial of the right to apply the zero rate to intra-community dispatches), as well as other applications of the principle that the benefit of rights arising under the VAT Directive (2006/112) should be denied where the person claiming the right knew or should have known that the relevant transaction was connected with VAT fraud.

8. 69C (7) sets the level of the penalty at 30% of the potential lost VAT.

9. 69C (8) defines "the potential lost VAT" to which the penalty rate will be applied to calculate the amount of penalty due.

10. 69C (9) sets out the time limit within which assessments for the penalty must be made.

11. 69C (10) clarifies that the penalty can be assessed at the same time as the denial decision.

12. 69C (11) stipulates that HMRC cannot issue a section 69C penalty where a taxable person has been assessed to a penalty under Schedule 24 of Finance Act 2007 or convicted of a criminal offence, relating to the same supply.

69D Penalties under section 69C: officer's liability

13. 69D (1) specifies the conditions under which a company officer can be made liable for all or part of a company's penalty.

14. 69D(2) precludes HMRC from recovering more than 100% of the penalty liability calculated under section 69C.

15. 69D(3) explains what HMRC must do before making a company officer liable for a penalty.

16. 69D (4) limits the time period within which a company officer may be given a notice of penalty liability such that this can only be done after an assessment for the penalty has been made; and no more than two years after the denial of rights decision is made.

17. 69D (5)(a) specifies that the penalty may be reduced by the tribunal or HMRC where there are mitigating circumstances

18. 69D (5)(b) requires the officer to pay any portion of the penalty allocated to them within 30 days of notification.

19. 69D(5)(c) deems that any portion of a penalty allocated to an officer shall be recoverable as if it were VAT due from him or her.

20. 69D(5)(d) permits a further notice to be issued to an officer to make them liable for an additional amount where an additional penalty has been assessed against the company.

21. 69D(5)(e) provides the same protection for officers as is afforded to companies under 69C(11) above, meaning that HMRC cannot hold an officer liable for a section 69C penalty where that person has already been held liable for a penalty under Schedule 24 of Finance Act 2007, or has been convicted of a criminal offence, relating to the same supply.

22. 69D(6) defines the term "company" for the purposes of section 69D.

23. 69D (7), (8) and (9) define the scope of the term "officer" for the purposes of this provision.

Section 69E Publication of details of persons liable to penalties under section 69C

24. 69E (1) states that a person can be named when they are liable for a section 69C penalty and the potential lost VAT in relation to the penalty or penalties exceeds £50,000

25. 69E (2) details the information that may be published about a person.

26. 69E (3) explains the circumstances under which information about an officer, held liable to a penalty under section 69D above, may also be published.

27. 69E (4) details the information about the officer that HMRC may publish.

28. 69E (5) allows HMRC to publish information under this section in any manner that they consider appropriate.

29. 69E (6) requires HMRC to inform the person or officer and allow them the opportunity to make representations prior to publishing their details.

30. 69E (7)-(11) set out the time limits within which information can be published under section 69E.

31. 69E (12) explains when a penalty or decision notice becomes final for the purposes of the time limits outlined above.

32. 69E (13) and (14) permit the Treasury to amend the threshold laid down at 69E(1)(b) for the amount of 'potential lost VAT' that is required in any case before information may be published.

Further subsections of the main clause

33. Subsection (1)(3) alters the existing VAT Act legislation for mitigation so that it applies to the new penalty.

34. Subsection (1)(4) amends the existing VAT Act legislation on assessments so that it applies to the new penalty.

35. Subsection (1)(5) provides for rights of appeal against any decision to impose the new penalty or to allocate a portion of penalty to an officer.

36. Subsection (1)(6) amends Schedule 24 of the Finance Act 2007 so that a person cannot be liable for a penalty under that section if they have already been assessed for a penalty under the new section 69C of the VAT Act.

37. Subsection (1)(7) details the effective date from which the new penalty can be applied to transactions.

Background note

38. The clause will introduce a new and more effective penalty against participation in VAT fraud. It will be applied to businesses and company officers when they knew or should have known that their transactions were connected with VAT fraud (also known as the 'knowledge principle').

39. The penalty will be issued at the same time as the tax decision. This should reduce the prospect of the tax decision and the penalty being litigated separately, which will prevent businesses, HMRC and the tribunal service incurring additional related costs. It also supports the government's objective of bearing down on fraud and evasion.

40. The new penalty will:

    - Be a fixed rate of 30% for participants in VAT fraud
    - Apply to businesses but can also be applied to company officers
    - Give HMRC the option to name those that participate in the fraud
    - Not include reductions for disclosure.

41. If you have any questions about this change, or comments on the legislation, please contact Kristian Jarvis on 03000 585747 (email: kristian.jarvis1@hmrc.gsi.gov.uk)

Clause 96: Customs enforcement: power to enter premises and inspect goods

Summary

1. This clause extends the scope of section 24 of the Finance Act 1994 ("section 24") to enable an officer of HMRC to inspect, examine and take account of goods held on a premises which that officer reasonably believes is used for the purpose of carrying on a trade or business in respect of goods which may be liable to customs duty; and to require specified individuals to provide the officer with reasonable assistance for that purpose.

Details of the clause

2. Subsection (1) introduces the amendments to section 24.

3. Subsections (2) and (3) make minor consequential amendments.

4. Subsection (4) inserts new subsections 24(2)-24(10). Subsections 24(2) and (10) are minor and consequential amendments. Subsections 24(3) and (6) give the new power for an officer to inspect, examine and take account of goods, and subsections 24(4) and (5) provide that an officer may require a relevant person to provide assistance for the purposes of exercising that power. Subsections 24(7) and (8) specify the circumstances in which HMRC is to bear costs incurred as a result of the exercise of the powers given by section 24, while subsection 24(9) defines terms used elsewhere in section 24.

Background note

5. The basic power for examining and taking account of goods is contained in section 159 of the Customs and Excise Management ("CEMA") 1979. However, this basic power is restricted to use at places appointed by the Commissioners for the purposes of doing so, such as ports, airports, approved warehouses etc.

6. Today officers often have to investigate sophisticated frauds involving customs goods, the majority of which are inland, at a trader's premises, as well undertaking routine compliance visits. The use of the basic power under CEMA is not permitted. The only power officers have is section 24 of the Finance Act 1994.

7. Section 24 gives a power for officers of HMRC to enter premises which are being used in connection with a trade or business which involves goods liable to customs duty and to inspect any goods found on those premises. As currently enacted the power given by section 24 does not include any power to require that goods or containers be moved or unpacked for the purpose of a closer examination.

8. These amendments give express powers for officers to require that goods and containers be moved, opened, and unpacked, power to search the contents of containers, a power to mark goods and containers for the purposes of taking an account, and a power to require certain specified individuals to provide reasonable assistance for the purposes of inspecting, examining and taking account of goods.

9. In addition, , these amendments provide that a person made subject to a requirement to provide assistance under section 24 will bear their own costs in relation to anything done pursuant to that section. Where an officer has done anything HMRC will bear the costs of the officer's time.

10. These amendments bring the scope of the power under section 24 into line with the power which HMRC has to inspect imported and warehoused goods, and goods loaded for export as stores given by section 159 of the Customs and Excise Management Act 1979.

11. If you have any questions about this change, or comments on the legislation, please contact Karen Rourke on 03000 593525 (email: karen.rourke@hmrc.gsi.gov.uk).

Clause 97: Power to search vehicles

Summary

1. This clause makes an amendment to section 163 of the Customs and Excise Management Act 1979 (“section 163”) to clarify the powers officers have to use reasonable force to gain entry to a vehicle.

Details of the clause

2. Section 1 amends section 163 CEMA ("Power to search vehicles or vessels") to insert a new subsection 1A specifying that an officer or other specified person may use reasonable force for the purposes of exercising the powers of search for which section 163 provides.

Background note

3. Many of the customs powers and requirements in CEMA were originally designed to deal with smuggling and routine compliance checks at approved places such as ports and airports. However, officers are now frequently dealing with sophisticated diversion frauds involving excise goods, the majority of which are at inland premises, post-clearance, and not within the confines of these places.

4. Today officers are increasingly finding abandoned vehicles, at places other than approved places, with excise goods visible inside. On these occasions it is crucial that officers are in no doubt as to the powers they have when forcing entry to the vehicle in order to secure the goods.

5. Section 163 allows an officer, constable, or member of Her Majesty's armed forces or coast guard to stop and search a vessel or vehicle which they suspect is carrying goods which are chargeable with duty which has not been paid, being unlawfully removed, or otherwise liable to forfeiture under the customs and excise Acts.

6. This clause amends section 163 to clarify the circumstances in which officers are empowered to use force in order to gain entry to a vehicle for the purposes of carrying out a search; and ensures that a search may still be carried out in cases where, for example, a vehicle has been locked or abandoned.

7. If you have any questions about this change, or comments on the legislation, please contact: Marilyn Seago on 03000 593391(email: marilyn.seago@hmrc.gsi.gov.uk).

Clause 98: Data-gathering from money service businesses

Summary

1. This clause extends Schedule 23 of Finance Act (FA) 2011 which covers HM Revenue & Customs' (HMRC) bulk data-gathering powers. The powers enable HMRC to collect data from certain third parties to assist with the efficient and effective discharge of HMRC's tax functions.

2. It does so by introducing Money Service Businesses as a new category of data-holder from whom HMRC may require bulk data. This change will allow HMRC to more effectively identify businesses and individuals who disguise income by exploiting services offered by MSBs, particularly through cash-based transactions. The clause does not impose any additional data or record keeping requirements on data holders.

Details of the clause

3. Subsection 1 amends Part 2 of Schedule 23 to FA2011 to insert a new paragraph 13D, which introduces Money Service Businesses as a category of relevant data-holder for the purposes of Schedule 23.

4. The new paragraph 13D(1) sets out, at sub-paragraphs (a) to (c), the conditions that bring a person within the new category of relevant data-holder. These are that the person: (a) does certain activities by way of business (those activities being defined in paragraph 13D(2)); (b) is a person to whom the Money Laundering Regulations 2007 apply; and (c) is not one of certain excluded credit institutions (defined in paragraph 13D(3)).

5. New Paragraph 13D(2) describes the activities, referred to in paragraph 13D(1)(a), that bring a person within the scope of this provision.

6. New Paragraph 13D(3) defines "excluded credit institutions", which will fall outside the scope of this measure by virtue of paragraph 13D(1)(c). In practice, banks and building societies operating in the UK and either regulated in the UK or regulated in another EEA country and with "passporting" rights in the UK will be excluded credit institutions.

7. New Paragraph 13D(5) explains the meaning of "credit institution" for the purpose of this clause.

8. Subsection 2 provides that data can be required which relates to periods before the law comes into effect. This approach follows that taken for Schedule 23 FA 2011 and is subject to the time limits in Schedule 23.

Background note

9. Greater use of digital record-keeping by businesses, and the use of electronic transaction methods, has meant the government has introduced a series of targeted extensions of HMRC's

bulk data-gathering powers to include new types of data-holders. The data may be used to assist with the efficient and effective discharge of HMRC’s tax functions, including for example for risk analysis, enabling HMRC to target its compliance work more accurately.

10. The hidden economy places an unfair burden on the vast majority of people and businesses who pay their fair share of tax. Hidden economic activity also disadvantages compliant businesses. Competition between businesses is distorted when a small minority seek to hide under the radar from their tax obligations. This change will allow HMRC to more effectively identify businesses and individuals who disguise income by exploiting services offered by MSBs, particularly through cash-based transactions. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power.

11. HMRC plans to employ the extended Schedule 23 powers to seek data that will help HMRC identify trends or areas where reporting of income is incomplete. Money Service Businesses are not explicitly specified as data-holders in Schedule 23 FA2011 as originally enacted and this clause extends the definition of data holder to these businesses.

12. HMRC's data-gathering powers were modernised in Schedule 23 FA 2011 following consultations, as part of the HMRC Review of Powers, Deterrents and Safeguards. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance.

13. Treasury regulations are needed to specify the relevant data that HMRC may require from Money Service Businesses. Draft regulations will be published on 5 December 2016 and the government intends to introduce them to Parliament by the end of the summer 2017.

14. If you have any questions about this change, or comments on the legislation, please contact John Tully on 03000 586687 (email: john.tully@hmrc.gsi.gov.uk).