HM Treasury

Finance (No. 2) Bill
Explanatory Notes

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1 December 2017

Introduction....3
Part 1: Direct taxes....4
Clause 1: Income tax charge for tax year 2018-19....5
Clause 2: Corporation tax charge for financial year 2019....6
Clause 3: Main rates of income tax for tax year 2018-19....7
Clause 4: Default and savings rates of income tax for tax year 2018-19....8
Clause 5: Starting rate limit for savings for tax year 2018-19....9
Clause 6: Transfer of tax allowance after death of spouse or civil partner....10
Clause 7: Deductions from seafarers' earnings....12
Clause 8: Exemption for armed forces' accommodation allowances....13
Clause 9: Benefits in kind: diesel cars....15
Clause 10: Termination payments: foreign service....17
Clause 11 and Schedule 1: Employment income provided through third parties....19
Clause 12 and Schedule 2: Trading income provided through third parties....24
Clause 13 and Schedule 3: Pension schemes....26
Clause 14: EIS, SEIS and VCT reliefs: risk to capital....29
Clause 15: EIS, SI and VCT reliefs: relevant investments....32
Clause 16 and Schedule 4: EIS and VCT reliefs: knowledge-intensive companies....34
Clause 17 and Schedule 5: VCTs: further amendments....38
Clause 18 and Schedule 6: Partnerships....42
Clause 19: Research and development expenditure credit....53
Clause 20: Intangible fixed assets: realisation involving non-monetary receipt....54
Clause 21: Intangible fixed assets: transactions between related parties....56
Clause 22: Oil activities: tariff receipts etc....58
Clause 23 and Schedule 7: Hybrid and other mismatches....60
Clause 24 and Schedule 8: Corporate interest restriction....65
Clause 25: Education Authority of Northern Ireland....68
Clause 26: Freezing of indexation allowance for gains chargeable to corporation tax....69
Clause 27: Assets transfer to non-resident company: reorganisations of share capital etc....71
Clause 28: Depreciatory transactions within a group of companies....72
Clause 29: First-year tax credits....74
Clause 30: Reduction of relief in cases where losses relieved sideways etc....76
Clause 31: Countering effect of avoidance arrangements....79
Clause 32: Double taxation arrangements specified by Order in Council....81

Clause 33 and Schedule 9: Bank levy ... 83
Clause 34: Debt traded on a multilateral trading facility ... 94
Clause 35 and Schedule 10: Settlements: anti-avoidance etc ... 95
Clause 36: Fixed rate deduction for expenditure on vehicles etc ... 105
Clause 37: Carried interest ... 107
Part 2: Indirect taxes ... 108
Clause 38: Online marketplaces ... 109
Clause 39: VAT refunds to public authorities ... 112
Clause 40 and Schedule 11: Higher rates for additional dwellings ... 113
Clause 41: Relief for first-time buyers ... 117
Clause 42 and Schedule 12: Landfill tax: disposals not made at landfill sites, etc ... 121
Clause 43: Air passenger duty: rates of duty from 1 April 2019 ... 125
Clause 44: VED: rates for light passenger vehicles, light goods vehicles, motorcycles etc ... 127
Clause 45: Tobacco products duty: rates ... 130
Part 3: Miscellaneous and final ... 132
Clause 46: Power to enter premises and inspect goods ... 133
Clause 47: Power to search vehicles or vessels ... 135
Clause 48: CO_2 emissions figures etc ... 136
Clause 49: Interpretation ... 138
Clause 50: Short title ... 139
Territorial extent and application in the United Kingdom ... 140

Explanatory notes

Introduction

1. These explanatory notes relate to the Finance (No. 2) Bill as introduced to Parliament on 28 November 2017 and published on 1 December 2017. They have been prepared jointly by HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Part 1: Direct taxes

Clause 1: Income tax charge for tax year 2018-19

Summary

1. This clause imposes a charge to income tax for the tax year 2018-19.

Details of the clause

2. Clause 1 imposes a charge to income tax for the tax year 2018-19.

Background note

3. Income Tax is an annual tax. It is for Parliament to impose income tax for a year. This clause imposes a charge to income tax for the tax year 2018-19.

Clause 2: Corporation tax charge for financial year 2019

Summary

1. This clause charges corporation tax (CT) for the financial year beginning 1 April 2019.

Details of the clause

2. Clause 2 charges CT for the financial year beginning 1 April 2019.

Background note

3. Parliament charges CT for each financial year. This clause charges CT for the financial year beginning 1 April 2019. The rate of CT for the financial year 2019 was set at 19% in section 7 of the Finance (No 2) Act 2015.

Clause 3: Main rates of income tax for tax year 2018-19

Summary

1. This clause sets the main rates of income tax for the tax year 2018-19.

Details of the clause

2. Clause 3 sets the basic, higher and additional rates of income tax for 2018-19.

3. This clause provides that the main rates of income tax for 2018-19 are: the 20% basic rate, the 40% higher rate and the 45% additional rate.

Background note

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

5. This clause sets the 'main rates', which will apply to 'non-savings, non-dividend' income of taxpayers in England, Wales and Northern Ireland. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 4: Default and savings rates of income tax for tax year 2018-19

Summary

1. This clause sets the default rates and savings rates of income tax for the tax year 2018-19.

Details of the clause

2. Subsection (1) provides the default rates of income tax for 2018-19: the 20% default basic rate, the 40% default higher rate and the 45% default additional rate.
3. Subsection (2) provides the savings rates of income tax for 2018-19: the 20% savings basic rate, the 40% savings higher rate and the 45% savings additional rate.

Background note

4. Income Tax is an annual tax. It is for Parliament to impose income tax for a year.
5. This clause will set the 'savings rates' which will apply to savings income of all UK taxpayers and the 'default rates' which will apply to the non-savings, non-dividend income of taxpayers who are not subject to either the UK main rates of income tax or the Scottish rates of income tax.
6. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 5: Starting rate limit for savings for tax year 2018-19

Summary

1. This clause sets the starting rate limit for savings for the tax year 2018-19.

Details of the clause

2. Clause 5 provides that for the tax year 2018-19 section 21 of the Income Tax Act 2007 (indexation) does not apply to the starting rate limit for savings set out in section 12(3) of the Income Tax Act 2007). The starting rate limit for savings for the tax year 2018-19 therefore remains at £5,000.

Background note

3. The starting rate for savings can apply to an individual's taxable savings income (such as interest on bank or building society deposits). The extent to which an individual's savings income is liable to tax at the starting rate for savings, rather than the basic rate of income tax, depends upon the total of their 'non-savings' income (including income from employment, profits from self-employment and pensions income). Should an individual's non-savings income in excess of that individual's personal allowance in a tax year exceed the starting rate limit for savings, the starting rate is not available. Where an individual's non-savings income in a tax year is less than the starting rate limit their savings income is taxable at the starting rate up to that limit.

4. Income tax is charged at the 0% starting rate for savings, rather than the basic rate of income tax, on that element of an individual's income up to the starting rate limit which is savings income.

5. This clause sets the starting rate limit for savings for 2018-19 at £5,000. This clause does not override Section 21 of the Income Tax Act 2007 in relation to the starting rate limit for savings in 2019-20 and subsequently.

6. The starting rate of income tax and the starting rate limit are not devolved matters.

Clause 6: Transfer of tax allowance after death of spouse or civil partner

Summary

1. Marriage Allowance allows individuals to transfer 10% of their personal allowance to their spouse or civil partner where the recipient is not a higher rate or additional rate taxpayer. This clause enables Marriage Allowance claims to be made after one or both of the parties to a marriage or civil partnership has died, either by a surviving spouse/civil partner or by the personal representatives of a deceased party. In line with existing Marriage Allowance rules, backdating of these claims will be allowed by up to four years.

2. This clause came into force on 29 November 2017.

Details of the clause

3. Subsection (1) provides for amendments to Chapter 3A of Part 3 of the Income Tax Act 2007 (ITA) (Transferable tax allowance for married couples and civil partners) (Marriage Allowance).
4. Subsection (2) provides for amendments to section 55B (tax reduction: entitlement) in accordance with subsections (3) to (5).

5. Subsection (3) amends section 55B(2) which contains conditions for an individual's entitlement to Marriage Allowance as a result of the creation of two new defined terms in section 55B(5A) and 55C(1).

6. Subsection (4) inserts new section 55B(5A). It creates a new defined term to describe an individual who makes an election under section 55C or whose personal representatives make this after their death ('the relinquishing spouse or civil partner'). 'Personal representatives' is defined in section 989 ITA.

7. Subsection (5) consequentially amends section 55B(6) to provide that the tax reduction to which this section refers is one that is available by reference to an election under section 55C.

8. Subsection (6) provides for amendments to section 55C (elections to reduce personal allowance) in accordance with subsections (7) and (8).

9. Subsection (7) amends section 55C(1) which contains conditions for making an election. It amends paragraph (a)(i) to create a new defined term to describe the individual that an elector must be in a marriage or civil partnership with to make a valid election ('the gaining party'). It also amends paragraph (a)(ii) so that this condition is satisfied where an election is made after the death of one or both parties

to a marriage or civil partnership, provided that the marriage or civil partnership was continuing when the parties were last both living.

10. Subsection (8) inserts a new section 55C(5) to allow personal representatives to make an election on behalf of a deceased party to a marriage or civil partnership in relation to the tax year in which that party died or for an earlier tax year.

11. Subsection (9) provides for amendments to section 55D (procedure for elections under section 55C) in accordance with subsections (10) and (11).

12. Subsection (10) sets out that where an election is made after the death of a spouse or civil partner, it has effect only for the tax year to which it relates and does not continue for subsequent tax years.

13. Subsection (11) provides that an election made by personal representatives may not be withdrawn.

14. Subsection (12) provides for the commencement of this clause on 29 November 2017 and for the amendments to have effect for elections made on or after this date. Paragraph (c) clarifies that elections can be made in reliance on the amendments in this clause even where a relevant death occurred on or before 29 November 2017.

Background note

15. The government introduced Marriage Allowance in 2015, which allows individuals to transfer 10% of their personal allowance to their spouse or civil partner where the recipient is not a higher rate or additional rate taxpayer

16. To make Marriage Allowance more widely available and to support bereaved spouses and civil partners, the government announced at Autumn Budget 2017 that it would allow claims for Marriage Allowance after the death of one or both parties to a marriage or civil partnership, provided they were married or in a civil partnership when the parties were last both living. Claims can be backdated by up to four years.

Clause 7: Deductions from seafarers' earnings

Summary

1. This clause extends the existing deduction from seafarers' earnings to employees of the Royal Fleet Auxiliary. Crown employees are unable to claim the deduction and employment in the Royal Fleet Auxiliary is Crown employment. This clause excludes employees of the Royal Fleet Auxiliary from the meaning of Crown employment for the purposes of the seafarer's earnings deduction (SED), which therefore entitles Royal Fleet Auxiliary employees to claim it. The clause takes effect on or after Royal Assent to Finance (No. 2) Bill.

Details of the clause

2. Subsection (1) amends section 384 in Chapter 6, Part 5 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 (meaning of employment by a seafarer), by inserting paragraph (aa) after paragraph (a) of subsection (2).
3. New paragraph (aa) excludes employment in the Royal Fleet Auxiliary from the definition of Crown employment. For the purposes of SED, members of the Royal Fleet Auxiliary are not to be treated as Crown employees, allowing them to claim the deduction.

Background note

4. The Royal Fleet Auxiliary is a civilian manned fleet owned by the Ministry of Defence that provides logistical support to the Royal Navy.
5. Employees of the Royal Fleet Auxiliary have been claiming a deduction under SED on a concessionary basis.
6. The government has decided to legislate this concession, and this clause provides certainty to employees of the Royal Fleet Auxiliary that this treatment can continue.

Clause 8: Exemption for armed forces' accommodation allowances

Summary

1. This clause introduces a new income tax exemption for allowances paid to or in respect of members of the armed forces for or towards the cost of accommodation. The exemption will have effect in relation to payments of allowances made on or after a date to be specified by the Treasury, once regulations have been made to set out the types of allowance that will qualify for the exemption in more detail.

Details of the clause

2. Subsection (1) introduces a new section 297D in Chapter 8 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

3. Subsection (2) provides for the new income tax exemption to have effect in relation to payments made on or after a date specified in regulations made by the Treasury.

New Section 297D

4. New section 297D provides an income tax exemption for accommodation allowances paid to or in respect of members of the armed forces.

5. New subsection (2) sets out the meaning of the "accommodation allowance", as an allowance payable out of the public revenue for or towards the cost of accommodation. It also allows the Treasury to prescribe additional conditions on this definition in regulations.

6. New subsection (3) allows regulations made under subsection (2)(c) that prescribe additional conditions on the meaning of accommodation allowance to cross-reference 3rd party schemes or documents.

7. New subsection (4) allows regulations made under this section that prescribe additional conditions for the definition of accommodation allowance to do so differently in relation to different cases and different areas.

8. New subsection (5) allows regulations made under this section that do not increase an individual's liability to income tax to have effect retrospectively.

Background note

9. Under their current accommodation model, the Ministry of Defence provides most members of the armed forces with accommodation. This accommodation is exempt from a benefit in kind tax charge by virtue of section 99 ITEPA.

10. The Ministry of Defence is intending to allow members of the armed forces to give up their entitlement to accommodation in exchange for an allowance to be used to rent or maintain accommodation in the private market.

11. This clause is intended to allow the Ministry of Defence to pay members of the armed forces the accommodation allowance tax-free, to continue the existing treatment of the current accommodation model.

Clause 9: Benefits in kind: diesel cars

Summary

1. This clause provides for a one percent increase in the diesel supplement for company car tax and the car fuel benefit charge. This increase will apply to all diesel cars first registered from 1 January 1998 to 31 August 2017. The increase will also apply for diesel cars first registered from 1 September 2017 that either do not meet or are not certified against new standards for nitrogen oxide (NOx) emissions under the "real driving emissions" (RDE2) regime (known as "Euro 6d"), or which do not have a certified NOx emissions figure under RDE2 standards. The diesel supplement will not apply to cars registered after 1 September 2017 if their certified NOx emissions meet the new standard.
2. These changes have effect for the tax year 2018-19 and subsequent tax years.

Details of the clause

3. Subsection (1) provides for amendments to section 141 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (Diesel cars: the appropriate percentage.)
4. Subsection (2) substitutes section 141(1) ITEPA and inserts new subsection (1A), as follows:
    - i) Paragraph (1) expands section 141(1) ITEPA and explains that diesel cars registered between 1 January 1998 and 31 August 2017 will always be subject to the diesel supplement. This allows employers to ignore these when considering whether or not diesel cars are NOx emissions compliant.
    - ii) Paragraph (1A) relates to cars registered after 1 September 2017.
        - a) (1A)(a) provides that the diesel supplement will apply to those cars registered on or after 1 September 2017 if the certified NOx emissions figure exceeds the RDE2 standard of 80 milligrams per kilometre driven.
        - b) (1A)(b) provides that the diesel supplement will also apply to cars that do not have a certified RDE2 NOx emissions figure.
5. Subsection (3) provides for an increase in the diesel supplement from 3 per cent to 4 per cent.
6. Subsection (4) inserts new subsections (2A) to (2C) which provide a number of

definitions. Subsection (2A) explains the meaning of a car with a certified RDE NOx emissions figure.

7. Subsection (5) provides for consequential amendments to be made to sections 139(7)(a) (car with a CO_2 emissions figure: the appropriate percentage) ITEPA and 140(5)(a) (car without a CO_2 emissions figure: the appropriate percentage) ITEPA.

8. Subsection (6) provides that these changes have effect for the tax year 2018-19 and any subsequent tax year.

Background note

9. The car benefit charge is normally calculated by taking the manufacturer's list price (plus the cost of any accessories) and multiplying it by an appropriate percentage, which reflects the level of Carbon Dioxide (CO_2) emissions produced. There is also an additional supplement for diesel cars on the basis that diesel engines produce harmful particulates and pollutants in addition to CO_2. The car fuel benefit charge is calculated similarly, however it uses a "multiplier" rather than the car's list price.

10. The government has made commitments to improve air quality standards especially in respect of NOx emissions which can be extremely harmful to health. This modest increase in the level of the diesel supplement is designed to encourage providers and users of company cars to turn to the least polluting models and supports the National Air Quality Plan.

11. It has been difficult in the past for employers and fleet managers to identify which diesel cars produce the lowest amounts of NOx. However, a new standard (RDE2) is being introduced which will allow NOx emissions to be quantified and recorded on the relevant certification. The appropriate certification for newly registered diesel cars will be produced by manufacturers.

12. The diesel supplement will apply, as now, to those cars propelled solely by diesel and registered between 1 January 1998 and 31 August 2017. It will also apply to models registered on or after 1 September 2017 which have a certified NOx emissions value exceeding the RDE2 standard of 80 milligrams per kilometre when driven, or for which no value is certified. Diesel cars registered on or after 1 September 2017 will be subject to the 3 per cent diesel supplement for the period 1 September 2017 to 5 April 2018 irrespective of their NOx emissions value.

Clause 10: Termination payments: foreign service

Summary

1. This clause removes foreign service relief on termination payments for UK residents. This will ensure that all employees who are UK resident in the tax year their employment is terminated will be liable to income tax on their termination payment in the same way regardless of whether they have worked abroad. Foreign service relief is retained for seafarers.

Details of the clause

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

13. Subsection (2) inserts a new subsection to section 413 of ITEPA (Exception in certain cases of foreign service) to set out that exceptions in the case of foreign service apply if the employee or former employee is non-UK resident in the tax year their employment is terminated. Exceptions in the case of foreign service continues to apply to payments and benefits in connection with a change in the duties of a person's employment or a change in the earnings from a person's employment where the employee is UK resident.

14. Subsection (3) inserts a subsection in section 414 of ITEPA (Reduction in other cases of foreign service) setting out that deductions in the case of foreign service relief apply if the employee or former employee is non-UK resident in the tax year their employment is terminated. Reductions in the case of foreign service continues to apply to payments and benefits in connection with a change in the duties of a person's employment or a change in the earnings from a person's employment where the employee is UK resident.

15. Subsection (4) inserts new section 414B ITEPA (Exception in certain cases of foreign service as seafarer) and new section 414C (Reduction in other cases of foreign service as seafarer.

New Section 414B ITEPA 2003

16. New subsection 414B(1) sets out new section 414B applies to payments or benefits arising upon the termination of employment where the employee or former employee is UK resident in the tax year in which the employment terminates.

17. New subsection 414B(2) sets out that the reduction for service relief will in future only apply to foreign seafaring service.

18. New subsections 414B(3) to (7) define foreign seafaring service, by applying the tax years in service as a seafarer.

19. New subsections 414B(8) cross refers to section 384 ITEPA, which defines the meaning of employment as a seafarer.

New Section 414C ITEPA 2003

20. New subsection 414C(1) sets out that new section 414C, reductions in cases of foreign service as a seafarer, applies to foreign service seafarers who are not excluded by section 414B.

21. New subsection 414C(2) sets out the conditions for when a reduction for foreign service for seafarers can be claimed.

22. New subsection 414C(3) sets out that the proportionate reduction will be calculated by reference to the length of the foreign seafaring service as a proportion of the length of service in the whole employment.

23. New subsection 414C(4) to (5) set out the limits of entitlement to foreign service, where a person is entitled to deduct, retain, satisfy income tax out of a payment which the person is liable to make or charge income tax against another person.

24. New subsection (6) provides that "foreign seafaring service" has the same meaning in Section 414C as in Section 414B(2).

25. Subsection (5) sets out that that these changes have effect from, on or after 6 April 2018 and, if the termination payment is received after 13 September 2017

Background note

26. The government believes income tax relief for foreign service has become outdated and unnecessary. In August 2016, HMRC published draft legislation for technical consultation on changes to the taxation of termination payments as a whole, including the removal of foreign service relief. The consultation highlighted territorial issues with the legislation relating to foreign service.

27. The government therefore announced at Budget 2017 that it would withdraw the original proposal in order to reconsider and bring forward new legislation ready for implementation from April 2018.

28. Those who have worked abroad but are resident in the UK in the year their employment is terminated will be taxed in the same way as others who have not worked abroad. They will continue to benefit from the existing £30,000 income tax exemption and an unlimited employee National Insurance contributions (NICs) exemption for payments associated with the termination of employment.

29. Reductions in the case of foreign service (sometimes referred to as 'foreign service exemption') is retained for seafarers.

Clause 11 and Schedule 1: Employment income provided through third parties

Summary

1. This clause introduces the next set of changes as part of the measure to tackle disguised remuneration tax avoidance schemes.
2. The clause introduces 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). These new sections introduce a new close companies' gateway and consequential double taxation relief provisions, and clarify when section 554A of Part 7A of ITEPA 2003 (Part 7A) applies.
3. The clause also introduces changes to the new charge on outstanding loans from disguised remuneration schemes (the loan charge), which was legislated in Finance (No. 2) Act 2017. These include the introduction of a requirement for employees in scope of the loan charge to provide additional information to HMRC about the loans they have received, and some further changes due to the introduction of the new close companies' gateway in Part 7A.
4. Finally, the clause introduces a new subsection to the PAYE: employee of non-UK employer rules in section 689 of ITEPA 2003.
5. The clause and Schedule has five Parts, as follows:
    - Part 1 details a change clarifying when section 554A of ITEPA 2003 applies;
    - Part 2 sets out the new close companies' gateway and the double taxation relief provisions;
    - Part 3 details some consequential amendments due to the introduction of the new gateway;
    - Part 4 sets out the new information requirement for the loan charge and the change to the PAYE obligations as applied to employees of non-UK employers; and
    - Part 5 sets out when all the changes and provisions will commence.

Details of the clause and Schedule

6. Clause 11 introduces Schedule 1.

Schedule 1: Part 1:

7. Paragraph 1 inserts new subsections (5A) to (5C) into section 554A of ITEPA 2003. This clarifies the application of Part 7A by putting beyond doubt that an income tax charge on a payment of earnings does not prevent a subsequent Part 7A charge arising as a result of a later relevant step.

Schedule 1: Part 2: Close companies

Application of Chapter 2 of Part 7A

8. Paragraph 2 inserts new sections 554AA to 554AF into Part 7A. These new sections 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, or the new close companies' gateway, are met a Part 7A charge can arise.

9. New section 554AA provides that a Part 7A charge will arise where all the conditions of subsection (1) are met. Broadly, this requires there to be an arrangement which has as one of its main purposes the avoidance of tax and which is intended to benefit an individual. The individual must have been employed, and had a material interest in their employer, in the three years preceding the relevant transaction. Under the arrangement the employer has to make a payment to a third party and a third party has to take a relevant step deriving from that payment.

10. New subsections (2) to (9) define some of the terms used in new subsection (1).

11. New section 554AB defines the payment made by the employer, the relevant transaction in new section 554AA, as, broadly, a payment within the meaning of the existing section 554C. The definition isn't replicated directly as they refer to different parties undertaking the transaction. The payment by the employer must meet the conditions of new section 554AB for the close companies' gateway to apply.

12. New section 554AC excludes 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.

13. New section 554AD defines "director" to include a shadow director for the purposes of new section 554AA.

14. New section 554AE defines "material interest" for the purposes of new section 554AA.

15. New section 554AF adds further supplementary rules for the application of the close companies' gateway at new section 554AA.

Double taxation

16. Paragraph 3 inserts new section 554Z2A into Part 7A, which sets out when the loans to participators rules in Chapter 3 of Corporation Tax Act 2010 (CTA 2010) have

priority over Part 7A charges. Broadly, where a section 455 CTA 2010 charge arises by virtue of section 459 CTA 2010 at the same time as the Part 7A charge by virtue of the close companies' gateway, the Part 7A charge will be relieved provided one of two conditions is met. Either the section 455 CTA 2010 charge is paid in full by the due date or the section 455 charge is returned to HM Revenue and Customs and an officer of HM Revenue and Customs consents to providing relief from Part 7A. The new section 554Z2A also relieves Part 7A charges arising at the same time as a charge under section 415 of ITTOIA 2005.

17. Paragraph 4 inserts new paragraph 36A into Schedule 11 to Finance (No.2) Act 2017. This follows the approach of new section 554Z2A and applies it to the loan charge.

Schedule 1: Part 3: Amendments consequential on Part 2

18. Part 3, including paragraphs 5 to 8, provides for consequential amendments to Income Tax (Trading and Other Income) Act 2005 and Corporation Tax Act 2009 to add the additional close companies' gateway to the definition of an employee benefit scheme. Part 2 also makes a consequential amendment to the loan charge in Schedule 11 to Finance (No.2) Act 2017.

Schedule 1: Part 4: Information requirement

19. Part 4, and paragraph 9, introduces the new information requirement for the loan charge, and a consequential change to Schedule 11 to Finance (No.2) Act 2017.

20. Paragraph 10 introduces new paragraphs 35A to 35K, which set out the information requirement.

21. New paragraph 35A sets out the conditions that must be met for someone to be required to provide this additional information. Broadly, the information must be provided if the loan charge arises on 5 April 2019, or the loan charge would have arisen on 16 March 2016 if that was the relevant date. The information will not need to be provided if a full settlement has been reached before the deadline to provide the additional information, and consequently no further tax is due. Provisions also make clear that the additional information is required where the loan charge date has been postponed following a successful application under Part 2, unless a full settlement has been reached before the deadline to provide the additional information.

22. New paragraph 35B provides that the third party who made the relevant loan must provide the person who is required to provide the additional information to HMRC such information as is necessary to enable that person to comply with the requirement.

23. New paragraphs 35B and 35C set out who must provide the information and by what date.

24. New paragraph 35D defines the information that must be provided for both loans and quasi-loans.

25. New paragraph 35E provides for the information that must be provided, as set out in

new paragraph 35D, to be capable of being amended by regulations.

26. New paragraph 35F sets out the penalties that can arise for failing to comply with this information requirement.

27. New paragraph 35G sets out the penalties that can arise where inaccurate information is provided.

28. New paragraph 35H defines a reasonable excuse, which will prevent a penalty arising under new paragraph 35F.

29. New paragraph 35I sets out how, and when, HMRC may assess an information requirement penalty.

30. New paragraph 35J sets out how, and when, an appeal against an information requirement penalty can be made.

31. New paragraph 35K sets out when an information requirement penalty must be paid and how it will be enforced.

32. Paragraph 11 makes consequential changes to the information obligation in paragraph 36 of Schedule 11 to Finance (No.2) Act 2017. This will ensure that the information provided to the employer is the same as the information provided to HMRC.

33. Paragraph 12 inserts new subsection (4A) in section 689 of ITEPA 2003, which provides that the section does not apply in relation to PAYE on employment income arising as a result of the loan charge.

Schedule 1: Part 5: Commencement

34. Part 5 sets out when the provisions in the other Parts of this Schedule commence. The provisions within paragraph 1 will take effect from 22 November. Commencement will be 6 April 2018 for all other paragraphs except paragraph 6 which relates to corporation tax and will apply from 1 April 2018.

Background note

35. 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. 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.

36. The future use of disguised remuneration avoidance schemes is being prevented by strengthening the current rules. This clause introduces the new close companies' gateway to the current rules. Other changes to the current rules were enacted in Finance Act 2016, Finance Act 2017 and Finance (No.2) Act 2017.

37. The existing use of disguised remuneration avoidance schemes will be tackled by the new charge on disguised remuneration loans that remain outstanding on 5 April 2019, which was legislated for in Finance (No.2) Act 2017. This clause makes further

provision in connection with that new charge.

38. The majority of these changes, including the close companies' gateway and the loan charge information, were subject to a consultation on draft legislation that ran from 13 September 2017 to 25 October 2017.

39. An information requirement for the self-employed has been introduced in Clause 12 Schedule 2.

40. A technical note providing details around changes made to this legislation since the technical consultation which closed on 25 October 2017, has been published and can be found on the gov.uk site.

Clause 12 and Schedule 2: Trading income provided through third parties

Summary

1. This clause and Schedule introduce a requirement for self-employed individuals in the scope of the loan charge to provide additional information to HMRC about the loans they have received.

Details of the clause and Schedule

2. Clause 12 introduces Schedule 2.

Schedule 2: Part 1: Trading income provided through third parties: loans etc. outstanding on 5 April 2019

3. Paragraph 1 introduces the new information requirement for the loan charge to Schedule 12 of Finance Act (No.2) 2017 and introduces new paragraphs 21 to 30 which set out the information requirement.

4. New paragraph 21 sets out the conditions that must be met for someone to be required to provide this additional information. Broadly, the information must be provided if the loan charge arises on 5 April 2019, or if the loan charge arises at the repayment date of an approved fixed term loan The information will not need to be provided if a full settlement has been reached before the deadline to provide the additional information, and consequently no further tax is due.

5. New paragraph 22 sets out who must provide the information and by what date.

6. New paragraph 23 defines the information that must be provided for both loans and quasi-loans. All of the information listed is required. The information will allow HMRC to conduct compliance checks on the loan charge.

7. New paragraph 24 provides that the list of information to be provided under new paragraph 23 may be amended by regulations.

8. New paragraph 25 sets out the penalties that can arise for failing to comply with this information requirement.

9. New paragraph 26 sets out the penalties that can arise where inaccurate information is provided. A penalty of up to £3000 may be payable for each inaccuracy. A penalty may be applied if a person knowingly provides inaccurate information or has not taken reasonable care to provide accurate information. If a person becomes aware of

an inaccuracy in previously provided information and does not take prompt action to inform HMRC a penalty may be due.

10. New paragraph 27 defines a reasonable excuse, which will prevent a penalty arising under new paragraph 25.

11. New paragraph 28 sets out how and when HMRC may assess an information requirement penalty.

12. New paragraph 29 sets out how and when an appeal against an information requirement penalty can be made. An appeal must be made in writing within 30 days of the penalty being issued. Either the issue of a penalty or the amount of a penalty may be appealed. The appeal must be sent to HMRC stating the reasons for the appeal.

13. New paragraph 30 sets out when an information requirement penalty must be paid and how it will be enforced.

Background note

14. This schedule is part of a package of measures announced at Budget 2016 to tackle existing and prevent future use of disguised remuneration avoidance schemes. This change will help us 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.

15. The existing use of disguised remuneration avoidance schemes will be tackled by the new charge on disguised remuneration loans that remain outstanding on 5 April 2019, which was legislated for in Finance (No.2) Act 2017. This clause makes further provision in connection with that new charge.

16. Schedule 12 of Finance (No.2) Act 2017 introduced the new charge on outstanding disguised remuneration loans for self-employed individuals and partners. This schedule requires information be provided specifically for the loan charge.

17. Schedule 1 makes further changes to tackle existing and future use of disguised remuneration avoidance schemes. This includes an information requirement for employees in the scope of the loan charge.

Clause 13 and Schedule 3: Pension schemes

Summary

1. This clause and Schedule amends the Finance Act 2004 (FA 2004), as it relates to the registration of pension schemes for UK tax reliefs.

Details of the clause and schedule

Clause 13

2. Clause 13 introduces Schedule 3 which makes amendments in respect of pension schemes.

Schedule 3: Pension Schemes

3. Paragraph 1 introduces amendments to Part 4 FA 2004.

4. Subparagraph 1(2) inserts new subsection (5A) into section 150 of FA 2004. Subsection (5A) provides a signpost to new section 274B of FA 2004 (see below).

5. Subparagraphs 1(3) and (4) insert new subparagraphs (h) and (i) into section 153(5) of FA 2004 and new subparagraphs (g) and (h) into section 158(1) of FA 2004 respectively. New sections 153(5)(h) and 158(1)(g) extend the circumstances in which H M Revenue & Customs (HMRC) can decide to refuse to register or de-register a pension scheme to those in which the sponsoring employer of an occupational pension scheme has been dormant for a continuous period of one month, within a year ending with the day on which the decision is made. New sections 153(5)(i) and 158(1)(h) allows HMRC to refuse to register, or to de-register a Master Trust scheme which is not authorised by the Pensions Regulator (an "unauthorised Master Trust").

6. Subparagraph 1(5) inserts new section 274B (National Employment Savings Trust and Master Trust schemes) into Chapter 8 of Part 4 of FA 2004. Section 274B(1) provides for pension schemes established under section 67 of the Pensions Act 2008, which are not occupational pension schemes to be treated as such for the purposes of Part 4 FA 2004. Section 274B(2) provides for Master Trust schemes, that are not occupational pension schemes to be treated as such for the purposes of Part 4 FA 2004.

7. Subparagraph 1(6) inserts new subsections (1B), (1C), (1D) and (1E) into section 279 of FA 2004. Subsection (1B)(a) and (b) define a Master Trust scheme. Subsection (1C) (a) and (b) provides for regulations (including any provision in force in Northern Ireland) made under section 40 of the Pension Schemes Act 2017 to be ignored in determining whether a scheme meets the definition of a Master Trust scheme at subsection (1B)(b).Subsection (1D) defines when a Master Trust scheme is

unauthorised for the purposes of Part 4 of FA2004. Subsection (1E) applies the Companies Act 2006 definition of dormant companies for the purposes of Part 4 of FA 2004.

8. Subparagraph 1(7) inserts references to those definitions into the general index of definitions contained in section 280(2) FA 2004.

9. Subparagraph 1(8) inserts new subparagraph (4A) into paragraph 1 of Schedule 36 to FA 2004. New subparagraph (4A) provides that pension schemes that became registered pension schemes as a result of paragraph 1 of Schedule 36 to FA 2004, but are not occupational pension schemes, or public service pension schemes, are to be treated as occupational pension schemes for the purposes of Part 4 of FA 2004.

10. Subparagraph 1(9) removes subsection (1) of section 30 of Finance (No.3) Act 2010 as this has been contained in section 280(2) FA 2004.

11. Paragraph 2 provides for commencement of provisions in paragraph 1.

12. Subparagraphs 2(1) and (2) provide for commencement. The effect of those provisions is that the amendments made in relation to dormant companies will come into force on 6 April 2018. The amendments made in relation to Master Trusts will come into force on the day on which section 3 of the Pension Schemes Act 2017 (prohibition on operating Master Trust Schemes unless authorised) comes into force, or if later, the day on which the Finance Bill receives Royal Assent.

13. Subparagraph 2(3) provides for those parts of paragraph 1 not already brought into force by subparagraphs (1) or (2), to come into force when this Act is passed, but subject to the provisions of subparagraph (4).

14. Subparagraph 2(4) provides for subparagraph (8) to be treated as always having had effect.

15. Subparagraph 2(5) applies the changes made by subparagraph 1(3) to any decision on an application to register a pension scheme under section 153(4) of FA 2004 regardless of when that application was made.

16. Subparagraph 3 provides for transitional provisions so that where a Master Trust scheme applies for registration before Section 3 of the Pension Schemes Act 2017 comes into force subsections (1B)(b) and (1C) do not apply for the purposes of defining a Master Trust scheme.

17. Subparagraph 4(1) provides for subparagraph (2) to apply to pension schemes that are Master Trust schemes but are not occupational pension schemes which have been registered under Chapter 2 of Part 4 of FA 2004 before the passing of this Act.

18. Subparagraph 4(2) provides for new section 274B(2) of FA 2004 to be treated as always having had effect in relation to the pension scheme.

19. Subparagraph 4(3) provides for “Master Trust scheme” and “occupational pension scheme” to have the same meaning in this paragraph as in Part 4 of FA2004.

Background note

20. The Pension Schemes Act 2017 introduced an obligation on the Pensions Regulator (tPR) to operate an authorisation and supervision regime for Master Trust schemes. This change to Finance Act 2004 will allow HMRC to align the pension scheme tax registration process with tPR's authorisation and supervision regime. Following this change, where a Master Trust scheme is not authorised by tPR, HMRC can refuse to register, or can de-register the pension scheme.

21. Similar changes to the tax registration process have been made to allow HMRC to refuse to register or to de-register a pension scheme where one of the sponsoring employers is a dormant company. This change follows the Pension scams consultation in which the Government committed to tightening HMRC rules to stop scammers opening fraudulent pension schemes.

22. This change supports the Government's objectives of fairness in the tax system by making changes to the tax registration for pension schemes to make it more effective at preventing fraud.

Clause 14: EIS, SEIS and VCT reliefs: risk to capital

Summary

1. This clause amends the requirements for investments to qualify for relief under the Enterprise Investment Scheme (EIS), the Seed Enterprise Investment Scheme (SEIS) or the Venture Capital Trusts (VCT) scheme. It introduces an overarching risk-to-capital condition to prevent investment in companies whose activities are mostly geared towards the preservation of the capital invested rather than the long-term growth and development of the company. The changes will take effect in accordance with regulations made by HM Treasury.

Details of the clause

2. The clause makes changes to Parts 5, 5A and 6 of the Income Tax Act (ITA) 2007. It introduces a new risk-to-capital condition into each of those Parts.
3. Subsection 1 amends Part 5 of ITA 2007 (enterprise investment scheme).
4. Subsection 1(a) inserts reference to new section 157A into section 157 (eligibility for EIS relief).
5. Subsection 1(b) introduces new section 157A into Part 5 of ITA 2007.
6. New section 157A sets out the risk-to-capital condition.
7. New subsection 157A(1) imposes two requirements for the condition to be satisfied. Taking into account all the circumstances existing at the time the shares are issued it must be reasonable to conclude both that:
    - The investee company has an objective to grow and develop its trade in the long-term, and
    - There is a significant risk that the investor could lose more of the capital invested than they get back by way of other returns from the investment.
8. New subsection 157A(2) defines the terms used in subsection 157A(1). For the purpose of subsection 157A(1):
    - The risk and the return is determined with reference to the investors in general.
    - Loss of capital is the loss of some or all of the amounts subscribed for the shares of the investee company.

- The return on the investment is the net investment return taking into account income from the investment, growth of capital, and the value of the EIS relief obtained in relation to the investment.

9. New subsection 157A(3) is a non-exhaustive and discretionary list of factors to which regard may be had when reaching a conclusion that the requirements of subsection 157A(1) have been met, or not met. Subsection 157A(3) is illustrative only and does not limit the application of the general principles set out in section 157A(1) to determine if the risk-to-capital condition is met.
10. New subsection 157A(4) sets out how section 157A applies in relation to a group of companies.
11. Subsection 2 amends Part 5A of ITA 2007 (seed enterprise investment scheme).
12. Subsection 2(a) inserts reference to new section 257AAA into section 257AA (eligibility for SEIS relief).
13. Subsection 2(b) introduces new section 257AAA into Part 5A of ITA 2007.
14. New subsection 257AAA(1) applies the same risk-to-capital condition as that in section 157A(1).
15. New subsection 257AAA(2) applies the same definitions as those in subsection 157A(2) except that the investment return takes into account the value of SEIS relief and not EIS relief.
16. New subsection 257AAA(3) applies in relation to subsection 257AAA(1) in the same manner that subsection 157A(3) does in relation to subsection 157A(1).
17. New subsection 257AAA(4) applies section 257AAA to a group of companies in the same way that section 157A is so applied.
18. Subsection 3 amends Part 6 of ITA2007 (venture capital trusts).
19. Subsection 3(a) inserts reference to new section 286ZA into section 286 (qualifying holdings).
20. Subsection 3(b) introduces new section 286ZA into Part 6 of ITA 2007.
21. New subsection 286ZA(1) applies the same risk-to-capital condition as that in section 157A(1), although for the purposes of Part 6 the investor is the investing company (the VCT).
22. New subsection 286ZA(2) applies the definitions as those in subsection 157A(2) but modified for the purposes of Part 6 and for the investor being the VCT. Loss of capital is defined by reference to the amount of consideration given for the relevant holding of shares and/or securities. The net investment return is to take into account any amounts payable to the VCT by way of income, fees and other charges or payments.
23. New subsection 286ZA(3) applies in relation to subsection 286ZA(1) in the same manner that subsection 157A(3) does in relation to subsection 157A(1).

24. New subsection 286ZA(4) applies section 286ZA to a group of companies in the same way that section 157A is applied

25. Subsections 4 and 5 are the commencement provisions. The amendments made by this section will take effect in accordance with regulations made by HM Treasury. The amendments made by this section may take effect on a day that is earlier than the day on which those regulations are made, but no earlier than the date of Royal Assent.

Background note

26. This measure was announced at Autumn Budget 2017.

27. The government published a consultation, 'Financing growth in innovative firms' on 1 August 2017 which asked for views on reducing lower risk capital preservation' investments in the venture capital schemes.

28. Evidence was provided in response to the consultation suggesting that a significant subset of EIS investment in 2016-17 was focused on capital preservation. The government's response document was published on 22 November 2017.

29. The government intends the venture capital schemes (the EIS, SEIS and VCTs) to be focused on support for companies with high growth potential. The risk to capital condition is a principled approach to reduce opportunities to use the schemes for tax motivated investment. It will enable the government to avoid excluding further specific types of activity, which would risk excluding genuine entrepreneurial businesses.

30. HM Revenue and Customs (HMRC) will publish draft guidance on the application of the new condition shortly after the publication of the Finance Bill.

Clause 15: EIS, SI and VCT reliefs: relevant investments

Summary

1. This clause prevents specified transitional provisions in the Finance Act (FA) 2007 and FA 2012 having the effect of excluding certain investments from constituting a relevant investment. This clause will ensure that all risk finance investments, whenever made, are relevant investments for the purposes of the Enterprise Investment Scheme, the Social Investment Tax Relief scheme and Venture Capital Trusts. The provisions take effect for new investments made on or after 1 December 2017.

Details of the clause

2. Subsection (1) prevents certain transitional provisions having the effect of excluding investments from constituting relevant investments for the purposes of the Enterprise Investment Scheme (EIS), the Social Investment Tax Relief (SITR) scheme and Venture Capital Trusts (VCTs). The change will apply for new investments made on or after 1 December 2017.

3. Subsection (2) specifies the transitional provisions that will no longer exclude investments from being taken into account in the definition of a relevant investment.

4. The definition of a relevant investment was introduced to the EIS and VCT rules by FA 2007 as part of the annual investment limit in section 173A and section 292A of the Income Tax Act (ITA) 2007. VCT investments made before 6 April 2007 and EIS investments made before 19 July 2007 were excluded from the definition of a relevant investment by paragraph 8 of Schedule 16 to FA 2007.

5. The definition of a relevant investment was amended by FA 2012, to include other risk finance investments, such as grants, that are State aids. The full definition of a relevant investment was also included in new section 280B of ITA 2007. Transitional provisions in Schedules 7 and 8 to FA 2012 excluded other risk finance investments made before 6 April 2012 from counting as relevant investments.

6. Subsection (3) defines a number of terms. The SITR scheme is included because section 257MNA in Part 5B of ITA 2007 (maximum amount where investment made in first 7 years) uses the definition of a relevant investment in section 173A ITA 2007.

Background note

7. A new 'lifetime' limit on the total amount of relevant investments a company may receive was introduced to the EIS and VCT rules in 2015. The limit is applied by provisions in sections 173A, 173AA, 173AB, 280B, 292A, 292AA and 292AB. The limit is £12 million for most companies and £20 million for knowledge-intensive companies.

8. This clause ensures that the lifetime limit rules work as intended by counting all relevant investments towards the limit, whenever they were received.

Clause 16 and Schedule 4: EIS and VCT reliefs: knowledge-intensive companies

Summary

1. This clause and Schedule increase certain investment limits under the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT) scheme in relation to knowledge-intensive companies (KICs). The Schedule introduces a revised definition of a KIC for this purpose. A different date from which the permitted maximum age limit for KICs is determined is also introduced. These changes will take effect in accordance with regulations made by HM Treasury.

Details of the clause and Schedule

2. Clause 16 introduces Schedule 4 which contains provision about EIS and VCT reliefs in relation to knowledge-intensive companies.

Details of the Schedule

3. Schedule 4 make amendments to Part 5 (enterprise investment scheme) and Part 6 (venture capital trusts) of the Income Tax Act (ITA) 2007.

4. Paragraph 1 amends section 158 ITA 2007. The maximum annual amount an individual can invest under the EIS is increased to £2 million if the amount over £1 million is invested in one or more KICs.

5. Subparagraphs (2) and (3) amend subsections (2)(a) and (2)(b) so that EIS relief is due on the lesser of the amount subscribed for EIS (qualifying shares) or 'the allowable amount'.

6. Subparagraph (4) introduces new subsections (2ZA) and (2ZB).

7. New subsection (2ZA) sets out limits to 'the allowable amount'. The maximum amount allowable is £2 million, but no more than £1 million can be subscribed for shares that are not KIC shares.

8. New subsection (2ZB) defines KIC shares for the purpose of subsection (2ZA).

9. Subparagraph (5) makes a consequential amendment to subsection (4).

10. Subparagraph (6) inserts new subsections (6) and (7).

11. New subsection (6) changes the effect of section 252A ITA 2007 (Meaning of "knowledge-intensive company") for the purposes of section 158. These changes apply where the company issues shares less than three years after it has commenced trading. In this circumstance the operating costs conditions in section 252A relate to

costs incurred in the three years after, rather than before, the date of the share issue.

12. New subsection (7) defines 'trade' for the purposes of new subsection (6).
13. Paragraphs 2 and 3 make amendments that increase the maximum amount of investments a KIC may receive in a year from £5 million to £10 million.
14. Paragraph 2 amends section 173A ITA 2007 (The maximum amount raised annually through risk finance investments requirement) for EIS relief.
15. Subparagraph (2) amends subsection (1) to provide for an annual investment limit of £10 million in relation to shares issued by a KIC. The limit of £5 million continues to apply for shares issued by any other company.
16. Subparagraph (3) inserts new subsection (5A).
17. New subsection (5A) changes the effect of section 252A ITA 2007 for the purposes of section 173A in the same way as new subsection (6) of section 158 ITA 2007.
18. Paragraph 3 amends section 292A ITA 2007 (The maximum amount raised annually through risk capital schemes requirement) for VCT relief.
19. Subparagraph (2) amends subsection (1) to provide for an annual investment limit of £10 million in relation to holdings issued by a KIC and £5 million for holdings issued by any other company.
20. Subparagraph (3) inserts new subsections (6A) and (7).
21. New subsection (6A) changes the effect of section 331A ITA 2007 (Meaning of "knowledge-intensive company") for the purposes of section 292A. These changes apply where the company issues shares or securities to a VCT less than three years after it has commenced trading. In this circumstance the operating costs conditions in section 331A relate to costs incurred in the three years after, rather than before, the date the shares or securities are issued.
22. New subsection (7) defines 'trade' for the purposes of new subsection (6A).
23. Paragraph 4 makes a consequential amendment to section 297B ITA 2007.
24. Paragraphs 5 to 9 make amendments that enable a KIC to substitute the date on which its annual turnover reaches £200,000 for the date of its first commercial sale when determining the maximum age limit of the company.
25. Paragraph 5 amends subsection (2)(a) to section 175A ITA 2007 (The permitted maximum age condition for EIS relief). It allows a company to elect for the 10 year period which marks the end of the initial investing period to commence on the date the company's annual turnover reaches £200, 000 rather than the date of its first commercial sale.
26. Paragraph 6 introduces new section 252B to ITA2007.
27. New section 252B sets out how the date on which the issuing company reaches an annual turnover of £200,000 is determined for the purposes of section 175(2)(a)(ii).
28. Subsections (2) to (4) specify the date on which a company reaches a turnover of

£200,000, depending on the company's accounting period.

29. Subsection (2) specifies that the company reaches the annual turnover of £200,000 where its annual turnover is £200,000 or more and the annual turnover for all earlier accounting periods is less than £200,000.

30. Subsection (3) specifies that the company's annual turnover is:

- For an accounting period of 12 months, the turnover of that accounting period, or
- For an accounting period that is not a 12 month accounting period, the turnover for the 12 months ending on the date of the end of the accounting period.

31. Subsection (4) specifies the date on which the company's annual turnover reaches £200,000, where the turnover of an accounting period reaches that amount (the 'specified date'):

- For companies with an accounting period of 12 months or less, the specified date is the last day of the accounting period
- For companies with an accounting period of more than 12 months, the specified date is the date 12 months after the start of the accounting period.

32. Subsections (5) and (6) includes the turnover of any company that is a subsidiary of the issuing company. The turnover is computed in the same way as for subsection (3). This is subject to any necessary apportionments under subsection (7) where a subsidiary company is acquired or disposed of part way through an accounting period of the parent company.

33. Subsection (7) provides for turnover to be apportioned by reference to time, where apportionment is necessary. For accounting periods of less than 12 months, (accounting period A), the turnover of the accounting period immediately preceding accounting period A should be apportioned as necessary and added to the turnover of accounting period A. For accounting periods of more than 12 months, the turnover of the whole accounting period should be apportioned to arrive at an annualised turnover.

34. Subsection (8) defines "turnover" by reference to the Companies Act 2006.

35. Paragraph 7 amends subsection (3)(a) to section 280C ITA 2007 (The permitted maximum age condition for VCT relief) in the same way that paragraph 5 amends section 175A(2)(a) as set out in paragraph 24.

36. Paragraph 8 amends subsection(2)(a) to section 294A ITA 2007 (The permitted company age requirement for VCT relief) in the same way that paragraph 5 amends section 175A(2)(a) as set out in paragraph 24.

37. Paragraph 9 introduces new section 331B to ITA 2007.

38. New section 331B sets out how the date on which the relevant company reaches an annual turnover of £200,000 is determined for the purposes of section 280C(3)(a) and section 294A(2)(a) in the same way as new section 252B.

Commencement

39. Paragraph 10 provides for the amendments made by this Schedule to come into force in accordance with regulations made by HM Treasury, from a date no earlier than 6 April 2018.

Background note

40. The EIS and VCT relief schemes are two of the tax-advantaged venture capital schemes. The schemes are intended to encourage individuals to invest in certain early stage trading companies with high potential for growth and development.

41. Both schemes have limits to the amount an individual can invest in any one year. They also limit the amount of tax-advantaged funding a company can receive annually and require these investments to be made within a certain number of years from when the company first commences trading ('the initial investment period').

42. Schedule 4 increases certain of these limits specifically for knowledge-intensive companies. This is to facilitate and encourage additional investment in innovative companies developing and exploiting new technologies.

43. The changes were announced at Autumn Budget 2017 as part of the government's response to the Patient Capital Review.

Clause 17 and Schedule 5: VCTs: further amendments

Summary

1. This clause and Schedule make a number of changes to the rules relating to investments made by Venture Capital Trusts (VCTs). The Schedule:

   - Restricts the application of an anti-abuse rule as it relates to mergers of VCTs with effect from 6 April 2014,
   - Increases the proportion of VCT funds that must be held in qualifying holdings to 80% ,
   - Requires a VCT to invest 30% of funds raised within 12 months following the end of the accounting period in which they are raised, and
   - Inserts a final date after which certain 'grandfathering' provisions will no longer apply.

Details of the clause and Schedule

2. Clause 17 introduces Schedule 5 which contains further amendments about venture capital trusts.

Details of the Schedule

3. This Schedule amends Part 6 of the Income Tax Act (ITA) 2007 and makes amendments elsewhere in the Finance Acts.
4. Paragraph 1 amends section 264A ITA2007. Section 264A is the provision that restricts the amount of relief investors can obtain when reinvesting proceeds from VCT share buy-backs. S264A applies where the share sale and subscription relate to VCTs that merge in the circumstances specified.
5. Subparagraph (2) adds a reference to new subsection (7A) to section 264A(5)(b). That section is to apply only when the conditions of new subsection (7A) are met.
6. Subparagraph (3) inserts new subsections (7A) and (7B) to section 264A.
7. New section 264A(7A) sets out requirements that must be met before section 264A can apply in relation to any VCT merger. Section 264A can only apply to a share subscription if either:

- It is to a VCT that has previously merged, or
- It is made less than two years before the VCT merges and where either the investor knows the merger is to take place, or the merger is an arrangement intended to confer a tax advantage to the VCT investors.

8. New section 264A(7B) sets out for the purposes of subsection (7A);
   - The date on which a merger is deemed to occur, and
   - A non-exhaustive list of factors that can be taken into account to determine whether or not a merger confers a 'tax advantage'.
9. Paragraphs 2 and 5 amend section 274 ITA2007. Section 274 lists the conditions a company must meet if it is to be an approved VCT.
10. Paragraph 2 amends the 'qualifying holdings condition' in section 274. The proportion of a VCT's investments that must be qualifying shares or securities is increased to being at least 80% by value.
11. Paragraph 3 amends other sections of Part 6 and Schedule 4 ITA 2007 in consequence of the change made by paragraph 2.
12. Paragraph 4 amends subsection (2)(a) of section 280A ITA 2007. For the purpose of the 'qualifying holdings condition' this subsection treats a VCT as continuing to hold any shares or securities it has disposed of for a period after the disposal. This period is increased to 12 months from 6 months.
13. Paragraph 5 inserts a 'minimum investment on further issue condition' to section 274. This condition is set out in new section 280BA ITA 2007.
14. Paragraph 6 introduces new section 280BA (The minimum investment on further issue condition) into ITA 2007.
15. New section 280BA applies to an approved VCT with issued share capital that subsequently issues more shares. The VCT is then required to invest at least 30% of the money raised in qualifying shares or securities within 12 months following the end of the accounting period in which that later share issue takes place.
16. Paragraphs 7 to 10 apply a final date after which certain grandfathering provisions relating to Part 6 ITA 2007 will no longer apply.
17. Paragraph 7 amends paragraphs within Schedule 2 to ITA 2007 such that money derived from old investments that is reinvested will no longer be subject to the specified exclusions from the requirements of section 274 ITA 2007.
18. Subparagraph (2) removes the exclusion in paragraph 69 from the 'no guaranteed loan requirement' for money derived from an issue of shares or securities prior to 2 July 1997.
19. Subparagraph (3) removes the exclusion in paragraph 70 from the 'proportion of

eligible shares requirement' for money derived from an issue of shares or securities prior to 2 July 1997.

20. Subparagraph (4) removes the exemption in paragraph 81 for investments in companies carrying on certain 'excluded activities' where that investment is made out of money derived from an issue of shares or securities prior to 17 March 1998.

21. Paragraph 8 removes the exemption in paragraph 3(6)(b) of Part 1 to Schedule 16 to Finance Act 2007 (Limit on number of employees of company in which investment is made) where that investment is made out of money derived from an issue of shares or securities prior to 6 April 2007.

22. Paragraph 9 removes the exemption in paragraph (12)(b) of Schedule 11 to Finance Act 2008 for investments in companies carrying on certain 'excluded activities' where that investment is made out of money derived from an issue of shares or securities prior to 6 April 2008.

23. Paragraph 10 removes the exemption in paragraph 6(2)(b) of Schedule 2 to Finance (No.3) Act 2010 from the '70% eligible shares condition' where that investment is made out of money derived from an issue of shares or securities prior to 6 April 2011.

24. Subparagraphs (2) and (3) disapply the 30% eligible shares condition from investments held before 6 April 2011.

25. Paragraphs 11 to 13 are the commencement provisions. The amendments made by paragraph 1 have effect for shares issued on or after 6 April 2014. The other amendments made by this Schedule will take effect in accordance with regulations made by HM Treasury. These other amendments may take effect on a day that is earlier than the day on which those regulations are made, but no earlier than the date of Royal Assent.

Background note

26. This Schedule contains a number of provisions relating to VCTs and their investments.

27. Paragraph 1 ensures that the anti-abuse rule in section 264A ITA 2007 works as intended. Its purpose is to deter "bed and breakfasting" by individuals claiming multiple amounts of income tax relief on what is essentially the same capital in the same company. Under the legislation as currently drafted, the tax relief claimed by an individual who had invested in one VCT would be reduced if they had sold shares back to a separate VCT within a six month period, if the two VCTs were to merge at some point. Paragraph 1 ensures that the reduction in income tax would apply only where, broadly, the individual would have been aware of the merger, and the potential reduction in income tax relief, before they subscribed for the shares.

28. The provisions in paragraphs 2 to 10 were announced at Autumn Budget 2017. The government published a consultation, 'Financing growth in innovative firms', on 1 August 2017 which asked for views on the value for money provided by the venture

capital schemes, including VCTs. The government's response document was published on 22 November 2017.

29. The government will bring forward amendments at Public Bill Committee to ensure that qualifying loans made by VCTs are unsecured and that returns on loan capital above 10% represent no more than a commercial return on the principal.

Clause 18 and Schedule 6: Partnerships

Summary

1. This clause and schedule introduce new provisions to provide clarity over aspects of the taxation of partnerships. This schedule specifies how the current rules and reporting requirements operate in particular circumstances where a partnership has partners who are bare trustees for another person or that are partnerships. It ensures that partnership returns contain sufficient information, makes clear that the allocation of partnership profits shown on the partnership return is the allocation that applies for tax purposes and provides a new structured mechanism for the resolution of disputes about the allocation of profits between partners. It also provides a relaxation in the information that is to be shown on the partnership return for investment partnerships that report under the International Tax Compliance Regulations 2015.

Details of the clause and Schedule

2. Clause 18 introduces the Schedule.

Schedule 4: Part 1: Bare trusts

3. This part introduces new provisions that have the effect of applying the partnership taxation rules in Part 9 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 05) and Part 17 of the Corporation Tax Act 2009 (CTA 09), and the tax framework rules in the Taxes Management Act 1970 (TMA 70), to beneficiaries of bare trusts where the trustee is a partner in a partnership and the beneficiary is chargeable to tax on the partnership's profits.

4. Paragraph (1) inserts new Section 848A into ITTOIA 05.

5. New Section 848A provides that where a partner in a firm is partner as a trustee for a beneficiary absolutely entitled to their share of the partnership profits, and the beneficiary is chargeable to tax on the share of partnership profits, the beneficiary of that trust is to be regarded as a partner of the firm for the purposes of Part 9 ITTOIA 05.

6. Paragraph (2) inserts new Section 1258A into CTA 09.

7. New Section 1258A provides that where a partner in a firm is partner as a trustee for a beneficiary absolutely entitled to their share of the partnership profits, and the beneficiary is chargeable to tax on the partnership profits, the beneficiary of that trust is to be regarded as a partner of the firm for the purposes of Part 17 CTA 2009.

8. Sub-paragraph (3)(1) amends TMA 70.

9. Sub-paragraph (3)(2) inserts new subsection (10B) into section 12AA TMA 70.

10. New subsection (10B) provides that where a partner in a firm is partner as a trustee for a beneficiary absolutely entitled to their share of the partnership profits, and the beneficiary is chargeable to tax on the partnership profits, the beneficiary of that trust is to be regarded as a partner of the firm for the purposes of TMA 1970.

11. Sub-paragraph (3)(3) inserts a reference to new subsection (10B) into section 118 TMA 70 (interpretation).

12. Sub-paragraph (4)(1) provides that new section 848A ITTOIA 05 applies for tax years from 2018-19 onwards.

13. Sub-paragraph (4)(2) provides that new section 1258A CTA 09 applies for accounting periods beginning on or after 1 April 2018.

14. Sub-paragraph (4)(3) provides that amendment of TMA 70 under paragraph (3) has effect for tax years from 2018-19 onwards.

Schedule 4: Part 2: Notional trade and business of indirect partner

15. This part introduces new provisions to provide that an indirect partner in a partnership is considered to carry on a notional trade or business in respect of their interest in that partnership for tax purposes and to clarify what the basis periods are for the notional trade or business.

16. Sub-paragraph 5(1) provides for the amendment of ITTOIA 05 as follows.

17. Sub-paragraph 5(2) inserts a definition of an 'indirect partner' in a partnership into section 847 ITTOIA 2005. An indirect partner in a partnership, for the purposes of Part 9 ITTOIA 2005, is a person who is a partner in a partnership which is itself a partner in the underlying partnership, either directly or indirectly via any number of intermediate partnerships.

18. Sub-paragraph 5(3) inserts new section 852A for notional trades of indirect partners.

19. New subsection 852A(1) provides that the section applies for the notional trade of a partner if the partnership they are a partner in is itself a direct or indirect partner of a trading partnership (the underlying partnership) from which the partnership (that they are directly a partner in) has trading profits or losses arising. The underlying partnership must not itself be a partner in another partnership.

20. New subsection 852A(2) provides substituted rules for sections 852(2) to (5) ITTOIA 05.

21. New subsection 852(2) as substituted by new section 852A(2) provides that the partner's notional trade commences on the later of their becoming an indirect partner in the underlying partnership, or that underlying partnership starting to carry on the

underlying trade.

22. New subsection 852(3) as substituted by new section 852A(2) provides that where the partner themselves actually carried on the trade prior to the underlying partnership carrying it on, the partner's notional trade commences when they themselves (the partner) began carrying it on.
23. New subsection 852(4) as substituted by new section 852A(2) provides that the partner's notional trade permanently ceases on the earlier of the partner ceasing to be an indirect partner in the underlying partnership or the underlying partnership permanently ceasing to carry on the underlying trade.
24. New subsection 852(5) as substituted by new section 852A(2) provides that if the partner actually carries on the trade after the underlying firm permanently ceases carrying it on, the partner's notional trade ceases when they themselves (the partner) cease carrying it on.
25. Sub-paragraph 5(4) inserts new section 855A for notional businesses of indirect partners.
26. New subsection 855A(1) provides that the section applies for the notional business of a partner in a firm if the partnership they are a partner in is itself a direct or indirect partner of an underlying trading partnership and the partnership they are directly a partner in has untaxed income or relievable losses that arise from the underlying partnership other than from carrying on a trade.
27. New subsections 855A(2) to (3) provide substituted rules for sections 854(2), 854(4), 855(2) and 855(3).
28. New subsection 854(2) as substituted by new subsection 855A(2)(a) provides that the partner's notional business commences on the later of their becoming an indirect partner in the underlying partnership, or that underlying partnership starting to carry on the underlying trade.
29. New subsection 854(4) as substituted by new subsection 855A(2)(b) provides that the partner's notional business permanently ceases on the earlier of the partner ceasing to be an indirect partner in the underlying partnership or the underlying partnership permanently ceasing to carry on the underlying trade.
30. New subsection 855(2) as substituted by new subsection 855A(3) provides that where the partner themselves actually carried on the trade prior to the firm, the partner's notional business commences when the firm begins carrying it on.
31. Subsection 855(3) as substituted by new subsection 855A(3) provides that if the partner actually carries on the trade after the firm permanently ceases carrying it on, the partner's notional business ceases when the firm ceases to carry on the trade.
32. Subsection 855A(4) provides that for the purposes of this section the meaning of 'untaxed income' has the same meaning as in section 854.
33. Sub-paragraph 5(5) provides for the amendments made by this section to have effect from the tax year 2018-19 onwards.

Schedule 4: Part 3: Returns: information to be included

34. This part introduces new provisions requiring additional information in a partnership return and statement where the reporting partnership is a partner in another partnership or where the reporting partnership includes a partner which is itself a partnership.

35. Sub-paragraphs 6(1) and (2) insert new subsections (1B) and (1C) into section 12AA TMA 70.

36. New subsection (1B) extends subsections (1) and (1A) so that an officer of the Board may act under subsections (2) and (3) for the purposes establishing the amounts in which indirect partners in a reporting partnership are chargeable to tax.

37. New subsection (1C) defines what is meant by an indirect partner in the reporting partnership for the purpose of this section, that being a person who is a partner in a partnership which is itself a partner in the reporting partnership, either directly or indirectly via any number of intermediate partnerships in between.

38. Sub-paragraph 6(3) inserts new subsections (1A), (1B), (1C) and (1D) into section 12AB TMA 70.

39. New subsection (1A) adds requirements for a reporting partnership which is a partner in another partnership to treat amounts of income and losses etc. from that other partnership separately from those amounts received from other sources in its partnership statement.

40. New subsection (1A)(a) requires for the purposes of subsection (1)(a)(i) that income or losses from that other partnership are treated as arising from a separate source to any other sources the reporting partnership has.

41. New subsection (1A)(b) requires for the purposes of subsection (1)(a)(ia) that disposal proceeds in respect of partnership property of the other partnership are treated as arising from a separate source to any other sources the reporting partnership has.

42. New subsection (1A)(c) requires for the purposes of subsection (1)(a)(ii) that where any income tax has been deducted, treated as deducted or paid on income of that other partnership, this tax is treated as having been deducted from income from a separate source to any other sources the reporting partnership has.

43. New subsection (1A)(d)(i) requires the reporting partnership to include on its partnership statement its share of all such amounts from any partnership statement made by the other partnership for all or any part of the reporting partnership's return period.

44. New subsection (1A)(d)(ii) requires the reporting partnership to state which of the assumptions made by the other partnership under new subsection (1B) were applied in arriving at the amounts included in the reporting partnership's partnership statement.

45. New subsection (1B) requires that where a reporting partnership has a partner which

is itself a partnership, the amounts shown in the reporting partnership's partnership statement as allocated to that other partnership must be calculated and shown on each of the following assumptions:

(a) That it is a UK resident individual;

(b) That it is a non-UK resident individual;

(c) That it is a UK resident company;

(d) That it is a non-UK resident company.

46. New subsection (1C) applies new subsection (1D) if the partnership statement shows the name of every person who is an indirect partner in the reporting partnership and information about the nature and residence status of each of those persons for the applicable tax year or accounting period.

47. New subsection (1D) allows any of the assumptions in new subsection (1B)(a) to (d) to be disregarded if the information provided satisfying new subsection (1C) makes it apparent that no direct or indirect partner in that partnership is a person of a type described by that assumption.

48. Sub-paragraph 6(4) inserts definitions of "indirect partner" and "reporting partnership" for the purpose of section 12AB TMA 70 into subsection 12AB(5).

49. "Indirect partner" takes the meaning as given in new Subsection 12AA(1C) TMA 70.

50. "Reporting partnership" means the partnership making the partnership statement in question under section 12AB(1).

51. Sub-paragraph 6(5) gives effect to the amendments made by this section for partnership returns for the 2018-19 tax year and onwards.

52. Sub-paragraph 7(1) provides for the amendment of Finance (No2) Act 2017 (F(No2)A 17).

53. Sub-paragraph 7(2) renumbers the existing paragraph 17 of Schedule A1 to TMA 70, inserted by section 60 F(No2)A 17, as sub-paragraph (1) and inserts new sub-paragraph (2) that provides that reference to a partner includes an indirect partner.

54. Sub-paragraph 7(3) inserts new paragraph 10A in Schedule 14 that amends section 12AB(1C) TMA 70 to insert 'section 12AA' before 'partnership return'. This provides that the provisions for information to be included on the partnership return apply only to s12AA TMA returns and not to Schedule A1 returns.

Schedule 4: Part 4: Returns: overseas partners in investment partnerships etc.

55. This part makes provisions to relax, in certain circumstances, some of the information requirements for a partnership return in respect of overseas partners in investment partnerships subject to International Tax Compliance Regulations 2015 requirements.

56. Sub-paragraph 8(1) explains that TMA 1970 is amended as follows.

57. Sub-paragraph 8(2) inserts a reference to new section 12ABZA in section 12AA(6) regarding the information about partners to be included with partnership returns.

58. Sub-paragraph 8(3) inserts new section 12ABZA.

59. New subsection 12ABZA(1) removes the requirement under section 12AA(6) to declare a person's tax reference in the partnership return for a period where that person and the partnership meet all of the conditions set out in new sections 12ABZA(1)(a) to (d).

60. New subsection 12ABZA(1)(a) is the condition that the person is not chargeable to income tax or corporation tax in the partnership return period,

61. New subsection 12ABZA(1)(b) is the condition that the partnership does not carry on a trade, profession or UK property business at any time during the return period,

62. New subsection 12ABZA(1)(c) is the condition that the partnership is required to make a relevant return or returns containing information about that person in respect of the whole of the return period, and

63. New subsection 12ABZA(1)(d) is the condition that the partnership return includes a statement confirming that the condition in new Subsection 12ABZA(1)(c) is met.

64. New subsection 12ABZA(2) defines a relevant return for the purpose of new section 12ABZA(1)(c).

65. New subsection 12ABZA(3) requires the nominated partner or their successor to give notice of the person's tax reference to an officer of HMRC where new section 12ABZA(1) would otherwise apply but the relevant return referred to in new section 12ABZA(1)(c) is not in fact made.

66. New subsection 12ABZA(4) requires the notice under new section 12ABZA(3) to be given within 12 months of the filing date for the partnership return.

67. New subsections 12ABZA(5) and (6) give the Commissioners for HMRC a power to make regulations to amend new subsection 12ABZA(2).

68. New subsection 12ABZA(7) defines "filing date" for the purpose of this section to have the meaning given in section 12ABA TMA 70.

69. Sub-paragraph 8(4) adds new section 12ABZA(3) to the table of special returns in section 98 TMA 70.

70. Sub-paragraph 8(5) gives effect to the provisions in this paragraph for returns made after the passing of the Act.

71. Paragraph 9 provides for the amendment of F(No2)A 17 by inserting new paragraph 10B into Schedule 14.

72. New paragraph 10B provides that 'section 12AA' is inserted before 'Partnership returns' in the heading of section 12ABZA and that 'section 12AA' is inserted before each occurrence of 'partnership return' in paragraphs (1), (3) and (4) of section 12ABZA. This provides that the relaxation to information requirements for overseas

partnerships only to s12AA TMA returns and not to Schedule A1 returns.

Schedule 4: Part 5: Returns conclusive as to shares of profits and losses

73. This part makes provisions to require that the amounts allocated to partners as profits and losses in a partnership return are considered final for tax purposes, subject to a new mechanism for disputes over the reported allocations of partnership income and losses to be referred to the Tribunal.

74. Sub-paragraphs 10(1) and 10(2) insert new section 12ABZB - Partnership return conclusive as to partnership shares – into TMA 70.

75. New subsection 12ABZB(1) provides for a partnership return to be conclusive as to whether a person receives a share in the profits or losses of a partnership and what that person's share is.

76. New subsection 12ABZB(2) provides that this applies even if the person would not otherwise be chargeable to tax on those profits.

77. New subsection 12ABZB(3) provides that any dispute between a person and one or more other partners over whether the partnership return correctly reports that person's share in the partnership's profit or loss may be referred to the Tribunal for determination.

78. New subsection 12ABZB(4) clarifies that where the issue in point is in substance the total amount of the partnership's profit or losses, this cannot be referred to the Tribunal as a dispute under this process.

79. New subsection 12ABZB(5) requires that notice of a dispute under new section 12ABZB(3) must be given before the end of the period of 12 months from the date the partnership return was delivered or an amendment of the return was made by the taxpayer if the dispute relates to matters in that amendment.

80. New subsection 12ABZB(6)(a) requires the dispute be notified to HMRC and the reporting partner by the person referring the dispute, at the same time it is notified to the Tribunal.

81. New subsection 12ABZB(6)(b) requires the reporting partner to notify the referral of the dispute to all partners in the partnership, but not including the person who referred the dispute.

82. New subsection 12ABZB(7) requires that where the Tribunal determines that the return was not correct regarding a person's share of the partnership profits or losses, that it is to determine what the return should have given, and HMRC is required to amend the return accordingly.

83. New subsection 12ABZB(8) requires that where a partnership return is amended following the outcome of a dispute, if that amendment requires amendment of other parties' or other partners' returns, HMRC must amend those returns by giving notice to those parties.

84. New subsection 12ABZB(9) allows the reporting partner to give notice to HMRC that

the dispute has been settled by agreement in writing of all partners in the partnership, and provides that HMRC must give effect to the agreed outcome as notified as if it had been determined by the Tribunal

85. New subsection 12ABZB(10) allows such an agreement to be disregarded if within 30 days a party to it gives notice to the other parties that they wish to repudiate it, or HMRC gives notice of its objection to the reporting partner.
86. New subsection 12ABZB(11) provides that a partnership return which has been subject to a dispute may not have another referred, unless the return has since been amended by the taxpayer and the dispute is in consequence of that amendment.
87. New subsection 12ABZB(12) defines "reporting partner" for the purpose of this section and clarifies that the section applies only to partners who were partners at any time during the period for which the return was made.
88. Sub-paragraph 10(3) amends section 12ABA(1) to allow for taxpayer amendment of anything that was included in the partnership return by an amendment by HMRC under new section 12ABZB(7)(b) to give effect to the outcome of a dispute regarding that partnership.
89. Sub-paragraph 10(4) amends section 12AC.
90. Sub-paragraph 10(4)(a) inserts new paragraph (d) in subsection (2) which extends the enquiry window for the partnership return to up to the next quarter date after the first anniversary of the notification of the referral of a dispute of the return to HMRC.
91. Sub-paragraph 10(4)(b) amends subsection (3) to allow a further enquiry to be made into a partnership return where that return has been amended as a consequence of a dispute made under new section 12ABZB(3).
92. Sub-paragraph 10(4)(c) amends subsection (4) to allow an enquiry to extend to anything included in a return as a result of an amendment made pursuant to new section 12ABZB(7)(b), subject to the limitations in subsection (5) and new subsection (5A).
93. Sub-paragraph 10(4)(d) inserts new subsection (5A) which limits the scope of an enquiry opened following the referral of a dispute to the matters within that dispute, if:
    - The time limit for opening an enquiry into the return would otherwise have passed but for the extended time limit provided by the notification of the referral, or
    - A final closure notice was previously issued in an enquiry, or
    - A partial closure notice relating to matters under the dispute was previously issued in an enquiry.
94. Sub-paragraph 10(5) amends section 12AD (amendment of partnership return by taxpayer during enquiry) to include disputes, such that a dispute of a return whilst an enquiry is in progress will not restrict the scope of that enquiry.
95. Sub-paragraph 10(6) amends section 28B(2)(b) to allow a closure notice following an

enquiry into the partnership to make amendments of anything that was included in the partnership return by an amendment by HMRC under new section 12ABZB(7)(b) to give effect to the outcome of a dispute regarding that partnership.

96. Sub-paragraph 10(7) amends section 30B(1) to allow an officer of the Board where they have discovered a loss of tax to make amendment to remedy that loss of anything that was included in the return by an amendment by HMRC under new section 12ABZB(7)(b) to give effect to the outcome of a dispute.

97. Sub-paragraph 10(8) amends section 55 TMA 1970.

98. Sub-paragraph 10(8)(a) makes a substitution in subsection (8B) to include new subsection (8E).

99. Sub-paragraph 10(8)(b) amends subsection 8C to provide that an amount of tax specified by an amendment of an Accelerated Payment Notice (APN) under new subsection 227(7A) is not an amount that can be postponed under this section.

100. Sub-paragraph 10(8)(c) inserts new subsection (8E).

101. New subsection (8E) provides that an amount of tax postponed under this section ceases to be postponed from the time the notice of the amendment of the APN is given and defines the due and payable dates for the tax due.

102. Sub-paragraph 10(9) amends section 59B(5)(b) to require payment of tax following receipt of a notice given under new section 12ABZB(8) in line with other amendments and corrections and returns under the provisions of Schedule 3ZA TMA 70.

103. Sub-paragraph 10(10) amends paragraph 7 of Schedule 3ZA TMA 70.

104. Sub-paragraph 10(10)(a) amends the heading.

105. Sub-paragraphs 10(10)(b) and 10(10)(c) amend sub-paragraphs 7(1) and 7(2) to add amendments of an individual's return under new section 12ABZB(8)(a) to the payment provisions of paragraph 7 which requires payment of the amount due from the amendment within a period of 30 days from the date of notice of the amendment being given.

106. Paragraph 11 amends section 850 ITTOIA 05 to refer to new section 12ABZB as a provision to which the firm's profit sharing arrangements are subject to.

107. Paragraph 12 amends section 1262 CTA 09 to refer to new section 12ABZB as a provision to which the firm's profit sharing arrangements are subject to.

108. Sub-paragraph 13(1) amends Finance Act 2014 (FA 14).

109. Sub-paragraph 13(2) amends sections 220 and 221 of FA 14 to allow an officer of HMRC to determine the amount to be paid under an APN without regard to any dispute referred to the Tribunal under new section 12ABZB(3).

110. Sub-paragraph 13(3) amends section 226 of FA 14 to ignore, for the purposes of APN penalties and other late payment penalties, any increase of the amount payable under the APN due to an amendment of that APN under new subsection 227(7A) consequential to a dispute regarding the partnership return to which the APN relates.

111. Sub-paragraph 13(4) amends section 227 of FA 14.

112. Sub-paragraph 13(4)(a) inserts new subsection (7A).

113. New subsection (7A) allows HMRC to make consequential amendments to an APN following an amendment of the partnership return to which it relates under new section 12ABZB(7)(b) by giving notice to the person to whom the APN was issued.

114. Sub-paragraph 13(4)(b) amends section 227(13) to include an amendment of the APN made under new subsection (7A), so that if such an amendment means the person subject to the notice has paid more than the amended amount, the excess must be repaid.

115. Sub-paragraph 13(4)(c) inserts new subsection (13A).

116. New subsection (13A) requires that if an amendment under new subsection (7A) means that an increased amount is payable to HMRC under section 223(2), the amount must be paid within 30 days of notice being given.

117. Sub-paragraph 13(5) amends Schedule 32 to FA 14 to allow an officer of HMRC to determine the amount to be paid under an APN without regard to any dispute referred to the Tribunal under new section 12ABZB(3).

118. Paragraph 14 provides for the amendments made under this paragraph to have effect for returns made for tax years from 2018-19 onwards.

119. Sub-paragraphs 15(1) to 15(4) make consequential amendments to provide that this part applies to s12AA partnership returns and not to Schedule A1 returns.

Background note

120. The rules governing the calculation of partnership profits and the return of those profits are clear in the majority of situations, but their application in certain modern commercial arrangements is not always without doubt. These changes and clarifications seek to address areas of uncertainty and complexity identified as problematic by stakeholders. The changes are in five parts.

121. Part 1 ensures consistent treatment where a beneficiary in a bare trust arrangement is entitled absolutely to any income of that bare trust but is not themselves a partner in the firm. This puts beyond doubt that they will be subject to the same rules for calculating profits etc. and reporting as actual partners.

122. Part 2 makes it clear that the basis period rules will apply consistently to persons allocated trade profits or losses by a partnership, irrespective of whether they are allocated directly or whether the profits or losses are allocated to other intermediate partnerships first.

123. Part 3 ensures that partnerships that are partners in other partnerships will always have access to the appropriate profit calculations and can complete their own partnership statement correctly. This will reduce the likelihood of errors or mistakes and ensure that the correct tax is calculated for partners in such structures.

124. Part 4 provides a reduction in the administrative burden for certain investment partnerships that report to HMRC under the Common Reporting Standard (CRS) or the Foreign Account Tax Compliance Act (FATCA), so that they are no longer obliged to provide tax references for all their partners.

125. Part 5 provides certainty over the amount of profit or loss that is allocated to a partner and reported to HMRC, and provides a defined process through which a partner can resolve a dispute over the amount they been allocated without reliance on existing compliance processes.

Clause 19: Research and development expenditure credit

Summary

1. This clause amends Part 6A of the Corporation Tax Act (CTA) 2009 to increase the rate of the Research and Development Expenditure Credit (RDEC) from 11 % to 12%.

Details of the clause

2. Subsection 1 amends section 104M CTA 2009 to increase the rate of the RDEC from 11% to 12%.

3. Subsection 2 provides that the amendments in this clause have effect in relation to expenditure incurred on or after 1 January 2018.

Background note

4. The RDEC was introduced for companies undertaking qualifying activity and incurring qualifying expenditure on 1 April 2013. It was introduced as a standalone credit to be brought into account as a receipt in calculating profits. The current general rate is set as 11% of qualifying R&D expenditure.

5. For profit making companies the credit discharges corporation tax liability that the company would have to pay. Companies with no corporation tax liability will benefit from the RDEC either through a cash payment or a reduction of tax or other duties due. The rate of the R&D expenditure credit is to be increased from 11% to 12% for expenditure incurred on or after 1 January 2018.

Clause 20: Intangible fixed assets: realisation involving non-monetary receipt

Summary

1. This clause amends the legislation that defines 'proceeds of realisation'. It applies when the consideration received on the disposal of an intangible fixed asset is something other than money. It puts beyond doubt that the amount to be recognised is the cash equivalent of the market value of the consideration. The amendment is effective from 22 November 2017. A related change is made by clause 21.

Details of the clause

2. Clause 20 amends section 739 of the Corporation Tax Act 2009 (CTA 2009).
3. Subsection (1) inserts new subsection (1A) into section 739 CTA 2009.
4. New subsection (1A) of section 739 specifies how non-cash consideration is to be valued and brought into account as the proceeds of realisation.
5. Subsection (2) sets out the commencement rule.
6. Subsection (3) defines when a contract is unconditional for the purposes of the commencement rule in subsection (2)

Background note

7. The law in relation to the taxation of intangible fixed assets held by companies is contained in Part 8 of CTA 2009. In general terms, Part 8 follows amounts recognised in a company's accounts to calculate the taxable profit or allowable loss.
8. When there is a disposal of an intangible fixed asset, the legislation requires that the profit or loss is calculated by reference to the proceeds of realisation that is recognised for accounting purposes. If, however, the proceeds of realisation are not wholly cash, for example the intangible fixed asset is exchanged for shares, the accounts may report the cost of the new asset at the net book value of the asset disposed of rather than at the market value of the asset that has been acquired.
9. This clause puts beyond doubt that where the consideration includes something other than cash, the amount recognised as the proceeds of realisation for the purposes of section 739 is the market value in cash of whatever is received as consideration. This ensures that disposals for non-cash consideration are taxed consistently with disposals where the payment is wholly in cash.
10. A complementary change is made by clause 21 to ensure that the market value rule

can apply to licences of intangible fixed assets between related parties as it applies to transfers of intangible fixed assets.

Clause 21: Intangible fixed assets: transactions between related parties

Summary

1. This clause introduces legislation to ensure licensing (or similar) transactions between related parties involving intangible fixed assets recognise the market value of the licence. It is effective from 22 November 2017. A related change is made by clause 20.

Details of the clause

2. Clause 21 amends Chapter 13 of Part 8 Corporation Tax Act 2009 (CTA 2009).
3. Subsection (1) makes a consequential amendment to the overview of Chapter 13 of Part 8 CTA 2009 in section 844 and inserts new subsection (2ZA).
4. Subsection (2) introduces new sections 849AB to 849AD into Chapter 13 of Part 8 CTA 2009.
5. New Section 849AB sets out the conditions in which a licence or other right in respect of an intangible asset is treated as being:
   - A grant at market value by the grantor, and
   - An acquisition at market value by the grantee.
6. Section 849AB(1) sets out the conditions when new section 849AB will apply to the grant of a licence or other right between related parties.
7. Section 849AB(2) and (3) provide when the market value should be recognised in relation to the grant of a licence or other right between related parties but only where either condition A or B in subsections (4) or (5) are met.
8. Section 849AB(4) and (5) define conditions A and B referred to in subsections (2) and (3).
9. Section 849AB(6) provides that new sections 849AC and 849AD will limit the circumstances when new section 849AB will apply.
10. Section 849AB(7) and (9) expand the definition of related party in section 835 CTA 2009 to include circumstances when the participation condition in Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) would be met.
11. Section 849AB(8) and (10) ensure new section 849AB applies for the purposes of section 1259 CTA 2009. Section 1259 of CTA 2009 determines how profits or losses of a partnership or an LLP are computed when the partnership or LLP contains at least one member that is a company.

12. Section 849AB(11) ensures that an intangible fixed asset held by a firm is treated as a chargeable intangible asset for the purposes of the section 1259 computation.
13. Section 849AB(12) defines 'market value' and 'the Taxes Acts' as used in this section.
14. New Section 849AC provides for the situation where an adjustment could be made under new section 849AB and under Part 4 of TIOPA 2010.
15. Section 849AC(1) sets out the conditions when new subsection 849AC will apply.
16. Section 849AC(2) and (3) provide that the adjustment to be made is the greater of the Part 4 of the TIOPA 2010 adjustment or the new section 849AB adjustment.
17. New Section 849AD restricts the circumstances when new section 849AB applies. It limits circumstances where the grant of a licence or other right, at overvalue or undervalue as the case may be, is adjusted to market value when calculating the profits or losses for other purposes of the Taxes Acts.
18. Section 849AD(1) – (3) set out the conditions when new section 849AD will apply to the grant of a licence or other right between related parties.
19. Section 849AD(4) provides that where the condition in subsection (1) of new section 849AD is met, subsections (2) and (3) of new section 849AB will not apply for the purposes of certain 'relevant provisions' in the Taxes Acts.
20. Section 849AD(5) defines the 'relevant provisions' to which the market value rule in new section 849AB are disapplied.
21. Subsection (3) sets out the commencement rule.
22. Subsection (4) defines when a contract is unconditional for the purposes of the commencement rule in subsection (2).

Background note

23. The law in relation to the taxation of intangible fixed assets held by companies is contained in Part 8 of CTA 2009. In general terms, Part 8 follows amount recognised in a company's accounts in relation to these assets to calculate the taxable profit or allowable loss. Amounts recognised for accounting purposes are however subject to adjustment under Part 8.
24. One requirement of Part 8 is that transfers of relevant intangible assets between related parties takes place at least at market value (if an adjustment under Part 4 of TIOPA for arm's length provision is not a greater value).
25. This clause applies a similar market value rule to grants of licences and other rights between related parties.
26. A related change is made by clause 20 that is designed to put beyond doubt that where the consideration for an intangible fixed asset includes something other than cash, the amount recognised as the proceeds of realisation for the purposes of section 739 is the market value in cash of whatever is received as consideration.

Clause 22: Oil activities: tariff receipts etc

Summary

1. This clause amends Chapter 4 of Part 8 of the Corporation Tax Act (CTA) 2010 to include a definition of tariff receipts for the purposes of Ring Fence Corporation Tax (RFCT) and Supplementary Charge (SC). This will have effect for accounting periods beginning on or after 1 January 2018.

Details of the clause

2. Subsection (1) provides that Chapter 4 of Part 8 of CTA 2010 (oil activities: calculation of profits) is amended as follows.

3. Subsection (2) amends section 291(9) of the Corporation Tax Act (CTA) 2010 to provide a definition of 'tariff receipt' in the new sections 291(9) and 291(10) of CTA 2010.

   - The new section 291(9) provides that the meaning of 'tariff receipt' for the purposes of RFCT and SC is given in new section 291A.
   - The new section 291(10) provides that 'tariff receipt' also includes, for the purposes of RFCT and SC, anything that is a tariff receipt or tax-exempt tariff receipt in the Oil Taxation Act 1983.

4. Subsection (3) inserts new Sections 291A and 291B into CTA 2010.

5. Subsection (4) makes consequential amendments to section 291 of CTA 2010.

6. Subsection (5) provides the commencement rule for subsections (1) – (4). This section has effect in relation to accounting periods beginning on or after 1 January 2018.

7. Subsection (6) makes consequential amendments to Regulation 3, SI 2017/292.

8. Subsection (7) provides the commencement rule for amendments made by subsection (6). This section has effect in relation to expenditure incurred on or after 1 January 2018.

9. Subsection (8) treats the amendments made by subsection (6) as if they were made by regulations made by the Treasury.

Section 291A

10. Section 291A provides the definition of tariff receipt for the purposes of RFCT and SC.
11. Subsection (1) defines tariff receipt as any consideration received or receivable, by a participator, for third party use of its ring fence asset.
12. Subsection (2) defines a ring fence asset as a "qualifying asset" (see subsection (3)) which is currently being used or has at one point been used for a ring fence trade.
13. Subsection (3) defines a "qualifying asset".
14. Subsection (4) provides for amounts that are not tariff receipts.
15. Subsection (5) provides for any amounts falling within subsection (4) to be apportioned in a just and reasonable way.
16. Subsection (6) describes the use of an asset for an oil purpose, as referenced in subsection (4)(c), following the original provision in section 6(4A) of the Oil Taxation Act 1983.

Section 291B

17. Subsections (1) and (2) provide that an "arrangement" (see subsection (4)) entered into where the main or one of the main purposes is to obtain a "tax advantage" (see subsection (4)) is to be counteracted.
18. Subsection (3) sets out how counteraction adjustments may be made.
19. Subsection (4) provides definitions for "arrangements" and "tax advantage".

Background note

20. This measure clarifies that activities by petroleum licence holders in the UK and on the UK Continental Shelf which give rise to tariff income, in relation to UK oil and gas assets, are oil extraction activities. This means profits from these activities are subject to Ring Fence Corporation Tax (RFCT) and Supplementary Charge (SC).
21. This clarification is provided by amending the definition of tariff receipt in legislation to make clear that there is no distinction for RFCT and SC purposes between the treatment of third party income arising from old (PRT) and new (non-PRT) oil fields. The original definition of tariff receipt was in section 6 of the Oil Taxation Act 1983, which has now been incorporated into the new definition in section 291(2).

Clause 23 and Schedule 7: Hybrid and other mismatches

Summary

1. This clause introduces Schedule 7, which introduces a number of amendments to the Hybrid and Other Mismatches legislation in Part 6A TIOPA 2010. These amendments clarify how the following matters are dealt with by the hybrids regime: withholding tax; taxes charged at a nil rate; taxes on capital; the quantification of certain mismatches; the scope of the rules in relation to multinational companies; the treatment of certain related party payments; the recognition of dual inclusion income; and the treatment of certain accounting adjustments.

Details of the clause and Schedule

2. Clause 23 introduces Schedule 7, which contains provisions amending Part 6A of TIOPA 2010 (Hybrid and other mismatches).

Schedule 7: Hybrid and other mismatches

3. All references to amendments and to Chapters relate to Part 6A TIOPA 2010, unless otherwise stated.

4. Paragraph 2, subparagraph (a) amends section 259B to make it clear that withholding taxes are ignored for the purposes of the hybrids regime.

5. Paragraph 2, subparagraph (b) amends section 259B so that, for the purposes of Chapters 8 and 11, residence in a territory is deemed to constitute tax residence where the relevant jurisdiction has no concept of tax residence.

6. Paragraphs 3 to 6 introduce amendments to Part 6A which relate to the treatment of amounts charged to tax at a 0% rate. These amendments ensure that the treatment of such amounts is consistent with the treatment of amounts on which no tax is charged.

7. Paragraph 3 amends the definition of ordinary income within section 259BC so as to exclude amounts of income or profits which are charged to tax at a 0% rate.

8. Paragraph 4 amends section 259FA so that income or profits charged at a 0% rate are disregarded when considering whether a mismatch arises under Chapter 6, which relates to transfers by permanent establishments.

9. Paragraph 5 amends section 259GB so that territories where tax is charged at a 0% rate are treated in the same way as territories where no tax is charged for the purposes of Chapter 7, which relates to the treatment of hybrid payees.

10. Paragraph 6 amends section 259KB so that the imported mismatch rules in Chapter

11 take the same approach in relation to permanent establishments and income or profits charged at a 0% rate as that set out by paragraph 4 in relation to Chapter 6.

11. Paragraphs 7 to 10 introduce amendments to Part 6A to ensure that amounts taxed as capital can be taken into account when determining whether a mismatch arises. These amendments relate to the treatment of CFCs (controlled foreign companies) within Chapter 2, the treatment of financial instruments in Chapter 3, and the treatment of the transfer of financial instruments in Chapter 4.

12. Paragraph 7 amends section 259BD so that any amounts charged, including those on capital amounts, can be taken into account when determining to what extent amounts of income or profits have been charged to tax under foreign CFC rules.

- New subsection 259BD(12A) enables "a qualifying CFC amount" to be treated as an amount of relevant income of the CFC.
- New subsection 259BD(12B) defines "a qualifying CFC amount".
- New subsection 259BD(12C) disregards any amounts which benefit from exemptions or exclusions, or which relate to CFC charges which are refunded.

13. Paragraph 8 amends section 259CC so that taxes paid on capital amounts can be taken into account when determining whether a mismatch arises under Chapter 3.

- New subsection 259CC(7) provides that a "qualifying capital amount" will be treated as ordinary income of a payee.
- New subsection 259CC(8) deals with cases where such amounts are under-taxed.
- New subsection 259CC(9) disregards any capital tax charged at a higher rate than tax on income.
- New subsection 259CC(10) defines a "qualifying capital amount"
- New subsection 259CC(11) disregards any capital taxes which benefit from exemptions or exclusions, or which are refunded.
- New subsection 259CC(12) defines a "qualifying capital tax".

14. Paragraphs 9 and 10 amend section 259DB and section 259DD so that taxes paid on capital amounts can be taken into account when determining whether a mismatch arises under Chapter 4.

15. Paragraph 9 amends section 259DB to enable any "qualifying capital tax" to be taken into account.

16. Paragraph 10 amends section 259DD to take qualifying capital amounts and qualifying capital taxes into account for Chapter 4 in the same way as set out by paragraph 8 in relation to Chapter 3.

17. Paragraph 11 amends section 259GB in Chapter 7 to provide that the "relevant amount" of a mismatch can be reduced where a payee is a partnership which is considered to be transparent by both a partner's territory of residence or

establishment, and in the territory where the partnership is established. In such circumstances, new subsection 259GB(4A) reduces the amount of ordinary income deemed to arise under section 259GB(4)(b), which in turn reduces the "relevant amount" of the excess for the purposes of section 259GB(3).

18. Paragraph 12 amends section 259HB to clarify the scope of Chapter 8 in relation to multinational companies. New subsection 259HB(2A) makes explicit the nature of the counterfactual to be applied in determining whether certain mismatches are within the scope of the chapter.

19. Paragraph 13 and 14 amend sections 259IC and section 259ID to enable certain related party income to be taken into account for the purposes of Chapter 9. These changes ensure that such income can be set against double deductions when quantifying the counteraction to be applied in Chapter 9.

20. Paragraph 13 amends section 259IC(4) to enable double deductions (amounts which are deductible for tax purposes in two territories) to be set against either dual inclusion income (amounts taxable in both territories), or amounts which fall within new section 259ID ("section 259ID income").

21. Paragraph 14 inserts new section 259ID, which defines "section 259ID income" by reference to conditions A to D.

    - Condition A requires an investor to make a payment to the hybrid entity, and that the payment does not give rise to a tax deduction for the investor.
    - Condition B is that the payment gives rise to (taxable) ordinary income for the hybrid entity.
    - Condition C is that the payment is a direct consequence of a payment to the investor from an unrelated third party.
    - Condition D is that the payment from that third party gives rise to (taxable) ordinary income for the investor.
    - The amount of section 259ID income is defined as the lesser of the payment made by the investor (condition A) and the payment received by the investor (condition C).

22. Paragraphs 15 to 17 amend Chapter 11 to ensure that dual inclusion income amounts can be taken into account when applying the imported mismatch rules in Part 6A.

23. Paragraph 15 inserts a reference to new section 259KD into section 259K.

24. Paragraph 16 amends s259KC to ensure that counteractions under Chapter 11 take any relevant dual inclusion income into account.

25. Paragraph 17 inserts new section 259KD which provides for dual inclusion income amounts to reduce the counteraction applied by the imported mismatch rules in Chapter 11.

26. New subsection 259KD(1) provides that any counteraction applied by Chapter 11

cannot exceed the "relevant net amount".

27. New subsection 259KD(2) defines the "relevant net amount" as either

- In relation to Chapters 5,7,8 or 9,the amount of the counteraction which would have applied had those chapters applied directly, rather than via the imported mismatch rules in Chapter 11, or
- In relation to dual territory double deduction imported mismatches and excessive PE deduction imported mismatches, the amount by which those double deduction amounts of a company exceed its dual inclusion income.

28. New subsection 259KD(3) provides a cross-reference to various carry forward provisions, which are disregarded for the purposes of calculating the relevant net amount under new subsection 259KD(2).

29. New subsections 259KD(4) and (5) define dual inclusion income and a permitted taxable period for the purposes of dual territory double deduction cases within Chapter 11.

30. New subsections 259KD(6) and (7) define dual inclusion income and a permitted taxable period for the purposes of excessive PE deduction cases within Chapter 11.

31. Paragraph 18 inserts new section 259LB into Chapter 12. This amendment enables adjustments to be made in circumstances where the accounting treatment in a later accounting period reduces or eliminates a mismatch which has already been counteracted by the hybrids regime.

32. New subsection 259LB(1) sets out the conditions which have to be met in order for an accounting credit recognised by a company to be offset against a Part 6A counteraction applied to the same company in an earlier accounting period, by means of a consequential adjustment.

33. New subsection 259LB(2) provides for adjustments to be made on a just and reasonable basis.

34. Paragraph 19 sets out the commencement provisions in relation to this schedule. Three changes – those which relate to deemed tax residence, taxes charged at a 0% rate, and the scope of the multinational company rules - have effect from 1 January 2018. Apportionment rules will apply for accounting or payment periods which straddle 1 January 2018. The remaining changes have effect from 1 January 2017 –the start date of the original legislation in Part 6A.

Background note

35. The hybrid and other mismatches regime is set out in Part 6A TIOPA 2010, and was introduced by Schedule 10 Finance Act 2016. The regime deals with mismatches involving entities, permanent establishments and financial instruments.

36. Hybrid mismatch arrangements can involve either double deductions for the same expense, or deductions for expense without any corresponding receipt being taxable.

37. The hybrid and other mismatches regime addresses arrangements that give rise to hybrid mismatch outcomes and generate a tax mismatch, and in doing so fully implements, and, as a matter of policy, in some areas goes further than, the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action 2 recommendations.

Clause 24 and Schedule 8: Corporate interest restriction

Summary

1. This clause and Schedule make certain technical amendments to the corporate interest restriction (CIR) rules in Part 10 and Schedule 7A of the Taxation (International and Other Provisions) Act 2010 (TIOPA) to ensure that the regime works as intended.

Details of the clause and Schedule

2. **Clause 24** introduces Schedule 8.

Schedule 8

3. **Part 1** makes amendments to the corporate interest restriction rules in Part 10 of TIOPA.

4. Paragraphs 2 to 5 make amendments to the rules about relevant derivative contract debits at sections 384 and 387 of TIOPA. This is to ensure that derivatives hedging a financial trade are not inappropriately excluded from the scope of the rules. In particular, this ensures that where a relevant derivative is hedging a risk that is reflected in tax-interest, the amounts arising on the derivative are similarly included in tax-interest. Amendments are also made to the definition of relevant income and expense amounts at sections 411 and 412 of TIOPA to ensure that the definitions of tax-interest and group-interest are aligned.

5. Paragraph 6 amends the calculation of group-EBITDA at section 416 of TIOPA, to exclude amounts which relate to research and development expenditure credits. This ensures that this 'above the line' item is treated consistently between the calculation of tax-EBITDA and group-EBITDA.

6. **Paragraphs 7 to 11** make amendments to the public infrastructure rules in Chapter 8 of Part 10 of TIOPA.

7. Paragraph 7 amends the requirements to be a qualifying infrastructure company (QIC) at section 433 of TIOPA. To be a QIC the company must be fully taxed in the UK for the accounting period in question. Paragraph 7 inserts new section 433(12) which allows a non-UK resident company to satisfy this condition where it has an insignificant amount of non-taxable income in the period.

8. Paragraph 8 amends the rules governing the making of a QIC election set out in section 434 of TIOPA.

9. Subparagraph 8(2) amends section 434(1)(a) so that the time limit for a QIC election is now the end of the accounting period in which the section 433 election first has effect.

10. Subparagraph 8(3) inserts new section 434(5)(ab) which limits the application of section 434(5) to cases where the business or part of the business is transferred between members of the same worldwide group. This allows a QIC to transfer the whole or part of its business to a third party without the purchaser being treated as making a QIC election.

11. Paragraph 9 amends section 436(10)(b) of TIOPA, in line with the changes made by paragraph 7 to section 433.

12. Paragraph 10 amends the rules which allow a group's interest capacity to be calculated under the de minimis provisions. This amendment ensures that the use of the de minimis provisions only applies where QICs in the group do not receive any significant tax-interest amounts from QICs outside of the group that are related parties.

13. Paragraph 11 amends section 444(1) of TIOPA, which sets out the conditions for the joint venture provisions to apply to a company. This amendment ensures that the joint venture company is the ultimate parent of a worldwide group at all times in the period. This prevents a joint venture company being part of the same group as one of the investors in the company.

14. **Paragraphs 12 and 13** make amendments to how members of a worldwide group are identified.

15. Paragraph 12 introduces new section 454A of TIOPA. This section deals with groups containing an entity providing asset management services. Where, as part of its asset management business, it holds an investment then the amendment ensures that such investments are not to be regarded as members of the same worldwide group as the asset manager. This section only applies where the management of the investment is not coordinated with the management of any other investment.

16. Paragraph 13 amends section 475 of TIOPA so that a subsidiary accounted for as a "held for sale" asset is treated as not being a non-consolidated subsidiary.

17. **Paragraphs 14 to 17** amend the administrative rules in Schedule 7A to TIOPA.

18. Paragraph 14 amends paragraph 9 in Schedule 7A to TIOPA which allows a group an extended time limit to file a revised interest restriction return where it has not suffered a restriction for a period. The amendment ensures that the extended deadline is available where the reporting company has filed a full interest restriction return in addition to where an abbreviated return has been filed.

19. Paragraphs 15 to 17 amend paragraphs 70 and 71 and insert new paragraph 70A in Schedule 7A of TIOPA. Previously, a company's own tax return was treated as being automatically amended as a result of the submission of an interest restriction return by a reporting company. Under the revised wording, the company is required to make the necessary amendments within three months or, if later, the normal time limit for amending the return, usually 24 months after the end of the accounting

period. The failure to amend the return within the time limit can lead to a penalty of £500 being levied on the company. Where a company fails to make the necessary amendment, HMRC may do so, subject to the possibility of correction by the company.

20. **Paragraphs 18 to 21** make minor amendments to the drafting of sections 378, 393, 411 and 412 of TIOPA.

21. **Paragraphs 22 to 26** set out the commencement provisions for these amendments.

22. **Part 2, which includes paragraphs 27 and 28,** makes consequential changes to the designated currency election provisions at section 9A of the Corporation Tax Act 2010.

Background note

23. The CIR rules restrict the ability of large businesses to reduce their taxable profits through excessive UK interest expense. They are part of the government's wider changes to encourage alignment of the location of taxable profits with the location of economic activity, and are consistent with the UK's more territorial approach to corporate taxation.

24. The OECD published recommendations on preventing base erosion through the use of interest expense in October 2015 under Action 4 of the Base Erosion and Profit Shifting (BEPS) Project. The government undertook an initial consultation on how the OECD recommendations could be implemented domestically from 22 October 2015 to 14 January 2016.

25. At Budget 2016 the government announced that it would introduce new rules to limit the tax deductibility of corporate interest expense consistent with the OECD recommendations, effective from 1 April 2017.

26. The CIR rules were enacted in Schedule 5 to the Finance (No.2) Act 2017.

27. As a result of further engagement with affected businesses, certain technical amendments to the legislation have been identified that are necessary for the regime to work as intended.

Clause 25: Education Authority of Northern Ireland

Summary

1. This clause introduces a new corporation tax (CT) exemption for the Education Authority of Northern Ireland.

Details of the clause

2. Subsection 1 inserts an exemption from CT for the Education Authority of Northern Ireland at section 987B Corporation Tax Act 2010 (CTA 2010).
3. Subsection 2 indicates that the exemption will take effect from 1 April 2015, the date on which the Education Authority was established as a body corporate.

Background note

4. Following the reform of local government, The Education Act (Northern Ireland) 2014 reorganized the bodies dealing with the provision of state education across Northern Ireland. The five Education and Library Boards were replaced by the Education Authority from 1 April 2015.
5. The Education and Library Boards were exempt from CT. Under pre-existing legislation the Education Authority would be liable to CT.
6. This measure introduces legislation to similarly exempt the Education Authority.

Clause 26: Freezing of indexation allowance for gains chargeable to corporation tax

Summary

1. This clause freezes the level of indexation allowance that is given in calculating a company's chargeable gains at the value that would apply to the disposal of an asset in December 2017 for assets acquired on or before 1 January 2018. Assets acquired from 1 January 2018 onwards will not attract any indexation allowance on disposal. The changes have effect for disposals of assets on or after 1 January 2018.

Details of the clause

2. Subsection (1) introduces the changes to the Taxation of Chargeable Gains Act 1992 (TCGA).
3. Subsections (2) inserts a new subsection (1B) in section 53 TCGA.
4. New subsection (1B) of section 53 TCGA prevents any allowance for changes in the retail prices index after December 2017.
5. Subsection (3)(a) makes consequential changes to the definition of "RD" in subsection (1) of section 54 TCGA so that calculations of indexation allowance are not affected by changes to the retail prices index after December 2017.
6. Subsection (3)(b) inserts new subsection (1B) into section 54 TCGA.
7. New subsection (1B) of section 54 TCGA prevents an indexation allowance arising on any relevant allowable expenditure on an asset that is incurred on or after 1 January 2018.
8. Subsection (4) amends section 110 TCGA which provides special rules for calculating indexation allowance on shares and securities where holdings are pooled for capital gains purposes. The indexed pool of expenditure on a shareholding is adjusted on each occasion that there is an operative event. An operative event is defined in subsection (7) of section 110.
9. The changes ensure that such adjustments are made by reference to the difference in the retail prices index for December 2017, rather than the month in which the disposal or other operative event occurs, and the date of the previous adjustment. No indexation adjustment is made to the pool of qualifying expenditure other than for the first operative event after 1 January 2018.
10. Subsection (5) amends section 114 TCGA, making equivalent changes to those for

shares and securities, described above, in the rules for calculating indexation allowance on the consideration given for options over shares and securities.

11. Subsections (6) and (7) provide the commencement rules. The changes generally apply to disposals of assets on or after 1 January 2018. However, there are other provisions in the Tax Acts which provide that a chargeable gain does not accrue at the time of the disposal of an asset, but is treated as accruing on a disposal at a later date. One common example is where a gain on the disposal of a qualifying business asset has been 'rolled over' against the acquisition of a replacement asset. Where the first disposal was before 1 January 2018, and the later date is after 1 January 2018, then subsection (7) ensures that the changes made by this measure do not affect the indexation allowance included in calculating the gain on disposal of the first asset.

Background note

12. This measure has been introduced to support the Government's aims of simplifying the tax system and providing equivalent treatment to profits of a company whether they are realized through trading transactions or on capital account.

13. Companies do not pay tax on the portion of their capital gains attributable to inflation. To achieve this, when calculating a gain on the disposal of an asset, companies apply an indexation factor to expenditure on the acquisition, enhancement or disposal of the asset that reflects movements in the retail prices index over the period since the expenditure was incurred.

14. Indexation allowance has been applied to the calculation of chargeable gains since April 1982. For individual taxpayers, the allowance was first frozen at March 1998 levels, then finally abolished in April 2008.

Clause 27: Assets transfer to non-resident company: reorganisations of share capital etc

Summary

1. This clause ensures that tax postponed under section 140 Taxation of Chargeable Gains Act 1992 (TCGA) does not become due on the occasion of a subsequent corporate restructuring involving the exchange of shares in an overseas transferee company where the substantial shareholdings exemption (SSE) applies to the share exchange. The changes have effect for disposals of shares and securities on or after 22 November 2017.

Details of the clause

2. Subsection 1 inserts new subsection (4B) to section 140 TCGA.

3. New subsection (4B) ensures that the rule in paragraph 4(3)(a) of Schedule 7AC to TCGA, which gives the SSE provisions priority over the general treatment of share for share exchanges in section 127 TCGA, is disregarded when considering whether a chargeable gain accrues under subsection (4) of section 140 TCGA.

4. Subsection (2) is the commencement rule. The changes apply to disposals of shares or securities on or after 22 November 2017.

Background note

5. This clause has been introduced to support the Government's intention to ensure that the tax system supports UK companies undertaking international business, and that the tax system does not present barriers to commercial transactions.

6. The SSE provisions treat any gain or loss on a disposal of shares as exempt from corporation tax on chargeable gains where the relevant conditions are fulfilled. Section 127 TCGA treats certain exchanges of shares or securities made as part of a corporate reconstruction as not amounting to a disposal and acquisition of separate assets, but instead deems the new shares or securities to be the same asset as the old shares or securities. The interaction of these provisions resulted in a postponed chargeable gain becoming chargeable on a further restructure of a UK Company's overseas business.

7. The change made by this clause means that a share for share exchange within section 127 TCGA will not amount to a disposal of the original shares received following a transfer of the trade and assets of a foreign branch of the company, irrespective of whether the SSE also applies to the same share exchange.

Clause 28: Depreciatory transactions within a group of companies

Summary

1. This clause extends the scope of section 176 Taxation of Chargeable Gains Act (TCGA) 1992. Section 176 limits the relief available to a company in respect of capital losses accruing on a disposal of shares by disallowing losses attributable to earlier 'depreciatory transactions' which materially reduced the value of the shares. The clause means that section 176 will apply where a depreciatory transaction has taken place at any time on or after 31 March 1982. This restores the time limit which applied to disposals made before 19 July 2011. The changes have effect for disposals on or after 22 November 2017, and also for some disposals treated as taking place before that date because a negligible value claim has been made.

Details of the clause

2. Subsection (1) amends subsection (1) of section 176 TCGA. It increases the period before a disposal within which a depreciatory transaction may occur with the result that the section may apply. The section will now apply where the value of the shares disposed of has been materially reduced by a depreciatory transaction effected at any time on or after 31 March 1982. The previous time limit of six years ending with the date of disposal ceases to apply.

3. Subsection (2) is the commencement rule.

4. Subsection 2(a) applies the change made by subsection (1) to disposals of shares on or after 22 November 2017.

5. Subsection 2(b) provides for the change also to apply to disposals treated as taking place before 22 November 2017 under the terms of a negligible value claim under S24 TCGA1992 made on or after 22 November 2017.

Background note

6. This clause seeks to ensure that the depreciatory transaction rules cannot be prevented from applying by simply holding on to a company from which value has been stripped for six years before claiming loss relief in excess of any genuine economic loss to the group.

7. A loss accruing on the disposal of shares by a company may be increased by a prior "depreciatory transaction" which takes value out of the shares. Examples of depreciatory transactions are the payment of a dividend, or the transfer of an asset for payment of less than market value, by the company whose shares are disposed of. To counteract this increase in the loss, the rules in sections 176 and 177 TCGA were introduced in 1968 and apply, for the purposes of corporation tax, to restrict the allowable loss by such an amount as is "just and reasonable" to counter the effect of the depreciatory transaction.

8. Finance Act 2011 introduced a limit to when this restriction is made. For disposals on or after 19 July 2011 an adjustment is only required in respect of depreciatory transactions occurring within the six years prior to the date of disposal. This clause removes the limit introduced in 2011.

9. Where shares become of negligible value a claim can be made under section 24 TCGA to treat the shares as disposed of and reacquired, giving rise to a capital loss. Such a claim can specify an earlier date when the shares were of negligible value for the loss to accrue. Without the extension of the commencement provision by sub-section (2)(b), losses arising from claims made after 22 November 2017 could continue to benefit from the restricted six-year limit on depreciatory transactions by specifying a date before 22 November for the claim to take effect.

Clause 29: First-year tax credits

Summary

1. This clause extends First Year Tax Credits until 31 March 2023 and reduces the rate of eligible claims to two-thirds of the corporation tax rate. The changes have effect on or after 1 April 2018.

Details of the clause

2. Subsection 1 introduces an amendment to Schedule A1 of Capital Allowances Act (CAA) 2001.
3. Subsection 2 makes various amendments to paragraph 2.
4. Subsection 2(a) amends sub-paragraph (1)(a) to change the amount of tax credit claimable from 19% to an applicable percentage.
5. Subsection 2(b) inserts sub-paragraph (1A) to set the applicable percentage as two-thirds of the rate of the corporation tax and to allow an average to be calculated where there is more than one rate in the same period.
6. Subsection 2(c) inserts sub-paragraphs (3A)-(3C) to set the applicable percentage for ring fence profits. It sets the meaning of ring fence profits and the small ring fence profits rate, and limits claims to 2 decimal places.
7. Subsection 3 amends paragraph 3(1)(b) to change the end date for the period in which expenditure can be incurred to 31 March 2023.
8. Subsection 4 amends paragraph 24(6) to refer to the applicable percentage which is the amount of tax credit claimable.
9. Subsection 6 provides that the changes have effect in relation to chargeable periods beginning on or after 1 April 2018.
10. Subsection 7 provides that the calculations in Subsection 8 apply where a company has a straddling period. This means a period which has two overlapping applicable percentages.
11. Subsection 8 clarifies how to calculate the apportionment between the straddling periods.

Background note

12. This relief has been amended to extend First Year Tax Credits until 31 March 2023 and reduce the rate of eligible claims to two-thirds of the corporation tax (CT) rate.
13. It applies to the products and technologies covered by the energy-saving (energy) and environmentally-beneficial (water) first year allowances schemes.
14. It supports the Government's policy to reduce the consumption of energy by business, by encouraging their investment in the most efficient plant and machinery.
15. HM Revenue & Customs (HMRC) will update the guidance after Royal Assent.

Clause 30: Reduction of relief in cases where losses relieved sideways etc

Summary

1. The clause limits the amount of double taxation relief (DTR) available to a company for foreign tax paid on income of a foreign permanent establishment (PE) of the company where losses of the PE have been relieved against income other than those of the PE in the foreign territory. The change applies from 22 November 2017.

Details of the clause

2. Subsections 1 and 2 insert new sections 71A and 71B into the double taxation relief (DTR) rules in Part 2 of TIOPA 2010.

3. New sections 71A(1)-(4) set out the circumstances in which the new section 71B applies to limit DTR. It applies for an accounting period where a company has a PE situated in a foreign territory and condition A or B is met in that period, or any earlier accounting period (which includes periods before the start date of the clause, subject to the limitation contained in subsection (7)).

4. Both conditions A and B are concerned with the treatment under the tax rules of the foreign territory of a loss or other amount attributable to the PE. They ask whether such an amount has been relieved against amounts other than of the PE or of the company, such as profits or other income arising in other entities. If losses or other amounts have been so relieved, resulting in a decrease in foreign tax chargeable for a foreign taxable period ending in the (UK) accounting period in question, then Condition A or B will be met for that accounting period.

   This might occur, for instance, where the results of the PE are consolidated for the purposes of the foreign tax rules with the results of other entities through a fiscal consolidation or similar arrangement, or if the foreign territory allows losses of the PE to be relieved against income of another group company.

5. New section 71B(1) modifies the calculation of credit relief for an accounting period in respect of foreign tax on a PE's qualifying income. In calculating the amount of relief allowable, the amount of foreign tax must instead be treated as reduced by the "relevant amount" (as defined in new s71A(3)) for that accounting period, but not so as to reduce the amount below nil.

6. New section 71B(2) provides for a similar modification of the calculation of any deduction for foreign tax from the company's income.

7. New sections 71B(3) and (4) describe how to arrive at the "relevant amount" for an accounting period. It comprises two elements:

- The first element is the amount of the decrease in foreign tax as a result of the loss or other amount attributable to the PE being relieved against other income in the foreign territory where condition A or B is met for the accounting period in question.
- The second element is the amount of any "excess" carried forward from the previous accounting period. It is arrived at through an iterative process whereby the "relevant amount" for each previous accounting period is reduced by the amount of foreign tax on the PE's qualifying income for that period and any excess is carried forward to the next accounting period. It reflects the extent to which losses (or other amounts) of the PE have been relieved against other income in the foreign territory where condition A or B is met in earlier accounting periods.

8. Illustrating this through a simple example, assuming a foreign tax rate of 35% and that the foreign taxable periods are the same as the accounting periods (APs):

- In AP1, the PE makes a loss of 1000 of which 800 is relieved against other income in the foreign territory and 200 is carried forward. The relevant amount is 280 (35% of 800) and an excess of 280 is carried forward to AP2.
- In AP2, the PE makes a further loss of 200. This loss, together with the loss carried forward of 200, (totalling 400) are relieved against other income in the foreign territory. The relevant amount is then 420 (280 +140) and an excess of 420 is carried forward to AP3.
- In AP3 the PE makes profit of 700 on which foreign tax of 245 is paid. The relevant amount is 420, so an excess of 175 is carried forward to AP4 and there is no credit relief allowable.
- In AP4, there is a PE profit of 600 on which foreign tax of 210 is paid. The relevant amount is 175 so for the purposes of allowing credit relief, foreign tax of 35 is treated as paid.

9. New section 71B(5) ensures that the new provisions do not apply where Part 6A TIOPA 2010 (Hybrid and other mismatches rules) applies a counteraction to a deduction or allowance which would otherwise be within the new DTR rules.

10. New section 71B(6) allows for appropriate adjustments to be made to the relevant amount if necessary, notwithstanding the normal time limits. This might be necessary, for instance, if the amount of loss of a PE that is allowed against other

income subsequently changes.

11. Subsection (3) provides that the existing definition of "overseas permanent establishment" in section 78 TIOPA applies for new sections 71A and 71B.
12. Subsection (4) ensures that where a deduction for an amount of foreign tax is treated as reduced by the relevant amount under new section 71B(2), this applies for the purpose of deductions for foreign tax from income under section 112 TIOPA.
13. Subsections (5) and (6) are the commencement provisions. The new rules apply from 22 November 2017 and subsection (6) sets out how they apply where the company's accounting period falls across that date.
14. Subsection (7) is a transitional provision that ensures that in applying the computational rules in new section 71B, earlier accounting periods beginning on or after 22 November 2011 must be considered as if section 71B applied for those periods.

Background note

15. The double taxation relief (DTR) rules in Part 2 TIOPA 2010 provide for credit relief for foreign tax paid on a company's qualifying income from a foreign permanent establishment (PE) against corporation tax on the income.
16. The changes made by this clause will amend the DTR rules where a foreign PE has made a loss that has been relieved for the purposes of the foreign tax rules against income other than of the PE in the foreign territory. It will restrict the amount of foreign tax that is treated as available for DTR for an accounting period to reflect the extent to which a loss of the PE has been relieved in this way in the period and earlier periods. This will ensure that DTR is confined to circumstances where income of a PE has effectively suffered double taxation.

Clause 31: Countering effect of avoidance arrangements

Summary

1. This clause introduces amendments to the double taxation relief targeted anti-avoidance rule (DTR TAAR) contained in Part 2 TIOPA 2010. The amendments make two changes to that legislation. The first change removes the requirement for HM Revenue and Customs to give a counteraction notice in order to apply the DTR TAAR and will have effect for returns with a filing date on or after 1 April 2018. The second change will extend the scope of one of the categories of prescribed schemes to which the TAAR applies to include tax payable by any connected persons. The second change will have effect for payments of foreign tax made on or after 22 November 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Part 2 TIOPA 2010. All references below are to Part 2 TIOPA 2010 unless otherwise stated.

3. Subsection 2 introduces the first amendment, which amends section 81 by removing the requirement for HM Revenue and Customs to give a counteraction notice. This subsection sets out how counteraction adjustments may be made instead.

4. Subsection 3 introduces the second amendment, which extends section 87 (which covers one of the categories of prescribed schemes) so that the amount of UK tax payable for the purposes of section 87 includes the amount of UK tax payable by a person and any person connected to that person.

5. Subsection 4 removes superfluous sections regarding counteraction notices.

6. Subsection 5 amends section 371SR in Part 9A TIOPA 2010 to remove references to counteraction notices for the amendment in subsection 2 above (counteraction adjustments).

7. Subsection 6 provides that the amendment in subsection 2 (counteraction adjustments) applies where the filing date for the relevant tax return is after 31 March 2018.

8. Subsection 7 provides that the amendment in subsection 3 (UK tax payable) applies where the foreign tax giving rise to credit relief is paid on or after 22 November 2017.

Background note

9. The DTR TAAR is a wide ranging anti-avoidance rule, which applies if there is a scheme or arrangement where the main purpose or one of the main purposes is to obtain allowance by way of credit for foreign tax and the scheme is a prescribed scheme. A prescribed scheme is one that meets one or more of the descriptions set out in sections 84 to 88 TIOPA 2010.
10. Where it applies, the existing legislation in section 81 and 90 TIOPA 2010 requires HMRC to issue a counteraction notice requiring the taxpayer to make such adjustments as are necessary to counteract the effect of the scheme or arrangement.
11. This clause will remove the requirement for HMRC to issue a counteraction notice and instead require the taxpayer to consider whether the DTR TAAR applies as part of the taxpayer's self-assessment. This aligns the DTR TAAR with more recent TAARs that do not include requirements for counteraction notices.
12. The existing legislation in section 87 TIOPA 2010 sets out one of the prescribed schemes to which the DTR TAAR can apply. It applies in situations where a scheme or arrangement has the effect of reducing the amount of UK tax payable by a person.
13. The clause slightly extends section 87 TIOPA 2010 to apply to situations where a scheme or arrangement has the effect of reducing the total amount of UK tax payable by a person and any person connected with that person.
14. This clause will modernise the DTR TAAR and will also promote fairness in the tax system by deterring taxpayers from entering into abusive DTR schemes or arrangements.

Clause 32: Double taxation arrangements specified by Order in Council

Summary

1. This clause amends the powers for giving effect in domestic law to international arrangements for the relief of double taxation. It confirms that arrangements modifying existing arrangements can be given effect, and that the provisions of arrangements given effect can delegate functions to public authorities. The provisions of the clause will be regarded as always having had effect. The clause has effect from Royal Assent of Finance (No. 2) Bill.

Details of the clause

2. Subsection (1) of the clause inserts a new subsection in section 2 of the Taxation (International and other Provisions) Act (TIOPA) 2010. New subsection 1A confirms that arrangements that can be given effect under the section include any arrangements modifying the effect of arrangements made with a view to affording relief from double taxation.

3. Subsection (2) of the clause inserts a new paragraph in subsection (2) of section 3 TIOPA. New paragraph (d) confirms that arrangements can be given effect under section 2 even if they contain provisions which confer functions on public authorities of the territories.

4. Subsection (3) of the clause inserts two new subsections in section 158 of the Inheritance Tax Act (IHTA) 1984.

5. New subsection (1ZA) of section 158 IHTA confirms that arrangements that can be given effect under the section include arrangements modifying the effect of arrangements made with a view to affording relief from double taxation.

6. New subsection (1ZB) of section 158 IHTA confirms that arrangements given effect under the section may include provisions which confer functions on public authorities of the territories.

7. Subsection (4) of the clause contains the commencement provisions.

8. Subsection (5) of the clause ensures that the provisions introduced by subsections (1) and (2) of the clause apply equally to arrangements given effect under provisions that have been replaced by section 2 TIOPA.

9. Subsection (6) of the clause ensures that the provisions introduced by subsection (3) of the clause apply equally to arrangements given effect under provisions that have been replaced by section 158 IHTA.

Background note

10. This clause ensures that the UK can give full effect to the provisions of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument or MLI) which it signed on 7 June 2017.

11. In the process of reviewing whether the existing power at section 2 TIOPA was sufficient to implement the MLI, doubts were raised in some quarters as to whether that section gave effect to arrangements, such as the MLI, which served mainly to restrict relief. Doubts were also expressed as to whether that section was clear enough that DTAs could include provisions delegating functions to public authorities (such as the function of determining residence for the purposes of the arrangements and the resolution of disputes that are a feature of provisions of the MLI).

12. The government believes that there are strong arguments that the existing power at section 2 TIOPA is sufficient to give effect to arrangements that serve mainly to restrict relief and to provisions that delegate functions to competent authorities. However, in order to put the matter beyond doubt and ensure that the important improvements to DTAs made by the MLI can quickly be brought into effect, it was thought prudent to amend the power.

13. Some existing arrangements already given effect under both section 2 TIOPA and section 158 IHTA have served mainly to restrict relief under existing arrangements. Also all arrangements given effect under those sections already include provisions conferring functions on the public authorities of the contracting jurisdictions. To put beyond doubt that these arrangements have always had full effect, the clause therefore extends to arrangements in respect of gift and death taxes and is regarded as always having applied (including to arrangements made under provisions succeeded by section 2 TIOPA and section 158 IHTA).

Clause 33 and Schedule 9: Bank levy

Summary

1. This clause and Schedule amend Schedule 19 to the Finance Act 2011 (FA 2011) to make changes to the bank levy. For periods of account ending on or after 1 January 2021, bank levy will be chargeable only on equity and liabilities recognised on the UK balance sheets of banks and building societies. Certain overseas entities within UK banking and building society groups will be excluded from the bank levy charge, and any overseas branches (foreign permanent establishments) of UK resident entities can also be disregarded. The Schedule also provides for the amount of UK equity and liabilities subject to the bank levy to be reduced where a UK bank holds certain types of loss absorbing investments in an overseas subsidiary. Various other changes and administrative updates to the bank levy will apply for periods of account ending on or after 1 January 2018, or from Royal Assent to the Finance Bill.

Details of the clause

2. Clause 33 introduces Schedule 9 which amends Schedule 19 to FA 2011 (Schedule 19), concerning the calculation and administration of the bank levy.

Details of the Schedule

Part 1: Chargeable equity and liabilities

3. Paragraph 2 replaces the current paragraphs 15 to 23 of Schedule 19, concerning the equity and liabilities on which the bank levy is chargeable (chargeable equity and liabilities), with new paragraphs 15 to 15Z5.

4. New paragraph 15 of Schedule 19 sets out how the amount of chargeable equity and liabilities of a bank levy paying group is to be determined for a chargeable period. It provides a single set of rules that will apply for UK banking or building society groups, overseas banking groups and other groups that include banking entities.

5. New paragraph 15(2)(a) concerns members of a group that are:

- 'UK sub-groups' (as defined at new paragraph 15B)
- 'chargeable UK resident entities' (as defined at new paragraph 15C).

6. A group's chargeable equity and liabilities for a period will include the 'UK-based equity and liabilities' of these UK sub-groups and entities at the end of that period, as determined in accordance with new paragraphs 15H to 15L.

7. New paragraph 15(2)(b) provides that a group's chargeable equity and liabilities will also include the 'UK allocated equity and liabilities' of any 'relevant foreign banks' (as defined at paragraph 78 of Schedule 19) within the group. The amount of a relevant foreign bank's UK allocated equity and liabilities is to be determined at the end of the chargeable period in accordance with paragraph 24 of Schedule 19.

8. New paragraph 15A sets out how the amount of chargeable equity and liabilities is to be determined for UK resident banks, building societies and relevant foreign banks, where the entity in question is not a member of a group (relevant entities).

9. New paragraph 15A(2)(a) concerns the chargeable equity and liabilities of relevant entities that are UK resident banks or building societies. This will be the amount of the entity's UK-based equity and liabilities at the end of the chargeable period, determined in accordance with new paragraphs 15H and 15I.

10. New paragraph 15A(2)(b) concerns the chargeable equity and liabilities of relevant foreign banks that are not members of a group. This will be the amount of the bank's UK allocated equity and liabilities at the end of the chargeable period, determined in accordance with paragraph 24 of Schedule 19.

11. New paragraphs 15D and 15E provide an election to disregard from the bank levy charge any 'non-UK allocated equity and liabilities' attributable to a 'foreign permanent establishment' of a UK resident entity. The amount of non-UK allocated equity and liabilities that can be disregarded is to be determined in accordance with new paragraph 15Z1. Paragraph 15D provides this election for bank levy paying groups, while new paragraph 15E concerns entities that are not members of a group.

12. New paragraph 15F sets out arrangements for the making or revocation of an election under new paragraph 15D or 15E. It also provides that a UK resident entity with a foreign permanent establishment in respect of which such an election has been made is a 'designated FPE entity'.

13. New paragraph 15G sets out how to determine the amount of the assets, equity and liabilities of:

    - chargeable UK resident entities, including designated FPE entities (as defined at paragraph 15F)
    - designated FPE entities which are members of UK sub-groups
    - UK resident members of a UK sub-group for which an 'entity-by-entity' election has been made under new paragraph 15L and
    - UK resident banks and building societies (including designated FPE entities) that are not members of a group

14. These amounts are used for the purposes of new paragraphs 15H, 15L and 15Z1 to calculate the UK-based equity and liabilities, or the ‘adjusted equity and liabilities’, of the entity.

15. New paragraph 15H sets out how the amount of UK-based equity and liabilities of:

    - a chargeable UK resident entity or
    - a UK resident bank or building society that is not a member of a group

    is to be determined for a chargeable period, where the entity in question is not a designated FPE entity. This is by applying the various adjustments set out in new paragraph 15N to the equity and liabilities of the entity in question at the end of the period.

16. New paragraph 15I sets out how the UK-based equity and liabilities of a designated FPE entity that is:

    - a chargeable UK resident entity or
    - not a member of a group

    is to be determined for a chargeable period, with reference to new paragraph 15Z1.

17. New paragraphs 15J to 15L set out how to determine the amount of UK-based equity and liabilities of a UK sub-group for a chargeable period, and provide different rules depending upon:

    - whether the UK sub-group has any non-UK resident members
    - whether any member of the UK sub-group is a designated FPE entity and
    - whether the group has made an entity-by-entity election in relation to the UK sub-group under new paragraph 15L.

18. New paragraph 15J concerns UK sub-groups:

    - that do not include any non-UK resident members or designated FPE entities and
    - in respect of which an entity-by-entity election under new paragraph 15L has not been made.

19. The amount of UK-based equity and liabilities of these UK sub-groups for a chargeable period is to be determined by adjusting the sub-group's equity and liabilities, as determined under sub-paragraph (2), in accordance with new paragraph 15N.

20. New paragraph 15K concerns UK sub-groups:

    - that include a non-UK resident member or designated FPE entity and
    - in respect of which an entity-by-entity election under new paragraph 15L has not been made.

21. The amount of UK-based equity and liabilities of these UK sub-groups for a chargeable period is to be determined by:

    - adjusting the equity and liabilities of the 'residual UK sub-group' (which excludes any designated FPE entities or non-UK resident members of the UK sub-group) in accordance with new paragraph 15N and
    - adding the 'adjusted equity and liabilities' of each designated FPE entity that is a member of the UK sub-group, as determined under new paragraph 15Z1.

22. New paragraph 15L provides that, subject to specified conditions, a group may elect to determine a UK sub-group's UK-based equity and liabilities on an entity-by-entity basis, and sets out arrangements for the making or revocation of such an election. Where such an election is made, the amount of UK-based equity and liabilities of the UK sub-group at the end of a chargeable period is to be established by:

    - determining the 'adjusted equity and liabilities' of each UK resident member of the UK sub-group that is not a designated FPE entity, by adjusting their equity and liabilities (as determined under new paragraph 15G(2)) in accordance with new paragraph 15N and
    - adding the adjusted equity and liabilities, as determined under new paragraph 15Z1, of each designated FPE entity that is a member of the UK sub-group.

23. New paragraph 15N(1) specifies steps to be taken to adjust the equity and liabilities of a UK sub-group or entity, in order to calculate its UK-based equity and liabilities (or, where appropriate, its adjusted equity and liabilities). Of these steps:

    1. Step 1 concerns an adjustment for 'excluded' equity and liabilities (as defined at paragraph 28 to 39 of Schedule 19).
    2. Step 2 relates to equity and liability adjustments within a group, and netting.
    3. Step 3 introduces a new reduction in the amount chargeable to bank levy for certain loss absorbing instruments that are issued by an overseas subsidiary and held within the relevant group by a UK sub-group or chargeable UK resident entity.
    4. Step 4 mainly reproduces existing provisions in Schedule 19 that allow a reduction in the amount chargeable to bank levy for certain 'high quality liquid assets' (defined in paragraph 70 of Schedule 19) held by a UK sub-group or entity.

    Further detail on these steps are set out at new paragraphs 15O to 15Z.

24. New paragraph 15N(2) concerns the amount of a reduction available under steps 3 and 4 of paragraph 15N(1). It provides that the reduction will always be equivalent to

the lower rate of bank levy, which is half of the rate chargeable on short term liabilities.

25. New paragraphs 15O to 15U concern step 2 of the adjustment referred to in paragraph 15N(1), and relate to equity and liability adjustments within groups, and netting.

26. New paragraphs 15O and 15P apply to entities that are members of a group that does not prepare consolidated accounts (an 'unconsolidated sub-group', as defined at paragraph 15O(2)). They provide that equity which would have been eliminated had consolidated accounts been prepared for the unconsolidated sub-group should be left out of the computation of the group's chargeable equity and liabilities. These paragraphs broadly reproduce the effect of provisions currently in operation (see, for example, paragraph 18(3) to (6) of Schedule 19 concerning the chargeable equity and liabilities of foreign banking groups).

27. New paragraph 15Q concerns UK resident members of UK sub-groups whose assets, equity and liabilities have been determined on a standalone entity basis under new paragraph 15G(2), because they are:

- a designated FPE entity or
- a member of a UK sub-group for which an entity-by-entity election has been made under paragraph 15L.

28. The paragraph provides that equity which would have been eliminated under normal consolidation procedures for the UK sub-group (excluding any non-UK resident members) should be left out of the bank levy charge.

29. New paragraph 15R excludes certain liabilities between members of a group from that group's bank levy charge. These paragraphs broadly reproduce the effect of provisions currently in operation (see, for example, paragraph 18(7) of Schedule 19 concerning the chargeable equity and liabilities of foreign banking groups). However they have been updated at sub-paragraph (2)(d) to take into account liabilities between members of the same UK sub-group, where the assets, equity and liabilities of these sub-group members have been determined on a standalone entity basis under new paragraph 15G(2).

30. New paragraphs 15S to 15U set out rules that apply in relation to 'netting', under which, subject to certain conditions, the amount of liabilities chargeable to the bank levy may be reduced. This reduction is available where an entity (M) 'nets':

- its liabilities to another party (N), against
- assets, in the form of amounts that N owes to M, or to another member of M's group.

31. The availability of netting is subject to there being an agreement that makes provision for 'single net settlement' of the respective parties' (M and N's) liabilities, so that there would be a single net sum payable on the occurrence of a 'netting event'. New

paragraph 15S sets out the netting rules that apply for group members, and new paragraph 15T applies to UK resident entities that are not part of a group. Both paragraphs set out similar qualifying conditions for netting. These include requirements concerning:

- the liabilities that can be included within a netting agreement
- the recognition of amounts owed by N ('N's liabilities') as assets by M, or another member of M's group where appropriate
- the conditions to be satisfied by the agreement providing for net settlement.

32. New paragraph 15S(5) means that group members cannot net liabilities to other UK members of the same group. New paragraph 15S(6) limits the availability of netting where M and N are in the same group and N is a relevant foreign bank with a permanent establishment in the UK, as well as setting out rules that apply where securities are provided as collateral.

33. New paragraphs 15S and 15T also provide definitions of terms such as 'single net settlement', and set out when a netting event occurs.

34. New paragraph 15U provides general rules for netting, which will apply to both groups covered by new paragraph 15S and non-group entities covered by new paragraph 15T. It provides for M's 'net settlement liabilities' to be reduced by M's 'net settlement assets' and defines these terms. Sub-paragraph (4) sets out rules that apply where N is a relevant foreign bank within the same group as M, and apply restrictions where an asset could be applied for netting purposes by more than one member of the group. Sub-paragraph (6) provides that, where appropriate, long term liabilities and short term liabilities (which are subject to different rates of bank levy) should be netted against M's net settlement assets on a proportionate basis.

35. New paragraphs 15S to 15U broadly reproduce the effect of provisions currently in operation (see, for example, paragraph 18(8) to (17) of Schedule 19 concerning the chargeable equity and liabilities of foreign banking groups). However, these provisions are being updated to allow the assets of any member of M's group (and not just M) to be included within netting agreements. In addition, certain requirements (such as those concerning net settlement at paragraphs 15S(2) to 15S(4)) have been modified to improve clarity.

36. New paragraphs 15V to 15Y concern step 3 of the adjustment referred to in paragraph 15N(1), and apply to bank levy paying groups. The paragraphs provide for a UK sub-group or chargeable UK resident entity to reduce the amount chargeable to the bank levy when all of the following conditions are satisfied:

- that UK sub-group or chargeable UK resident entity, or another UK member of the same group (a 'relevant group member'), holds certain 'qualifying loss absorbing instruments' issued by an overseas subsidiary of a UK resident entity within the group (or assets representing these

instruments)

- the instruments satisfy a 'loss-absorbing capacity or recapitalisation requirement' as well as other conditions to be set out in regulations by HM Treasury
- the liabilities of the UK sub-group or chargeable UK resident entity include 'tier one capital equity and liabilities' or other loss absorbing instruments that satisfy certain conditions.

37. New paragraphs 15V, 15W and 15Y set out various definitions, regulation-making powers and conditions to be satisfied in relation to this reduction.
38. New paragraph 15X sets out the amount of the reduction that will be available. It caps this reduction for tier one equity and liabilities and other loss absorbing instruments at the relevant 'liabilities amount' for each type of instrument, as defined at sub-paragraphs (3) and (4). Sub-paragraph (5) excludes from this reduction any assets which have previously been applied for the purposes of a netting adjustment. This sub-paragraph also safeguards against more than one reduction being made in respect of any particular loss absorbing instrument (or part of such an instrument).
39. New paragraph 15Z concerns step 4 of the adjustment referred to in paragraph 15N(1), in relation to high quality liquid assets. It broadly reproduces current provisions of Schedule 19 (see, for example, paragraph 17(7) and (8) concerning foreign banking groups). The paragraph allows for a reduction in the amount chargeable to the bank levy for certain lending transactions involving collateral that, if not used as such, would otherwise form part of a chargeable UK sub-group or entity's high quality liquid assets. Sub-paragraph (1)(b) excludes from this reduction any assets which have previously been applied for the purposes of a netting adjustment, or a reduction under new paragraph 15X. It also prevents more than one reduction being made in respect of an asset. Sub-paragraph (2) sets out the amount of the reduction permitted under this paragraph.
40. New paragraphs 15Z1 to 15Z4 concern the non-UK allocated equity and liabilities of designated FPE entities. This is the equity and liabilities attributable to foreign permanent establishments of these UK resident entities.
41. New paragraph 15Z1 sets out various steps to calculate:

- the non-UK allocated equity and liabilities of a designated FPE entity, which can be disregarded from the bank levy charge by an election made under new paragraphs 15D and 15E
- the UK-based equity and liabilities of a designated FPE entity that is not a member of a UK sub-group
- the adjusted equity and liabilities of a designated FPE entity that is a member of a UK sub-group, which is to be used in the calculation of that

sub-group's UK-based equity and liabilities and

- the amount of equity and liabilities that are long term, and the amount that are short term.

42. The steps detailed below apply to designated FPE entities that are members of a UK sub-group, or which are chargeable UK resident entities - as well as those designated FPE entities that are not members of a group.

    a. Steps 1 and 2 establish the proportion (X%) that the assets of a foreign permanent establishment of a designated FPE entity bears to the assets of that designated FPE entity as a whole, at the end of a chargeable period.

    b. Step 3 requires the amount that would be the UK-based equity and liabilities (or, in the case of a UK sub-group member, the adjusted equity and liabilities) of the designated FPE entity to be determined for the chargeable period, including any non-UK allocated equity and liabilities of the entity. This amount is to be determined by applying the various adjustments set out in new paragraph 15N to the equity and liabilities of the designated FPE entity, as determined under new paragraph 15G(2).

    c. Step 4 requires the equity and liabilities at step 3 to be attributed to the foreign permanent establishment (as non-UK allocated equity and liabilities) in the same proportion (X%) as was established at steps 1 and 2.

    d. Step 5 sets out how to determine the UK-based equity and liabilities (or, in the case of a UK sub-group member, the adjusted equity and liabilities) of the designated FPE entity.

    e. Step 6 requires identification of the proportion of the equity and liabilities at step 3 that are long term equity and liabilities.

    f. Step 7 applies the designated FPE entity's long term equity and liabilities, and short term liabilities, to paragraph 6(2) of Schedule 19, which sets out steps for determining the amount of bank levy that is chargeable.

43. New paragraph 15Z2 provides details of how the amount of assets of a foreign permanent establishment is to be determined for step 2 of the calculation at new paragraph 15Z1, including by applying certain provisions of corporation tax legislation. The paragraph also provides that the assets of a foreign permanent establishment representing an 'excluded' loan relationship (as defined at sub-paragraph (6)) are to be left out of this assets calculation.

44. New paragraphs 15Z3 and 15Z4 provide netting rules for steps 1 and 2 of the calculation at new paragraph 15Z1, concerning the assets of a designated FPE entity (E) and any foreign permanent establishment of that entity.

45. New paragraph 15Z3 includes requirements concerning:

- the liabilities that can be included within a netting agreement ('E' and 'N's' liabilities)
- the recognition of amounts owed by N ('N's liabilities') as assets by E
- the conditions to be satisfied by the agreement providing for net settlement.

46. The paragraph also includes definitions of terms such as net settlement provision and single net settlement, sets out when a netting event occurs and makes provision for cases in which securities are used as collateral. New paragraph 15Z3(5) means that group members cannot net liabilities to certain other members of the same group.

47. New paragraph 15Z4 provides, at sub-paragraph (1), for the net settlement assets of a designated FPE entity (E) to be reduced by that entity's net settlement liabilities, for the purposes of step 1 of the calculation at new paragraph 15Z1. Sub-paragraphs (2) and (3) explain how netting applies to the assets of a foreign permanent establishment of E for step 2 of this calculation. They provide that the net settlement assets of the foreign permanent establishment (as defined at sub-paragraph (7)) are to be reduced by the same proportion (Z%) as E's net settlement assets were reduced under sub-paragraph (1).

48. New paragraph 15Z5 provides an exclusion from the bank levy charge for a UK sub-group, chargeable UK resident entity or relevant foreign bank that has 'relevant equity and liabilities' of less than £50 million at the end of the chargeable period. This is subject to a £200 million cap on the total equity and liabilities that can be excluded by a group.

49. Paragraphs 3, 5, 6 and 8 to 15 of the Schedule update Schedule 19, largely consequential to other changes.

50. Paragraph 4 of the Schedule amends paragraph 25 of Schedule 19, which sets out netting rules that apply when calculating a relevant foreign bank's UK allocated equity and liabilities under paragraph 24(1) of Schedule 19. Sub-paragraphs (7) and (8) omit provisions that apply the netting rules in paragraph 25 to step 3 of the calculation at paragraph 24(1) (concerning a relevant foreign bank's equity and liabilities). The netting rules that will apply instead for the purposes of step 3 of this calculation are set out in new paragraphs 27A to 27D, as introduced by paragraph 7 of the Schedule.

51. New paragraph 27A provides rules that will apply where the relevant foreign bank is part of a group, and new paragraph 27B will apply where the bank is not part of a group.

52. The changes set out in paragraphs 4 and 7 of the Schedule mean that:

- the netting rules at paragraph 25 will apply only for calculation of the assets of a relevant foreign bank and its UK permanent establishments,

for the purposes of step 1 and 2 of paragraph 24(1)

- the netting rules at new paragraphs 27A to 27D will apply for calculation of the relevant foreign bank's equity and liabilities, for the purposes of step 3 of paragraph 24(1).

53. The netting rules at new paragraph 27A to 27D differ from those at paragraph 25 of Schedule 19 in that new paragraph 27A permits the assets of any group member (and not just the relevant foreign bank) to be included within netting agreements. By contrast, paragraph 25 requires assets to be recognised by the relevant foreign bank in question if they are to form part of a netting agreement.

Part 2: Miscellaneous amendments

54. Paragraph 17 of the Schedule omits paragraphs 43 and 44 of Schedule 19, concerning joint ventures. These paragraphs are longer required following changes to the relevant accounting provisions.

55. Paragraph 19 of the Schedule inserts new paragraph 53A of Schedule 19. From 1 January 2019, the largest UK banks will be required to separate core retail banking from investment banking, under ring-fencing requirements. New paragraph 53A limits the joint and several liability of any 'ring-fenced entity' that is not the responsible member for a group (as defined at paragraph 54 of Schedule 19). These ring-fenced entities will not be liable for bank levy amounts arising in respect of any non-ring-fenced entity within the group.

56. Paragraphs 20 and 21 of the Schedule concern the nomination of a 'responsible member' in relation to a group's bank levy. They update provisions requiring annual nomination of a responsible member to permit automatic renewal of an entity's responsible member status. This is subject to 'renewal conditions' set out in new paragraph 54(3A) of Schedule 19 (introduced by paragraph 20(4)) and other conditions specified in new paragraph 55A of Schedule 19 (introduced by paragraph 21).

57. Paragraph 20(5) of the Schedule updates paragraph 54 of Schedule 19 by adding new sub-paragraphs (6A) and (6B). These provide a new option that applies if HM Revenue and Customs (HMRC) rejects a group's nomination of an entity to be its responsible member. In such cases, these sub-paragraphs will permit HMRC and the group's parent entity (or another entity acting on behalf of the parent) to agree, within a specified period, that a different entity should be the group's responsible member. Where such an agreement is made, the default arrangements set out in paragraphs 54(4) and (5) of Schedule 19, which would otherwise determine who is the responsible member for the group, will not apply.

58. Paragraphs 22 to 34 of the Schedule remove various references to UK GAAP (UK generally accepted accounting practice) and US GAAP (United States Generally Accepted Accounting Principles) throughout Schedule 19, leaving only references to international accounting standards.

Part 3: Commencement

59. Part 3 of the Schedule sets out commencement provisions for these amendments.

Background note

60. The bank levy was introduced in 2011. Its purpose is to ensure that banks and building societies make a fair contribution, reflecting the risks they pose to the financial system and the wider UK economy. The bank levy also creates appropriate incentives to encourage banks to move away from riskier funding models.

61. Summer Budget 2015 set out a long-term plan for taxation of the UK's banking sector. This balanced the need to ensure that the sector remains robust, highly competitive and open for business against the ongoing need for banks and building societies to make an appropriate tax contribution that reflects their unique risks to the UK financial system and wider economy. The plan included the introduction of a new 8% corporation tax surcharge on banking sector profits from 1 January 2016 and a phased reduction of the bank levy rate between 2015 and 2021.

62. In addition, to reflect significant changes in international regulation and resolution planning that are reducing the risk of overseas banking operations to the UK, a change in the scope of the bank levy was announced. This clause and Schedule give effect to this change for periods of account ending on or after 1 January 2021.

63. The measures within this clause and Schedule form part of a wider package of changes designed to provide a sustainable basis for raising revenue from the banking sector in the long-term, while recognising developments in the regulatory and resolution regime for banks. They also include changes to simplify the administration of the bank levy.

Clause 34: Debt traded on a multilateral trading facility

Summary

1. This clause amends the rules on the deduction of income tax from payments of yearly interest. It provides that such a deduction will not apply to securities admitted to trading on a multilateral trading facility (MTF) operated by an EEA-regulated recognised stock exchange (RSE). It further widens the definition of alternative finance investment bonds to include securities admitted to trading on such an MTF.

Details of the clause

2. Subsection 1 of the clause amends section 987 of Income Tax Act 2007 (meaning of "quoted Eurobond") (ITA) so that the definition of a quoted Eurobond is extended to include securities admitted to trading on a MTF operated by an EEA-regulated RSE.

3. It further inserts a new subsection (2) into section 987 which defines an 'EEA-regulated RSE' and a 'MTF'

4. Subsection 2 of the clause similarly amends the definition of 'investment bond arrangements' in section 151N of Taxation of Capital Gains Act 1992, section 564G of ITA and section 507 of Corporation Tax Act 2009.

5. Subsections 3 to 4 of the clause set out the commencement details of the amendments.

Background note

6. There has been a decline in the use of the UK as a trading venue for corporate debt since 2009. Against that background, the UK Debt Market Forum, set up by the Financial Conduct Authority in 2015, identified a need to improve the competitiveness of UK MTFs as alternatives to traditional debt markets.

7. It has become clear that current requirements to withhold tax on interest are a barrier to the establishment of MTFs in the UK. This is because debt traded on a UK MTF would not benefit from an existing exemption from withholding requirements - the Qualifying Eurobond Exception (QEE) - while similar debt traded on some overseas MTFs would. This means that UK MTFs suffer a competitive disadvantage, making them commercially unattractive.

8. This measure ensures that UK debt markets can compete internationally on an equal footing by ending the anomaly which leads UK companies to issue debt on overseas venues in order to benefit from an existing UK exemption from withholding tax on interest.

Clause 35 and Schedule 10: Settlements: anti-avoidance etc

Summary

1. Clause 35 and Schedule 10 introduce anti-avoidance provisions in relation to payments and benefits made from offshore trusts. They have effect from 6 April 2018.

Details of the clause

2. Clause 35 introduces Schedule 10.

Details of the Schedule

Part 1: Capital gains tax

TCGA 1992

3. Paragraphs 1 and 2 amend the Taxation of Chargeable Gains Act (TCGA) 1992.

4. Paragraph 1(1) inserts new sections 87D to 87P into TCGA 1992. Sections 87D to 87F amend the operation of the matching rules in sections 87 and 87A where capital payments are made to non-residents and where there are payments to a mixture of resident and non-resident beneficiaries when a settlement comes to an end. Sections 87G and 87H make provision for cases where the trustees of an offshore trust make a capital payment to a close member of a UK resident settlor's family. Sections 87I to 87K make provision for cases where the trustees of an offshore trust make a capital payment to a person and there is an arrangement or intention for the payment to be passed on to a UK resident. Section 87L makes provision for cases where the payment is passed on to a close member of a UK resident settlor's family. Section 87M makes provision for cases where the payment is passed on to a remittance basis user. Sections 87N and 87P make provision in relation to the operation of the matching rules where the recipient of a capital payment later becomes non-resident.

5. New section 87D disapplies rules contained within sections 87 and 87A of TCGA 1992 that attribute gains accruing to the trustees of an offshore trust to beneficiaries who receive a capital payment. It disapplies those rules when the capital payment is made to a person that is not resident in the UK.

6. New section 87E overrides section 87D to the extent that capital payments are made to a temporary non-resident. The payment is treated as being received by the beneficiary in the period when they return to the UK.

7. New section 87F modifies section 87D where capital payments are received by a mixture of resident and non-resident beneficiaries in the year when the trust ends.

8. New section 87G applies when the beneficiary in receipt of the payment from the trustees is a close member of the settlor's family at the time of receipt and in the year of receipt the settlor is UK resident. It provides that sections 87 and 87A are to be applied as if the capital payment were received by the settlor (rather than the close family member in receipt of the payment). Where tax becomes chargeable on the settlor, the settlor may recover the amount from the person in receipt of the payment and require HMRC to confirm the amount.

9. New section 87H defines 'close member of the settlor's family' as the settlor's spouse or civil partner; or a minor child of either the settlor, spouse or civil partner. It ceases to apply on the settlor's death.

10. New section 87I provides that new sections 87J and 87K apply when the trustees of an offshore trust make a capital payment ('the original payment') to a person ('the original recipient'); there is an arrangement or intention for that payment (or anything that derives from or represents it) to be passed on within 3 years to a UK resident ('the subsequent recipient'); and in at least one of the tax years from the year of the original payment to that of the onward payment the original recipient (or where section 87G(2) applies, the settlor) is either not a UK resident or is a remittance basis user. Where there is a series of payments via non-residents, the intermediary payments are ignored.

11. New section 87J defines for the purposes of section 87K the amount of the original payment that consists of the taxed matched amount, the untaxed matched amount and the unmatched amount.

12. New section 87K provides that where there is a capital payment to which section 87I applies and there is an unmatched amount then sections 87 and 87A are to be applied as if a capital payment was received by the subsequent recipient (rather than the original recipient) and specifies the amount of that payment; and where there is an untaxed matched amount then chargeable gains are treated as accruing to the subsequent recipient and specifies the amount of those gains.

13. New section 87L applies when the subsequent recipient in a section 87I case is a close member of the settlor's family. It provides that where there is an unmatched amount, sections 87 and 87A are to be applied as if the capital payment was received by the settlor if the settlor is UK resident (rather than treated as received by the close family member). Where there is an untaxed matched amount, the settlor is UK resident and the subsequent recipient is a close member of the settlor's family, then the chargeable gains are treated as accruing to the settlor (rather than treated as accruing to the close family member). Where tax becomes chargeable on the settlor, the settlor may recover the amount from the person in receipt of the payment and require HMRC to confirm the amount.

14. New section 87M provides that where section 87K treats an unmatched amount as being received by, or chargeable gains as accruing to, a remittance basis user; and

section 87L does not treat it as received by, or accruing to, the settlor; then section 87I(1)(a) has effect as if the capital payment were received by the remittance basis user. The rules in section 87I can operate again on any further onward payments of amounts which have not been remitted.

15. New section 87N applies if a capital payment is made to a beneficiary who was UK resident when the payment was received but subsequently the beneficiary (or the settlor if they are liable for the tax as a result of section 87G(2)) becomes non-UK resident before some or all of the payment is matched. It confirms that sections 87 and 87A are to be applied without taking into account the unmatched portion of the payment.

16. New section 87P modifies the application of new section 87N where a capital payment is made to a temporary non-UK resident beneficiary who returns to the UK. It confirms that sections 87 and 87A are to be applied as if the payment was received during the beneficiary's period of return.

17. Subparagraphs 1(2) to (10) make consequential changes.

18. Subparagraph 1(2) amends section 2(4) and (5) (which deal with chargeable gains accruing under section 87), section 16ZC (which deals with losses of remittance basis users) and section 62 (which deals with the general position on the death of a taxpayer) to refer to the new sections 87K and 87L.

19. Subparagraph 1(3) amends section 86A(1) (which deals with attribution of gains to the settlor in temporary non-residence cases) to refer to the new sections 87K and 87L.

20. Subparagraph 1(4) inserts into section 87 (which deals with the attribution of gains to beneficiaries) new subsection 87(3A) to provide split year provisions that take account of the changes in new section 87E. It deems the gain to accrue in the UK part of the year.

21. Subparagraph 1(5) amends section 87B (which deals with remittance basis) to refer to the new sections 87K and 87L, corrects a drafting omission and makes consequential amendments.

22. Subparagraph 1(6) amends section 89(3) (which deals with migrant settlements) to refer to the new sections 87D to 87P.

23. Subparagraph 1(7) amends section 91 (which deals with the increase in tax payable where there is a delay between the gain arising and the capital payment) to refer to the new sections 87K and 87L and makes consequential amendments.

24. Subparagraph 1(8) amends sections 279A and 279C (which deal with deferred unascertainable consideration) to refer to the new sections 87K and 87L.

25. Subparagraphs 1(9) and (10) amend Schedule 4C (which has provisions about transfers of value linked with trustee borrowing) to refer to new sections 87K and 87L and make consequential amendments.

26. Subparagraph 1(11) links to subparagraph 1(4)(b), which deletes subsection 87(7) (which deals with apportionment of gains in a split year). Subparagraph 1(10) omits paragraph 101 of Schedule 45 of Finance Act 2013, which inserted subsection 87(7).

27. Subparagraphs 1(12) to (16) provide for the commencement of new sections 87D to 87P of TCGA 1992.

28. Subparagraph 1(12) confirms that new sections 87D and 87E (disregard of capital payments to non-residents and temporary non-residents) take effect in relation to payments received in the tax year 2018-19 or later tax years and, where payments have not been matched prior to 2018-19, in relation to payments received prior to tax year 2018-19. There is an exception for new section 87D (3) (which removes the disregard of capital payments to a close family member of a UK resident settlor) which confirms that it applies to payments received on or after 6 April 2018.

29. Subparagraph 1(13) confirms that new sections 87F (disregarded payments in year settlement ends) and 87G (settlor liable if capital payment received by close family member) have effect in relation to payments received in tax year 2018-19 or later years.

30. Subparagraph 1(14) confirms that new sections 87I to 87M (onward payment rules) have effect in relation to onward payments made on or after 6 April 2018, even in cases where the original payment is received before that date.

31. Subparagraph 1(15) confirms that new sections 87N and 87P (payments to migrating beneficiaries) have effect where the particular tax year is 2018-19 or later.

32. Subparagraph 1(16) confirms that the amendments made to section 89 (migrant settlements) have effect for the tax year 2018-19 and later tax years.

33. Paragraph 2 modifies the effect of new sections 87E and 87P of TCGA 1992 when a period of temporary non-UK residence began before 8 July 2015. Here, any capital payment received by the beneficiary will be taxed based on the beneficiary's status at the date of payment rather than the date of return to the UK.

Part 2: Income tax

ITTOIA 2005

34. Paragraph 3 introduces amendments to Chapter 5 (settlements: amounts treated as income of settlor) of Part 5 (miscellaneous income) of the Income Tax (Trading and Other Income) Act (ITTOIA) 2005. Chapter 5 comprises of sections 619 to 648 of the Act.

35. Paragraph 4 amends section 619(1) of ITTOIA 2005 to charge income tax on the amount or value of benefits treated as income as a result of new section 643A (as inserted by paragraph 9).

36. Paragraph 5 makes a consequential amendment to section 621 of ITTOIA 2005 (income charged) confirming that tax is charged under Chapter 5 on all benefits to which section 619(1) applies.

37. Paragraph 6 amends section 622 of ITTOIA 2005 (person liable) to reflect that an individual other than the settlor can be liable for tax charged under new sections 643A or 643I to 643M.

38. Paragraph 7 makes consequential amendments to section 623 of ITTOIA 2005 (calculation of income) to reflect that an individual other than the settlor can be liable for tax charged under new sections 643A or 643I to 643M.

39. Paragraph 8 makes consequential amendments to section 635 of ITTOIA 2005 (amount of available income) to include references to unprotected income.

40. Paragraph 9 makes consequential amendments to section 636 of ITTOIA 2005 (calculation of undistributed income) to include references to unprotected income.

41. Paragraph 10 makes consequential amendments to section 637 of ITTOIA 2005 (qualifications to section 636) to include references to unprotected income.

42. Paragraph 11 inserts new sections 643A to 643N into ITTOIA 2005 which contain provisions treating income as arising to the settlor or a close family member of the settlor where benefits are provided to such individuals and there is available protected foreign source income.

43. New section 643A provides that where a person has an untaxed benefits total for a tax year an amount equal to so much of that total as does not exceed the settlement's available protected income is treated as income of that person. This is subject to subsections (3) and (4) which, where the individual is not the settlor, deem the income (or part of the income) to be that of the settlor in certain cases.

44. Those cases are where the individual is, at subsection (3)(a), a non-UK resident; at subsection (3)(b), a UK resident remittance basis user and none of the deemed income is remitted to the UK in the tax year; and, at subsection (4), a UK resident remittance basis user and only part of the deemed income is remitted in the tax year.

45. Where subsection (4) applies only the unremitted remainder is deemed to be income of the settlor.

46. Subsection (5) provides that where there is a choice as to the individuals to whom income is treated as arising under s 643A, income is to be treated as arising to such one or more of them and in such proportions as appears to HMRC to be just and reasonable.

47. New section 643B defines 'untaxed benefits total' for the purposes of new section 643A. It is the difference between the total amount of benefits provided by the trustees to an individual and the amount of those benefits which have either already been subject to income tax or capital gains tax or treated as arising to a person under section 643A in a previous year. If the individual is the settlor, benefits provided when the settlor is either domiciled in the UK or deemed domiciled as a result of having a UK domicile of origin are not included in the total. The section sets out the steps to be worked through to calculate the amount of benefits to be taken into account.

48. New section 643C defines 'available protected income' for the purposes of new section 643A. Adjustments are made for benefits already taken into account in charging income tax under the transfer of asset abroad rules in Chapter 2 of Part 13 Income Tax Act 2007. The amount of benefits treated as income as a result of section 643A cannot exceed the amount of available protected income.

49. New section 643D provides that where a benefit is included in calculating an amount of chargeable gain deemed to accrue to a beneficiary that amount is deductible when computing the amount of adjusted benefit under section 643B.

50. New section 643E provides that where tax becomes chargeable on the settlor as a result of section 643A (3) or (4), the settlor may recover the amount from the person in receipt of the payment and require HMRC to confirm the amount.

51. New section 643F provides that where under section 643A income is deemed to arise to a remittance basis user in a tax year then the income is also treated as 'relevant foreign income' (which, under section 832, is charged when remitted).

52. New section 643G provides ordering rules for matching benefits or available protected income to income deemed by section 643A as arising to an individual for the purposes of section 643F.

53. New section 643H defines a close member of the settlor's family for the purposes of sections 643B to 643M.

54. New section 643I confirms that sections 643J to 643L apply where income is treated as arising to an individual under section 643A ('the original beneficiary') who is not taxed on the payment, there is an arrangement or intention for the benefit (or anything the derives from or represents it) to be passed on within 3 years to the settlor or a close member of the settlor's family ('the subsequent recipient') and it is reasonable to expect that the subsequent recipient will be UK resident when they receive the onward payment.

55. It also provides that the original beneficiary is not liable to tax on the amount treated under section 643J or 643L as arising to the subsequent recipient or the settlor.

56. New section 643J applies where there is an onward payment to which section 643I applies and the subsequent recipient is a UK resident who is not a remittance basis user. It provides that the amount of the onward payment is treated for income tax purposes as income of the subsequent recipient.

57. It also applies where there is an onward payment to which section 643I applies and the subsequent recipient is a UK resident who is a remittance basis user and the onward payment, or part of it, is remitted to the UK in the charging year. It provides that the amount remitted is treated for income tax purposes as income of the subsequent recipient.

58. New section 643K applies where there is an onward payment to which section 643I applies and the subsequent recipient is either not a UK resident in the gift year, or is UK resident for the gift year but not a UK resident for the matching year where this is later than the gift year. It provides that the onward payment is treated for section

643I purposes as income of the subsequent recipient so that the onward payment rules can apply again. This is subject to amounts treated as the settlor's under section 643L.

59. It also applies where there is an onward payment to which section 643I applies and the subsequent recipient is a UK resident who is a remittance basis user and none, or only part, of the onward payment is remitted to the UK in the charging year. It provides that that the part of the onward payment which is not remitted is treated for section 643I purposes as income of the subsequent recipient so that the onward payment rules can apply again. This is subject to amounts treated as the settlor's under section 643L.

60. Both section 643J(2)(e) and section 643K(2)(e) operate where only part of the onward payment is remitted. In this instance section 643J charges the part remitted and section 643K confirms the part not remitted can be subject to the onward payment rules going forward.

61. New section 643L applies where there is an onward payment to which section 643I applies and the subsequent recipient is a close member of the settlor's family who is a UK resident remittance basis user for the charging year and all or part of the onward payment is not remitted. It provides that any unremitted part of the onward payment is treated for income tax purposes as income of the settlor.

62. It also applies where there is an onward payment to which section 643I applies and the subsequent recipient is a close member of the settlor's family who is not UK resident for the charging year. It provides that the onward payment is treated for income tax purposes as income of the settlor.

63. Where tax becomes chargeable on the settlor as a result of this section, the settlor may recover the amount from the person in receipt of the payment and require HMRC to confirm the amount.

64. New section 643M applies if the trustees of a settlement provide a benefit to an individual ('the original beneficiary') who is not the settlor or a close member of the settlor's family; there is an arrangement or intention for the benefit (or anything the derives from or represents it) to be passed on within 3 years to another person ('the subsequent recipient') who is the settlor or a close member of the settlor's family and it is reasonable to expect that the subsequent recipient will be UK resident when they receive the onward payment. It provides that the onward payment is to be treated as a benefit provided to the subsequent recipient (rather than the original beneficiary). Where there is a series of payments via persons who are neither the settlor nor a close family member of the settlor's family, the intermediary payments are ignored.

65. New section 643N provides that income treated as arising to a remittance basis user as a result of new section 643I or 643L is relevant foreign income.

ITA 2007

66. Paragraph 12 introduces amendments to Chapter 2 (transfers of assets abroad) of Part

13 (tax avoidance) of the Income Tax Act (ITA) 2007. Chapter 2 comprises of sections 714 to 751 of the Act.

67. Paragraph 13 amends section 731 of ITA 2007, the charge to tax on income arising under section 732, in consequence of new sections 733C, 733E, 735B and 735C (see paragraphs 16 and 19 of the Schedule).

68. Paragraph 14 amends section 732(1)(e) of ITA 2007 to ensure that double taxation does not arise under section 731 and other provisions and that charges under s 731 take priority over charges under sections 643A, 643J and 643L of ITTOIA 2005.

69. Paragraph 15 amends section 733A of ITA 2007, the definition of close member of a settlor's family, so that it ceases to apply on the settlor's death.

70. Paragraph 16 inserts new sections 733B to 733E into ITA 2007.

71. New section 733B provides that sections 733C to 733E apply where income is treated as arising to an individual ('the original beneficiary') who is not taxed on the payment, there is an arrangement or intention for the benefit (or anything the derives from or represents it) to be passed on within 3 years to another person ('the subsequent recipient') and it is reasonable to expect that the subsequent recipient will be UK resident when they receive the onward payment.

72. New section 733C applies where there is an onward payment to which section 733B applies and the subsequent recipient is a UK resident who is not a remittance basis user. It provides that the onward payment is to be treated for the purposes of section 731 as if it were income arising to the subsequent recipient under section 732.

73. It also applies where there is an onward payment to which section 733B applies and the subsequent recipient is a UK resident who is a remittance basis user and the onward payment, or part it, is remitted to the UK in the charging year. It provides that the remitted part of the onward payment is to be treated for the purposes of section 731 as if it were income arising to the subsequent recipient under section 732.

74. New section 733D applies where there is an onward payment to which section 733B applies and the subsequent recipient is not UK resident. It provides that the onward payment is to be treated for the purposes of section 733B purposes as if it were income arising to the subsequent recipient under section 732 so the onward payment rules can apply again.

75. It also applies where there is an onward payment to which section 733B applies and the subsequent recipient is a UK resident who is a remittance basis user and none, or only part, of the onward payment is remitted to the UK in the charging year. It provides that the unremitted part of the onward payment is to be treated for the purposes of section 733B as if it were income arising to the subsequent recipient under section 732 so the onward payment rules can apply again.

76. Both section 733D(2)(e) and section 733C(2)(e) operate where only part of the onward payment is remitted. In this instance section 733D charges the part remitted and section 733C confirms the part not remitted can be subject to the onward payment rules going forward.

77. New section 733E applies where there is an onward payment to which section 733B applies and the subsequent recipient is a close member of the settlor's family who is a UK resident remittance basis user for the charging year and none, or only part, of the onward payment is remitted to the UK in the charging year. It provides that the unremitted part of the onward payment is treated for the purposes of section 731 as if it were income arising to the settlor under section 732.

78. It also applies where there is an onward payment to which section 733B applies and the subsequent recipient is a close member of the settlor's family who is not UK resident for the charging year. It provides that the onward payment is treated for the purposes of section 731 as if it were income arising to the settlor under section 732.

79. Paragraph 17 amends section 734(1)(d) of ITA 2007 to prevent double taxation where the chargeable amount determined under section 732 is also a chargeable gain under new section 87G of TCGA 1992 (inserted by paragraph 1(1)).

80. Paragraph 18 inserts new section 734A into ITA 2007. It prevents double charges to income tax under new sections 643A, 643J and 643L of ITTOIA 2005 (inserted by paragraph 11) and section 732 of ITA 2007.

81. Paragraph 19 inserts new section 735C into ITA 2007. It applies in relation to income that is treated under section 733C or 733E as arising to a person for the purposes of section 731 as if it arose to them under section 732. It treats the income as relevant foreign income where the person is a remittance basis user.

Consequential amendments

82. Paragraph 20 amends section 97(1)(a) and (3) of TCGA 1992 and Schedule 1 of ITA 2007 in consequence of Part 2 of the Schedule to ensure that a capital payment for capital gains tax purposes cannot include sums already taxed under the new income tax provisions.

Commencement etc of amendments relating to ITTOIA 2005 and ITA 2007

83. Paragraph 21 provides for the commencement of Part 2 of the Schedule.

84. Paragraph 22 provides that new section 643D(3) of ITTOIA 2005 is to be treated as inserted by HM Treasury under powers conferred by section 354 of the Taxation (International and Other Provisions) Act 2010.

Background note

85. Income arising, and gains accruing, to the trustees of an offshore trust are, broadly, treated as arising or accruing as follows:

- Sections 86 and 87 of TCGA 1992: Section 86 treats gains accruing to the trustees of a settlor-interested offshore trust as accruing to a UK resident settlor who is also domiciled or (from 6 April 2017) deemed domiciled in the UK; otherwise section 87 attributes the gains to beneficiaries to the

extent that they receive a capital payment that is matched to the gain.

- Chapter 5 of Part 5 of ITTOIA 2005: Chapter 5 treats income arising to the trustees of a settlor-interested offshore trust as arising to the settlor (irrespective of whether the settlor enjoys the income). Capital sums (such as loans) paid to such settlors in excess of the trustees' undistributed income is also treated as income arising to the settlor. Where the remittance basis applies to the settlor, foreign source income is taxed in the year in which it is remitted.
- Chapter 2 of Part 13 of ITA 2007: Chapter 2 applies where a person transfers assets as a result of which income becomes payable to a person abroad, such as to the trustees of an offshore trust. It deems income to arise to the transferor where that person is UK resident and has power to enjoy the income that arises to the trustees; receives a capital sum from the person abroad; or receives a benefit provided out of the transferred assets that is matched to the income. Rules prevent double taxation under Chapter 2 and other provisions (such as Chapter 5 of Part 5 of ITTOIA 2005). Where the remittance basis applies to the transferor, foreign source income is taxed in the year in which it is remitted.

86. Income treated as arising, and gains treated as accruing, as above, may not be immediately liable to UK tax where the person is not UK tax resident or is a UK resident non-UK domicile remittance basis user.

87. The measure tackles the ability to 'wash-out' income or gains due by routing payments via non-UK residents or UK resident remittance basis users.

88. The measure was announced in December 2016 at paragraphs 2.3.1 (treatment of capital gains in trusts) and 2.3.5 (recycling benefits from protected settlements) of the government's response to further consultation on reforms to the taxation of non-domiciles. The consultation response can be found at: https://www.gov.uk/government/consultations/reforms-to-the-taxation-of-non-domiciles-further-consultation

89. In a technical briefing on the non-domicile reforms published on 21 March 2017 the government announced that because the draft legislation was incomplete certain elements, included the provisions relating to this measure, would be included in a future Finance Bill. The technical briefing can be found at: https://www.gov.uk/government/publications/non-domicile-taxation-technical-briefing-on-overseas-trusts/non-domicile-taxation-technical-briefing-on-overseas-trusts.

Clause 36: Fixed rate deduction for expenditure on vehicles etc

Summary

1. This clause allows unincorporated property businesses the option of calculating their allowable deductions for expenditure incurred on vehicles by the use of simplified flat rates based on business miles travelled, commonly referred to as "mileage rates". Mileage rates are already available for self-employed traders and employees, so this measure brings greater consistency between taxpayers.

Details of the clause

2. Subsection 1 amends section 94E of the Income Tax (Trading and Other Income) Act (ITTOIA 2005) as set out in subsections (2) and (3). Section 94E is an exclusion from using the mileage rates for certain vehicles.

3. Subsection 2 alters two parts of section 94E(3)(b) to ensure that vehicles are also excluded where their acquisition cost has been deducted in a property business on the cash basis.

4. Subsection 3 defines "any relevant trade or business" for the purpose of this section as any trade or property business.

5. Subsections 4 and 5 apply the existing provisions on flat rate deductions for vehicles used in a trade to property businesses (both for those using GAAP and the cash basis), by providing for the inclusion of sections 94C and 94D to 94G of Chapter 5A ITTOIA 2005 into the tables at sections 272(2) and 272ZA(1) ITTOIA 2005.

6. Subsection 6 adds additional sections 9A and 9B to section 59 of the Capital Allowances Act 2001. This prevents unrelieved capital expenditure on a particular vehicle, being carried forward for capital allowances purposes for that property business, when mileage rates have been used for that vehicle for that same property business. It also removes subsection 8(d) from section 59. The effect of this is to apply subsection 9 to prevent the carry forward of any unrelieved qualifying expenditure for capital allowances purposes when someone starts using the mileage rates deduction, whether or not they enter the cash basis.

7. Subsections 7 and 8 give the commencement of the new provisions as tax year 2018-19 for subsections 2 and 3, and tax year 2017-18 for all other sections.

8. Subsection 9 adds an additional section 2A to section 94E ITTOIA 2005 to remove the restriction on using a mileage rate deduction where a landlord has claimed capital allowances in respect of a vehicle in the tax years 2013-14 to 2016-17. This gives effect to the transitional arrangements.

Background note

9. This measure has been introduced to make the treatment of unincorporated property businesses more consistent with the self-employed in allowing use of the simplified expenses mileage rates to calculate the allowable deductions for business expenditure incurred on vehicles.

10. This is a step towards the government's ambition of simplifying the tax system, by allowing the use of mileage rates amongst individuals regardless of their source of income.

11. Use of mileage rates for landlords was requested by stakeholders in the consultation on the use of cash basis for property businesses in Autumn 2016.

Clause 37: Carried interest

Summary

1. This clause removes transitional provisions in Finance (No.2) Act 2015 that determine how carried interest is taxed when the amounts which arise relate to disposals made before certain dates in 2015. The amendments have effect for amounts of carried interest arising on or after 22 November 2017.

Details of the clause

2. Subsection (1)(a) provides that all amounts of carried interest arising on or after 22 November 2017 are within scope of Chapter 5 of Part 3 of Taxation of Chargeable Gains Act (TCGA) 1992.

3. Subsection (1)(b) provides that section 103KG(2) to (15) TCGA 1992 applies to all amounts of carried interest arising on or after 22 November 2017.

4. Subsection (1)(c) provides that section 809EZDA and section 809EZDB Income Tax Act (ITA) 2007 apply to all amounts of carried interest arising on or after 22 November 2017.

5. Subsection (3) ensures that "carried interest" and "arising" have the same meanings in Chapter 5E of Part 13 of Income Tax Act 2017.

Background note

6. Legislation determining the taxation of carried interest, which is a form of performance related reward for investment managers, was introduced with effect from 8 July 2015 in Finance (No.2) Act 2015. Transitional rules included in that Act excluded amounts of carried interest which had been subject to delays in payment for genuine commercial reasons and which were in relation to disposals of partnerships assets before 8 July 2015, or (in other circumstances) before 22 October 2015.

7. This clause creates a single, consistent treatment for amounts of carried interest arising on or after 22 November 2017 irrespective of the timing of connected disposals of partnership assets.

Part 2: Indirect taxes

Clause 38: Online marketplaces

Summary

1. This clause deals with joint and several liability of operators of online marketplaces and the requirement on operators of online marketplaces to display valid VAT numbers.

Details of the clause

2. Subsection (1) provides that the Value Added Tax 1994 ("VATA") is to be amended in accordance with subsections (2) to (8).

3. Subsection (2) provides for a regulatory penalty to be imposed under section 69(h) VATA on an online marketplace operator in circumstances where it fails to display a seller's valid VAT registration number on its online marketplace within 10 days of being provided with it, or becomes aware that a displayed number is invalid and does not remove it within 10 days.

4. Subsections (3) and (4) amend section 77B VATA to extend the scope of joint and several liability that can be imposed on an online marketplace operator. They remove the restriction to VAT payable by overseas businesses so that section 77B will apply to VAT payable by all businesses making taxable supplies in the UK through an online marketplace.

5. Subsection (5) inserts a new section 77BA into VATA to give the Commissioners of HMRC the power to make the operator of an online marketplace jointly and severally liable for the VAT payable on goods sold through the online marketplace by a non-UK business that should have registered for UK VAT but has failed to do so in certain specified circumstances.

6. New section 77BA(1) provides that the new section 77BA applies where the operator of the online marketplace knows or should know that a non-UK business that makes taxable supplies of goods through its online marketplace is in breach of the requirement for it to register for VAT under Schedule 1A VATA.

7. New sections 77BA(2) to (4) set out what the operator of the online marketplace should do once it knows or should have known of the breach referred to in new section 77E(1) to avoid being held jointly and severally liable for any VAT payable by the non-compliant business. Where the online marketplace operator knew or should have known that the unregistered non-UK business should be registered for VAT, it has 60 days from when it knew or should have known that in which to ensure that any such business that does not register for VAT as it should no longer offers goods for sale through its online marketplace.

8. New sections 77BA(5) and (6) specify the period during which the online marketplace operator will be held jointly and severally liable for VAT payable by the unregistered

non-UK business. Subsection (6) makes it clear that such a period does not include any period in relation to which the online marketplace operator has been made jointly and severally liable under section 77B(5) VATA or any period for which it has been relieved from such liability by virtue of it having secured the result in section 77B(3) VATA.

9. New section 77BA(7) clarifies what is meant by a person being in breach of a Schedule 1A registration requirement.
10. New section 77BA(8) contains some definitions of terms used in new section 77BA.
11. Subsection (6) amends section 77C VATA to give the Commissioners of HMRC the power to raise an assessment against an online marketplace operator in the circumstances covered by new section 77BA.
12. Subsection (7) amends section 77D to make provision for interest on assessments made under section 77BA that are not paid on time.
13. Subsection (8) inserts a new section 77E into VATA that imposes certain requirements on the operators of an online marketplace in relation to the display of VAT registration numbers on its online marketplace.
14. New section 77E(1) provides that new section 77E applies where a person offers, or proposes to offer, goods for sale through an online marketplace.
15. New section 77E(2) requires an online marketplace operator to take reasonable steps to check both that a VAT registration number it has been provided with by a seller or someone else is valid and that any VAT registration number that is displayed on its online marketplace as the VAT registration number of a particular seller is valid.
16. New sections 77E(3) and (4) require the operator of an online marketplace to display any valid VAT registration number which it has been provided with as a seller's VAT registration number on its online marketplace within a specified time period.
17. New sections 77E(5) and (6) require the online marketplace operator, where it becomes aware that a VAT registration number that is displayed on its online marketplace in relation to a particular seller is invalid, to secure that the invalid VAT registration number is removed from the online marketplace within a specified time period.
18. New sections 77E(7) and (8) clarify the meaning of some terms used in new section 77E.
19. New section 77E(9) defines some terms used in new section 77E.

Background note

20. These new provisions are part of a package of measures announced at Budget 2017 which build on measures announced in Budget 2016. They support the Government's policy of tackling online fraud and creating a level and fair playing field for all businesses selling goods online.

21. The new provisions:

    a. Extend the scope of existing joint and several liability provisions to include UK businesses. An operator of an online marketplaces can be held jointly and severally liable for VAT payable by any person selling goods through the online marketplace who fails to comply with any requirement imposed by VATA. The online marketplace operator can avoid being held jointly and severally liable if it removes the business from its marketplace within a specified period. The Commissioners of HMRC can remove the notice of liability from the online marketplace operator where, for example, the business complies with its VAT obligations.

    b. Legislate for a new joint and several liability provision where a person offering goods for sale though an online marketplace is not established in the UK and is in breach of a Schedule 1A VATA registration requirement. If the online marketplace operator allows an unregistered non-UK business to continue to sell goods through its marketplace 60 days after it knows or should know that the non-UK business is required to be registered for VAT, it will be held jointly and severally liable for the unpaid VAT. However, the liability will cease from the point that the non-UK business complies with its obligation to register under Schedule 1A VATA.

    c. Introduce a new requirement on online marketplace operators to display valid VAT numbers on their online marketplaces with a regulatory penalty for breach. The operator of an online marketplace will be required to check the validity of all the VAT registration numbers provided to it and display valid VAT registration numbers on its website within 10 days of being provided with them. It will also be required to ensure that all the VAT registration numbers displayed on its website are valid and take steps to remove any invalid ones that it becomes aware of within 10 days of becoming so aware.

22. The new provisions are intended to encourage non-compliant UK and non-UK businesses that sell goods through online marketplaces to register for VAT, comply with their obligations under VATA and pay the VAT due on sales made in the UK.

Clause 39: VAT refunds to public authorities

Summary

1. This clause amends section 33(3) of the Value Added Tax Act 1994 to extend refunds of VAT to a number of public bodies. These are the combined authorities, police and crime commissioners undertaking the function of the fire and rescue authority, the London Fire Commissioner, the Scottish Fire and Rescue Service and the Scottish Police Authority.

Details of the clause

2. Subsection (1) inserts the following amendments to section 33(3) of the Value Added Tax Act 1994.
3. Subsection (2) amends section 33(3)(a) by adding to it a combined authority established under an order made under relevant local government legislation.
4. Subsection (3) adds two new paragraphs after section 33(3)(a) to also include fire and rescue authorities falling under the Fire and Rescue Services Act 2004, if these are not local authorities falling within section 33(3)(a) and the Scottish Fire and Rescue Service.
5. Subsection (4) removes the term "police authority".
6. Subsection (5) then adds two new paragraphs after section 33(3)(f). Paragraph (fa) includes the Scottish Police Authority as a body entitled to reclaim VAT. Paragraph (fb) mentions the Police Service of Northern Ireland and the Northern Ireland Policing Board, which is necessary as a consequence of the removal of the general term "police authority" in subsection 4.
7. Subsection (6) makes the clause effective in relation to supplies made and acquisitions and importations taking place on or after the day on which the Act is passed.

Background note

8. The amendments effected by this clause are mainly as a result of changes to the structure of local government, the police services and the fire and rescue services. Public bodies providing such services have historically benefitted from the refund scheme. Without this amendment new bodies taking over the responsibilities of those public bodies would only benefit from the refund scheme through individual orders made by the Treasury under section 33(3)(k) of the Value Added Tax Act 1994. At the same time the opportunity has been taken to include some types of fire and rescue authorities, which have hitherto benefitted from refunds of VAT through orders made by the Treasury under section 33(3)(k) of the Value Added Tax Act 1994.

Clause 40 and Schedule 11: Higher rates for additional dwellings

Summary

1. This clause contains provisions to amend Schedule 4ZA of the Finance Act 2003 which covers the higher rates for additional dwellings etc of stamp duty land tax (SDLT) that apply to certain purchases of residential property.

Details of the Clause

2. The clause introduces Schedule 11 which amends Schedule 4ZA of the Finance Act 2003.

Details of the Schedule

3. Paragraph 1 of Schedule 11 makes provision to amend Schedule 4ZA of the Finance Act 2003 (the `main Schedule`) which covers the higher rates for additional dwellings etc of SDLT (HRAD).

4. Paragraph 2 of Schedule 11 will counteract abuse.

5. Sub-paragraph 2(1) amends Condition D in paragraph 3 of the main Schedule. Condition D deals with relief from HRAD when an individual buys a `new` main residence having disposed of an `old` main residence (`replacement main residence relief`).

6. Sub-paragraph 2(2)(a) inserts new sub-paragraph 3(6)(ba) into the main Schedule. This will prevent replacement main residence relief being given where the seller, their spouse or civil partner retains a major interest in the old main residence.

7. Sub-paragraph 2(2)(b) makes a consequential change to sub-paragraph 3(6)(c) of the main Schedule to accommodate new sub-paragraph 3(6)(ba).

8. Sub-paragraph 2(3) inserts new sub-paragraph 3(6A) into the main Schedule. This will stop new sub-paragraph 3(6)(ba) applying if the spouses or civil partners are not living together at the date of disposal.

9. Sub-paragraph 2(4) inserts new sub-paragraph 3(7)(ba) into the main Schedule. This will prevent replacement main residence relief being given if the seller, their spouse or civil partner retains a major interest in the old main residence.

10. Sub-paragraph 2(5) inserts new sub-paragraph 7(8) into the main Schedule. This will prevent new sub-paragraph 3(7)(ba) applying if the spouses or civil partners are not living together at the date of disposal. Sub-paragraph 9(3) of the main Schedule gives the meaning of "living together".

11. Paragraph 3 of Schedule 1 makes provision for a new paragraph 7A of the main Schedule. In certain circumstances this excludes from HRAD the purchase of further interests in the same dwelling.
12. New sub-paragraph 7A(1) has the effect of excluding a purchase from HRAD where, subject to certain other requirements, the purchaser had a major interest in the same dwelling before the new purchase and the same dwelling was the purchaser's only or main residence in the three years preceding purchase. Such a dwelling is called a `relevant purchased dwelling`.
13. New sub-paragraph 7A(2) requires that the purchased interest must take the form of a freehold or a leasehold of 21 years or more.
14. New sub-paragraph 7A(3) prevents the exclusion applying where the purchaser is beneficially entitled as a joint tenant to the relevant purchased dwelling and their interest is less than 25%.
15. New sub-paragraph 7A(4) prevents the exclusion applying if the purchaser is beneficially entitled as a tenant in common or coparcener to the relevant purchased dwelling and their interest is less than 25%.
16. New sub-paragraph 7A(5) defines `relevant purchased dwelling`.
17. Paragraph 4 of Schedule 1 inserts a new paragraph 9A into the main Schedule.
18. New paragraph 9A means that HRAD will not apply to exchanges of interests between spouses or civil partners.
19. Paragraph 5 inserts new paragraph 9B into the main Schedule. New paragraph 9B changes the way that interests retained by a former spouse or former civil partner upon divorce or dissolution of a civil partnership are treated.
20. New sub-paragraph 9B(1) sets out the situation in which new paragraph 9B applies. New paragraph 9B applies where a major interest in a dwelling, owned by A, is subject to a "property adjustment order" in favour of another person, B, and the dwelling is B's only or main residence, but not A's only or main residence.
21. New sub-paragraph 9B(2) disregards an interest held by A in the circumstances described in new sub-paragraph 9B(1).
22. New sub-paragraph 9B(3) defines property adjustment orders.
23. Paragraph 6 of Schedule 1 makes specific provision for property held by trustees of children whose affairs are subject to arrangements such as those provided by the Court of Protection.
24. Sub-paragraph 6(1) inserts new sub-paragraphs 12(1A) and 12(1B) of the main Schedule. New sub-paragraph 12(1A) disapplies paragraph 12 where a trustee appointed by the court undertakes actions in respect of a property in pursuit of a relevant court appointment. New sub-paragraph 12(1B) defines a "relevant court appointment".
25. Sub-paragraph 6(2) inserts new sub-paragraphs 17(5A) and 17(5B) of the main Schedule and prevents property outside of England, Wales and Northern Ireland

held by a child from being attributed to the child's parents where the property is held on behalf of the child in pursuit of a relevant court appointment.

26. Paragraphs 7 to 11 make minor and consequential amendments.

27. Paragraph 12 amends paragraph 12 of the main Schedule. It clarifies that paragraph 12 applies to parents of a child, and also applies to their spouse or civil partner who is not a parent of the child but who is living together with the parent.

28. Paragraph 13 omits the word Wales from the heading before paragraph 17 of the main Schedule, taking effect from the date that SDLT ceases to apply to property purchased in Wales, per sub-paragraph 16(4).

29. Paragraph 14 amends paragraph 17 and inserts new sub-paragraph 17(1A) into the main Schedule. It indicates how the terms "major interest", "land transaction" and "effective date" will apply to dwellings situated in Wales once SDLT no longer applies in Wales.

30. Paragraph 15 makes consequential amendment to the commencement provisions of section 128 of the Finance Act 2016 to accommodate other changes made by Schedule 1.

31. Paragraph 16 provides for the commencement of the amendments made by Schedule 1. The amendments made by Schedule 1, except those relating to SDLT ceasing to apply in Wales, have effect on transactions entered into on or after 22 November 2017.

32. Sub-paragraphs 16(2) and (3) prevent the changes made by paragraph 2, from applying where the contract for it was entered into before 22 November and there was no variation to the contract etc on or after 22 November.

33. Sub-paragraph 16(4) deals with commencement in relation to the paragraphs relating to SDLT ceasing to apply to property in Wales when section 16(2) of the Wales Act 2014 comes into effect.

Background note

34. The main Schedule was inserted into the Finance Act 2003 by section 128 of the 2016 Finance Act. The main Schedule contains legislation to charge higher rates of SDLT when a company buys residential property and when individuals who already own residential property do so.

35. The changes made by this legislation will ensure that the main Schedule works better when someone -

- gets divorced,
- exchanges property with a spouse,
- adds to an existing interest in their main residence, or
- is a child whose affairs are subject to the Court of Protection etc.

36. The changes will also prevent abuse by requiring the purchaser to dispose of the whole of their former main residence, and to do so to someone who is no their spouse, before benefitting from replacement main residence relief.

Clause 41: Relief for first-time buyers

Summary

1. This clause introduces a new relief from stamp duty land tax (SDLT) on purchases by first-time buyers of a single residential property (a dwelling) where the price paid is not more than £500,000. No SDLT will be payable on the first £300,000 of the purchase price. 5% will be chargeable on the remainder. The measures applies to transactions with an effective date on or after 22 November 2017.

Details of the clause

2. Subsection 1 amends Part 4 of Finance Act 2003.

3. Subsection 2 inserts new section 57B into Part 4 of Finance Act 2003 which in turn says that new Schedule 6ZA of Finance Act 2003 provides relief from SDLT to "first-time buyers", and requires the relief be claimed in a land transaction return, or by amending such a return.

New Schedule 6ZA Finance Act 2003

4. Subsection 3 inserts new Schedule 6ZA into Part 4 of Finance Act 2003.

New Schedule 6ZA: Part 1: Eligibility for Relief

5. Sub-paragraphs 1(1) to (6) set out the conditions that must be met to be eligible to claim first-time buyers' relief:-

    - The first condition is that the subject matter of the transaction consists of a "major interest" in a single dwelling ("the purchased dwelling").
    - The second condition restricts the relief to instances where the relevant consideration (excluding any rent) does not exceed £500,000 ("relevant consideration" is defined in paragraph 11 of this note).
    - The third condition restricts the relief to a first-time buyer or buyers who intend(s) to occupy the property as their only or main residence.
    - The fourth condition is that the transaction is not linked to any other land transaction, unless that other linked transaction consists of
        - an interest in land which forms part of the garden or grounds of the dwelling; or
        - an interest in, or right over, land subsisting for the benefit of the dwelling or of the gardens or grounds of the dwelling.

6. Sub-paragraph 1(7) precludes a claim to first-time buyers' relief if the transaction attracts the higher rates of SDLT because it is an acquisition by a person who already owns another dwelling for the purposes of the higher rates (per schedule 4ZA of Finance Act 2003).

7. Paragraph 2 sets out the conditions for certain linked transactions to be eligible to first-time buyers' relief. It provides that where the main transaction was eligible for relief, or would have been if it was a chargeable transaction, relief may also be claimed for any transaction linked to the main transaction provided that it consists of an interest as set out in the fourth condition above. The reference here to a main transaction that would have been eligible for relief 'if it was a chargeable transaction' covers transactions that were not chargeable because the consideration was below the SDLT threshold (currently £125,000). But relief is not available if a purchaser in relation to the linked transaction is not a purchaser in relation to the main transaction.

8. Paragraph 3 replicates the effect of first-time buyers' relief for purchases under alternative finance arrangements entered into between a person and financial institution by treating the person rather than the institution as the purchaser.

New Schedule 6ZA: Part 2: The Relief

9. Paragraph 4 says that where first-time buyers' relief is claimed, the ordinary rates of SDLT which apply to residential property are replaced by Table A; namely that the amount of tax chargeable is 0% up to and including £300,000 and 5% on the remainder of the relevant consideration so far as it does not exceed £500,000 ("relevant consideration" is defined at paragraph 11 of this note).

10. Paragraph 5 provides for relief to be withdrawn where a later linked transaction has the effect of making the earlier transaction ineligible for relief. (An example might be where the later transaction takes the relevant consideration above the £500,000 limit, or includes the acquisition of another dwelling.) In these circumstances additional tax becomes payable on the earlier transaction as if the claim had not been made and a further SDLT return must be delivered (as per section 81A of Finance Act 2003).

New Schedule 6ZA: Part 3: Interpretation

11. Paragraph 6 defines a "first-time buyer" as an individual who has not previously purchased a major interest (e.g. a freehold or leasehold interest of 21 years or more) in a dwelling in England, Wales or Northern Ireland, or its equivalent elsewhere in the world. It applies equivalent rules where the individual has previously purchased a property under alternative property finance arrangements, including equivalent arrangements in another jurisdiction.

12. Paragraph 7 defines "relevant consideration" as the chargeable consideration for a single transaction, or the total chargeable consideration for all linked transactions.

13. Paragraph 8 excludes from the meaning of "major interest" a lease which has less than 21 years to run from the day after the effective date of the transaction.

14. Sub-paragraphs 9(1) to (4) set out what counts as a dwelling, which is

- a building or part of a building which is used or suitable for use as a

dwelling, or is in the process of being constructed or adapted for such use;

- land that is to be occupied or enjoyed with the dwelling as garden or grounds, including any structures on that land;
- land that subsists, or is to subsist, for the benefit of the dwelling.

15. Sub-paragraphs 9(5) and (6) expand the definition of a dwelling set out above to include a building that is to be constructed or adapted for use as a single dwelling. In these circumstances relief is available where a contract to acquire such a property (once it is built) is substantially performed at a time when the building works have not yet begun.

16. Sub-paragraphs 9(7) and (8) exclude from the meaning of 'dwelling' a building, or part of a building, used for the purposes specified in section 116(2) or (3) of Finance Act 2003 (e.g. residential accommodation used for school pupils, students or members of the armed forces).

Subsections (4) to (8)

17. Subsection (4) inserts new subsection (7) into section 110 of Finance Act 2003 (approval of regulations under general power) and provides that regulations made by the Treasury to vary these new provisions which do not increase any person's liability to tax are subject to the negative resolution procedure.

18. Subsection (5) inserts new paragraph 16 into schedule 9 of Finance Act 2003 (right to buy, shared ownership leases etc.) and provides that a claim to first-time buyers' relief is available for purchases under a shared ownership lease or shared ownership trust only where the purchaser elects to pay SDLT on the full market value in a one-off payment up-front.

19. Subsection (6) repeals the previous expired provisions relating to first-time buyers' relief which applied for a time-limited period to transactions where the effective date of the transaction was on or after 25 March 2010 but before 25 March 2012.

20. Subsection (7) makes consequential amendments to Schedule 2 to the Wales Act 2014 in relation to the definition of a "first-time buyer" in new paragraph 6 of Schedule 6ZA. Someone will not be a first time buyer if they have previously been a purchaser in relation to a major interest in a dwelling situated in Wales.

21. Subsection (8) provides that these changes have effect for any land transactions where the effective date is on or after 22 November 2017.

Background note

22. Stamp Duty Land Tax (SDLT) is a tax on purchases of land in England, Wales and Northern Ireland. SDLT is expected to be devolved to Wales with effect from 1 April 2018. SDLT was devolved to Scotland in April 2015.

23. There are two main charging regimes within SDLT: one for transactions in residential property; the other for transactions involving non-residential and mixed use property (e.g. commercial property transactions).

24. Purchasers are charged at a percentage of the consideration they pay for an interest in land (e.g. the price paid for the property).

25. The standard rates of SDLT for all residential property transactions are as follows:

Relevant consideration	Percentage
Up to £125,000	0%
More than £125,000 and up to £250,000	1%
More than £250,000 and up to £500,000	4%
More than £500,000 and up to £925,000	5%
More than £925,000 and up to £1,500,000	10%
The remainder	12%

26. An additional rate of 3% applies on top of the above rates to acquisitions by any person who already owns another residential property.

27. This clause introduces a new relief from the standard residential rates of SDLT for individuals who are purchasing their first property as their main or only residence for a consideration (e.g. purchase price) of up to £500,000.

28. The new rates that will apply to these transactions are as follows: -

Relevant consideration	Percentage
Up to and including £300,000	0%
Any remainder (so far as not exceeding £500,000)	5%

29. These revised rates will be available to first-time buyers for transactions with an effective date (which is usually the date of completion) on or after 22 November 2017.

30. All claims to first-time buyers' relief must be made in a land transaction return.

Clause 42 and Schedule 12: Landfill tax: disposals not made at landfill sites, etc

Summary

1. This clause and Schedule amend Part 3 of Finance Act (FA) 1996 to include disposals at sites without an environmental disposal permit (but which ought to have) within the charge to Landfill Tax. It will also introduce changes to what constitutes a taxable disposal for Landfill Tax purposes. This will take effect for disposals on or after 1 April 2018, subject to any transitional arrangements.

Details of the clause

2. Subsection 1 introduces Schedule 2 which amends Part 3 and Schedule 5 of FA 1996, Schedule 36 and Schedule 41 of FA 2008 and Schedule 23 of FA 2011.

3. Subsection 2 specifies that the changes take effect in relation to disposals in England and Northern Ireland.

Details of the Schedule

4. Part 1 introduces amendments to Part 3 and Schedule 5 of FA 1996.

5. Part 2 introduces consequential amendments to Schedule 36 and Schedule 41 of FA 2008 and Schedule 23 of FA 2011.

6. Part 3 introduces commencement and transitional provisions.

Part 1 Amendments to Part 3 of FA 1996

7. Paragraph 2 amends section 40 of FA 1996 to make changes to what constitutes a taxable disposal. It removes the requirement for the material disposed of to be waste, or disposed of by way of landfill. It also provides that disposals that require an environmental permit but do not take place at a landfill site will be subject to Landfill Tax. Subparagraph (3) defines a landfill site for the purposes of the tax.

8. Paragraph 3 inserts a new section 40A and provides details of when a disposal of material occurs. Subsection (5) of the new section 40A provides for the power to make an Order providing for material to be treated as disposed of where it would not be otherwise be so treated and for material to be treated as not disposed of in circumstances where it would otherwise be so treated. Subsection (7) of the new section 40A provides for the power to treat prohibited disposals as disposed of at a

site other than a landfill site.

9. Paragraph 4 amends section 41 of FA 1996 to define the persons responsible for paying the tax on taxable disposals not made at a landfill site. Subparagraph (4) provides that these persons are jointly and severally liable for the tax.

10. Paragraph 5 to 7 makes amendments to section 43, 44 and 45 to disapply the exemptions to disposals not made at a landfill site.

11. Paragraph 8 inserts a new paragraph (za) into section 46 which provides the power to exempt disposals from the tax where they are not required to have a permit under guidance issued by a body established under any enactment, a government department or agency of a government department.

12. Paragraph 9 amends section 69 of FA 1996 to extend the definition of a taxable activity to taxable disposals made elsewhere than a landfill site.

13. Paragraph 10 makes amendments to section 42 of FA 1996 so that the lower rate of tax is only available for disposals at a permitted landfill site.

14. Paragraphs 11 and 12 restrict the credits against Landfill Tax liability to permitted landfill sites.

15. Paragraph 13 removes section 64 to 67 of FA 1996. Sections 64 to 65A are repealed because they are replaced by new sections 40(2) and 40A, and sections 66 and 67 now feature elsewhere.

16. Paragraph 14 makes consequential amendments to section 70 of FA 1996, including removing section 70(2) of FA 1996. Section 70(2A) is redundant and is now repealed.

17. Paragraph 15 inserts new paragraph (za) into section 71 of FA 1996 to provide for the procedure applicable for the making of an order under new section 40A(5) where such an order will cause a taxable disposal to occur when that would not otherwise have been the case.

18. Paragraph 16 removes paragraph 1B of Schedule 5 to FA 1996 and 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. Subparagraphs 4 to 7 make consequential amendments to paragraphs 2A, 10, 31, 45 and 46 of Schedule 5 of FA 1996.

19. Paragraph 17 makes changes to section 47 of FA 1996 in relation to the registration of persons who make taxable disposals not at landfill sites. Subparagraph (3) specifies the persons who are not required to register in relation to disposals made at a place other than a permitted landfill site. Subparagraph (5) substitutes a new version of section 47(9) of FA 1996 to provide for the Commissioners to specify in the regulations the conditions that will apply when deciding if a person is registered and related matters, besides repeating provisions already in place. Subparagraph (9A)

provides for these conditions to be supplemented by information published in a notice. Subparagraph (10) provides for definitions of 'registered person' and 'registrable person' that will apply to all of Part 3 of and Schedule 5 of the FA 1996 from the date of commencement.

20. Paragraphs 18 to 21 makes amendments to sections 49, 59, 70 of FA 1996 and paragraphs 2, 26 and 27 of Schedule 5 of FA 1996 so that these sections only apply to registered persons.

21. Paragraphs 22 and 23 make amendments to the assessment provisions for Landfill Tax. Paragraph 25 inserts new section 50A that provides that the Commissioners may assess an unregistered person for unpaid tax. This paragraph also inserts provisions for the information that must accompany an assessment made under the new section 50A.

22. Paragraphs 24 and 25 make amendments to section 54 of FA 1996 and paragraphs 27, 33 and 36 of Schedule 5 of FA 1996 relating to interest and time limits for assessments made under new section 50A. These paragraphs also provide for the publication of the names and addresses of persons assessed under that new section (after any appeal against that assessment has been finally determined).

Part 2 Amendments of Other Acts

23. Paragraph 26 inserts new paragraph 1A (to ensure powers to inspect business premises will apply to those liable to the tax in respect of unauthorised landfill sites) and makes consequential amendments to Schedule 36 to FA 2008, replacing "landfill disposal" with "disposal of material".

24. Paragraph 27 inserts a new paragraph 3A to Schedule 41 of FA 2008 to provide for penalties to be payable by unregistered persons when they have been assessed under section 50A and there has been wrongdoing on the part of those persons.

25. Paragraph 28 makes consequential amendments to Schedule 23 to FA 2011, replacing "landfill disposal" with "disposal of material".

Part 3 Commencement and Transitional Provisions

26. Paragraph 29 provides that the changes included in the Schedule will commence from 1 April 2018.

27. Paragraph 30 provides for the interpretation of taxable activities within Section 47 of FA 1996. Such taxable activities do not include those activities made elsewhere than at a landfill site. Subparagraph (2) provides that all persons registered for Landfill Tax before 1 April 2018 will remain registered after that date until terminated in accordance with section 47.

28. Paragraph 31 introduces transitional arrangements for Part 3 of FA 1996. This provides that where the Commissioners become aware of a disposal at a place other than a landfill site, that requires a permit or licence, and is not liable for the tax

elsewhere in the legislation, it will be treated as having been made on 1 April 2018.

29. Paragraphs 32 to 33 introduce a requirement that a person who is liable to pay tax on a disposal made before 1 April 2018 (by virtue of paragraph 31) must notify HMRC of this by 30 April 2018. Subparagraphs 2 and 3 provide that certain information is required alongside this notification and that the person will be liable for a penalty if they do not make the required notification.

30. Paragraph 34 provides for the commencement of paragraphs 31 to 33.

31. Paragraph 35 provides for the interpretation of expressions defined for the purposes of Part 3 FA 1996.

Background note

32. Landfill Tax was introduced on 1 October 1996 as a disincentive to landfilling material and to encourage the switch to more environmentally friendly alternatives. Since the introduction of the tax in the UK, landfilling is down more than 60%.

33. At Budget 2016, in response to ongoing challenges by a number of landfill operators, the government announced a consultation on changes to the criteria for determining when Landfill Tax is due. The government published a consultation paper in May 2016 setting out proposals to amend the criteria, and published the summary of responses to the consultation on 5 December 2016.

34. At Spring Budget 2017, the government announced it would consult on whether to extend the scope of Landfill Tax to disposals of material at sites operating without the appropriate environmental licence or permit. These illegal waste sites operate outside the scope of Landfill Tax making the activity attractive to rogue operators who exploit the disparity of tax treatment to undercut legitimate operators.

35. The government published a consultation paper in March 2017 which set out the reasons for extending the scope of Landfill Tax and asked for responses on a number of areas including how to define an illegal waste site and who should be liable for the tax.

36. The government published the summary of responses to the consultation on 13 September 2017, and following strong support from industry, confirmed its intention to legislate to extend the scope of Landfill Tax to illegal waste sites from 1 April 2018. To ensure the simplest transition for the industry to the new rules, the government decided to combine the legislation on the revised scope with the previously announced changes to clarify what material is taxable.

37. HMRC will work with industry to publicise the changes and provide guidance before 1 April 2018, including a clear statement about the responsibilities of innocent parties.

38. Landfill Tax was devolved to Scotland in April 2015 and will be devolved to Wales from April 2018. These changes will thus not apply to sites in Scotland and Wales.

Clause 43: Air passenger duty: rates of duty from 1 April 2019

Summary

1. This clause provides for changes to the rates of air passenger duty (APD). The rates for APD are set out in section 30 of the Finance Act 1994.

2. This clause amends the multiplier used to calculate the long-haul Band B higher rate in section 30(4E)(a) and (d) and the multiplier used to calculate the default Northern Ireland long-haul Band B higher rate of (where a rate is not set by an Act of the Northern Irish Assembly) in section 30A(5A)(c)(ii) from "six times" to "6.6 times".

3. The rates of APD for flights to Band A destinations and the reduced rate to Band B destinations are unchanged. Other rate changes to Band B destinations will be as follows:

   a. Standard rate will rise by £ 16 (from £156 to £ 172)

   b. Higher rate will rise by £ 47 (from £468 to £ 515)

4. These changes will come into effect in relation to the carriage of passengers beginning on or after 1 April 2019.

Details of the clause

5. Subsection 2 amends the APD standard rate for flights to Band B destinations.

6. Subsection 3 amends the multiplier used to calculate the long-haul higher rate for flights to Band B destinations.

7. Subsection 4 amends the multiplier used to calculate the long-haul higher rate for flights departing from Northern Ireland to Band B destinations (if not set by an Act of the Northern Ireland Assembly).

8. Subsection 4 states that these changes apply to the carriage of passengers beginning on or after 1 April 2019.

Background note

9. APD rates are dependent on a passenger's class of travel and final destination. The reduced rates apply to the lowest class of travel available on the aircraft, the standard rates to any other class, and the higher rates to travel in aircraft of 20 tonnes or more equipped to carry fewer than 19 passengers. There are two destination bands: Band A

includes destinations whose capital is up to 2,000 miles from London and Band B includes all other destinations.

10. The airline industry made a request to the Government to give sufficient advance notice of changes in APD rates. In response to this the Spring Budget 2017 announced the APD rates for 2018 to 2019 and the Autumn Budget 2017 announced the rates for 2019 to 2020.

Clause 44: VED: rates for light passenger vehicles, light goods vehicles, motorcycles etc

Summary

1. Vehicle Excise Duty (VED) is collected by the Driver and Vehicle Licensing Agency (DVLA) and is based on the level of CO_2 emissions a car produces.

2. This clause provides for changes to certain rates of VED by amendments of the Vehicle Excise and Registration Act 1994 (VERA).

3. This clause also provides a supplement in the VED system for cars registered after 1 April 2018, to the effect that these cars go up by one VED band in their First Year Rate. This will apply to all diesel cars first registered from 1 April 2018 that either do not meet or are not certified against the second stage of standards for nitrogen oxide (NOx) emissions under the "real driving emissions" (RDE) regime (known as "Euro 6d"), or which do not have a certified NOx emissions figure under RDE conditions. The supplement will apply to diesel cars that are type approved to the Euro 6b, Euro 6c, or Euro 6d-temp emissions standard. The supplement will not apply to diesel cars that are type approved to Euro 6d.

4. Diesel cars approved to Euro 6d must comply with the 'final' conformity factors of the new Real Driving Emissions (RDE) legislation. This is the obligation to meet the legislative laboratory limits in an on-road emissions test as prescribed by RDE. For nitrogen oxides (NOx), the emissions should not exceed 80 milligrams per kilometer, plus a margin for measurement uncertainty, on any valid RDE test for a car to comply with the 'final' conformity factors. The vehicle manufacturer will provide 'Declared maximum RDE values' on a vehicle's Certificate of Conformity.

5. The diesel supplement will apply to diesel cars first registered from 1 April 2018 with 'Declared maximum RDE values' for NOx emissions that exceed 80 milligrams per kilometre, or which do not have declared maximum RDE values. It will not apply to diesel cars such cars if their declared maximum RDE values for NOx emissions are 80 milligrams per kilometre or below.

6. These changes have effect from 1 April 2018.

Details of the clause

7. Subsection (1) provides for amendments to Schedule 1 to the VERA.

8. Subsection (2) amends paragraph 1(2) of Schedule 1 to VERA to change the rates of vehicles first registered before March 2001 with an engine capacity exceeding 1,549cc to increase the duty rate by £10. It also amends paragraph 1(2A) of Schedule 1 to VERA to change the rates of vehicles first registered before March 2001 with an

engine capacity not exceeding 1,549cc to increase the duty rate by £5.

9. Subsection (3) amends the table in paragraph 1B of Schedule 1 to VERA. It substitutes the table to change some of the graduated rates of duty which apply generally to light passenger vehicles first registered on or after 1 March 2001. The table operates so that vehicles emitting in excess of 225 grams of carbon dioxide per kilometer that were registered in the United Kingdom or overseas before 23 March 2006 pay a lower rate than those registered from 23 March 2006 onwards.

10. Subsection (4) amends paragraph 1GC of Part 1AA by adding Table 2 for the annual rate of duty for higher rate diesel vehicles. Paragraph 1GC of subsection 4 currently only relates to the annual rates of VED which are determined by the vehicle's carbon dioxide emissions figure. Subsection (4) inserts a new paragraph (4) to define a higher rate vehicle to mean a vehicle propelled by diesel that either does not have declared maximum RDE figures for NOx, or has declared maximum RDE figures for NOx which exceed 80 milligrams per kilometre for either the complete RDE trip or the urban RDE trip.

11. Subsection (4) inserts paragraph (5) to define when a vehicle has RDE figures for NOx. Paragraph (6) is inserted to explain that a car's RDE figures for NOx are declared maximum values. The declared maximum value is one which the manufacturer guarantees the vehicle will not exceed on any valid RDE test.

12. Subsection (4) inserts paragraph (7) which defines "Diesel" to mean any diesel fuel within Article 2 of Directive 98/70/EC of the European Parliament and of the Council.

13. Subsection (5) amends paragraph 1J of Schedule 1 to VERA to change rates for some light goods vehicles first registered on or after March 2001 to increase the duty rate for subparagraph (a) by £10 to £250

14. Subsection (6) amends paragraph 2(1) of Schedule 1 to VERA to change rates for motorcycles weighing no more than 450 kilograms unladen. The rate of duty increases by £1 to £19 for motorbicycles with an engine size not over 150cc; by £1 to £42 for motorcycles with an engine size of over 150cc but not more than 400cc; by £2 to £64 for motorbicycles with an engine size of over 400cc but not more than 600cc; and by £3 to £88 for any other motorcycles.

15. Subsection (7) provides that changes to VED have effect on or after 1 April 2018.

Background note

16. The rate of VED chargeable on vehicles is dependent on various factors including the vehicle type, engine size, date of first registration and exhaust pipe emission data. Generally, cars and vans registered prior to March 2001, and all motorcycles, are taxed by reference to the engine size. The rate applying to cars registered on or after 1 March 2001 is generally determined by the vehicle's carbon dioxide emissions. A reduced rate of VED applies when a vehicle uses certain alternative fuels or meets other conditions set out in VERA.

17. The government has made commitments to improve air quality standards especially in respect of NOx emissions which can be extremely harmful to health. This modest

increase in the level of the diesel supplement is designed to encourage providers and users of company cars to turn to the least polluting models. A new test (RDE) is being introduced which will require vehicle manufacturers to ensure NOx emissions in typical real-world driving are controlled to within declared maximum levels.

18. The RDE test measures a car's emissions in real world driving situations, described as real driving emissions trips – for example, the level of emissions produced when an engine is under load, say, by driving uphill. It will be carried out on cars older than 6 months which have been driven 100,000 kilometres or less. The manufacturer will declare emission figures which it guarantees will be met under any valid RDE test. The legitimacy of the declaration is planned to be verified through testing by approval authorities, market surveillance authorities and even non-governmental bodies, using accredited laboratories.

19. The diesel supplement will apply to models registered on or after 1 April 2018 which have a declared maximum RDE figure for NOx emissions exceeding 80 milligrams per kilometre, or for which no value is declared.

Clause 45: Tobacco products duty: rates

Summary

1. Clause 45 provides for changes to the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco) and to the Minimum Excise Tax (MET) on cigarettes.
2. These changes have effect from 6pm on 22 November 2017.

Details of the clause

3. Subsection (1) amends Tobacco Products Duty Act 1979 (TPDA)
4. Subsection (2) amends the table contained in Schedule 1 to the Tobacco Products Duty Act 1979. The duty on tobacco products are changed as follows:
    - Cigarettes – The duty rate on cigarettes is the higher of either the usual application of duties or the MET. The usual application of duty rates are charged in two duty components. First, a specific duty element, which is increased from £207.99 per thousand cigarettes to £217.23 per thousand cigarettes, plus the second, a percentage of the retail price, which remains unchanged at 16.5%. The MET for cigarettes will be increased from £268.63 to £280.15 per 1000 cigarettes.
    - Cigars – The duty rate on cigars is increased from £259.44 to £270.96 per kilogram;
    - Hand rolling tobacco – The duty rate on hand-rolling tobacco is increased from £209.77 to £221.18 per kilogram;
    - Other smoking tobacco and chewing tobacco – The duty rate on other smoking tobacco and chewing tobacco is increased from £114.06 to £119.13 per kilogram.
5. Subsection (3) provides for the revised duty rates and the MET to have effect from 6pm on 22 November 2017.

Background note

6. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between the richest and poorest in the UK. The Government is committed to maintaining high tobacco duty rates to support public health objectives and the public finances. Research has consistently shown that the price of tobacco products negatively affects demand.

7. This clause increases excise duty on all tobacco products by 2% above the rate of inflation (Retail Price Index) in accordance with the November 2017 announcement. The excise duty rate for hand-rolling tobacco is increased by an additional 1%. The clause also increases the MET on cigarettes from £268.63 to £280.15 per 1000 cigarettes

8. The duty increase, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 28p, a 30 gram pack of hand-rolling tobacco by 41p, 10 grams of cigars by 14p and a 30 gram pack of pipe tobacco by 18p.

9. The changes to the MET on cigarettes support public health objectives and tackle the very cheapest cigarettes. A MET sets 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 usual application of duties or the MET. The MET was introduced in Finance Bill 2017 and came into effect on 20 May 2017.

Part 3: Miscellaneous and final

Clause 46: 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.

Clause 47: Power to search vehicles or vessels

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. Subsection 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.

Clause 48: CO_2 emissions figures etc

Summary

1. Following the introduction of a new regime for calculating a car's CO_2 emissions, known as the "Worldwide harmonized Light-duty vehicles Test Procedures" (WLTP), the government is amending the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and the Vehicle Excise and Registration Act 1994 (VERA) to clarify that a car's CO_2 emissions for the purpose of these rules will remain based on the existing testing regime, known as the "New European Driving Cycle" (NEDC).
2. These changes have effect for the car benefit charge and car fuel benefit charge in the tax year 2017-18 and subsequent tax years, and for Vehicle Excise Duty (VED) in relation to licences taken out on or after 29 November 2017.

Details of the clause

3. Subsection (1) sets out that Schedule 1 of VERA is to be amended by this clause.
4. Subsection (2) amends paragraph 1A (2) in Schedule 1 to VERA to update the definitions of light passenger vehicles (i.e. for ones registered before 1st April 2017).
5. Subsection (3) amends paragraph 1G (1) in Schedule 1 to VERA to update the definitions of the EC certificate of conformity (i.e. in relation to light passenger vehicles registered before 1st April 2017).
6. Subsection (4) amends paragraph 1GA in Schedule 1 to VERA to update the definition of light passenger vehicle and EU certificate of conformity (i.e. for such vehicles registered on or after 1st April 2017) and provide that for the purposes of determining a car's CO_2 emissions figure any WLTP emissions figure specified in that car's EC Certificate of conformity must be ignored. This is following changes to EU law made by Commission Regulation (EU) 2017/1151 which allow an EC certificate of conformity to give a car's CO_2 emissions in WLTP values in addition to NEDC values. Vehicle Excise Duty has previously been based on the latter and this clause continues that approach.
7. Subsection (5) amends paragraph 1H (2) in Schedule 1 to VERA to update the definitions of light goods vehicle.
8. Subsection (6) applies the updated definition of "EU certificate of conformity", and the requirement to ignore any WLTP values specified in one, when assessing whether a light passenger vehicle registered on or after 1st April 2017 is exempt from VED due to having an applicable CO_2 emissions figure of 0g/km.
9. Subsection (7) states that the amendments to VERA have effect for licenses taken out on or after the 29 November 2017.

10. Subsection (8) sets out that ITEPA is to be amended by this clause.

11. Subsection (9) amends section 136 ITEPA to provide that, for the purposes of determining a car's CO_2 emissions figure, any WLTP values specified in that car's EC certificate of conformity must be ignored. This is following changes made by Commission Regulation (EU) 2017/1151 which allow an EC certificate of conformity to give a car's CO2 emissions in WLTP values in addition to NEDC values. The car benefit charge and the car fuel benefit charge have previously been based on the latter and this clause continues that approach.

12. Subsection (10) amends section 137 ITEPA and makes the same provision as subsection (9) with regard to bi-fuel cars.

13. Subsection (11) updates the definitions of "EC certificate of conformity" and "EC type-approval certificate" for the purpose of the car benefit charge and the car fuel benefit charge.

14. Subsection (12) outlines that the amendments to ITEPA will have effect for the 2017-18 tax year onwards.

Background note

15. The car benefit charge is normally calculated by taking the manufacturer's list price (plus the cost of any accessories) and multiplying it by an appropriate percentage, which reflects the level of Carbon Dioxide (CO_2) emissions produced. The car fuel benefit charge is calculated similarly, however it uses a "multiplier" rather than the car's list price.

16. HM Revenue and Customs (HMRC) collects the car benefit charge and car fuel benefit charge, and the Driver and Vehicle Licensing Agency (DVLA) collects VED. Both are collected according to the CO_2 emissions of a vehicle. To determine the CO_2 emissions of a vehicle HMRC and DVLA use the figure as set out on the vehicle's certificate of conformity.

17. From the 1 September 2017 a new emissions test procedure was introduced (WLTP) and the certificate of conformity now shows CO_2 emissions figures based upon the new emissions test procedure in addition to those based upon the existing methodology (NEDC). These changes clarify that the CO_2 figures under the existing NEDC methodology (i.e. the 'New European Driving Cycle' basis) should continue to be used. The clause also updates certain definitions.

Clause 49: Interpretation

1. This clause provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of "CAA 2001" as an abbreviation for the Capital Allowances Act 2001.

Clause 50: Short title

1. This clause provides for the bill to be known as "Finance Act 2017" upon Royal Assent.

Territorial extent and application in the United Kingdom

1. In the view of HM Government, Finance (No. 2) Bill has a differential extent and application in the United Kingdom as shown in the table below. All the provisions except those mentioned in the next paragraph apply to the whole of the United Kingdom.

2. The provisions where there is a differential application appertain to income tax (clause 3), corporation tax: Education Authority of Northern Ireland (clause 25), stamp duty land tax (SDLT) (clauses 40 and 41, and Schedule 11) and landfill tax (clause 42 and Schedule 12).

3. Clause 3 sets the main rates of income tax for a tax year. Main rates apply to the non-savings, non-dividend income of taxpayers in England, Wales and Northern Ireland. From April 2017 the Scottish Parliament has had the power to set rates for this type of income for taxpayers in Scotland.

4. Clause 25 deals with the liability to corporation tax of the Education Authority of Northern Ireland. Corporation tax extends throughout the UK, but the provision applies only to a Northern Ireland body.

5. Clauses 40 and 41, and Schedule 11, appertain to SDLT. SDLT currently applies in England, Wales and Northern Ireland. The National Assembly for Wales was given legislative competence to introduce its own equivalent to SDLT by the Wales Act 2014 and has enacted the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017. But the Act cannot have effect until the date specified by Treasury order under section 16 of the Wales Act 2014, and no such order has yet been made. SDLT does not apply in Scotland, which has its own tax on land transactions under the Land and Building Transaction Tax (Scotland) Act 2013.

6. Clause 42 and Schedule 12 deal with landfill tax on disposals made in England and Northern Ireland only. Landfill tax currently applies in England, Wales and Northern Ireland. The National Assembly for Wales was given legislative competence to introduce its own equivalent to landfill tax by the Wales Act 2014 and has enacted the Landfill Disposals Tax (Wales) Act 2017. But the Act cannot have effect until the date specified by Treasury order under section 19 of the Wales Act 2014, and no such order has yet been made. Landfill tax does not apply in Scotland, which has its own corresponding tax under the Landfill Tax (Scotland) Act 2014.

7. Clause 43 deals with air passenger duty. Air passenger duty currently applies in the whole of the UK. The Scottish Parliament was given legislative competence to introduce its own equivalent to air passenger duty by the Scotland Act 2016 and has enacted the Air Departure Tax (Scotland) Act 2017. But the Act cannot have effect until the date specified by Treasury order under section 17 of the Scotland Act 2016, and no such order has yet been made.

Clause or resolution number	Extends to E&W and applies to **England**	Extends to E&W and applies to **Wales**	Extends and applies to **Scotland**	Extends and applies to **Northern Ireland**	Would corresponding provision be within the competence of the **National Assembly for Wales**?	Would corresponding provision be within the competence of the **Scottish Parliament**?	Would corresponding provision be within the competence of the **Northern Ireland Assembly**?	Legislative Consent Motion needed?
Clauses 1 to 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No	No
Clauses 4 to 24	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 25	No	No	No	Yes	N/A	N/A	N/A	No
Clauses 26 to 39	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 40 and 41	Yes	Yes	No	Yes	No	Yes	No	No
Clause 42	Yes	No	No	Yes	N/A	N/A	N/A	No
Clauses 43 to 50	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedules 1 to 10	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 11	Yes	Yes	No	Yes	No	Yes	No	No
Schedule 12	Yes	No	No	Yes	N/A	N/A	N/A	No

Minor or consequential effects

8. None identified.

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