Finance Bill: Clauses with powers to make secondary legislation

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Glossary of statutory references and other terms:

EIS	Enterprise Investment Scheme
FA, followed by a year	Finance Act of that year
F (No.2) A, followed by a year	Finance (No. 2) Act of that year
FATCA	Foreign Account Tax Compliance Act
HMRC	Her Majesty’s Revenue and Customs
IHTA 1984	Inheritance Tax Act 1984
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
KIC	Knowledge-intensive company
SEIS	Seed Enterprise Investment Scheme
TIOPA 2010	Taxation (International and Other Provisions) Act 2010
TMA 1970	Taxes Management Act 1970
UK GAAP	United Kingdom Generally Accepted Accounting Practice
US GAAP	United States Generally Accepted Accounting Practice
VCT	Venture Capital Trust

Clause 8: Exemption for armed forces' accommodation allowances

Clause 8 introduces new section 297D ITEPA 2003. This provides an income tax exemption for allowances paid to or in respect of members of the armed forces for or towards the cost of accommodation.

New section 297D (2) sets out the definition of "accommodation allowance" for the purposes of this income tax exemption. Section 297(2)(a) and (b) define the allowance as one payable out of the public revenue and for or towards the cost of living accommodation. Section 297(2)(c) gives the Treasury the power to specify additional conditions by regulation.

New section 297D (3) clarifies that regulations made under the power in section 297D(2)(c) can be framed by reference to a scheme or document. This is intended to allow reference to Ministry of Defence accommodation policy documents. Regulations made will therefore need to be amended in due course if the accommodation schemes change to retain the income tax exemption.

New section 297D (5) allows these regulations to have retrospective effect if they do not increase any person's liability to income tax. This is to ensure regulations can retrospectively define the meaning of accommodation allowance by reference to the Ministry of Defence's accommodation policy documents, if for any reason these regulations cannot be laid until after the documents have effect.

Regulations under this section will be made by HM Treasury. These regulations will be made using negative procedure.

Regulations will be made in time for the Ministry of Defence to launch a pilot for their new accommodation allowance. The pilot is expected to be launched in late 2018. Draft regulations are not yet available since the Ministry of Defence has not yet finalised its accommodation allowance policy documents. Regulations will be consulted on in draft in accordance with the tax policy making process later in 2018.

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

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

These clauses and Schedules introduce new reporting requirements for individuals in the scope of the disguised remuneration loan charge: clause 11 and Schedule 1 in respect of employment income provided through third parties, and clause 12 and Schedule 12 in respect of trading income provided through third parties.

Paragraph 10 of Schedule 1 inserts new paragraph 35D into Schedule 11 to F (No.2) A 2017, and paragraph 1 of Schedule 2 inserts new paragraph 23 into Schedule 12 to F (No.) A 2017, which list the information individuals are required to provide under the reporting requirements. Paragraph 10 of Schedule 1 and paragraph 1 of Schedule 2 also respectively insert new paragraph 35E into Schedule 11 to F (No. 2) A 2017 and new paragraph 24 into

Schedule 12 to F (No. 2) A 2017, which provide powers for the Commissioners for HMRC to add to, remove from or amend the list of information required, and to make incidental provision. These are negative powers. There are currently no plans to use the powers.

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

Clause 14 introduces a new risk to capital condition to the Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and Venture Capital Trusts (VCTs) to better target the schemes on growth companies. This is intended to counteract investment arrangements in companies that are designed to preserve the investor's capital. An eligible company must have objectives to grow and develop in the long term, and there must be a significant risk to any capital invested in it.

The clause contains a provision enabling HM Treasury to make regulations to commence the changes to the rules. No procedure would apply to the making of the regulations. It is intended to use the power to enable the provisions to take effect from Royal Assent, subject to normal State aid rules.

Clause 15 and Schedule 4: EIS and VCT reliefs: knowledge intensive companies

Clause 15 introduces Schedule 4 to the Finance Bill which is intended to encourage more investment in knowledge-intensive companies (KICs).

The Schedule: increases the annual investment limit for individuals who make investments in KICs under the EIS from £1 million to £2 million; increases the annual amount of investment a KIC may receive under the EIS or from a Venture Capital Trust (VCT) from £5 million to £10 million; and allows KICs to elect for the start date for the initial 10 year age limit for receiving an investment under the EIS or VCT to be the date from which the company's annual turnover first exceeds £200,000, instead of the date of the first commercial sale.

The Schedule contains a provision enabling HM Treasury to make regulations to commence the changes to the rules. No procedure would apply to the making of the regulations. It is intended to use the power to enable the provisions to take effect from 6 April 2018, subject to normal State aid rules.

Clause 16 and Schedule 5: Venture capital trusts: further amendments

Clause 16 introduces Schedule 5 to the Finance Bill which amends the rules for VCTs.

Paragraph 1 of the Schedule corrects a technical flaw. Paragraphs 2 to 10 make a number of changes to better target VCT investments in higher risk growth companies: the minimum amount of investments a VCT must hold in qualifying companies will increase from 70% to 80% for accounting periods beginning on or after 6 April 2019; the deadline for using the proceeds on disposal of qualifying holdings will be doubled from 6 months to 12 months to encourage VCTs to reinvest the money instead of, for example, paying out the money in dividends, for disposals made on or after 6 April 2019; VCTs will be required to invest at

least 30% of the funds they raise in any accounting period beginning on or after 6 April 2018 within 12 months of the end of that period, to encourage earlier investment of funds; and a number of transitional provisions ("grandfathering provisions"), that enable VCTs to reinvest funds under the old rules that applied at the time the funds were first raised, will cease to apply, to ensure all new investments made on or after 6 April 2018 are made under the current rules.

Government amendment 1 applies additional conditions where VCTs make long term loans as an alternative to equity investment. It ensures the loans are unsecured and on terms that provide no more than a commercial rate of return on the amount of the loan. A 'safe harbour' deems loans with returns that average no more than 10% a year to be commercial, where there are no other unusual arrangements. The amendment would apply for new loans drawn down on or after Royal Assent.

The Schedule contains a provision enabling HM Treasury to make regulations to commence the changes to the rules in paragraphs 2 to 10 and Government amendment 1. No procedure would apply to the making of the regulations. It is intended to use the power to enable the provisions to take effect as described above, subject to normal State aid rules.

Clause 18 and Schedule 6: Partnerships

Clause 18 introduces Schedule 6 which makes changes to, and clarifies, certain aspects of the taxation of partnerships including the statutory requirements relating to partnership returns. Schedule 6 is in five parts. Part 4 provides an exemption, in limited circumstances, from having to provide certain information on a partnership return: investment partnerships, with no trading or property income in the UK, will not be required to provide an HMRC reference number in respect of a partner who is not chargeable to income tax or corporation tax in the UK, as long as information about that partner has been provided on a return under the International Tax Compliance Regulations 2015 (broadly, the Common Reporting Standard or FATCA).

Paragraph 8(3) of Schedule 6 inserts new section 12ABZA into TMA 1970 which deals with certain partnership information which does not need to be included in a partnership return. Subsection (2) defines "relevant return" for the purposes of section 12ABZA(1)(c) by reference to the International Tax Compliance Regulations 2015 (SI2015/78) and subsection (5) provides a new power to permit the Commissioners for HMRC to amend this definition in order to ensure that the section works as intended should the regulations change. There are currently no plans to use the powers but any instrument would be subject to negative procedure.

Clause 32: Double taxation arrangements specified by Order in Council

Clause 32 amends the power under which double taxation arrangements with territories outside of the United Kingdom are given effect in domestic law.

The existing powers contained in Chapter 1 of Part 2 TIOPA 2010 and section 158 IHTA 1984 provide that arrangements shall have effect if Her Majesty by Order in Council declares that it is expedient that they should have effect. Clause 32 amends sections 2 and 3 TIOPA 2010 and section 158 IHTA 1984 to clarify the scope and content of arrangements that may be given effect under these rules.

Subsections (1) and (3) of the clause clarifies that arrangements modifying the effect of existing arrangements can be given effect. Subsections (2) and (3) of the clause clarify that arrangements given effect may include provisions conferring functions on the public authorities of the contracting territories (HMRC in the case of the UK).

The amended powers are draft affirmative. The amended powers will be used following Royal Assent to give effect to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument or MLI) which the United Kingdom signed on 7 June 2017. The Multilateral Instrument will be included as Schedule to the Order, and a copy of the Multilateral Instrument is attached to this letter. The Multilateral Instrument has been public since November 2016 and HMRC and HM Treasury have consulted upon it. The Order itself will be straightforward and so it is not intended to prepare a draft of the Order for consultation.

The powers will also continue to be used to give effect to bilateral arrangements made with a view to affording relief from double taxation.

Clause 33 and Schedule 9: Bank Levy

Clause 33 and Schedule 9 amend Schedule 19 to FA 2011, concerning the calculation and administration of the bank levy.

Paragraph 2 of Schedule 9 introduces new paragraphs 15V to 15Y of Schedule 19. These provide for a new adjustment within the bank levy calculation in respect of certain loss absorbing instruments that are issued by an overseas subsidiary and held within the relevant group by a UK sub-group or UK resident entity. This adjustment will be linked to loss absorbing or recapitalisation requirements imposed by the relevant UK or overseas regulatory authority for banks.

The new regulation-making powers provided within Schedule 9 are set out below:

- New paragraph 15V of Schedule 19 provides that regulations may define ‘tier one equity and liabilities’ (sub-paragraph (3)) and a ‘loss absorbing or recapitalisation requirement’ (sub-paragraph (4)) for the purposes of this adjustment.
- New paragraph 15W provides that regulations may specify conditions to be satisfied for a loss absorbing instrument to qualify for this adjustment (sub-paragraph (4)); as well as certain conditions to be satisfied in relation to the liabilities of the UK group member whose bank levy is being calculated (sub-paragraph (7)).

These powers will be used by HM Treasury to make a statutory instrument for bank levy chargeable periods ending on or after 1 January 2021. This statutory instrument will be

introduced once the appropriate regulatory definitions (upon which these regulations are expected to depend) are in place. The power will be exercised under the negative procedure. A draft of the regulations will be published for consultation (although not before 2019 – 2020).

Elsewhere, paragraph 10 of Schedule 9 updates the existing power at paragraph 40(1) of Schedule 19 that allows HM Treasury to add to, repeal or amend provisions relating to 'netting' and the bank levy by statutory instrument. This update is consequent to renumbering of paragraphs and other changes within Schedule 9, but does not affect the scope of this power. Similarly, paragraph 34 of Schedule 9 updates HM Treasury's power at paragraph 81 of Schedule 19 to make certain consequential changes by statutory instrument. This update reflects the removal of other references to 'US GAAP' and 'UK GAAP' elsewhere within the Schedule. There are currently no plans for HM Treasury to make further use of these regulation-making powers.

Clause 41: Relief for first time buyers

Clause 41 introduces a new section 57B and new Schedule 6ZA to FA 2003. These provisions provide relief from stamp duty land tax for first time buyers.

Subsection (4) of the clause inserts a new subsection (7) into section 110 FA 2003. Sections 109 and 110 FA 2003 provide for a general power to amend stamp duty land tax legislation by regulations, with those regulations being made under the affirmative procedure. New section 110(7) provides that regulations made to vary new schedule 6ZA FA 2002 or new paragraph 16 of Schedule 9 FA 2003 may be made under the negative procedure as long as they do not increase any person's liability to tax. Subsection 109(3) FA 2003 provides that this power cannot be used to vary rates or thresholds.

There are no current plans to use this power.

Clause 42 and Schedule 12: Landfill Tax: disposals not made at landfill sites, etc.

Clause 42 and Schedule 12 implement two changes to Landfill Tax:

Firstly, the simplification of what constitutes a disposal at a landfill site that has a permit authorising disposals ('an authorised site') and

Secondly the extension of the tax to unauthorised landfill sites, which are sites that do not, but which ought to, have a permit.

Schedule 12 contains, or amends, six powers to make secondary legislation. Apart from the power in paragraph 32, all are inserted into the existing primary legislation for Landfill Tax, contained in FA 1996.

Paragraph 3 of Schedule 12 inserts new section 40A into FA 1996. New sections 40A(5) to (8) provide the power to provide for material to be treated as disposed of, for Landfill Tax purposes, in circumstances where it would not otherwise be so treated and, conversely, for material to be treated as not disposed of in circumstances where it would not otherwise be

so treated. The power is required in order to make detailed provision for descriptions of material that either will or will not be taxed. This power will be required to make The Landfill Tax (Disposals of Material) Order 2018, which will provide the details of what types of material are treated as disposed of at an authorised landfill site. It will also provide that the disposal of certain types of prohibited material at a place other than an authorised landfill site is taxable. This Order will be subject to the 'made affirmative' procedure and will be laid by the Treasury it as soon as possible after Royal Assent. A draft of the Order is attached to this letter.

Paragraph 8 of Schedule 12 inserts new section 46(2)(za) into FA 1996. This provides that regulations under section 46 (power to vary) can confer exemption by reference to guidance made by the Environment Agency or its equivalent in Northern Ireland (or other body given similar powers in the future). That has the effect that particular kinds of disposal do not require a permit or licence. Paragraph 17 of Schedule 12 inserts new section 47(9) into FA 1996. New section 47(9) provides the power to make regulations regarding a person's application to be registered for Landfill Tax. This includes the form and timing of any application and the conditions under which HMRC may reject a person's application. (The regulations may also provide for the Commissioners for HMRC to issue binding public guidance, but it is not presently intended to use this aspect of the power.) These powers are required to make The Landfill Tax (Amendment) Regulations 2018, which will make necessary changes to the record-keeping arrangements at authorised sites to support the re-definition of disposal. It also makes essential changes to the existing regulations to address record-keeping and registration requirements at unauthorised sites and to provide for a new system for estimating the weight of material disposed of at those sites. It will also provide that that where the Environment Agency in England, or its equivalent in Northern Ireland, do not require certain disposals to be authorised, they will not be within the scope of the tax. These regulations will be subject to the negative procedure and will be laid by both the Treasury and the Commissioners for HMRC as soon as possible after Royal Assent. A draft of the Regulations is attached to this letter.

Currently, the following set of provisions are not planned to be used; however, this may be reviewed in future based on operational experience. All three are powers are for the Commissioners for HMRC and would be subject to the negative procedure.

Paragraph 16 of Schedule 12 inserts new paragraph 1C into Schedule 5 to FA 1996. New paragraph 1C provides record keeping provisions for operators of authorised landfill sites. At present, it is considered that the records that landfill site operators are required to keep by the existing legislation should be adequate.

Paragraph 23 of schedule 12 inserts new section 50A into FA 1996. New section 50A(2) contains the power to specify additional information that should accompany an assessment for Landfill Tax at an illegal waste site made under section 50A. At present, the information within section 50A should be adequate

Paragraph 32 of Schedule 12 provides for a self-standing power for the Commissioners for HMRC to specify further information that should be notified to them when a person is liable

under paragraph 31 in respect of disposals made before 1 April 2018 at an unauthorised site. The power is included for consistency with the power included in section 50A FA 1996 by paragraph 23