HM Treasury

Draft provisions for Finance Bill Explanatory Notes

Clauses 1 to 40

6 July 2018

Explanatory notes

Introduction

1. These explanatory notes relate to the draft provisions for Finance Bill 2018-19 as published for consultation on 6th July 2018. They have been prepared jointly by HMRC and HM Treasury in order to assist the reader in understanding the draft provisions.

2. Publication of draft legislation for the finance bill ahead of its introduction to Parliament is part of the government's tax policy making process, which was updated on 6 December 2017.

3. The notes need to be read in conjunction with the draft provisions for Finance Bill 2018-19. They are not, and are not meant to be, a comprehensive description of the draft provisions. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

4. These draft provisions are published for consultation. Details of who to respond to are set out in the background to each explanatory note.

5. The government has also published tax information and impact notes for the legislation published on 6 July 2018 with the exception draft clause 17 and schedule 9 (VAT on vouchers) where the tax information and impact note will be published at Budget 2018, and draft clause 24 (HGV road user levy) where the tax information and impact note was published on 28 March 2018.

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Clause 1: Optional remuneration arrangements: arrangements for cars and vans

Summary

1. This clause introduces amendments to the optional remuneration arrangements (OpRA) legislation introduced in section 7 and Schedule 2 to the Finance Act 2017. The changes ensure that when a taxable car or van is provided through OpRA, the amount foregone includes costs connected with the car or van which are regarded as part of the benefit in kind under normal rules. In addition, the changes adjust the value of any capital contribution towards a taxable car when the car is made available for only part of the year.

Details of the clause

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

3. Subsection (2) amends section 120A(3)(b) ITEPA (benefit of car treated as earnings: optional remuneration arrangements) and introduces new subsection 120A(4). This provides that the total amount foregone, which is to be taken into account in calculating the amount reportable for tax and NICs purposes, includes both the amount foregone with respect to being provided with the car and the amount foregone with respect to the costs connected with the car (such as insurance) which are regarded as part of the benefit in kind under normal rules. The cost of a driver and fuel are not to be included as these are chargeable under separate provisions.

4. Subsection (3) amends sections 121A(1) and (2) ITEPA (optional remuneration arrangements: method of calculating relevant amount) to substitute a revised Step 1 which references the total foregone amount in connection with the car for the year. Where it is not possible to separate out the total amounts foregone in connection with the car from a number of benefits the amendment provides for an apportionment to be made on a just and reasonable basis. The calculation reflects the value of "a benefit mentioned in section 120A(4)(a) or (b)", that is, the car and any benefits connected to its provision.

5. Subsection (4) provides for amendments to be made to section 132A ITEPA (capital contributions by employee: optional remuneration arrangements). This puts the deduction for a capital contribution for a taxable car by an employee on a similar footing to the normal rules by providing for the amount of the deduction in any tax year to be reduced on a pro-rata basis if the car is not made available for the whole of the relevant tax year. Section 132A(3) sets out the overall method of calculating the amount of the deduction for a capital contribution by reference to an "availability factor". New subsection 132A(4A) sets out a formula for calculating the "availability factor" taking into account the number of days in the tax year, and the number of days in the tax year during which the car is not available. New subsection 132A(4B) then defines what is meant by a day on which the car is unavailable.

6. Subsection (5) amends section 154A (benefit of van treated as earnings: optional remuneration arrangements) by revising subsections (2)(b), (3) and (7) to introduce the concept of "total foregone amount" in respect of taxable vans. It also introduces new subsection 154A(8) which mirrors the provisions of new subsection 120A(4) as outlined in paragraph 3 above.

7. Subsection (6) amends section 239 ITEPA (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles). This removes the exemption provided by sections 239(1) and (2) when liability in respect of a taxable car or van arises by virtue of section 120A or section 154A.

8. Subsection (7) provides that the amendments have effect from the tax year 2019-20 onwards.

Background note

9. Under current rules, where the benefit of the availability of a taxable car or van is made through OpRA, the amount foregone by the employee in respect of the benefit is compared to the modified cash equivalent of the car or van – the greater value is reportable as the value of the benefit for tax and NICs purposes.

10. When ITEPA was originally introduced, the explanatory note was explicit that connected costs were regarded as part of the car benefit charge (and now also applies to the van benefit charge). During the introduction of section 7 and schedule 2 to the Finance Act 2017, which introduced the OpRA provisions, an oversight meant that no provision was made to ensure the calculation of the amount foregone for a taxable car or van should be the total amount foregone, including any connected costs.

11. In most instances information on the level of benefits from the benefit of the car and connected benefits are readily available and there should be no need to artificially disaggregate amounts foregone for the purpose of calculating the aggregate total amount foregone if so.

12. The deduction in any tax year for a capital contribution towards a taxable car is automatically reduced on a pro-rata basis under the normal car benefit charge rules if the car is made available for only part of a tax year. Similar provisions were not included in section 7 and Schedule 2 to the Finance Act 2017 for calculating the relevant amount when a taxable car is provided through OpRA. This means that currently, where a taxable car is provided through OpRA, the amount deductible for capital contributions is overstated where a car is available only for a part year.

13. Introduction of the OpRA legislation was announced at Autumn Statement 2016 and Finance Bill legislation was published in December 2016 for technical consultation. Neither of the issues subject to amendment in Finance Bill 2018-19 was identified in the responses to the consultation.

14. Following introduction of the new OpRA rules in Finance Act 2017, HMT and HMRC were made aware of these anomalies. The government decided to take action to protect the Exchequer at the first opportunity.

15. If you have any questions about this change, or comments on the legislation, please contact Su McLean-Tooke on 03000 586404 (email: su.mclean-tooke@hmrc.gsi.gov.uk or employmentincome.policy@hmrc.gsi.gov.uk).

Clause 2: Exemption for benefit in form of vehicle-battery charging at workplace

Summary

1. This clause introduces a new exemption to Chapter 3 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to encourage employers to provide charging facilities for all-electric and plug-in hybrid vehicles at or near the workplace. It removes any liability to income tax arising from the provision of charging facilities (including electricity) for individuals charging the batteries of vehicles other than taxable cars or vans at or near their workplace.

Details of the clause

2. Subsection (1) introduces new section 237A (Vehicle-battery charging) to ITEPA. Subsection 237A(1) provides that the exemption will apply where facilities for charging a vehicle's battery are provided at or near an employee's workplace.

3. New subsection 237A(1) also provides that the exemption applies if the employee is a passenger in a vehicle using the charging facilities.

4. New subsection 237A(2) provides that the charging facilities must be made available generally to the employer's employees at that workplace. Where an employer has multiple workplace locations, they need not make charging facilities available at all of them.

5. New subsection 237A(3) sets out a number of definitions for the purposes of the section.

6. Subsection (2) provides that the exemption has effect from the start of the 2018-19 tax year onwards.

Background note

7. One of the current issues limiting the adoption of all-electric or plug-in hybrid vehicles by the general public is the worry about where they can be recharged. Many residential areas have limited charging facilities, especially where only on-street parking is available.

8. If an employer provides battery charging facilities (including electricity) for a vehicle which is not a taxable car or van, the employee is provided with a benefit in kind which is liable to income tax and NICs. Taxable cars and vans are exempt from any charge under separate provisions in ITEPA.

9. The government announced at Autumn Budget 2017 that they would introduce an exemption to remove any income tax or NICs liability for charging electric vehicles at

work with effect from 6 April 2018. This supports Air Quality and Climate Change initiatives by incentivising the take-up of all-electric and plug-in hybrid vehicles.

10. The legislation provides that the exemption can apply where facilities are made available "at or near the workplace". The words "at or near the workplace" are not defined in the legislation. However, HM Revenue and Customs take the same approach as for section 237 (parking facilities), where the charging facilities made available are within a reasonable distance from the place of work having regard to the nature of the locality.

11. The exemption does not extend to the reimbursement by employers of costs incurred by individuals or the provision of charging facilities when recharging vehicles away from the workplace. Where a vehicle is used in the performance of the duties of the employment, approved mileage allowance payments and mileage allowance relief may apply.

12. If you have any questions about this change, or comments on the legislation, please contact Su McLean-Tooke on 03000 586404 (email: su.mclean-tooke@hmrc.gsi.gov.uk or employmentincome.policy@hmrc.gsi.gov.uk).

Clause 3: Exemptions relating to emergency vehicles

Summary

13. This clause introduces three revisions to the tax treatment of emergency vehicles. Firstly, an extension to the current 'on-call' exemption to allow for ordinary commuting in an emergency vehicle when not on-call. Secondly, provisions to ignore fuel as an 'additional expense' in working out the tax charge if certain conditions are met. Finally, transitional arrangements for the taxation of emergency vehicles for the period 6 April 2017 to 5 April 2020. This ensures that a small number of employees in the emergency services avoid an immediate significantly increased tax charge for having their emergency vehicle available for private use following changes to the 'use of assets' legislation in Finance Act 2017.

Details of the clause

14. Subsection (1) introduces amendments to section 248A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Subsections (2) and (3) amend sections 248A(1) and (8) to clarify and extend the scope of the existing exemption for emergency vehicles in section 248A ITEPA. It clarifies it by amending the existing wording of subsection 248A(1)(a) ITEPA so that it is clear that the emergency vehicle has to be provided mainly for the person's business travel. It then extends the scope of the exemption by amending subsection 248A(1)(b) to cover all commuting.

15. Subsection (4) introduces new subsections (5) and (6) into section 205 ITEPA which relate specifically to fuel provided for emergency vehicles.

16. New subsection 205(5) ITEPA sets out the circumstances under which the cost of fuel provided for an emergency vehicle can be ignored as an additional expense in determining the cost of the benefit where –

    a. the employer provides no fuel for private use;

    b. the employer reimburses an employee only for fuel for business use; or

    c. the cost of fuel provided by the employer for private use is made good in full by the employee on or before 6 July following the tax year.

17. New subsection 205(6) ITEPA sets out a number of related definitions.

18. Subsection (5) provides that the amendments made to ITEPA have effect for the tax year 2017-18 and subsequent years.

19. Subsection (6) introduces provisions for the tax years 2017-18 to 2019-20 to alter the way in which the cost of the taxable benefit of an asset made available without

transfer is calculated, if that asset is an emergency vehicle.

20. Subsection (7) provides for the cost of the taxable benefit set out in section 205(1C) ITEPA to be calculated as the private use proportion of the annual cost of the benefit. The "private use proportion" is the proportion of annual mileage that is private mileage. This ensures that the calculation for users of emergency vehicles reverts broadly to previous practice for the transitional period. Following the end of that period, the new rules for calculating the benefit of an asset apply.

21. Subsection (8) disapplies some of the rules in section 205A(2) ITEPA that determine when an asset is treated as unavailable for private use for the purposes of the deduction rule. Adjustments may still be made for periods in the tax year before the day on which the asset is first available to the employee or after the day on which the emergency vehicle is last available to the employee. Adjustments may also be made if the emergency vehicle is shared with another employee during the tax year according to the provisions in s205B ITEPA.

Background note

22. Typically, where a car is provided to an employee by an employer and is available for private use (including home to work commuting), the car benefit charge applies. However, these rules do not apply if the car is of a type not commonly used as a private vehicle and is unsuitable for private use. This definition applies to emergency vehicles with fixed flashing blue lights. This includes concealed lights as deployed in unmarked police cars.

23. An emergency services employee is defined in legislation as working in the provision of the following services: police, fire, fire and rescue, ambulance, and paramedic.

24. There is an existing exemption in Chapter 3 Part 4 of ITEPA for emergency vehicles if the only private use is for on-call commuting or for private journeys made while on-call. Emergency vehicles with more extended private use are not covered by that exemption. They fall within, and are taxed under, the use of assets legislation in Chapter 10 of Part 3 of ITEPA. These rules tax assets, of any kind, made available for private use by an employer. These typically include a wide range of assets such as: helicopters, TVs, washing machines, yachts.

25. HMRC had a long-standing practice of calculating the value of the benefit on these assets on the basis of time apportionment. However, this was later identified as an unlawful extra statutory concession on the basis of the *Wilkinson* rules. As a result, the use of assets legislation was amended by section 8 of the Finance Act 2017 with the intention of broadly reflecting long-standing practice in statute.

26. Draft legislation was published in December 2016 for technical consultation. However, there were no responses and no indication that a number of emergency service staff were using emergency vehicles for private use in a way that meant the relevant exemption did not apply. As a result of the changes to the use of assets legislation, some individuals faced a significant increase in the taxable value of the

benefit.

27. Although ordinary commuting is typically considered a private expense, extending the 'on-call' exemption to allow for ordinary commuting in an emergency vehicle is designed to aid the provision of vital public services.

28. The government recognises that the emergency services require flexibility to maintain fast response times to perform a vital public service. The changes to legislation being introduced should ensure that a tax charge will not discourage employees from taking vehicles home. Extending the scope of the emergency vehicles exemption should mean that more employees in the emergency services have no liability to a benefit charge.

29. If the level of their current personal use means that employees are still taxable under the use of assets legislation, the transitional provisions will allow them, if they wish to do so, to review and possibly vary their contractual arrangements which might otherwise have significantly increased the tax charge for the private use of their emergency vehicle. Employees and employers will have time to consider whether or not to reduce the level of the private use of an emergency vehicle that is allowed in the knowledge that the new rules on use of assets will apply from 6 April 2020.

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

Clause 4: Exemption for expenses related to travel

Summary

1. This clause removes the requirement for employers to check receipts or other forms of documentary evidence of the amounts spent by employees when using the HMRC benchmark scale rates to pay or reimburse their employees' qualifying subsistence expenses. This clause also makes necessary amendments to allow HMRC to introduce a statutory exemption for overseas scale rates, subject to the same checking requirements as benchmark scale rates.

Details of the clause

2. Subsection (1) introduces an amendment to the exemption for paid or reimbursed expenses in section 289A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

3. Subsection (2) amends section 289A ITEPA 2003 to introduce section 289A(2A). Section 289A(2A) contains a new exemption for expenses in the course of qualifying travel that have been paid or reimbursed in accordance with regulations made by the Commissioners for HMRC, subject to a new Condition C, which contains a lower checking requirement, being satisfied. Both benchmark scale rates and overseas scale rates will be covered by these regulations. The exemption will not apply if the payment or reimbursement is offered in conjunction with a relevant salary sacrifice arrangement.

4. Subsection (3) introduces section 289A(4A) ITEPA 2003 which contains the further condition, Condition C, allowing payments or reimbursements of expenses to be made with a lower checking requirement than under other parts of section 289A. This condition requires employers to operate a system for checking that employees were engaged in qualifying travel in relation to the amount paid or reimbursed.

5. Subsection (4) makes a consequential amendment to section 289A(5) ITEPA 2003.

6. Subsection (5) inserts section 289A(5A) ITEPA 2003 to create a definition of qualifying travel, as travel for which a deduction from earnings would be allowed under Chapter 2 or 5 of Part 5 ITEPA 2003

7. Subsections (6) and (7) make consequential amendments to section 289A(6) and (7) ITEPA 2003.

8. Subsection (8) inserts section 289A(8) ITEPA 2003 to allow regulations made under new section 289A(2A)(a) to exempt amounts of expenses that are calculated by reference to rates for expenses published from time to time by HMRC.

9. Subsection (9) provides that the amendments will have effect from the tax year 2019-20.

10. Subsection (10) provides that from the tax year 2019-20, the Income Tax (Approved Expenses) Regulations 2015 (S.I. 2015/1948) have effect as if they were made under new section 289A(2A)(a) ITEPA 2003 rather than section 289A(6)(a) and (7) ITEPA 2003. It also makes consequential amendments to these regulations to reflect this change.

Background note

11. Benchmark scale rate payments are payments or reimbursements in respect of certain types of subsistence expenses that are currently listed in regulations made under the power in section 289A(6)(a) ITEPA 2003: S.I. 2015/1948. These regulations cover meal allowances for employers to pay or reimburse their employees for food and drink costs that would otherwise be tax deductible.

12. This clause will provide that these expenses may be paid or reimbursed using benchmark scale rates without requiring an employer to check amounts spent in order to make the payments free from tax. Instead, legislation will only require employers to ensure that employees are undertaking qualifying travel on the occasions in respect of which a payment is made or reimbursed (i.e. travel for which a deduction would be allowed under Chapter 2 or 5 of Part 5 ITEPA 2003).

13. Overseas scale rates are amounts currently set out in HMRC guidance. Employers can use these rates for paying or reimbursing accommodation and subsistence expenses to employees, whose duties require them to travel abroad, free of tax and NICs.

14. This legislation will allow HMRC to bring the concessionary exemption for overseas scale rates into legislation. Similar to benchmark scale rates, there will be no requirement for employers to check amounts spent in order to pay or reimburse employee expenses using overseas scale rates free from tax, but they will need to ensure the employees are undertaking qualifying travel on the occasions in respect of which a payment is made or reimbursed.

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

Clause 5: Beneficiaries of tax-exempt employer-provided pension benefits

Summary

1. Employers often provide death in service and retirement benefits to employees. This clause will amend the tax exemption which concerns employer paid premiums into life assurance products and employer contributions to certain overseas pension schemes. Currently, premiums and contributions are only tax exempted if the named beneficiary is the employee or a member of the employee's family or household. This clause will allow the named beneficiary to be any individual or registered charity.

Details of the clause

2. The clause introduces amendments to Chapter 9 of Part 4 of the Income Tax (Earning and Pensions) Act 2003 (ITEPA).

3. Subsection 1 amends section 307(2) to widen the scope of the exemption to allow the employee to name any individual, or a charity, as the beneficiary of the employee's death in service or retirement benefits. The employee will not be liable to income tax as a benefit in kind on contributions paid in these circumstances.

Background note

4. When an employer provides for death in service benefits through a life assurance policy or provides retirement benefits through a qualifying relevant overseas pension scheme, the employee will usually name a beneficiary to receive any payment due upon their death and may be able to name a beneficiary to receive their retirement benefit. Prior to this provision premiums paid into these schemes by the employer are tax exempt if the named beneficiary of the employee's death or retirement benefit is the employee, a member of the employee's family or a member of their household. The current tax definitions of family and household only cover: spouse, civil partners, parents, children and dependents, domestic staff and the employee's guests.

5. This clause modernises the exemption to ensure the tax charge remains relevant and fair. Extending the exemption to include any named individual as beneficiary allows the employee to nominate their preferred recipient irrespective of their relationship to the employee in law. This ensures that employees throughout the workforce are treated fairly and proportionately with employees in marriages or with close family. The exemption will also allow employees to nominate a registered charity, which is consistent with existing government policy of providing tax relief on charitable donations.

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

Clause 6, Schedules 1 and 2: Disposals of assets by non-UK residents and payments on account etc

Summary

1. This clause and Schedule 1 introduce from 6 April 2019 new provisions to bring gains on interests in UK land by non-UK residents into charge, to charge non-UK resident companies to corporation tax (CT) on their gains from disposals of interests in UK land, and to abolish the charge to tax on ATED-related gains. The clause and Schedule 2 extend from 6 April 2019 existing reporting and payment on account obligations on non-UK residents disposing of UK property to include the new interests chargeable to tax; and also introduce from 6 April 2020 capital gains tax (CGT) reporting and payment on account obligations for residential property gains chargeable on UK resident persons and branches and agencies of non-UK resident persons.

Details of the clause and Schedules

2. Clause 6 introduces new Schedules. Schedule 1 relates to disposals of interests in assets relating to UK land by non-UK residents and the abolition of charge to tax on ATED-related gains. Schedule 2 relates to payments on account in respect of liabilities arising from chargeable gains.

3. Subsections (1) and (2) describe what Schedule 1 does and how, explaining that the new Part 1 substituted by Schedule 1 gives effect to the changes relating to non-UK residents' gains and the abolition of ATED-related CGT, and that Schedule 1 restates the effects of the repealed provisions in a rewritten form.

4. Subsection (3) describes what Schedule 2 does and who is affected.

Schedule 1: Part 1: Extending cases in which non-residents are charged to tax etc

5. Paragraphs 1 and 2 of Schedule 1 substitutes a new Part 1 of Taxation of Chargeable Gains Act 1992 (TCGA 1992). The new Part 1 restates the existing law from Part 1 and Chapters 5, 6, and 7 of Part 2 of the of that Act, and also includes new provisions to bring disposals by non-UK residents of UK land into charge.

6. A Table of Destinations will be published when the Bill is introduced showing where the old Part 1 and Chapters 5, 6, and 7 of Part 2 have been incorporated into the new Part 1.

7. The majority of the provisions in Schedule 1 relate to restatement of the current law, and are not explained in this note.

8. The following sections in the new Part 1 are new provisions relating to the disposals of interests in assets relating to UK land by non-UK residents.

    a. Section 1A(3)(b) of the new Part 1 charges CGT on non-UK resident persons who make gains on disposals of 'interests in UK land', which is defined in new section 1C. This subsection is not engaged if the gain would fall into section 1A(3)(a) of the new Part 1 as arising to a branch or agency. See new section 2B(4)(a) with regard to similar gains by companies, which in accordance with the changes enacted in this Schedule are now chargeable to CT on their gains.

    b. Section 1A(3)(c) of the new Part 1 charges CGT on non-UK resident persons' gains on disposals of interests in rights to assets that derive at least 75% of their value from UK land, and where the person has a substantial indirect interest in that land. The supporting provisions to this charge are the new section 1D and in the new Schedule 1A to TCGA 1992. This subsection is not engaged if the gain would fall into section 1A(3)(a) of the new Part 1 as arising to a branch or agency. See new section 2B(4)(b) with regard to gains by companies, which in accordance with the changes enacted in this Schedule are now chargeable to CT on their gains.

    c. Section 1C of the new Part 1 defines an interest in UK land for the purposes of new section 1A(3)(b).

    d. Section 1D of the new Part 1 defines the conditions for section 1A(3)(c) to apply, and refers to the new Schedule 1A to TCGA 1992 for the application of the charge.

    e. Section 1E(2) of the new Part 1 restates the provisions on availability of losses against gains arising from disposals of assets by non-UK residents liable to CGT (now under new section 1A(3)) and extends them to gains brought into charge by this Schedule.

    f. Section 2B(4)(a) of the new Part 1 charges CT on non-UK resident companies who make gains on disposals of interests in UK land, as defined in section 1C. This subsection is not engaged if the gain would fall into section 2B(4)(a) of the new Part 1 as arising to a UK permanent establishment of a non-UK resident company.

    g. Section 2B(4)(b) of the new Part 1 charges CT on non-UK resident companies' gains on disposals of interests in rights to assets that derive at least 75% of their value from UK land, and where the person has a substantial indirect interest in that land. The supporting provisions to this charge are in the new Schedule 1A to TCGA 1992. This subsection is not engaged if the gain would fall into section 2B(4)(a) of the new Part 1 as arising to a UK permanent establishment of a non-UK resident company.

9. Paragraph 3 omits sections 16ZB to 16ZD of TCGA 1992 (losses of non-UK domiciled individuals), which are then incorporated by paragraph 12 into a new Schedule 1 to TCGA 1992 consolidating together the core rules pertaining to non-UK domiciled individuals.

10. Paragraph 4 inserts section 36A into TCGA 1992, which refers to the new Schedule 4AA dealing with the calculation of gains and losses on disposals of interests in assets relating to interests in UK land by non-UK residents after 6 April 2019.

11. Paragraphs 5, 6, and 7 omit Chapters 5, 6, and 7 respectively of Part 2 of TCGA 1992. These Chapters are restated and incorporated into the new Part 1 substituted by paragraphs 1 and 2.

12. Paragraph 8 inserts new sections 271ZA and 271ZB into TCGA 1992, restating provisions previously contained section 11 of the old Part 1 of TCGA 1992.

13. Paragraphs 9, and 10 omit Schedules B1 and BA1 to TCGA 1992 respectively, which contained definitional and other provisions relating to charging disposals of interests in residential land. The rules for calculating a residential property gain are now contained in the new Schedule 1B inserted by paragraph 14 of this Schedule.

14. Paragraph 11 omits Schedule C1 to TCGA 1992, which contained definitional and other provisions relating to the repealed sections 14F and 14G of TCGA 1992, which related to elections for non-resident CGT not to apply. These definitions are still relied upon in the new Schedule 4AA, as they applied on 5 April 2019, to establish which rebasing provisions will apply.

15. Paragraph 12 substitutes a new Schedule 1 to TCGA 1992, restating the existing law relating to UK resident individuals not domiciled in the UK.

16. Paragraph 13 inserts a new Schedule 1A to TCGA 1992, which contains the provisions relating to disposals by non-UK residents of assets deriving 75% or more of their value from UK land. This is relevant for the new sections 1A(3)(c), 1C, and 2B(4)(c), which bring into charge gains on assets that derive at least 75% of their value from UK land where the person has a substantial indirect interest in that land.

    a. Paragraph 1 of the new Schedule 1A introduces the Schedule and indicates what each Part provides for.

    b. Paragraph 2 of Schedule 1A contains the basic provisions defining whether an asset derives 75% of its value from UK land using tracing and attribution provisions. This is drafted with reference to a company, as this is the most common case,

    c. The final draft will adapt the application in the case of certain collective investment schemes, and where necessary for other non-corporate cases.

    d. Paragraph 3 of Schedule 1A defines which assets of a company are "qualifying assets" to consider for the 75% property richness test in paragraph 2. This is all of the assets apart from those where the matching liability is being disposed of in the same arrangement, such as the creditor balance of an inter-company loan. UK land is always a qualifying asset, even if matched.

e. Paragraph 4 of Schedule 1A is an exemption in the form of a test, which will prevent the need to consider the other provisions in this Schedule if the party making the disposal can reasonably conclude that the UK land in an entity being disposed of is, to all but an insignificant degree, used in the course of a trade.

f. The trade must have been ongoing for 12 months prior to the disposal, and must be expected to continue.

g. Paragraph 5 of Schedule 1A applies in the circumstances where two or more companies that are linked are disposed of as part of an arrangement, and some but not all of those companies would meet the 75% property richness test in paragraph 4.

h. If, when the assets of the companies are aggregated, the 75% property richness test in paragraph 4 is not met, none of those companies will be taken to meet that test. The arrangement must involve a disposal by one person or by one set of connected persons, to another person or set of connected persons. In order to gain the effect of this paragraph, the same effect should in principle be achievable by placing a holding company above the entities being disposed of in the arrangement and disposing of the interests in that holding company.

i. Paragraph 6 provides that a person disposing of a right or interest in an entity that meets the 75% property richness test in paragraph 4 has a "substantial indirect interest" in UK land if they have a 25% investment in that company at any point in the two years ending with the disposal, including on the day of disposal.

j. Paragraph 7 defines the ways in which a 25% investment may be achieved for the purposes of the provision in the new section 1D(1)(b) and in this Part.

k. Paragraph 8 attributes rights and interests of certain connected parties of a person when considering whether that person meets the test in section 1D(1)(b) and in this Part.

l. Paragraph 9 contains anti-avoidance provisions relating to this Schedule.

17. Paragraph 14 inserts a new Schedule 1B to TCGA 1992, which contains rules for calculating a residential property gain for the purposes of the rate applied to such gains by section 1H of the new Part 1.

18. Paragraph 15 inserts Schedule 1C to TCGA 1992, containing rules relevant to section 1K of the new Part 1 for the Annual Exempt Amount for settled property cases.

19. Paragraph 16 inserts a new Schedule 4AA to TCGA 1992, which replaces the existing rules for non-UK residents relating to calculation of gains and losses which were in the omitted Schedule 4ZZB to TCGA 1992, and provides calculation methods for

disposals by non-UK residents of interests in asset relating to UK land on or after 6 April 2019.

a. Part 1 of Schedule 4AA outlines the contents of the Schedule.

b. Part 2 of Schedule 4AA covers cases where all of the assets being disposed of came into charge under the provisions coming into force on 6 April 2019 – that is those disposals made chargeable on non-UK residents by Schedule 1 to the Finance (No.3) Bill 2018.

   i. The default position in this Part 2 under paragraph 3 of Schedule 4AA is rebasing to the market value of the asset at 5 April 2019, but an election can be made under paragraph 4 for the default rules for calculating a gain in TCGA 1992 to be used instead.

   ii. Paragraph 4(2) of Schedule 4AA provides that if the election is made in the case of an indirect disposal under new sections 1A(3)(c) or 2B(4)(b) and a loss accrues, that loss is not an allowable loss.

   iii. Paragraph 5 of Schedule 4AA indicates how the element of the gain that is a residential property gain is calculated in accordance with the new Schedule 1B.

c. Part 3 of Schedule 4AA covers cases where all of the assets being disposed of came into charge under the provisions coming into force on 6 April 2015.

   i. The default position in this Part under paragraph 7 of Schedule 4AA is rebasing to the market value of the asset at 5 April 2019, but an election can be made under paragraph 8 for the default rules for calculating a gain in TCGA 1992 to be used instead, or under paragraph 9 for a time-apportionment method to be used.

   ii. Paragraph 10 of Schedule 4AA indicates how the element of the gain that is a residential property gain is calculated in accordance with the new Schedule 1B.

d. Part 4 of Schedule 4AA covers cases to which Parts 2 or 3 do not apply, because the land being disposed of had days of both residential and non-residential use.

   i. The default position in this Part, under paragraph 13 of Schedule 4AA is rebasing to the market value of the asset at 5 April 2015 and 5 April 2019. If the asset was acquired between those dates, the rebasing to 5 April 2015 does not apply. The relevant commencement provisions interact to bring the relevant gains into charge, or allows the relevant loss to accrue, from the appropriate date.

   ii. An election can be made under paragraph 14 for the default rules for calculating a gain in TCGA 1992 to be used instead.

iii. *The final provisions will consider the application of an election for time-apportionment where there is only partly residential use.*

iv. Paragraph 15 of Schedule 4AA indicates how the element of the gain that is a residential property gain is calculated in accordance with the new Schedule 1B.

e. Paragraph 16 of Schedule 4AA retains the application of Parts 2 to 4 of this Schedule for certain companies that become UK resident after 5 April 2019.

f. Paragraph 17 of Schedule 4AA deals with trustees that become non-UK resident on or after 5 April 2018, and provides that Parts 2 to 4 of the Schedule do not apply. Sub-paragraph (3) disapplies deemed disposal and re-acquisition rules where the relevant person becomes non-UK resident.

g. Paragraphs 18 of Schedule 4AA deals with companies that become non-UK resident on or after 5 April 2018, and provides that Parts 2 to 4 of the Schedule do not apply. Sub-paragraph (3) disapplies deemed disposal and re-acquisition rules where the relevant person becomes non-UK resident.

h. Paragraph 19 of Schedule 4AA provides that if a rebasing date is used in accordance with this Schedule then that date is not to be used for the purposes of a wasting asset determination under Chapter 2 of Part 2 of TCGA 1992.

i. Paragraph 20 of Schedule 4AA provides that if a valuation is used in accordance with this Schedule, then that valuation should be the basis for capital allowances claims.

j. Paragraph 21 of Schedule 4AA provides for how elections can be made and that once made they are irrevocable.

k. Paragraph 22 of Schedule 4AA provides interpretation for the Schedule.

20. Paragraph 17 of Schedule 1 omits Schedule 4ZZA to TCGA 1992, which contained rules relating to the tax on ATED-related chargeable gains that are abolished by clause 6.

21. Paragraph 18 omits Schedule 4ZZB to TCGA 1992, as the provisions therein are now adapted for the inclusion of the new assets and people in charge and incorporated in the new Schedule 4AA.

22. Paragraph 19 omits Schedule 4ZZC to TCGA 1992. The relevant provisions still applicable are adapted into the new Schedule 1B inserted by paragraph 14.

Schedule 1: Part 2: Consequential amendments

23. Paragraph 20 restates the repealed section 3A of TCGA 1992 in a new section 8C to the Taxes Management Act 1970.

24. Further consequential amendments will be published when the Bill is introduced.

Schedule 1: Part 3: Commencement and transitional provisions etc

25. Paragraph 25 contains the commencement provisions for this Schedule.

26. Paragraph 26(2) allows that allowable NRCGT losses or ring-fenced allowable ATED-related CGT losses accruing to a company before 6 April 2019 are allowable losses for CT to the extent they have not already been deducted from gains. Under paragraph 94(4) the definitions in the repealed Schedule 4ZZB and section 2B apply as they did before repeal.

27. Paragraph 27 is a continuity provision relating to the repealed parts of TCGA 1992 and the restatements enacted by this Schedule.

28. Paragraph 28 empowers the Treasury to make Regulations to return the effect of the law if its effects are changed by this Schedule.

Schedule 2: Part 1: Returns and payments on account: Disposals of land etc

29. Paragraph 1 of Schedule 2 prescribes the disposals to which the Schedule applies.

30. Paragraph 1(1)(a) with paragraph 10(3) provide that for non-UK residents and UK residents making a disposal in the overseas part of a tax year the Schedule applies to direct and indirect disposals of UK land made on or after 6 April 2019 (whether or not a gain arises).

31. Paragraph 1(1)(b) with paragraphs 10(4) and (5) provide that for UK residents that do not have a split tax year or make a disposal in the UK part of a split year, and for non-UK residents that dispose of assets connected to a UK branch or agency through which they carry on a trade, profession or vocation, the Schedule applies to disposals on which a residential property gain arises on or after 6 April 2020.

32. Paragraph 1(2) prescribes disposals that the Schedule does not apply to. Paragraphs 1(2)(a) and (b) are of relevance to disposals falling within either paragraph 1(1)(a) or (b). They exclude disposals in certain circumstances where neither a gain nor a loss arises. Paragraphs 1(2)(c) and (d) are of relevance to disposals falling within paragraph 1(1)(b). They exclude disposals of residential property situated outside of the UK where some or all the gain qualifies for double taxation relief or is taxed on the remittance basis. The excluded disposals may be amended by Treasury order.

33. Paragraph 2 provides an obligation for a person to make a return in respect of a disposal to which the Schedule applies. This is to be made within 30 days of the day following completion of the disposal (as defined at subparagraph 10(2)).

34. Paragraphs 2(2) and (3) provide that a return is not required to be made when either the disposal is one to which paragraph 1(1)(b) applies and, under paragraph 3, no amount is due to be paid on account; or the filing date for the return is after a time when a self-assessment return that takes account of the disposal is due to be, or has

been, delivered.

35. Paragraph 2(4) provides that a single return is to be made when two or more disposals to which the Schedule apply were made in the same tax year and complete on the same day.

36. Paragraph 3 provides that a person who has to make a return under paragraph 2 also has to make a payment on account by the due date for the return where an amount of tax is notionally chargeable (as determined by paragraph 4). The amount payable is the amount of tax notionally chargeable that exceeds any previous amounts paid under paragraph 3 in respect of the tax year. For companies liable to corporation tax, paragraph 3(4) provides that commencement of this obligation is subject to an appointed day order.

37. Paragraph 4 provides that the amount of tax notionally chargeable is the amount of tax that would be due if, under existing rules for calculating chargeable gains for a tax year, the tax year ended at the time the disposal is completed. In calculating the amount, only gains on disposals to which the Schedule applies are taken into account but any unused allowable losses for capital gains purposes that have accrued by the time the disposal is completed can be used.

38. Paragraph 5 provides that where an amount of tax notionally chargeable (as determined by paragraph 4) is less than the amounts previously paid on account for the tax year concerned then the difference is repayable to the person.

39. Paragraph 6 provides that where an allowable loss arises on a disposal that would have been a disposal within paragraph 1(1)(b) were it not made for a loss, a return may be made under paragraph 2 securing the application of the repayment provisions at paragraph 5.

40. Paragraph 7 provides that any obligation under the Schedule to have delivered a return or made a payment on account following the grant of an option remains in place on the exercise of the option. This is notwithstanding any treatment of the grant as the same transaction as the disposal occurring on the exercise for the purpose of determining the liability to tax for the combined consideration.

41. Paragraph 8 provides for the making of reasonable expectations and estimates.

42. Paragraph 8(1) provides that anticipated future events can be taken into account when determining whether the Schedule applies to a disposal.

43. Paragraphs 8(2), (3) and (5) deal with changes in a person's anticipated residence status for the tax year. Where the change increases the amount of tax that would be payable on account, an additional return and payment becomes due. For the purpose of determining the amount of tax notionally chargeable under paragraph 4 a new disposal is deemed to take place and the actual disposal is ignored.

44. Paragraphs 8(4) and (5) provide that where a disposal becomes eligible for a relief, when at the time of the completion of the disposal that was not the case, a further return may be delivered under paragraph 2 securing the application of the repayment provisions at paragraph 5. For the purpose of determining the amount of

tax notionally chargeable under paragraph 4 a new disposal is deemed to take place and the actual disposal is ignored.

45. Paragraph 8(6) provides that a reasonable estimate may be made of an individual's taxable income for the year for purpose of determining the rate of CGT that is applicable.

46. Paragraph 9 prescribes the contents of a return made under this Schedule.

47. Paragraph 10 provides definitions for Part 1. Paragraph 10(8) ensures that concepts (such as 'disposal') within, and reliefs provided by, the Taxation of Chargeable Gains Act (TCGA) 1992 apply to disposals to which the Schedule applies. It also ensures that definitions within TCGA 1992 also apply to the Schedule. This includes "connected" (at TCGA 1992, section 286); "chargeable period" (at section 288(1)) and "the no gain/no loss provisions" (at section 288(3A)).

Schedule 2: Part 2: Notification of chargeable amounts, amendments of returns, enquiries etc

48. Paragraph 11 provides that a person is not required to give HM Revenue and Customs (HMRC) notice of liability to capital gains tax or corporation tax by virtue of a chargeable gain arising on a disposal to which the Schedule applies. This is provided that a return under paragraph 2 has been made and delivered to HMRC by the end of the notification period mentioned at section 7(1C) of the Taxes Management Act (TMA) 1970 or paragraph 2 of Schedule 18 to the Finance Act 1998.

49. Paragraph 12 provides for the amendment of self-assessment returns to returns made under paragraph 2. Amendments are permitted only so far as the return could have included the amendment by reference to things already done.

50. Paragraph 13 provides for enquiries into self-assessment returns and repayments during an enquiry in a similar way to returns made under paragraph 2 and repayments under paragraph 5.

51. Paragraph 14 provides for the amendment of returns during an enquiry and the making of payments after an amendment or correction in a similar way to returns made under paragraph 2 and amendments or corrections of such returns.

52. Paragraph 15 provides for the determination of tax by HMRC where no self-assessment return is delivered to returns that are not delivered under paragraph 2.

53. Paragraph 16 provides for assessments where a loss of tax is discovered to returns made under paragraph 2.

54. Paragraph 17 provides definitions for Part 2.

Schedule 2: Part 3: Consequential amendments

55. Paragraph 18 makes consequential amendments to TMA 1970.

56. Paragraph 19 makes consequential amendments to TCGA 1992.

57. Paragraph 20 makes consequential amendments to Schedule 24 to the Finance Act 2007 (penalties for errors).

58. Paragraph 21 makes consequential amendments to Schedule 36 to the Finance Act 2008 (information and inspection powers).

59. Paragraph 22 makes consequential amendments to Schedule 55 to the Finance Act 2009 (penalty for failure to make returns).

60. Paragraph 23 provides that interest applies to late payments on account and amounts that are repayable under paragraph 5.

61. Paragraph 24 provides for the commencement of Part 3. Paragraph 24(2) maintains for disposals in tax year 2019-20 an exception for non-residents to make a payment on account when they make self-assessment returns to HMRC; thereafter the exception will cease.

Background note

62. This clause and these Schedules build on recent changes to the taxation of gains arising on the disposal of land and property.

63. Since April 2015, certain non-resident persons (including individuals, trustees and closely-held companies) have been generally chargeable to capital gains tax (NRCGT) on gains arising on the disposal of UK residential property interests.

64. Prior to that, certain persons (mainly companies), wherever resident, became chargeable to CGT on gains arising on disposals of residential property that were chargeable to the annual tax on enveloped dwellings (ATED-related gains).

65. In March 2017, in its consultation *Non-resident companies chargeable to income tax and non-resident CGT*, the government explored bringing non-UK resident companies with gains from the disposal of UK residential property interests within the scope of corporation tax (rather than NRCGT). This clause and Schedule 1 give effect to that.

66. In November 2017, in its consultation *Taxing gains made by non-residents on UK immovable property*, the government consulted on proposals to extend the UK's tax base to gains arising to all non-UK residents on direct and indirect disposals of all forms of UK land, and to harmonise the rules relating to ATED-related CGT. This clause and Schedule 1 give effect to these proposals, including the abolition of the charge to ATED-related CGT.

67. The existing administration of NRCGT requires affected persons to:

- make a return (a NRCGT return) when a UK residential property interest is disposed of (whether or not a gain arises),

- deliver the return to HMRC within 30 days of the completion of the disposal, and
- where the disposal is made for a gain, to make a payment on account. A payment on account is not required where the person makes self-assessment returns, such as in relation to chargeable income.

68. In its summary of responses to its consultation *Taxing gains made by non-residents on UK immovable property*, the government confirmed the extension of the existing NRCGT reporting and payment on account principles to disposals with chargeable gains covered by the consultation. This clause and Schedule 2 give effect to these proposals.

69. At Autumn Statement 2015 the government announced the introduction from April 2019 of a requirement on UK residents to make payments on account of CGT for residential property gains. Budget 2017 announced deferral of its introduction until April 2020.

70. In April 2018, in its consultation *Payment window for residential property gains*, the government conducted a technical consultation on the proposals announced at Autumn Statement 2015 and removing the exceptions from making a payment on account that apply to non-residents. This clause and Schedule 2 give effect to these proposals.

71. This legislation is published in draft, and further provisions will be made as noted in the body of the Explanatory Notes. Specific provision will also be made by a separate Schedule to TCGA 1992 for how the rules for charging non-UK residents' gains on interests in UK land will apply to collective investment vehicles.

72. If you have any questions about the changes made by Schedule 1, or comments on the legislation, please contact James Konya on 03000 544525 (email: james.konya@hmrc.gsi.gov.uk)

73. If you have any questions about the changes made by Schedule 2 , or comments on the legislation, please contact Alan McGuinness on 03000 585256 (email: alan.mcguinness@hmrc.gsi.gov.uk)

Clause 7 and Schedule 3: Non-UK resident companies carrying on UK property businesses

Summary

1. This clause charges the profits of a UK property business and other UK property income of non-UK resident companies to Corporation Tax rather than to Income Tax as at present. The change has effect from 6 April 2020.

Details of the clause and Schedule

2. The clause introduces Schedule 1 which makes provision to extend the scope of Corporation Tax for non-UK resident companies. The Schedule is made up of three Parts.

Part 1: Extension of Scope of Charge

3. Paragraphs 1 to 5 set out what changes are to be made to section 5 of the Corporation Tax Act 2009 (CTA 2009) (Territorial scope of charge) to bring a non-UK resident company carrying on a UK property business or which has other UK property income within the charge to Corporation Tax.

4. Paragraph 2 adds two further circumstances to subsection (2) of section 5 of CTA 2009 in which a non-UK resident company is within the charge to Corporation Tax:– where it carries on a UK property business and where it has other UK property income.

5. Paragraph 3 defines the profits of the UK property business or other UK property income of a non-UK resident company that are within the charge to Corporation Tax. They include the profits of loan relationships or derivative contracts that the company is a party to for the purpose of the property business or generating the income.

6. Paragraph 5 defines the meaning of “other UK property income”.

Part 2: Supplementary & Consequential Amendments

Income Tax (Trading and Other Income) Act 2005 (ITTOIA)

7. Paragraph 6 amends section 362 of ITTOIA so that it does not have effect when an existing UK property business is taken out of the charge to Income Tax and brought into the charge to Corporation Tax. This will mean that this change of tax regime will not be regarded as a disposal event under section 61 of the Capital Allowances Act

2001.

Income Tax Act 2007 (ITA)

8. Paragraph 7 amends section 5 of ITA to exclude from the charge to Income Tax a non-UK resident company in receipt of income that is chargeable to Corporation Tax.

Corporation Tax Act 2009 (CTA 2009)

9. Paragraphs 8 to 22 contain consequential amendments to CTA 2009, in particular:

Part 2 of CTA 2009: Chargeable profits

10. Paragraph 9 amends section 3 of CTA 2009 to make clear that where a company is not UK resident and is in receipt of income that is (or would be but for an exemption) chargeable to Corporation Tax, that income is not chargeable to Income Tax.

11. Paragraph 10 amends section 18A of CTA 2009 (Exemption for profits or losses of foreign permanent establishments) so that the description of profits or losses not to be left out of account is widened for a non-UK resident company to include:

    - Profits or losses of the company's UK property business
    - Other UK property income of the company
    - Profits arising from loan relationships or derivative contracts that the company is a party to in relation to the UK property business or UK property income

    This ensures that the UK continues to retain its taxing rights over UK immovable property.

12. Paragraph 11 replaces the existing wording of subsection (2A) of section 19 CTA 2009 to make clear that the chargeable profits of a UK permanent establishment of a non-UK resident company, as defined at subsection (3) of section 19, do not include the types of income set out in that paragraph. Such profits are chargeable instead under section 5 or section 5B of CTA 2009.

Part 5 of CTA 2009: Loan Relationships

13. Paragraph 12 amends section 333(2) of CTA 2009 so that an asset held or liability owed for the purposes of the activities set out in that paragraph is excluded from the deemed realisation rules where a company ceases to be UK resident but continues to be within the charge to Corporation Tax in respect of those activities.

14. Paragraph 13 amends section 334 of CTA 2009 to reflect the changes made to section 333(2) of CTA 2009 with regard to a non-UK resident company which ceases to hold a loan relationship for the purposes of the activities mentioned in that amended subsection.

Part 7 of CTA 2009: Derivative Contracts

15. Paragraphs 14 and 15 make similar changes to sections 609 and 610 of CTA 2009 in respect of the rights and liabilities under a derivative contract in the same circumstances.

16. Paragraph 16 amends section 697 of CTA 2009 (Exceptions to section 696) so that where a non-resident person is party to a derivative contract and is chargeable to Corporation Tax or Income Tax on the income arising on that derivative contract, then the debits for notional interest payments as provided under that contract and attributable to company A are not excluded by section 696 of CTA 2009 (Derivative contracts with non-UK residents).

Part 8 of CTA 2009: Intangible Fixed Assets

17. Paragraphs 17 to 20 amend the rules relating to elections for the transfer of a degrouping charge on a chargeable intangible fixed asset from one group company, (A), to another group company, (B), where B is a non-UK resident company. The changes insert new section 793A of CTA 2009 which sets out how the resulting credit is to be dealt with depending on whether company B:

    - carries on a trade in the UK through a permanent establishment,
    - carries on a trade of dealing in or developing UK land, or
    - carries on a UK property business.

18. Paragraph 21 amends section 795 of CTA 2009 so that in the event that a non-UK resident company does not meet its liability to a degrouping charge, and recoverability is sought from a controlling director as specified in that section, the activities of the company also include a trade of dealing in or developing UK land, or carrying on a UK property business.

19. Paragraph 22 amends section 863 of CTA 2009 so that the deemed acquisition of a chargeable intangible fixed asset at its accounting value at that time also applies where the asset of a non-UK resident company begins to be held for the purpose of:

    - a trade in dealing in or developing UK land,
    - carrying on a UK property business, or
    - generating other UK property income.

Corporation Tax Act 2010 (CTA 2010)

20. Paragraphs 23 to 28 make consequential amendments to CTA 2010, in particular:

21. Paragraph 24 amends section 9 of CTA 2010 so that it applies in respect of return of accounts for all activities of a non-UK resident company that are within the charge to CT and the company prepares its accounts in a currency other than sterling.

22. Paragraphs 25 to 28 amend the group relief rules to include a loss arising from all activities of a non-UK resident company that are within the charge to CT.

Part 3 Commencement and Transitional Provisions

23. Paragraph 29 provides the date on which the Schedule comes into force.

24. The effect of Paragraph 30 is that where a period of account straddles the commencement date, the profits or loss arising in the first period (ending on 5 April 2020) will remain chargeable to Income Tax and the profits or loss arising in the second period (commencing on 6 April 2020) will be within the charge to CT.

25. Paragraph 31 provides for the “grandfathering” of losses which have arisen within the Income Tax regime and remain unused at the commencement date. These income tax losses can be carried forward to the CT regime and offset against future UK property business profits for so long as the company continues to carry on the UK property business.

26. Profits of an earlier accounting period are to be relieved in priority to a later accounting period. The loss will not be available for offset against other types of income receivable by the non-UK resident company that are also chargeable to CT. It will not be possible to surrender these income tax losses as group relief.

27. Where a non-UK resident company is a partner in a firm and that firm carries on a trade and has untaxed income or relievable losses from a UK property business, the UK property business is regarded as a notional business and the basis period for the notional business usually follows that of the trade. Paragraph 32 provides that the basis period of the notional business (i.e. the UK property business) for the tax year immediately preceding the commencement date (2019/20) is deemed to end on 5 April 2020 for Income Tax purposes.

28. Paragraph 33 prevents a deduction for an amount of loss arising under a derivative contract which is wholly or partly referable to a period of time when the derivative contract was not within the charge to CT so that the company was not chargeable to CT on any profits arising from the contract. This prohibition also applies where the company was not a party to the contract at the time to which the loss is referable. Sub-paragraphs 5 and 6 ensure that any such non-deductible losses cannot be deducted under any other provision.

29. Paragraphs 34 and 35 make provision for dealing with any asymmetries in the taxation of debits and credits arising from derivative contracts entered into for the purpose of a UK property business where the period of the contract straddles the commencement date.

30. Paragraph 34 provides that just and reasonable adjustments are to be made where fair value amounts in relation to the derivative contract have been brought into account for Income Tax but, due to an election being made under regulation 9 of the Disregard Regulations, these amounts are not similarly brought into account under the derivative contract regime for Corporation Tax (Part 7 of CTA 2009). An adjustment will be made in each period for an amount to be brought into account over the remaining term of the derivative contract so that symmetry is achieved.

31. Paragraph 35 provides that, where fair value movements in relation to a derivative

contract have not been brought into account for Income Tax purposes as a result of being capital in nature, an election under regulation 6A of the Disregard Regulations is treated as having been made in respect of that derivative contract. This will ensure that the debits and credits over the period of the derivative contract are brought into account on a consistent basis.

32. In addition, where regulations 7 or 8 of the Regulations are subsequently in point after the commencement date, regulation 10 of the Disregard Regulations will apply to bring an amount back into account if previously recognised in the company's financial statements but it was not brought into account at that time under the Income Tax rules.

33. Paragraph 36 provides that an asset which is held by a non-UK resident company for the purposes of its UK property business or held for the purpose of generating other UK property income and which becomes a chargeable intangible asset when it comes within the charge to CT on the commencement date will be deemed to have acquired the asset immediately on the commencement date at its accounting value at that time.

34. Paragraph 37 makes provision that an election to reallocate a degrouping charge under section 792 of CTA 2009 cannot be made where company B is a non-UK resident company and the relevant time (the date a company ceased to be a member of the group or the principal company became a member of another group) is as follows:

- before 3 July 2016 where the non-UK resident company carries on a trade of dealing in or developing UK land
- before the commencement date where the non-UK resident company carries on a UK property business

35. Paragraph 38 makes provision that relief for past expenditure on contaminated or derelict land by a non-UK resident company carrying on a UK property business at a time when the company was not within the charge to CT will not count as qualifying land remediation expenditure. Relief under section 1147 of CTA 2009 for later capital expenditure on contaminated or derelict land will be available for the CT accounting period in which the expenditure is incurred subject to the required election being made.

Background note

36. Following announcement at Autumn Statement 2016, the government consulted in March 2017 on the case and options for bringing non-resident companies' UK property income and gains (previously chargeable to Income Tax and non-resident CGT respectively) into CT. At Autumn Budget 2017, the government published a response document to the consultation and announced that it would make this change in April 2020.

37. This clause and schedule focuses solely on UK property income. It will deliver more

equal tax treatment for UK and non-UK resident companies in receipt of similar income, and take steps to prevent those that use this difference to reduce their tax bill on UK property through offshore ownership.

38. If you have any questions about this change, or comments on the legislation, please contact Susan Gardner on 03000 563815 (email: susan.m.gardner@hmrc.gsi.gov.uk).

Clause 8 and Schedule 4: Corporation tax relief for carried-forward losses

Summary

1. This clause and Schedule make changes to the loss reform legislation in Part 7ZA of the Corporation Tax Act 2010 (CTA 2010) to ensure that it meets the policy objectives which are to restrict relief for certain carried forward losses and also allow these to be used more flexibly.

2. The Schedule changes the way in which restricted losses are calculated by all companies and how the regime applies to insurers within the Basic Life Assurance and General Annuity Business (BLAGAB) in order to prevent companies accessing an excessive amount of the deductions allowance. This change commences with immediate effect from the date of announcement.

3. The Schedule also makes amendments to the calculation of terminal relief within section 45F CTA 2010, the allocation of the deductions allowance where a company is a member of more than one group, prevents carried-forward shock losses of insurance companies being surrendered as group relief and makes other minor consequential amendments.

Details of the clause and Schedule

4. This Clause introduces Schedule 4.

Schedule 4:

5. Paragraph 1 introduces the amendments to CTA 2010.

6. Paragraphs 2 and 3 make consequential amendments to sections 188DD and 188ED to substitute references to new section 269ZFA for references to section 259ZD(5), and also omit sections 188DD(4) and 188ED(4). Paragraph 3 also corrects a minor drafting error in section 188ED(5).

7. Paragraphs 4 and 5 omit the references to the BLAGAB deductions allowance from sections 269ZB(8) and 269ZC(6). The trading and non-trading profits deductions allowances are now restricted to the company's deductions allowance less the non-trading and trading deductions allowances respectively.

8. Paragraph 6 omits from the calculation of the allowable relevant deductions in section 269ZD(2)(b) any deductions made by the company for the accounting period

for carry forward of BLAGAB trade losses against BLAGAB trade profits. It amends the meaning of "relevant maximum" in section 269ZD(4) (restriction on deductions from total profits) to include a new definition of "relevant profits" (inserted by new section 269ZFA). The previous definition of "relevant profits" in section 269ZD(5) is repealed. It also amends section 269ZD(7) to omit BLAGAB trade profit from the requirement not to restrict the sum of any relevant deductions (section 269ZD(2)) where total profits, as calculated by step 1 in section 269ZF(3), is nil.

9. Paragraph 7 repeals section 269ZE (restriction on deductions from total profits: insurance companies).

10. Paragraph 8 inserts new section 269ZFA which includes a new definition of "relevant profits". This is the amount of the company's "qualifying profits" (which are the "modified total profits" less the amount of in-year reliefs such as group relief given by steps 1 and 2 in section 269ZF(3)) less the amount of the company deductions allowance (given by section 269ZD(6)).

11. Paragraph 9 inserts new section 269ZFB that includes modifications to sections 269ZD(7) and 269ZFA(2) for insurance companies carrying on BLAGAB in the period. The "qualifying profits" are calculated as given by steps 1 and 2 in section 269ZF(3) but as though section 269ZF(4)(a) only ignored company distributions referable to BLAGAB taxed under Part 9A CTA 2009 by reason of an election under section 931R CTA 2009, and only the policyholders' share of the BLAGAB I-E profit is excluded by section 269ZF(4)(d).

12. Paragraph 10 omits subsection 269ZJ(4).

13. Paragraph 11 substitutes section 124C FA 2012 for section 124E FA 2012 in subsection 269ZQ(2)(b).

14. Paragraph 12 inserts new section 269ZV(5A) that prevents a company being allocated a share of the deductions allowance from a group of which is it an ultimate parent (within section 269ZZB(3)) if it is also a member of another group.

15. Paragraphs 13 and 14 make consequential amendments to sections 269CC and 269CN to substitute references to new section 269ZFA for references to section 259ZD(5).

16. Paragraph 15 makes a minor amendment to section 304(7) (certain deductions for losses made in a ring fence trade) to ensure that the reference to section 45B refers to post-1 April 2017 losses set against trade profits.

17. Paragraph 16 introduces amendments to Finance Act 2012 (FA 2012).

18. Paragraphs 17, 18 and 19 omit the references to section 124D (restriction on deductions from BLAGAB trade profits) from sections 124, 124A and 124C.

19. Paragraph 20 omits sections 124D and 124E (restriction on deductions from BLAGAB trade profits).

20. Paragraph 21 replaces section 45G CTA 2010 which covers the calculation of relief under section 45F where a part of an accounting period falls within the 3-year

maximum period for which relief is allowed. New section 45G limits the amount of relief where only part of the accounting period falls within the 3 year maximum period. For losses that can only be set against trading profits, the maximum relief due is the proportion of trading profits for the accounting period that the part period bears to the whole accounting period. For example, if the part of a 12 month accounting period that falls within the 3 year period is 3 months, the proportion is 3/12. For losses that can be set against total profits, the maximum relief due is the proportion of total profits for the accounting period that the part period bears to the whole accounting period, less the amount of any relief given for losses that can be set only against trading profits.

21. Paragraph 22 amends section 188BG(3) so that carried forward BLAGAB trade shock losses under sections 124A(2) and 124C(3) FA 2012 are included in the types of losses that cannot be surrendered by a Solvency 2 insurance company.

22. Paragraph 23 introduces amendments to CTA 2010 that relate to the legislation on transferred trades in Chapter 1 of Part 22.

23. Paragraph 24 amends section 357JI (Northern Ireland losses: transfers of trade without a change of ownership) to include references to legislation in Chapter 1 of Part 22 as amended by Part 8 of Finance (No 2) Act 2017.

24. Paragraph 25 amends section 676 (disallowance of trading loss on change of ownership of company: company reconstructions) to include references to legislation in Chapter 1 of Part 22 as amended by Part 8 of Finance (No 2) Act 2017 and to extend the trading losses covered to include sections 45A, 45B, 303B, 303C and 303D.

25. Paragraph 26 amends section 676AF (restriction on use of carried-forward post-1 April 2017 trade losses) to prevent losses transferred to a company under Chapter 1 of Part 22 before its change of ownership from being deducted from "affected profits" (within section 676AE) that arise after.

26. Paragraph 27 amends section 676BC (disallowance of relief for trade losses) to prevent losses transferred to a company under Chapter 1 of Part 22 before its change of ownership from being deducted from an amount of total profits that represent a "relevant gain" (within section 676BE) that arise after.

27. Paragraphs 28, 29, 30 and 31 include commencement provisions. For the amendments to the computation of "relevant profits" and BLAGAB, the changes apply to accounting periods beginning on or after 6 July 2018. All other changes apply to accounting periods beginning on or after 1 April 2019. For accounting periods that straddle the commencement date, the periods that fall before and after this date are treated as separate accounting periods for the purpose of applying the amendments. Where it is necessary to apportion amounts to the separate periods, this should be done on a time basis unless this produces a result that is unjust or unreasonable in which case a just and reasonable method is used.

Background note

28. Loss reform was introduced in section 18 and Schedule 4 of Finance (No 2) Act 2017 with effect from 1 April 2017.

29. The reform made two main changes. It increased the company's flexibility to set off carried-forward losses, either against the company's own total profits in later periods, or in the form of group relief in a later period. Additionally, it limited the amount of profit against which carried-forward losses can be set.

30. The following paragraphs provide the background to the various amendments made to the loss reform rules.

31. Loss restriction calculation: in calculating the amount of profits against which carried-forward losses can be set, each group (or a company that is not part of a group) has an annual allowance of £5m profits. Carried-forward losses can be set against that amount without restriction. Losses in excess of that amount are restricted to a maximum of 50% of the company's total profits for the period.

32. BLAGAB: The way in which the reform applies is modified for certain industries (for example, insurers). For BLAGAB the policyholders' share of the profit is outside of the scope of the loss reforms so that policyholders are not unfairly impacted by the reforms. No changes were made to the basis of calculation of BLAGAB profit, in particular the loss restriction rules do not apply to any items that are treated as a 'BLAGAB management expense'. The loss reforms as described above apply to carried-forward BLAGAB trade losses and to the shareholders' (SH) share of the 'I minus E' profit.

33. Shock losses: Insurers also have special rules within the loss reforms for "Shock losses". These losses made by insurers are carried-forward and relieved without restriction, however, they cannot be used as flexibly as other losses. Under Solvency II insurers are required to determine the amount of capital they would need to survive a hypothetical catastrophic stress event. This is known as their Solvency Capital Requirement or SCR. "Shock losses" can be claimed by an insurer where they suffer a loss that exceeds its "shock loss threshold" which is set at 90% of the SCR, as this represents a catastrophic shock event having taken place.

34. Terminal relief: This allows a company that has ceased trading to carry back any unused carried-forward trading losses and set these against profits of the 3 years ending with the date of cessation without restriction. Certain types of losses can only be set against trading profits of the company whilst others can be set against total profits.

35. Transfer of trades without a change of ownership: The legislation within Chapter 1 of Part 22 CTA 2010 allows the losses of a trade to be transferred where the trade is transferred without a change of ownership. The legislation was amended by Part 8 of Finance (No 2) Act 2017 to apply to the trade losses introduced by sections 45A, 45B, 45F, 303B, 303C and 303D as part of loss reform.

36. If you have any questions about this change, or comments on the legislation, please

contact Clare Dunne on 03000 585961 (email: clare.e.dunne@hmrc.gsi.gov.uk)

Clause 9 and Schedule 5: 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. This Clause introduces Schedule 5.

Schedule 5

3. Paragraphs 2, 3 and 4 make amendments to the calculation of the group-interest figures in respect of capitalised interest (and other capitalised amounts) to ensure that these provisions work as intended.

4. Paragraph 2 introduces new subsection 410(5A) to complement sections 410(3) and 410(5). In particular, this clarifies that nothing is to be included in net group-interest expense (NGIE) in respect of interest and other amounts capitalised in a relevant asset.

5. Paragraph 3 amends section 413 which sets out the calculation of adjusted net-group interest expense (ANGIE). This confirms that the adjustments being made under sections 413(3)(a), 413(3)(b), 413(4)(a) and 413(4)(b) are limited to non-financial assets and non-financial liabilities.

   In particular, no adjustments are made in respect of arrangement fees and other similar amounts simply because they are included in the carrying value of the financial asset or liability in question under an amortised cost basis of accounting. In these circumstances, the calculation of ANGIE will follow the amounts of financing costs recognised in profit or loss.

6. Paragraph 4 amends section 423 which sets out an alternative calculation of ANGIE where the group has made an interest allowance (alternative calculation) election. In particular, this ensures where a GAAP-taxable asset is also a relevant asset (for example, as with intangible fixed assets), the calculation of ANGIE includes (by way of an upward or downward adjustment) the amount of any amortisation or write off of relevant amounts previously capitalised in the asset.

7. Paragraph 5 ensures that, when calculating ANGIE, an upwards adjustment should be made under subsection 413(3) for any release credit which would be prevented

from being brought into account for tax by section 358 of Corporation Taxes Act (CTA) 2009. A corresponding amendment is made to subsection 413(4) to ensure that a downwards adjustment should be made for any release debit which would be prevented from being brought into account for tax by section 354 of CTA 2009.

Typically sections 354 and 358 CTA 2009 apply in relation to intra-groups which do not affect the calculation of ANGIE for the worldwide group. However, this amendment aligns the calculation of ANGIE with the UK tax rules in circumstances where there is a release of a connected company loan and the counterparty is not a member of the worldwide group.

8. Paragraph 6 provides for an additional adjustment to be made to the calculation of group-EBITDA where a group has made an interest allowance (alternative calculation) election. Where such an election is made, new section 424A will exclude amounts from the group's "profit before tax" figure that represent employees' remuneration which remain unpaid nine months after the end of the period of account. Instead, such amounts are included in the group's profit before tax in the period in which the amount is actually paid. This aligns the calculation of group-EBITDA more closely with the UK tax rules.

9. Paragraph 7 clarifies how ANGIE and qualifying net group-interest expense (QNGIE) are calculated in cases where an interest allowance (non-consolidated) election is made. Where additional amounts of ANGIE and QNGIE are to be included as a result of this election, these affect the calculation at section 413(1) and section 414(1) respectively. As a result, they are included in the calculations before the application of section 413(2) and section 414(2) respectively, which provide that neither ANGIE nor QNGIE can be negative.

10. Paragraph 8 amends the public infrastructure assets test at section 433(5) so that pension fund assets and deferred tax assets are included as a class of assets that would not cause the assets test to be failed.

11. Paragraph 9 amends the public infrastructure rules for the grandfathering of existing debt at section 439. This ensures that where a company is reimbursed certain expenses under a qualifying contract, this income is ignored as qualifying infrastructure receipts. As a result, such income will not prevent the company's future qualifying infrastructure receipts from being highly predictable.

12. Paragraph 10 makes some changes section 452 which concerns how the CIR rules apply to Real Estate Investment Trusts ("REITs").

13. Paragraph 10(2) provides clarification that section 599 is disapplied in determining the amounts of a REIT that should be included in the CIR calculations. It therefore follows that any interest or other financing amounts in the REIT property business profits are treated as if they are brought into account under Part 5 of Corporation Tax Act 2009 and are therefore subject to the CIR rules. This is notwithstanding that the interest or other financing cost may be treated as being brought into account under Part 4 (and not under Part 5 of Corporation Tax 2009) as a result of the application of section 599 Corporation Tax 2010 for the purposes of the calculating the profits of the

property business.

14. Paragraph 10(3) inserts new subsection 452(4A) to deal with cases where section 543 CTA 2010 imposes a charge to Corporation Tax as a result of the REIT's interest cover ratio falling below 1.25. The new subsection provides that where an amount is charged to Corporation Tax under section 543 CTA 2010, this to be treated as a tax-interest income amount for the purposes of the CIR rules. This ensures that the REIT does not suffer, in effect, a double restriction as a result of having high levels of gearing in that particular period.

15. Paragraph 10(4) provides clarification that any interest restriction allocated to the REIT property business profits has effect for the purpose of calculating the amount that is required to be distributed by the REIT under section 530 CTA 2010. This is notwithstanding that the interest or other financing cost may be treated as being brought into account under Part 4 and not under Part 5 of Corporation Tax 2009 as a result of the application of section 599 Corporation Tax 2010.

16. Paragraphs 11, 12 and 13 make amendments to the administrative rules in Schedule 7A of TIOPA.

17. Paragraph 11 permits a longer time for appointing or revoking the appointment of a reporting company, the company responsible for filing interest restriction returns and dealing with other administrative matters on behalf of worldwide group. A valid appointment or revocation has effect for a worldwide group period of account, so long as made within 12 months of the end of the period of account (rather than the previous six months). This allows a group to appoint a reporting company shortly before the time limit for filing the return. Once made, an appointment rolls over to future periods unless it is revoked or otherwise becomes ineffective.

18. Paragraph 12 makes consequential a change to the filing date for an interest restriction return. This ensures that where a group appoints a reporting company more than nine months after the end of a period of account (as will now be permitted as a result of the change made at paragraph 11), this does not extend the time limit for filing an interest restriction return.

19. Paragraph 13 permits HMRC to specify additional information to be included within an interest restriction return in addition to those listed in paragraph 20 of Schedule 7A.

20. Paragraphs 14 to 16 set out certain consequential amendments as a result of the above changes.

21. Paragraphs 17 to 19 set out the commencement of these amendments.

Background note

22. 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 policy to align the location of taxable profits with the location of economic activity, and are consistent with the UK's more territorial approach to corporate taxation.

23. 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.

24. 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.

25. The CIR rules were enacted in Finance (No.2) Act 2017, and were subject to minor amendments in Finance Act 2018.

26. 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.

27. If you have any questions about this measure, please contact the CIR team on email: interest-restriction.mailbox@hmrc.gsi.gov.uk.

Clause 10 and Schedule 6: Avoidance involving profit fragmentation arrangements

Summary

1. This clause and Schedule introduce a new anti-avoidance rule to ensure that business profits cannot be taken out of the charge to UK tax by arranging for them to be attributed to offshore entities. The new rules have effect for profits arising on or after 6th April 2019 (income tax) or 1st April 2019 (corporation tax).

Details of the clause and Schedule

2. This clause introduces Schedule 6.

Schedule 6:

3. Paragraph 1 gives an overview of the Schedule and defines the terms "the resident party", "the overseas party", and "a related individual" for the purposes of the Schedule. A "related individual" can be:

   - the resident party,
   - a member of a partnership of which the resident party is a partner, or
   - a participator in a company which is the resident party.

4. Paragraph 2 sets out the arrangements to which the rules apply. Five conditions must be satisfied, set out in paragraph 2(1)(a) to 2(1)(e) inclusive.

5. Paragraph 2(1)(a) requires there to be arrangements ("the material provision") involving the resident party and the overseas party.

6. Paragraph 2(1)(b) requires that "the material provision" gives rise to a transfer of value between the resident party and the overseas party. The typical form of this is for trading receipts to be attributed and paid to the overseas party rather than to a UK-resident person carrying on a business, or for a UK business to pay expenses to the overseas party.

7. Paragraph 2(1)(c) requires that the transfer of value is not in an amount or on terms that would be applied if the transactions were at arm's length.

8. Paragraph 2(1)(d) requires there to be a "tax mismatch". In essence this compares the tax paid in relation to "the material provision" in the jurisdiction relevant to the overseas party with the tax that would have been paid in the UK by the resident

party had the transfer of value not been made.

9. Paragraph 2(1)(e) requires that any of the "enjoyment conditions" is met (see paragraph 6).

10. Paragraph 2(2) sets out how the "provision" described in paragraph 2(1) is interpreted where the resident party is a member of a partnership.

11. Paragraph 3 provides further explanation of the term "transfer of value".

12. Paragraph 3(1) provides that the transfer can be direct or indirect.

13. Paragraph 3(2) sets out a non-exhaustive list of circumstances by which the transfer of value could arise.

14. Paragraph 3(3) provides that the transfer can be traced through any chain of entities, however long and complex that chain may be.

15. Paragraph 3(4) sets out that where companies or partnerships are involved, profits, assets and rights must be attributed to the individuals involved in a just and reasonable manner. This will normally be in proportion to their share in a partnership or their rights in a company.

16. Paragraph 4 sets out the "tax mismatch" condition.

17. Paragraph 4(1) sets out that a tax mismatch arises where three conditions are met, and the exemption in paragraph 4(4) does not apply. Firstly, there is an increase in expenses for which the resident party obtains a deduction, or a reduction in the income taken into account by the resident party in computing the amount of tax payable. Secondly, the resulting reduction in UK tax payable by the resident party exceeds the increase in tax payable by the overseas party for the corresponding tax period. Finally, the overseas party does not meet the "80% payment test" (see paragraph 4(5)). For the purposes of this calculation, the starting point is the business profit of the resident party after all other adjustments have been made for tax purposes. This would include adjustments made, for example, under the transfer pricing rules where those rules apply.

18. Paragraph 4(2) defines "the tax reduction" as the amount calculated at paragraph 4(1)(b).

19. Paragraph 4(3) broadens the comparison to encompass both the rate of tax in the overseas jurisdiction and any reliefs or reductions that may apply to the overseas party.

20. Paragraph 4(4) exempts from the tax mismatch calculation any amount that arises solely because of certain types of payment (for example, a payment to a charity).

21. Paragraph 4(5) defines "the 80% payment test" as a comparison between the resulting increase in tax paid by the overseas party (X) and the resulting reduction in the amount paid by the resident party (Y) – as defined at paragraph 4(1)(b). If the value of X is greater than or equal to 80% of the value of Y then the 80% payment test is met by the overseas party. Paragraph 5 provides more detail about the calculation of the amount of tax paid.

22. Paragraph 4(6) provides a rule to compare tax periods where the actual tax periods of the parties do not coincide.

23. Paragraph 4(7) defines a number of terms used in paragraph 4.

24. Paragraph 5 sets out in detail how to carry out the calculation to arrive at the amount of a "tax reduction" for the purposes of the "tax mismatch" described in paragraph 4.

25. Paragraph 5(1) details how to calculate the resulting reduction in tax paid by the resident party. This is done by first calculating a value "A" by adding the lesser of the expenses mentioned in paragraph 4(1)(a)(i) and the actual deduction allowed at that provision to the amount of the reduction in income mentioned in paragraph 4(1)(a)(ii). The tax rate that would be applicable to the resident party had they had profits chargeable to the relevant tax for that tax period is then applied to A to arrive at the resulting reduction in tax paid by the resident party. Where the resident party is liable to income tax on the business profits, the tax rate to be used is the highest rate of income tax applicable to the resident party for that tax year. For example if an individual is a self-employed trader chargeable at the upper rate of income tax (45%), and they had expenses of £30,000 to which paragraph 4(1)(a)(i) applies, and income of £50,000 to which paragraph 4(1)(a)(ii) applies, the reduction in P's liability to UK income tax would be computed as:

    (£30,000+£50,000) × 45% = £80,000 × 45% = £36,000

26. Paragraph 5(2) details how to calculate the resulting increase in tax paid by the overseas party. This is done by considering the increase in the total amount of relevant taxes to be paid by the overseas party assuming that they have income as a result of the material provision of the amount "A", as set out in paragraph 5(1). In considering the total amount of relevant taxes to be paid, the overseas party is assumed to have taken into account any deductions or reliefs in determining their liability to tax as a result of the material provision, apart from any "qualifying deduction" or "qualifying loss relief" (see paragraph 5(8)); and all further reasonable steps are assumed to have been taken to minimise the amount of tax that the overseas party would be required to pay under the law of any country and under any double taxation arrangements.

27. Paragraph 5(3) sets out a non-exhaustive list of what is meant by "further reasonable steps" in paragraph 5(2).

28. Paragraph 5(4) requires that any withholding tax which falls to be paid on payments made to the overseas person or entity be treated as tax which falls to be paid by the overseas person or entity and not the person making the payment – provided the amount is not refunded.

29. Paragraph 5(5) provides further detail about what is meant by an amount of tax payable by the overseas party being refunded. Any repayment made to any person is included if the whole or part of that repayment derives from the tax payable by the overseas party, unless the repayment derives from qualifying losses incurred by the overseas party.

30. Paragraph 5(6) provides an explanation of how paragraph 5 applies in circumstances where the overseas party is a member of a partnership. In these circumstances any

reference to the overseas party's liability to any tax includes reference to the liabilities to tax of all members of the partnership; references to any tax being payable by the overseas party include tax being payable by any member of the partnership; and references to loss relief obtained by the overseas party include a reference to loss relief obtained by any member of the partnership. Paragraph 5(4) applies to any member of the partnership as it applies to the overseas party.

31. Paragraph 5(7) sets out the meaning of "qualifying deduction" and "qualifying loss relief". In broad terms, a qualifying deduction is a deduction that would have been given to the resident party in computing its taxable profits had it incurred that amount. Qualifying loss relief similarly means any loss relief that would have been given under UK tax rules to the resident party in computing tax on business profits. For corporation tax this will include all forms of eligible loss relief. For income tax it will include only losses given against business profits, for example losses of a trade carried forward and set against profits of the business in a later period.

32. Paragraph 6 sets out the "enjoyment" conditions. These conditions consider whether the related individual and/or a person connected with them is able to enjoy the benefit of the amounts that have been transferred to the offshore entity. The arrangements often ensure that the related individual does not have legal entitlement to the amounts, but the practical outcome is that they, their family or other connected persons are able to make use of these amounts, directly or indirectly.

33. Paragraph 6(1) sets out the ways in which a "related individual" (see paragraph 1) may be able to enjoy the amounts arising from the value transferred to the offshore entity.

34. Paragraph 6(2) sets out that the enjoyment conditions can apply irrespective of the nature or form of the benefits, the time at which the benefits may accrue and irrespective of the legal entitlements arising from the arrangements.

35. Paragraph 6(3) extends the enjoyment conditions to cover any person who is connected with the related individual, within the meaning of section 993 of ITA 2007, with certain modifications.

36. Paragraph 6(4) extends the connection test to cover situations where the related individual has effective control or influence over a person's actions even if the individual does not have legal connection with that person.

37. Paragraph 7 sets out how the arrangements are to be counteracted.

38. Paragraph 7(1) requires that in order for the arrangements to be counteracted it must be reasonable to assume that they were entered into to gain a tax advantage. The tax advantage to be counteracted is the advantage arising if this legislation were not taken into account.

39. Paragraph 7(2) sets out the different ways in which a tax advantage may be counteracted.

40. Paragraph 8 provides for a procedure to ensure that the amounts involved are not taxed more than once. The taxpayer may enter a claim and consequential amendments may be made.

41. Paragraph 9 sets out that any payment made by any person to the resident party to enable the latter to meet any tax liability resulting from the counteraction is not to be taken into account in computing the resident party's income or profits for tax purposes.

42. Paragraph 10 sets out the "notification" requirements.

43. Paragraph 10(1) requires that where four of the five conditions in paragraph 2(1) are met the arrangement must be notified. The condition that does not have to be met is in paragraph 2(1)(c), which requires a judgement to be made as to whether the value transferred is not in line with the value deriving from an arm's length arrangement.

44. Paragraph 10(2) sets out the information that must be provided in a notification which includes a description of the "material provision" that should provide some indication as to why the condition in paragraph 2(1)(c) is not met.

45. Paragraph 10(3) sets out that the notification must be made in the tax return.

46. Paragraph 10(4) provides an exemption from the requirement to notify if the value transferred as a result of the material provision is subject to adjustment under the legislation covering transfer pricing, controlled foreign companies and the diverted profits tax.

47. Paragraph 10(5) provides a power for HMRC to specify other circumstances in which notification is not required.

48. Paragraph 11 sets out how to apply the legislation where any party is carrying on business through a partnership.

49. Paragraph 12 sets out a list of defined terms.

50. Paragraph 13 sets out the commencement rule. The new rules will apply to value transferred as a result of a material provision on or after 1st April 2019 (for corporation tax) or 6th April 2019 (for income tax). The rules apply to amounts arising from arrangements whenever those arrangements were put in place.

Background note

51. This measure tackles tax avoidance arrangements that involve the fragmentation of UK business profits whereby some or all of those profits are said to arise in the hands of an offshore entity in a jurisdiction where there is significantly lower tax than in the UK. Typically the offshore entity is based in a tax haven.

52. The arrangements involve the UK business purporting that business receipts have been earned by the offshore entity, when that entity does not have the substance to earn those profits; or the payment of fees and expenses to the offshore entity that are much higher than is justified by the work done by that entity.

53. The legislation counteracts the arrangements by bringing the relevant amounts back into charge to UK tax, either by disallowing the expenses or by reattributing receipts to the UK business.

54. If you have any questions about this change, or comments on the legislation, please

contact Chris Stewart on 03000 519 402 (email: profitfragmentation.mailbox@hmrc.gsi.gov.uk)

Clause 11 and Schedule 7: Oil activities: transferable tax history

Summary

1. This clause and Schedule provide a mechanism by which an oil company may transfer a portion of its historic profits, and the associated tax paid on those profits, to another company, on the sale of an oil licence. This will allow the buyer company to claim a repayment of the tax paid in certain circumstances when it comes to decommission the oil field. This measure will have effect in relation to licence transfers approved after 1 November 2018.

Details of the clause and Schedule

2. Clause 11 introduces Schedule 7 which makes provision for elections to transfer tax history for the purposes of certain sections of the Corporation Tax Acts, on the sale of an interest in a UK oil licence.

Schedule 7

Part 1: Election to Transfer Tax History

3. Paragraph 1 states that this schedule applies in circumstances where the Oil and Gas Authority (OGA) gives permission, on or after 1 November 2018, for a company (the seller) to sell a UK oil licence to another company (the purchaser).

4. Sub-paragraphs 2 (1) and (2)(a) allow the seller and purchaser to elect for some or all of the seller company's ring fence profits to be treated as if they were the buyer company's ring fence profits (a Transferable Tax History (TTH) election).

5. Sub-paragraph 2 (2)(b) states that where an amount of the seller's ring fence profits of an accounting period are to be treated as if they were the buyer's, a corresponding, proportionate amount of the seller's adjusted ring fence profits should also be treated as if they were the buyer's adjusted ring fence profits.

Part 2: The Total TTH Amount

6. Paragraph 3 defines the 'total TTH amount', being the total amount of the seller's ring fence profits to be treated subject to the provisions of this Schedule, as if they were the purchaser's. The total TTH amount may be made up of the seller's eligible ring fence profits, defined in paragraph 13 of the schedule, of the reference accounting period, defined at paragraph 97 of the Schedule, and of preceding accounting periods, as the purchaser and the seller may agree. However, the total TTH amount may not contain amounts of eligible ring fence profits for accounting

period ending on or after 17 April 2002, as losses incurred in a ring fence trade cannot be carried back to accounting periods ending before this date.

7. Paragraph 4 restricts the total TTH amount, so that it cannot be greater than the 'uplifted decommissioning costs estimate', as defined in paragraph 5 of the schedule, nor can it exceed the total amount of the eligible ring fence profits of the seller for accounting periods beginning on 17 April 2002 and ending with the end of the seller's reference accounting period.

8. Paragraph 5 sets out the steps that must be calculated to arrive at the uplifted decommissioning costs estimate, which the total TTH amount cannot exceed. Firstly, the seller's proportion of the net cost amount must be calculated, and then the proportion of that amount that is attributable to the TTH asset, which is the interest in a transferred oil field to which the TTH election relates, must be identified. Certain adjustment must then be made to the apportioned amount in accordance with paragraph 9 of the Schedule, and the result is then doubled, to arrive at the uplifted decommissioning costs estimate.

9. Paragraph 6 explains how to calculate the net cost amount, by taking the estimate of the decommissioning costs of the TTH oil field from a relevant decommissioning security agreement (a DSA).

10. Sub-paragraphs 6 (3), (4) and (5) explain which estimate of the decommissioning costs of the field to use when there is more than one such estimate in the relevant period of 12 months prior to the TTH election being made.

11. Paragraph 7 provides that the 'seller's proportion' of the net cost amount established under paragraph 6 is the amount that the seller is responsible for under the decommissioning security agreement used to establish the net cost amount.

12. Paragraph 8 defines the 'relevant proportion' of the seller's proportion of the net cost amount for the purposes of calculating the 'uplifted decommissioning costs estimate' under paragraph 5. The relevant proportion is the proportion that the TTH asset bears to all other interests in the same field held by the company. This ensures that the maximum amount of TTH that can be transferred is calculated by reference to the field interest that is being transferred.

13. Paragraph 9 allows HMRC to specify certain assumptions that must be made, or ignored, in calculating the uplifted decommissioning costs estimate, to ensure that, prior to doubling, the figure is a reasonable estimate of the likely costs of decommissioning the asset.

14. Paragraph 10 provides a definition of a decommissioning security agreement for the purposes of this schedule.

15. Paragraph 11 states that the eligible ring fence profits (see paragraph 13 of the Schedule) of an accounting period of the seller may not be transferred under a TTH election unless all of the eligible ring fence profits of the immediately following accounting period have also been transferred.

16. Paragraph 12 requires that where a TTH election is made, all the eligible ring fence

profits of an accounting period of the seller must be transferred. However, there is an exception for the earliest accounting period that is included in the election. For the earliest accounting period, the amount of profits that can be transferred need not be the full amount of the eligible ring fence profits.

17. Paragraph 13 defines 'eligible ring fence profits as being the profits of a ring fence trade of an accounting period, provided that the profits are subject to corporation tax at the main ring fence rate of 30%, no marginal rate relief has been given in respect of the profits, and the tax liability for those profits has been fully paid.

18. Sub-paragraph 13(d) prevents the same ring fence profits from being included within two different TTH elections.

Part 3: Effect of a TTH Election on the Seller

19. Paragraph 15 states that Part 3 applies where a TTH election made by a seller and a purchaser has been approved by an officer of HMRC.

20. Paragraph 16 prevents a loss made by the seller company from being carried back and set against any profits transferred under a TTH election.

21. Paragraph 17 prevents relief being given to the seller in respect of any profits transferred under a TTH election, and stops any tax paid on those profits being repaid to the seller.

22. Paragraph 18 applies where, following a TTH election, the seller's ring fence profits of a period to which the election applies are revised downwards. If the revised profits of the period are less than the profits transferred, the seller is treated as having made a loss in it ring fence trade of an amount equal to that difference.

23. Sub-paragraph 18 (2)(b) ensures that paragraph 17 of the Schedule does not prevent that deemed loss from being relieved.

24. Sub-paragraphs 19(1) and (2) disregard the entitlement to a repayment of supplementary charge on the transferred adjusted ring fence profits by the seller for any provisions of the Corporation Tax Acts. This applies to accounting periods for which there is a transferred profits amount.

25. Sub-paragraphs 19(3) and (4) define the "transferred adjusted ring fence profits amount" for an accounting period as the seller's eligible adjusted ring fence profits for that period. However, where the accounting period is the earliest period, the "transferred adjusted ring fence profits amount" is the seller's adjusted ring fence profits for that period in proportion to how much of the transferred profits amount bears to the seller's ring fence profits amount for that period.

26. Sub-paragraph 19(5) provides that the adjusted ring fence profits for a period are 'eligible' if the seller has paid in full the tax liability on profits calculated for the purpose of section 3301(1) of CTA 2010 at the effective date of the election.

27. Sub-paragraph 19(6) states that the definition of the "earliest period" can be found in sub-paragraph 12(4).

Part 4: Effect of a TTH Election on the Purchaser

28. Paragraph 20 states that Part 4 of the Schedule applies where a joint TTH election made by the seller and the purchaser has been approved, production at the oil field that was the subject of the TTH election has permanently ceased and the conditions in sub-paragraph 20(d) are met.

29. Sub-paragraph 20(d) provides further conditions that must be met for Part 4 of the Schedule to apply. It requires that the purchaser makes a decommissioning loss in a ring fence trade, it claims to carry that loss back against profits of previous accounting periods, and that the purchaser holds an amount of activated TTH for the loss making period in accordance with paragraphs 5 and 6 of the schedule.

30. Paragraph 21 defines a decommissioning loss for the purposes of sub-paragraph 20(d)(ii) of the schedule as a loss which is subject to the extended loss carry back periods contained in s39, s40 and s42 of CTA 2010. Losses are subject to these provisions if they have been incurred in the final 12 months prior to the cessation of the trade, or as a result of certain allowances for decommissioning having been made to the company in the loss making accounting period.

31. Paragraph 22 states that where the conditions in paragraph 20 are met, the profits of an accounting period to which a loss is carried back under s37 or s42 are to be treated as including any activated TTH allocated to that accounting period in accordance with Part 6 of the Schedule. However, this only applies where the loss carried back to the period in question exceeds the amount of the company's own profits for that period.

32. Sub-paragraphs 23(1) and (2) allow for there to be a repayment of supplementary charge on the seller's transferred adjusted ring fence profits for the pre-acquisition accounting period referred to in sub-paragraphs 22(2)(b) or (3)(b) as if the amount of supplementary charge was charged on and paid by the purchaser. The repayment is in accordance with that applied by paragraph 47. Paragraph 23 only applies where an activated transferred profits amount is applied in accordance with sub-paragraph 22(2)(b) or (3)(b) in respect of a loss period.

33. Sub-paragraph 23(3) states that the reference to the "seller's supplementary charge" in sub-paragraph 23(2) is the amount that is charged on the transferred adjusted ring fence profits amount for that period under section 330(1) of CTA 2010.

34. Sub-paragraph 24(1) describes the references to the transferred adjusted ring fence profits amount for a pre-acquisition accounting period of the purchaser as

    - the seller's transferred adjusted ring fence profits amount (see sub-paragraph 19(3)) for an accounting period which coincides with the purchaser's pre-acquisition period, or

    - the overlapping proportion of the transferred adjusted ring fence profits amount for each of the seller's accounting period that overlaps with the purchaser's pre-acquisition accounting period in cases where there is no coinciding accounting period of the seller.

35. Sub-paragraph 24(2) states that the overlapping proportion referred to in sub-paragraph 24(1)(b) is the proportion of the purchaser's accounting period that overlaps with an accounting period of the seller bears to the purchaser's accounting period as a whole.

36. Paragraph 25 treats corporation tax paid by the seller on activated transferred profits as having been paid by the purchaser, so that where a loss of the purchaser is set against those profits, the corporation tax paid by the seller may be repaid to the purchaser.

37. Paragraph 26 provides that an enquiry into a claim to carry back a loss may include enquiring into the amount of TTH that has been activated, the decommissioning expenditure attributable to the TTH asset for any accounting period, and the tracked profits attributable to the TTH asset in any accounting period.

Part 5: TTH activation

38. Sub-paragraph 27(1) states that TTH activation occurs if two conditions are met: the winning of oil from the field has permanently ceased, and at the end of an accounting period the total decommissioning expenditure amount exceeds the total net profits amount.

39. Sub-paragraph 27(2) states that the total decommissioning expenditure amount is the proportion of the sum of the decommissioning expenditure amounts as defined in paragraph 28 that is attributable to the TTH asset for each period from the initial transfer of the TTH asset up to the end of the accounting period in question.

40. Sub-paragraph 27(3) defines the total net profits amount as the sum of the tracked profits or losses attributable to the TTH asset for each period from the initial transfer of the TTH asset to the end of the accounting period in question.

41. Paragraph 28 defines the decommissioning expenditure amount attributable to an oil field for an accounting period as the sum of the special allowance amount, the post-cessation expenditure amount and the restoration expenditure amount.

42. Paragraph 29 defines the special allowance amount as the amount of any allowances made to the purchaser under s164 of the Capital Allowances Act 2001 where the expenditure giving rise to the allowance is incurred on decommissioning plant or machinery that was used in direct connection with the TTH oil field.

43. Paragraph 30 defines the post-cessation expenditure amount as the amount of any allowances made to the purchaser under s165 of the Capital Allowances Act 2001 where the expenditure giving rise to the allowance is incurred on decommissioning plant or machinery that was used in direct connection with the TTH oil field.

44. Paragraph 31 defines the restoration expenditure amount as the amount of any allowances made to the purchaser under s416ZA of the Capital Allowances Act 2001

where the expenditure giving rise to the allowance is incurred on the restoration of a site used in relation to the TTH oil field.

45. Paragraph 32 requires any apportionment of amount under paragraph 29, 30 or 31 between the TTH oil field and any other oil field or part thereof must be made on a basis which is just and reasonable.

Part 6: Allocation of Activated TTH amount

46. Paragraph 33 states that Part 6 applies where an activation event has occurred in accordance with Part 5 of the Schedule in relation to the TTH asset.

47. Paragraph 34 defines the first activation period as the first accounting period of the purchaser where an activation event under Part 5 of the Schedule occurs, and defines a post-activation period as any subsequent accounting period of the purchaser.

48. Paragraph 35 defines the total activated TTH amount for the first activation period, as the lower of the amount of TTH activated in accordance with Part 5 of the Schedule, and the total TTH amount transferred to the purchaser.

49. Paragraph 36 defines the total activated TTH amount for any post-activation period as the lower of the adjusted activated TTH amount (as defined in paragraphs 37-39), and the closing balance of the total TTH amount at the end of the preceding accounting period(as defined in paragraph 46).

50. Paragraph 37 provides that where further TTH is activated in a post-activation accounting period, as a result of further decommissioning costs being incurred in relation to the TTH asset in that period, which exceed any further profits or losses attributable to the TTH asset for that period, the adjusted activated TTH amount for that post-activation period is the closing balance of activated TTH for the previous accounting period plus the additional TTH activated in that period.

51. Paragraph 38 provides that where, in a post activation period, the tracked profit or loss amount attributable to the TTH asset is greater than any further decommissioning expenditure amounts attributable to the TTH asset, the adjusted activated TTH amount is the closing balance of activated TTH for the accounting period immediately beforehand, less the excess of tracked profits over decommission expenditure for the post-activation period.

52. Paragraph 39 provides that where no further decommissioning costs are incurred in relation to the TTH asset, and no further tracked profits or losses made, the total activated TTH amount is the closing balance of the total TTH amount for the previous accounting period.

53. Paragraph 40 introduces paragraph 41, stating that it applies for the purposes of a loss carry back claim made by the purchaser in accordance with Part 4 of the Schedule.

54. Paragraph 41 sets out how amounts of activated TTH are applied to accounting

periods falling prior to the date of the initial transfer of the TTH asset. Amounts are applied to the most recent accounting period first for which there is an unused transferred profits amount, up to the value of the unused transferred profits amount or the available activated TTH, whichever is lower. Where the total activated TTH amount is greater than the unused transferred profits amount for an accounting period, the excess activated TTH amount is then applied to the next preceding accounting period for which there is an unused transferred profits amount, and so on.

55. Paragraph 42 defines the transferred profits amount for an accounting period of the purchaser as the profits of the coinciding accounting period of the seller that were transferred to the purchaser under the TTT election, or, if there is no such directly coinciding accounting period of the seller, then a proportion of the profits of any accounting period of the seller that overlap with the accounting period of the purchaser, calculated on a time apportionment basis.

56. Paragraph 43 defines the unused transferred profits amount of an accounting period as the transferred profits amount, less any activated transferred profits amount allocated to that period previously.

57. Paragraph 44 defines the available activated TTH amount as the total activated TTH amount for that period, less any amounts previously allocated to a subsequent accounting period in accordance with paragraph 41 of the Schedule.

58. Paragraph 45 defines the closing balance of activated TTH as being the total activated TTH held by the purchaser for an accounting period, less any amounts against which losses have already been set in accordance with paragraph 22 of the Schedule.

59. Paragraph 46 defines the closing balance of the total TTH amount as the total TTH amount less any TTH against which losses have already been set in accordance with paragraph 22 of the Schedule.

Part 7: Supplementary Charge: Recalculation of Adjusted Ring Fence Profits

60. Sub-paragraph 47(1) provides that paragraph 47 applies for the purposes of recalculating the transferred adjusted ring fence profits amount for the pre-acquisition accounting period as referred to in sub-paragraph 23(1).

61. Sub-paragraphs 47(2) and (3) state that the recalculated transferred adjusted ring fence profits for the relevant pre-acquisition accounting period mentioned in sub-paragraph 47(1) is the total of (a) the reduced profits amount, and (b) the adjusted finance cost amount for the loss period. Where this produces a negative amount, the recalculated transferred adjusted ring fence profits amount is nil.

62. Paragraph 48 states that the "reduced profits amount" is calculated by reducing the transferred adjusted ring fence profits amount for that period (but not below nil) by the lower of (subject to paragraph 49)

- The amount applied in accordance with sub-paragraph 22(2)(b) or (3)(b) for the period, and
- The activated ARFP amount

63. Paragraph 49 applies instead of paragraph 48 where the supplementary charge rate under section 330(1) of CTA 2010 was greater than 20% for the pre-acquisition period referred to in sub-paragraph 23(1). This paragraph instead determines the "reduced profits amount" as
    - the total of the activated ARFP profits amount and the ARFP uplift amount for the period
    - and then reducing that total by the amount applied in accordance with sub-paragraph 22(2)(b) or (3)(b) for the period.
64. Paragraph 50 provides the rules for calculating the "Activated ARFP amount".
65. Paragraph 51 provides the rules for calculating the "ARFP uplift amount".
66. Paragraph 52 provides the rules for calculating the "Adjusted finance cost amount".

Part 8: TTH Elections: Conditions and Procedure

67. Sub-paragraph 53(1)(a) provides that in order to make a TTH election the seller and the purchaser must not be associated with each other.
68. Sub-paragraphs 53(1)(b) and (c), 53(2) and 53(3) set out exceptions to this rule, where the transfer of TTH is part of a hive-down, or a corporate restructuring.
69. Sub-paragraph 53(4) defines associated companies for the purposes of sub-paragraph 51(1)(a).
70. Paragraph 54 provides that a seller may not make a joint election if it is party to a decommissioning relief deed (DRD), unless the DRD disregards the total TTH amount when calculating any reference amount.
71. Paragraph 55 requires that a TTH election must be made by the later of 31 March 2019 or 90 days after the date of the transfer of the oil licence to the purchaser.
72. Paragraph 56 allows HMRC to specify the form and content of a TTH election.
73. Paragraph 57 amends the time limits for HMRC to enquire into a TTH election where the hive down condition or the corporate restructuring condition is met.

Part 9: TTH Elections: Approval

74. Paragraph 58 provides that a TTH election may be approved by an officer of HMRC

giving notice of approval to the seller and the purchaser.

75. Paragraph 59 provides that an election may be refused by an officer of HMRC.

76. Paragraph 60 provides that if an election is neither approved nor refused, and no enquiry is opened into the election, the election shall be deemed to be approved.

77. Paragraph 61 requires the purchaser to comply with the profit tracking requirement and to keep such records as may be required by HMRC, as a condition of approval.

78. Paragraph 62 sets out the profit tracking requirement and requires a statement of the tracked profit or loss to be submitted to HMRC each year alongside the purchaser's corporation tax return.

79. Paragraph 63 requires the tracked profit or loss amount to be calculated on a basis that is just and reasonable.

80. Paragraph 64 requires the purchaser in each period after the transfer to notify HMRC the name of its 'senior tracking officer' (STO), who must ensure the purchaser complies with the profit tracking requirement and certify to HMRC that it has done so.

81. Paragraph 65 sets out who may be the STO of a purchaser company.

82. Sub-paragraphs 66(1), (2) and (4) provide that penalty may be charged on the STO if he or she fails to comply with the requirements in paragraph 64 of the Schedule.

83. Sub-paragraph 66(3) provides that a penalty may be charged on the purchaser if it fails to notify HMRC who its STO is for an accounting period.

84. Paragraph 67 makes provision for how a penalty under paragraph 66 may be assessed.

85. Paragraph 68 makes provision for how penalties charged under paragraph 66 must be paid, and how they can be enforced.

Part 10: TTH Elections: Effective Date and Withdrawal

86. Paragraph 69 provides that a TTH election has effect from the date that the sale of the interest in the oil licence is completed, and the consequences of the election are permanent unless it is withdrawn.

87. Paragraph 70 makes provision for the circumstances in which a TTH election may be withdrawn by HMRC in respect of the purchaser.

88. Sub-paragraph 70(3) provides that withdrawal of an election does not affect any claim made previously under which a loss of the purchaser was set against activated TTH.

Part 11: TTH Elections: Inaccuracies

89. Paragraph 71 provides that a penalty may be charged on the seller if an inaccurate TTH election is submitted.

90. Sub-paragraph 71(c) sets out how to determine the 'potential lost revenue' where a penalty is charged.

91. Paragraph 72 allows HMRC to amend a TTH election by giving notice to the purchaser if the election is discovered to be inaccurate.

92. Sub-paragraphs 72(3) and (4) set out certain restrictions on when an amendment under this paragraph can be made.

93. Paragraph 73 provides that an amendment under paragraph 72 will not interfere with claims already made by the purchaser under which losses are carried back against activated TTH.

Part 12: Chargeable Gains

94. Paragraph 74 provides that the transfer of tax history is not the disposal of an asset for the purposes of the Taxation of Chargeable Gains Act 1992.

95. Paragraph 75 provides that any consideration attributed to the transfer of tax history under a joint election is to be treated as consideration for the disposal of the licence interest for chargeable gains and capital allowances purposes.

96. Paragraph 76 requires the value of the TTH to be included when calculating the market value of the licence interest for chargeable gains and capital allowances purposes.

97. Paragraph 77 provides that the transfer of tax history is to be treated as included in the any reference to the disposal of a licence interest where there is an oil licence swap.

98. Paragraph 78 defines "the transfer of tax history" for the purposes of this part.

Part 13: Supplementary

99. Paragraph 79 allows the seller and the purchaser to make a single TTH election where interests in two or more oil licence are sold at the same time and as a result the purchaser acquires more than one interest in the same oil field.

100. Paragraph 80 makes provision for how to allocate activated TTH amounts held by a purchaser in a loss period where multiple elections have been made in respect of the same asset.

101. Paragraph 81 provides that paragraph 82 to 89 apply if the purchaser of a TTH asset subsequently sells on that TTH asset, or a part of it, to a new purchaser.

102. Paragraph 82 provides that any amount of tax history that was transferred under the original election from the seller to the first purchaser may be treated as being part of

the first purchaser's eligible ring fence profits, and so can be transferred to the second purchaser, on the onwards sale of the TTH asset. However, this only applies insofar as the transferred tax history has not already been activated and allocated to a pre-acquisition accounting period.

103. Sub-paragraphs 82(4)(b) and 82(5) provide that if only part of the original TTH asset is transferred on to the second purchaser, only a proportionate part of the original TTH can be transferred too.

104. Paragraph 83 provides that paragraphs 84 to 88 apply if an election is made in accordance with paragraph 82.

105. Paragraph 84 provides that TTH that is the subject of a subsequent election in accordance with paragraph 82 ceases to be available to be applied in the hands of the first purchaser.

106. Paragraph 85 alters the normal rules in paragraphs 11 and 12 of the Schedule so that amounts of transferred tax history from the first election that are treated as being part of the first purchaser's eligible ring fence profits are transferred to the second purchaser in priority to the first purchaser's own eligible ring fence profits.

107. Sub-paragraph 86(1) provides that for the purposes of the subsequent TTH election the adjusted eligible ring fence profits of the first purchaser are also to include amounts of transferred adjusted ring fence profits from the original TTH election.

108. Sub-paragraph 86(2) provides that if only part of the original TTH asset is transferred, only a corresponding part of the transferred adjusted ring fence profits from the first election are to be treated as the eligible adjusted ring fence profits of the first purchaser.

109. Paragraph 87 expand definitions within the Schedule so that for the purposes of the subsequent TTH election, references to the purchaser are taken to include references to the first purchaser.

110. Sub-paragraph 88 (a) provides that where there are further onward sales of the TTH asset, references in the legislation are to be read accordingly.

111. Sub-paragraph 88(b) provides that amounts of transferred TTH that are to be treated as eligible ring fence profits of the second purchaser in accordance with paragraph 82 of the Schedule must be applied so that the transferred profits in relation to an earlier election are treated as eligible ring fence profits of the second purchaser before amounts of transferred profits that relate to subsequent elections are to be treated eligible ring fence profits of the second purchaser.

112. Paragraph 89 provides that where, following an onward sale, the first purchaser continues to be liable for some or all of the decommissioning costs of the original TTH asset, for the purposes of the activation calculation, the total net profits amount must include the second purchaser's tracked profits amount for each accounting period that are attributable to the TTH asset.

113. Paragraph 90 makes provisions for appeals to be made under this schedule against

decisions to refuse approval for a TTH election, amend a TTH election, withdraw a TTH election, or charge a penalty in accordance with the STO provisions.

114. Sub-paragraph 90(4) provides that any such appeal may be overturned on appeal to the tribunal.

115. Sub-paragraph 90(5) provides that where a decision to withdraw a TTH election is overturned, the election is treated as having had continual effect throughout.

116. Sub-paragraph 91(1) allows an officer of HMRC to amend an election or disallow a claim if certain arrangements have been entered into so that the provisions of the Schedule have effect as if the arrangements had not bene entered into.

117. Sub-paragraph 91(2) provides that arrangements are within sub-paragraph 91(1) if they are designed to secure an entitlement to repayment of tax or an earlier repayment of tax than would otherwise have been the case, or otherwise circumvents the intended limits of the legislation.

118. Paragraph 92 provides that relief may not be given to two different people in respect of the same amount of transferred profits.

Part 14: Interpretation

119. Paragraph 93 introduces Part 14 which provide definitions for the Schedule.

120. Paragraph 94 provides that terms defined for the purposes of Part 8 of CTA 2010 that are used in this Schedule have the same meaning as in Part 8 of that Act.

121. Paragraph 95 defines a UK oil licence in accordance with the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964.

122. Paragraph 96 defines licensed area and transferred oil field.

123. Paragraph 97 defines the seller’s reference accounting period.

124. Paragraph 98 defines the purchaser’s reference accounting period.

125. Paragraph 99 defines the seller’s pre-transfer accounting periods.

126. Paragraph 100 defines the purchaser’s pre-acquisition accounting periods and post-acquisition accounting periods.

127. Paragraph 101 makes provision for the purchaser to be treated as having 12 month accounting periods ending on the date of its incorporation and successive 12 month periods prior to that, where the purchaser is incorporated after the seller’s reference accounting period.

128. Paragraph 102 defines transferred profits amount and activated transferred profits amount.

129. Paragraph 103 defines trade loss relief provisions.

Background Note

130. This clause and Schedule introduce a mechanism by which a company carrying on a ring fence trade can elect to transfer part of it historic profits, together with the tax paid on those profits, to another company, when it sells an interest in a UK oil licence. That tax history will then be available to the new owner of the oil licence so that when it comes to decommission the oil field it can, in certain circumstances, set losses against those profits, and get a refund of the tax paid by the seller company.

131. When an oil field ceases production, the licensees are obliged to decommission the field. This includes plugging the oil wells and removing infrastructure, such as platforms and pipelines. Companies are able to claim certain allowances for this expenditure, and if as a result of this expenditure, a company makes a loss in a ring fence trade, under the current rules, it can claim to set that loss against its own profits back to 2002, and get a refund of the tax paid on those profits.

132. Because currently companies can only set decommissioning losses against their own historic profits, there is a disincentive for new companies to enter the market and acquire oil fields, as they will have to meet the costs of decommissioning without having certainty that they will be able to get tax relief on those costs.

133. The introduction of this legislation will allow new companies to acquire the record of historic profits earned, and taxes paid, by the previous owner of the field. This will allow the buyer to have certainty that it will get tax relief for its decommissioning costs, levelling the playing field between new entrants and existing operators, and supporting new investment in the UK and the UK continental shelf, in line with the government's policy to maximize the economic recovery of the UK's oil resources.

134. If you have any questions or comments on this legislation, please contact the oil and gas team on tax.oilgas@hmrc.gsi.gov.uk.

Clause 12: Petroleum revenue tax: post-transfer decommissioning expenditure

Summary

1. This clause enables participators in oil fields to obtain Petroleum Revenue Tax (PRT) relief for decommissioning expenditure where that expenditure was either incurred or funded by the previous holder of the interest in the oil field. The clause has effect for transfers of interests that have been given consent by the Oil and Gas Authority (OGA) on or after 1 November 2018.

Details of the clause

2. Subsection 1 provides for Schedule 3 Oil Taxation Act (OTA) 1975 to be amended.

3. Subsection 2 inserts new paragraph 11A into Schedule 3 OTA 1975.

4. Subsection 3 inserts new subparagraph (3) into paragraph 8 of Schedule 3 OTA 1975. This provides that paragraph 8 is subject to paragraph 11A.

Paragraph 11A

5. Subparagraph 1 provides that the paragraph applies where there has been a transfer for the purposes of Schedule 17 to FA 1980 (Transfers of Interests in Oil Fields) and the transfer was approved by the Oil and Gas Authority on or after 1 November 2018.

6. Subparagraph 2 disapplies the subsidised expenditure rules at paragraph 8(1) of Schedule 3 to OTA 75 where decommissioning expenditure which has been incurred by the new participator is met by the old participator. The new participator is therefore treated as having incurred such expenditure. The subparagraph further provides that where it applies the expenditure cannot be treated as having been incurred by anyone other than the new participator for all purposes of OTA 75.

7. Subparagraph 3 provides that subparagraph (4) applies where the old participator has ceased to be a licensee in the field at the end of the transfer period. That is, if the old participator has disposed of all of its interests in the relevant field.

8. Subparagraph 4 provides that where the old participator incurs decommissioning expenditure in respect of the field after the end of the transfer period such expenditure is deemed to have been incurred by the new participator. The subsidised expenditure rules are disapplied in respect of such expenditure.

9. Subparagraph 5 provides that where there has been more than one transfer of field interest between the old and the new participator and one (or more) of those transfers was approved by the OGA before 1 November 2018 any decommissioning expenditure met or incurred by the old participator is to be apportioned on a just and

reasonable basis for the purposes of the paragraph.

10. Subparagraph 6 sets out a number of definitions:

    a. "Decommissioning expenditure" takes the definition from section 3(1)(i) and (g) OTA 75.

    b. "The old participator", "the new participator" and "the transfer period" all take their meaning from Schedule 17 to FA 1980.

Background note

11. This measure provides for PRT relief to be available for decommissioning expenditure where such expenditure is either incurred or met by the previous holder of a field interest ("the old participator"). Relief is given to the current holder of the field interest ("the new participator").

12. Previously in these circumstances, and if the old participator had disposed of its entire field interest, no relief would have been available to either the old participator or the new participator.

13. Where the relief results in a loss for PRT purposes the new participator will be able to set that loss against its profits from the field. Any surplus will be transferred automatically at cessation of production to, in the first instance, the old participator, and then to previous holders of the relevant field interest in accordance with Schedule 17 to FA 1980.

14. The measure will make relief available where previously companies had to enter into complex and uncommercial arrangements to access relief. The structuring of transfers of field interests will therefore be simpler which is in accordance with the government's policy of Maximising Economic Recovery (MER) of UK Petroleum.

15. If you have any questions about this change, or comments on the legislation, please contact Hugh Grainger on 03000 589 523 (email: hugh.grainger@hmrc.gsi.gov.uk).

Clause 13 and Schedule 8: Leases

Summary

1. This clause and Schedule implement a package of proposals for income tax and corporation tax rules as a result of the adoption of International Financial Reporting Standard 16 (IFRS 16) for all entities which apply International Financial Reporting Standards or Financial Reporting Standard 101 Reduced Disclosure Framework (FRS 101). The legislation takes effect for periods of account commencing on or after 1 January 2019.

2. The main areas of change are:

    - Amending current legislation that relies on lease accounting definitions
    - Minor amendments to the rules for Long Funding Leases
    - Repealing legislation that stopped entities giving effect to IFRS 16 and introducing rules for the spreading of any transitional adjustment recognised upon adoption of IFRS 16

Details of the clause and Schedule

3. Clause 13 introduces Schedule 8.

Schedule 8

Part 1: Finance leases: Amendments as a result of changes to accounting standards

4. Part 1 of the Schedule makes changes ensuring that the relevant legislation will apply to an IFRS 16 lessee as intended.

5. Paragraph 1 makes the required changes to Part 2 of Capital Allowances Act (CAA) 2001, the most significant of which are explained below.

6. Paragraph 1(2) amends section 67 which sets out the circumstances in which a person is entitled to capital allowance even though they do not own the plant or machinery in question. Currently section 67 applies to hire purchase contracts and leases that are treated as finance leases for accounting purposes. Going forwards, if the lessee uses IFRS 16 they must determine whether they would have accounted for the lease as a finance lease were they required under generally accepted accounting practice to determine whether the lease was a finance lease or not.

7. Paragraph 1(3) inserts the new terminology of 'interest expenses' into section 70E of CAA 2001 to reflect the terminology used in IFRS 16.

8. Paragraph 1(4) amends section 70YA. The amendments have the effect of not requiring a deemed disposal and reacquisition where a long funding lease is reclassified upon the mandatory adoption of a new accounting standard.

9. The following example illustrates how the changes to section 70YA will apply:

    - A lessee uses IFRS or FRS 101 and has a long funding operating lease which has three years left to run as at the 31 December 2019. In its accounts for the year to 31 December 2019 it is required to adopt IFRS 16 and moves from accounting for the long funding operating lease as an operating lease to accounting for the lease under IFRS 16, recognising a right-of-use asset and a lease liability. Section 70YA does not apply and the lease will continue to be taxed using the rules for a long funding operating lease without any deemed disposal or reacquisition.

10. Paragraph 1(5) amends the definition of a "long funding finance lease" in section 70YI so that all lessees using IFRS 16 and who have a long funding lease in respect of a right-of-use asset will be defined as having a long funding finance lease. It inserts a new definition into subsection 70YI(1) that defines a "right-of-use lease" to identify those lessees using IFRS 16.

11. Paragraph 1(6) amends section 228J which provides for plant or machinery leases that are subject to further operating leases. If the lessee uses IFRS 16 they must determine, for any lease in respect of a right-of-use asset, whether they would have accounted for the lease as a finance lease were they required under generally accepted accounting practice to determine whether the lease was a finance lease or not.

12. Paragraph 2 amends the income tax rules for computing the deduction claimed by a lessee with a long funding finance lease. The substantial changes are explained below.

13. Paragraph 2(3) introduces new section 148GA of ITTOIA 2005. The new section applies in certain circumstances and will either increase or decrease the deduction claimed for income tax purposes for a lessee using IFRS 16 with a long funding finance lease. The new section identifies two circumstances where a lessee using IFRS 16 with a long funding finance lease will have a change in their rental payments and allows an increased deduction based upon how any rental increase is reflected in its accounts or imposes a restriction of its deduction if the rental payments decrease.

14. New sections 148GA(1)(a) and (b) apply where the lessee uses IFRS 16, has a long funding finance lease and where there is a change in the rental payments in any period of account.

15. New sections 148GA(1)(c)(i) and (ii) provide that the section only applies where the change in rental payments:

- Results in a remeasurement of the lease liability in the lessee's accounts, or
- Is recognised in the accounts as an amount paid under the lease but not as an amount accounted for as an interest expense that relates to a right-of-use lease nor as depreciation, or an impairment, of that right-of-use asset.

16. New section 148GA(2) provides that where the section applies the lessee will adjust the deduction limitation under section 148G of ITTOIA 2005 by the amount its accounting deduction in its profit and loss account is adjusted by as a result of the change in rentals which meets the tests in new sections 148GA(1)(c)(i) and (ii).
17. New section 148GA(3) provides that there is no adjustment to the limitation under section 148G of ITTOIA 2005 if the remeasurement or deduction results in enhanced capital expenditure provided for under section 70D of CAA 2001.
18. Illustrating how this applies are the following two examples.

    - A lessee has adopted IFRS 16 and has a long funding finance lease. At the end of year 5 the lease terms require the lessee to pay a one off rental based upon the number of widgets produced by the leased plant and machinery giving rise to a rental payment of £100,000. The lessee accounts for the payment as a debit in the profit or loss, but not as an interest expense, in year 5. New section 148GA provides that the deduction claimed by the lessee is whatever interest expense is recognised in respect of the lease liability, the limit of the deduction provided for by section 148G, plus the £100,000 (see new section 148GA(1)(c)(ii)).
    - A lessee has adopted IFRS 16 and has a long funding finance lease. At the end of year 5 the lease terms require the rentals to be adjusted based upon the movement of an index. This results in the lease liability and right-of-use asset being remeasured because the rental payments increase. The lease liability is increased by £100,000 and the right-of-use asset is increased by £100,000. The lease runs for another five years and the lessee depreciates the right-of-use asset on a straight line basis. New section 148GA provides that the deduction claimed by the lessee for each subsequent period of account after year 5 is whatever interest expense is recognised in respect of the lease liability, the limit of the deduction provided for by section 148G of ITTOIA 2005, plus the £20,000 depreciation charge which relates to the remeasurement (see new section 148GA(1)(c)(i)).

19. Paragraph 3 makes the changes to Corporation Tax Act (CTA) 2010, the most

significant of which are described below.

20. Paragraph 3(2) amends section 288 of CTA 2010 which concerns sale and leaseback arrangements, to ensure that the legislation continues to operate as intended. If the lessee uses IFRS 16 they must determine whether they would have accounted for any lease in respect of a right-of-use asset as a finance lease were they required under generally accepted accounting practice to determine whether the lease was a finance lease or not.

21. Paragraph 3(3) amends section 331 and inserts a new subsection 331(3)(da) of CTA 2010 to ensure that the rules continue to apply as intended to a lessee using IFRS 16.

22. Paragraph 3(5) inserts a new section 377A of CTA 2010. The new section applies in certain circumstances and will either increase or decrease the deduction claimed for corporation tax purposes for a lessee using IFRS 16 with a long funding finance lease. The new section identifies two circumstances where a lessee using IFRS 16 with a long funding finance lease will have a change in their rental payments. It allows an increased deduction based upon how any rental increase is reflected in its accounts or imposes a restriction of its deduction if the rental payments decrease.

23. New sections 377A(1)(a) and (b) provide that the section applies where the lessee uses IFRS 16, has a long funding finance lease and where there is a change in the rental payments in any period of account.

24. New sections 377A(1)(c)(i) and (ii) provide that the section only applies where the change in rental payments:

    - Results in a remeasurement of the lease liability in the lessee's accounts, or
    - Is recognised in the accounts as an amount paid under the lease but not as an amount accounted for as an interest expense that relates to a right-of-use lease nor as depreciation, or an impairment, of that right-of-use asset.

25. New section 377A(2) provides that where the section applies the lessee will adjust the deduction limitation under section 377 by the amount its accounting deduction in its profit and loss account is adjusted as a result of the change in rentals which meets the tests in new sections 377A(1)(c)(i) and (ii).

26. New section 377A(3) provides that there is no adjustment to the limitation under section 377 of CTA 2010 if the remeasurement or deduction results in enhanced capital expenditure provided for under section 70D of CAA 2001.

27. The two examples in paragraph 18 of this Explanatory Note apply equally as to the application of new section 377A as they do for new section 148GA of ITTOIA 2005.

28. Paragraph 3(6) amends the definition of a "long funding finance lease" in section 381 so that all lessees using IFRS 16 and who have a long funding lease will be defined as having a long funding finance lease. A new definition is inserted into section 381 of

CTA 2010 that defines a "right-of-use lease".

29. Paragraph 3(7) amends section 437, which concerns the sale of lessors. This change ensures that the legislation applies as intended for an IFRS 16 lessee, where the lease is a right-of-use lease.

30. Paragraph 3(8) inserts new subsections 544(5A) and (5B) of CTA 2010 amend the meaning of "property profits" and "property financing costs" for Real Estate Investment Trusts. This ensures that the legislation applies as intended for an IFRS 16 lessee, where the lease is a right-of-use lease.

31. Paragraph 4 amends section 494 of Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) which sets out the definition of "finance lease" for the purposes of the Corporate Interest Restriction (CIR). This is to ensure that lessees as well as lessors continue to categorise leases into either finance leases or operating leases.

32. Where a lessee applies an accounting framework (such as FRS 102) that categorises leases into finance leases or operating leases, the rule is unchanged and that classification will be used for the purposes of Part 10 TIOPA 2010. Where a lessee applies an accounting framework (such as FRS 101 or IFRS) that does not apply such a categorisation, the lessee must still categorise the lease, if it is a right-of-use lease, for the purposes of Part 10 TIOPA 2010 as if it were required to do so for accounting purposes.

33. The reference in the definition to "right-of-use lease" ensures that where a lessee using IFRS 16 opts to keep a short-term lease or a lease of a low-value asset off the balance sheet, this lease need not be classified for CIR purposes – such leases are not included as "finance leases" under the CIR rules.

34. Paragraph 5 provides that the changes made by Part 1 of the Schedule will have effect in relation to periods of account beginning on or after 1 January 2019. For the purposes of chapter 7 of Part 10 TIOPA 2010 (which calculates certain figures of the worldwide group for CIR) the change made by paragraph 4 will have effect in relation to periods of account of the worldwide group beginning on or after 1 January 2019.

Part 2: Long Funding Leases

35. Part 2 of the schedule makes changes to the long funding lease rules in Chapter 6A of Part 2 of CAA 2001.

36. Paragraph 7(1) amends section 70I. This extends the definition of a short lease from leases with a term of less than 5 years to leases with a terms of less than 7 years. It also omits subsections 70I(3) to (8) removing the conditions that made certain leases short leases if they had a term between 5 and 7 years.

37. Paragraph 7(2) makes consequential amendments that are needed to section 70YF.

38. Paragraph 8 amends section 70O which sets out the lease payments test and inserts a new section 70O(5). These changes amend the rate of interest used in the event the rate implicit in the agreement cannot be determined.

39. Paragraph 9 sets out that all of the changes in Part 2 will have effect in relation to leases entered into on or after 1 January 2019.

Part 3: Changes to accounting standards and tax adjustments

40. Part 3 of the schedule governs the repeal of section 53 of FA 2011 and introduces new legislation to give effect to the new accounting standard IFRS 16. In particular it introduces rules that require a spreading of any transitional adjustment recognised upon adoption of the standard.

41. Paragraph 10 repeals section 53 of FA 2011. This will mean that unless the statute provides otherwise an IFRS 16 lessee can follow their accounts for tax purposes in respect of their leases. Previously section 53 would have meant that any changes to the accounting for leases (such as the new IFRS 16) would be ignored for tax purposes.

42. The repeal of section 53 will have effect in relation to periods of account beginning on or after 1 January 2019. However, for the purposes of chapter 7 of Part 10 TIOPA 2010 (which calculates certain figures of the worldwide group for CIR) the repeal will have effect in relation to periods of account of the worldwide group beginning on or after 1 January 2019.

43. Paragraphs 11 to 16 modify the change of basis provisions in Chapter 17 of Part 2 and Chapter 7 of Part 3 of ITTOIA 2005 and Chapter 14 of Part 3 and sections 261 and 262 of CTA 2009 where a lessee treats a lease as a right-of-use asset under IFRS 16 and had not previously accounted for the lease as a finance lease. These will have effect for a period of account beginning on or after 1 January 2019.

44. Paragraph 12 sets out the transitional adjustments required where an asset is first recognised in a period of account beginning on or after 1 January 2019. The calculation steps set out in paragraph 12 result in a lessee spreading all adjustments recognised in consequence of adopting IFRS 16 across the mean average length of the leases which have given rise to those adjustments.

45. Paragraph 12(1) sets out that the paragraph will apply when a lessee recognises an IFRS 16 lease in a period of account beginning on or after 1 January 2019.

46. Paragraph 12(2) sets out the steps that the lessee will use for any amount treated by any of the change of basis provisions as arising in consequence of a change of accounting policy in relation to the adoption of IFRS 16. The steps identify the amount to be recognised in a period of account and the period over which those amounts are recognised ("the spreading period").

- Step 1 requires the lessee to calculate the net debits and credits brought into account for each lease. The legislation ensures that the net amount includes only amounts recognised in equity which are in consequence of the transition to IFRS 16.

- Step 2 requires the lessee to calculate a percentage for each lease ("the relevant percentage") by dividing the amount under Step 1 for that lease by the total amounts for the lessee for all leases found under Step 1.

- Step 3 requires the lessee to multiply the relevant percentage found under Step 2 by the remaining period outstanding in days of the lease as at the date of transition. The term of a lease is determined in accordance with generally accepted accounting practice.

- Step 4 requires the lessee to calculate the mean of all periods under Step 3. This will be done by adding together all of the amounts calculated under Step 3.

- Step 5 sets out that the spreading period is the number of days found under Step 4 beginning with the day on which the first period of account begins.

47. Paragraph 12(3) requires an amount to be recognised in any period wholly or partly within the spreading period in proportion to the number of days falling within the spreading period.

48. Paragraph 12(4) provides that any amount calculated by paragraph 12 is also subject to paragraphs 14 and 15.

49. Illustrating these steps through an example, assume that the table below sets out details of four leases held by a lessee who adopts IFRS 16 on 1 January 2019.

	Step 1	**Step 2**	**Step 3**	**Step 4**
Lease	**Transitional accounting adjustment**	**Weighting percentage A/SUM (A^1-A^n)**	**Remaining lease term on IFRS 16 adoption**	**Mean lease period**
Lease 1	£(10,000,000) credit	26.32% (=10m ÷ 38m)	1,826 days	481 (=1826 × 26.32%)
Lease 2	£8,000,000 debit	21.05% (=8m ÷ 38m)	730 days	154 (=730 × 21.05%)
Lease 3	Nil	Excluded	1,826 days	Excluded
Lease portfolio	£20,000,000 debit	52.63% (=20m ÷ 38m)	1,461 days	769 (=1461 × 52.63%)
Overall	**£18,000,000 debit**	**100%**		**1,404 days**

- Step 1 – Calculate the net debits and credits

  Calculation included in the table gives the figure of £18,000,000.

- Step 2 – Calculate the relevant percentage

  Calculation included in the table.

- Step 3 – Calculate the remaining lease term

  Calculation included in the table.

- Step 4 – Calculate the mean of all periods

  Calculation included in the table.

- Step 5 – Calculate the spreading period.

  The spreading period is 1,404 days.

- If the lessee had a period of account which ran from 1 January 2019 to 31 December 2019 they would claim as a deduction £4,679,487 (=365 ÷ 1,404 × £18,000,000).

50. Paragraph 13 provides that where a lessee has adopted IFRS 16 for a period of account prior to the first period of account the transitional provisions provided for in paragraph 12 have effect as if they arose in the first period of account beginning on or after 1 January 2019. This paragraph has the effect of ensuring that lessees choosing to early-adopt IFRS 16 are taxed on a basis consistent with lessees adopting IFRS 16 in the first period of account beginning on or after 1 January 2019.

51. Paragraph 14 provides for circumstances where a lessee has an amount that is being spread under the rules provided for by paragraph 12 and the lease is transferred to a connected party. The paragraph has the effect of requiring the transferee to continue to recognise the amounts that have been spread.

52. Illustrating paragraph 14 using an example:

    - A lessee has computed a spreading period of 1,500 days and recognised a net debit of £1,000,000 under the computational steps provided for under paragraph 12. The first period of account ran from 1 January 2019 to 31 December 2019. On the 450th day of the spreading period the lessee transfers all of the leases to a connected party.

    - The transferor is 85 days into its period of account of 1 January 2020 to 31 December 2020 when it transfers the lease and will claim a deduction of £56,667 (= 85 ÷ 1,500 × 1,000,000) in that period of account. The transferee has an identical period of account and will claim a deduction of £187,333 (=281 ÷ 1,500 × 1,000,000) in that period of account.

    - The lessee will continue to spread the remaining transitional adjustment computed under paragraph 12 of £512,667 from 1 January 2021 over the remaining spreading period of 769 days.

53. Paragraph 15 provides for circumstances where the lessee has an amount treated under paragraph 12 and ceases its activities. The lessee brings into the account the remaining amount that has not been relieved immediately before the cessation.

54. Paragraph 16 provides that paragraphs 11 to 15 apply equally to lease portfolios as they do for individual leases.

55. Paragraph 17 provides that transitional adjustments following the repeal of section 53 of FA 2011 and the introduction of IFRS 16 shall be included in the list of the change of accounting provisions at section 426 of TIOPA 2010. This ensures that the transitional amounts are included in the calculations of group figures for CIR in circumstances where the group has made an interest restriction (alternative calculation) election.

56. Paragraph 18 provides the treatment under CIR of certain transitional adjustments arising on the repeal of section 53 of FA 2011 and the introduction of IFRS 16. In particular, it applies to adjustments where (i) they arises from a lease that was treated as a finance lease under the old accounting; and (ii) the company opts not to treat the leases as a giving rise to a 'right-of-use asset' as a result of it being a short term and low value lease. Such transitional amounts are treated as tax-EBITDA amounts (and not tax-interest amounts) in the CIR calculations.

Background note

57. Entities applying IFRSs or FRS 101 will be required to adopt IFRS 16 for periods of account beginning on or after 1 January 2019 which will change the accounting treatment for leases. The main change will affect the treatment for the lessee.

58. Currently, lessees and lessors are required to make a distinction between finance and operating leases. Where the lessee has substantially all the risks and rewards incidental to the ownership of an asset (a finance lease) it recognises a finance lease asset and liability on its balance sheet. Where the lessee does not have substantially all the risks and rewards incidental to the ownership of the asset (an operating lease) it recognises lease payments as an expense over the lease term. This treatment will continue under the Financial Reporting Standard 102 (FRS 102), the main Financial Reporting Standard applicable in the UK and Republic of Ireland.

59. The new accounting standard will remove the distinction between finance leases and operating leases for a lessee. Going forward under IFRS 16 a lessee will recognise all leases on its balance sheet other than certain exempted leases which are of low value or are short term.

60. This measure introduces legislative changes to ensure that certain rules which relied upon the distinction between finance and operating leases will continue to operate as intended providing certainty and stability for businesses, and ensuring that taxation of lessees is broadly consistent regardless of which accounting framework is adopted.

61. Section 53 of FA 2011 was introduced in anticipation of these accounting changes but before the new accounting standard was settled. Section 53 has the effect of disregarding for tax purposes most changes in the accounting treatment for leases after 1 January 2011. This gave certainty to affected businesses, and permitted the government to consult fully over the future tax treatment of leases. However, it was

not intended to be a long term solution.

62. This measure repeals section 53 of FA 2011. This reduces the administrative costs for businesses by removing the requirement that a lessee, adopting IFRS 16 recalculate for tax purposes its lease accounting using the frozen accounting policy.

63. The long funding lease rules in Part 2 of CAA 2001 provide that where a plant or machinery lease is in substance a funding lease for the lessee (because the effect of the lease is substantially equivalent to the lessee having borrowed funds to acquire the asset) the lessee is entitled to claim capital allowances on the asset even though they are not the legal owner. The changes ensure that those rules will continue to apply as intended for an IFRS 16 lessee.

64. A lessee of plant and machinery using IFRS 16 will have a long funding finance lease if the lease is not short and it meets either the lease payments test or the useful economic life test. There is no need to distinguish between long funding operating leases and long funding finance leases for a lessee using IFRS 16 because all leases will be accounted for in the same way. Furthermore, this measure will ensure that a lessee using IFRS 16 with a long funding finance lease will be able to adjust the deduction claimed in certain circumstances where the rentals increase or decrease. The schedule makes several simplifications to the tests to identify a long funding lease which are not connected to the accounting standard changes.

65. The CIR rules operate to limit interest and other financing costs that are deductible for corporation tax purposes. These rules are consistent with the recommendations of Action 4 of the OECD's Base Erosion and Profits Shifting (BEPS) project. The OECD report recommended that the rules should apply to the finance cost element of finance lease payments. These changes to the legislation ensure that CIR continues to be consistent with the OECD's recommendations, and mean that any interest restriction will not vary significantly depending on the accounting framework used.

66. In particular, where a lessee has a right-of-use asset under IFRS the legislation will require the company to determine whether they would have accounted for the lease as a finance lease if they were required to determine whether the lease was a finance lease or not for accounting purposes. For leases classified as finance leases for tax purposes, any finance charges in the accounts are tax-interest amounts for CIR. For leases classified as operating leases for tax purposes, any finance charges in the accounts are not tax-interest amounts for CIR. Therefore lessees will not suffer any interest restriction on amounts paid in respect of operating leases.

67. Lessees can opt to apply several accounting options upon adoption of IFRS 16 and under some of those options it is expected that they will recognise a transitional adjustment in equity. Under the change of basis provisions that amount would be recognised in the period of transition. In addition the adoption of IFRS 16 may lead to certain other provisions being remeasured. It is expected that most entities adopting IFRS 16 and who choose an adoption method that recognises a net transitional adjustment will have a net debit. The spreading of that transitional adjustment for tax purposes over the average remaining term of the lessee's leases therefore protects Exchequer receipts whilst ensuring fairness for lessees regardless of which of the

accounting options they choose.

68. If you have any questions about the CIR change, please contact Jackie Phillips by telephone: 03000 564340 or email: interest-restriction.mailbox@hmrc.gsi.gov.uk

69. For all other questions please contact Ian Woodrow by telephone: 03000 589538 or email: ian.woodrow@hmrc.gsi.gov.uk

Clause 14: Rent-a-room: non-exclusive residence

Summary

1. This clause introduces an additional non-exclusive residence test into s786 of Chapter 1 Part 7 Income Tax (Trading and other Income) Act 2005 that must be satisfied in order for receipts to be eligible for rent-a-room relief. The test requires the individual or individuals in receipt of income to share occupancy of the residence in question with the individual whose occupation of the furnished accommodation is generating the receipts. This clause has effect from 6 April 2019.

Details of the clause

2. Subsection (1) provides that s786 ITTOIA 2005 is amended.

3. Subsection (2) inserts new paragraph (1)(ca) after paragraph (1)(c).

4. New paragraph (1)(ca) provides that the physical use of the furnished accommodation by a person (the tenant) must overlap wholly or in part with the use of the residence as sleeping accommodation by the individual (the landlord) or by a member of their household.

5. Subsection (3) inserts new subsection (8).

6. New subsection (8) provides that a member of the individual's household does not include a person who is a member of that household only by reason of them being an occupier under a letting, only by reason of them being an employee, or by being both.

7. In practice subsection (8) provides that a member of the household would include a co-habiting partner, or a grown up child as they are members of the household in their own right. The purpose of this new subsection is to limit availability of rent-a-room relief to those situations where the residence is shared with a household member, not someone who merely lives in the same dwelling.

8. Subsection (4) provides that the amendment to ITTOIA 2005 has effect for the tax year 2019-20 and for subsequent tax years.

Background note

9. Rent-a-room relief provides income tax relief for those letting out furnished accommodation. It was introduced in 1992 to encourage individuals to make spare capacity in their homes available for rent. The government intended this to increase

the quantity and variety of low-cost rented accommodation, giving more choice to tenants and making it easier for people to move around the country for work.

10. Rent-a-room relief gives relief from Income Tax for up to £7,500 of income to individuals who let furnished accommodation in their only or main residence.

11. In the last 25 years the housing market has changed significantly. The private rented sector has more than doubled in size, and the emergence and growth of online platforms in particular, have made it easier than ever for those with spare accommodation to access a global network of potential occupants.

12. The objective of this clause is to ensure that rent-a-room relief is better targeted to achieve its objective of incentivising individuals with spare accommodation (that might otherwise go unused) to share their homes.

13. If you have any questions about this change, or comments on the legislation, please contact Robert Nott on 07748 634689 (email: Robert.nott@hmrc.gsi.gov.uk)

Clause 15: Entrepreneurs' relief: company ceasing to be an individual's personal company

Summary

1. This clause enables individuals whose shareholding is 'diluted' below the 5% qualifying threshold for entrepreneurs' relief as a result of a new share issue to obtain relief for chargeable gains on the shares up to that time.

Details of the clause

2. Subsection (1) amends Part 5 of Taxation of Chargeable Gains Act (TCGA) 1992 to include a new Chapter 3A.

3. Subsection (2) contains the commencement provision for this clause. The changes apply to shares held at the time of a new share issue that takes place on or after 6 April 2019.

Chapter 3A

4. New Chapter 3A contains new sections 169SB to 169SF which allow two elections. The first to determine the gain on the shareholding at the time of the dilution, and the second to defer the accrual of the gain until a subsequent disposal of shares or securities.

5. New section 169SB provides an overview of the chapter.

6. New section 169SC allows an individual to make an election to 'crystallise' a gain by deeming a disposal and acquisition of their shares or securities at market value.

7. New subsections (1) to (3) of new section 169SC set out the criteria which much be met for an election to be made. These are:

    - The individual's shareholding falls below the 5% threshold required to meet the 'personal company' requirement in section 169S, as a result of a relevant share issue. New subsection (6) defines a 'relevant share issue' as an issue of shares by the company wholly for cash and for genuine commercial reasons, and,

    - If a disposal of those shares or securities had been made immediately before the relevant share issue it would have resulted in a gain, which would have qualified for entrepreneurs' relief.

8. New subsection (4) gives the effect of the election, which is to deem a disposal and reacquisition of the shares or securities at their relevant value immediately before the

relevant share issue.

9. New subsection (5) defines the 'relevant value' as the amount shares would be sold for if the whole company was acquired at market value, or for other assets, the market value of those assets.

10. New subsections (6) to (9) provide various definitions for the purposes of the section and chapter.

11. New section 169SD allows the individual to make a further election to defer the gain which accrued under new section 169SC.

12. New subsection (1) of new section 169SD allows an election to be made so that the gain which arose under new section 169SC(4) does not accrue until an actual disposal of the shares or securities.

13. New subsection (2) sets out the rules for calculating the amount of deferred gain that accrues on the later disposal. This is done in three steps.

14. Step 1 is to attribute the deferred gain between each class of shares or security which were the subject of the deemed disposal. Example: X made an election under section 169SC to defer her deemed gain of £100,000. £25,000 of that gain related to her 50 class A shares and £75,000 of it related to her 50 class B shares. Step 1 allocates the gain between those shares accordingly.

15. Step 2 is to apportion the amounts identified under step 1 by reference to how many of the shares which were the subject of the deemed disposal have actually been disposed of. Example: if X sold 25 of her 50 class A shares, the calculation would be £25,000 (the amount of deemed gain attributed to 50 class A shares above) x (25 ÷ 50) = £12,500.

16. Step 3 provides that the of the gain that is treated as accruing is the total of all amounts under step 2, but (including any previous disposals) capped at the total amount of deferred gain attributed to that class of shares or securities.

17. New subsection (3) provides that where the subsequent disposal of shares is a capital distribution under section 122 TCGA, then the amount of shares treated as disposed of under Step 2 of new subsection (2) will be the total amount of that class of shares or securities that was the subject of the deemed disposal.

18. New subsections (4) to (7) provide rules for establishing how much of the deemed gain accrues on a disposal of shares where there has been a reorganisation of share capital under Chapter II Part IV TCGA after the deemed disposal. The new holding is equated to the original shares by reference to the market values of the holdings.

19. New section 169SE sets out the rules for making elections under new sections 169SC and 169SD. New subsection (1) ensures that both elections are irrevocable. New subsection (2) gives the time limit for an election under new section 169SC as one year after the 31 January following the year in which the deemed disposal takes place, and new subsection (3) gives the time limit for an election under new section 169SD as four years after that tax year. New subsection (4) ensures that where an

individual makes both elections and has no other reason to submit a tax return for the year, they can make both elections by writing to HM Revenue and Customs (HMRC) within one year after the 31 January following the tax year.

20. New section 169SF ensures that entrepreneurs' relief can be claimed on any deferred gain which accrues on a later disposal following an election under new section 169SD, and sets out the rules for making such claims.

Background note

21. This clause has been introduced following of representations from stakeholders that the 'personal company' requirement for entrepreneurs' relief could sometimes act as a barrier to growth in companies. Currently for a gain on a disposal of shares or securities in a company to qualify for entrepreneurs' relief the claimant must have at least 5% of the voting rights in the company by virtue of holding at least 5% of the ordinary share capital of the company, for a period of one year leading up to the disposal. This may lead to shareholders being unwilling to accept external investment because doing so would 'dilute' their shareholding below the 5% threshold.

22. This clause allows individuals whose shareholding has been 'diluted' below the 5% threshold to retain entrepreneurs' relief on gains which accrue prior to dilution, thus removing the perceived barrier to growth. It does this by allowing them to treat their shareholding as having been disposed of and reacquired at market value at the time of dilution. It also allows them to defer the gain that results from this until the shares are actually disposed of, thus avoiding a 'dry' tax charge.

23. This is part of the government's response to the patient capital review and, and is in line with the government's policy of supporting enterprise and entrepreneurship.

24. If you have any questions about this change, or comments on the legislation, please contact Leah White on 03000 530279 (email: leah.white@hmrc.gsi.gov.uk)

Clause 16: Gift aid: restrictions on associated benefits

Summary

1. This clause simplifies the number of thresholds and changes the limits on the value of benefits that can be given to donors without affecting the Gift Aid qualifying status of a donation to a charity. The changes will apply in relation to gifts by individuals and payments by companies made to charities on or after 6 April 2019.

Details of the clause

2. Subsection 1 makes changes to section 418 of Income Tax Act (ITA) 2007. Section 418 provides the limits on benefits that can be given in relation to gifts made by individuals to charities if the gifts are to remain eligible for Gift Aid. Where the amount of the gift by an individual does not exceed £100, the benefit restriction is 25% of that amount. For gifts exceeding £100, the benefit restriction will be the sum of £25 and 5% of the amount of the excess subject to the overall benefit restriction of £2,500 set out in section 418.

3. Subsection 2 applies the changes made to section 418 ITA 2007 in relation to gifts made to charities by individuals on or after 6 April 2019.

4. Subsection 3 makes changes to section 197 of Corporation Tax Act (CTA) 2010. Section 197 provides the limits on benefits that can be given in relation to payments made by companies to charities if the payments are to remain qualifying charitable donations for corporation tax relief. Where the amount of the payment by a company does not exceed £100, the benefit restriction is 25% of that amount. For payments exceeding £100, the benefit restriction will be the sum of £25 and 5% of the amount of the excess subject to the overall benefit restriction of £2,500 set out in section 197.

5. Subsection 4 applies the changes made to section 197 CTA 2010 in relation to payments made to charities by companies on or after 6 April 2019.

Background note

6. Gift Aid is generally only allowed on donations that are freely given. However, certain small benefits are allowed to be given as a thank you to donors without the charity losing Gift Aid tax relief on the donation, provided the value of benefits is within certain limits. At present, there are three different thresholds that determine the value of benefits that charities may give to donors whilst still being able to claim Gift Aid on the full amount of the donation. The same thresholds also apply to benefits given to companies for making a donation to a charity.

7. The changes in this measure will introduce a simpler and a more generous two threshold benefit valuation rule for charities making it easier to claim Gift Aid on eligible donations and so increase the overall number and value of claims.

8. If you have any questions about this change, or comments on the legislation, please contact Hasmukh Dodia by email: charitypolicy.taxteam@hmrc.gsi.gov.uk

Clause 17 and Schedule 9: VAT treatment of vouchers

Summary

1. This clause and Schedule transpose Council Directive (EU) 2016/1065, which provides for the VAT treatment of vouchers, by amending the Value Added Tax Act 1994 (VATA 1994). Specifically, it amends section 51B of, and Schedule 10A to that Act and inserts sections 51C and 51D and Schedule 10B. This will make the rules for the tax treatment of vouchers consistent, especially where they can be used either in the UK or more widely in the EU - thus preventing either non-taxation or double taxation of the goods or services relating to the vouchers. It affects only vouchers, such as gift cards, for which a payment has been made and which will be used to buy something. The clause and schedule will have effect for vouchers issued on or after 1 January 2019. Vouchers issued before 1 January 2019 will be subject to the existing rules.

Details of the clause

2. Clause 17 introduces Schedule 9 which makes provision for the VAT treatment of vouchers.

Details of the Schedule

3. Paragraph 1 provides for amendments to VATA 1994.
4. Paragraph 2 amends section 51B so that Schedule 10A does not have effect with respect to face value vouchers (within the meaning of that Schedule) issued on or after 1 January 2019.
5. Paragraph 3 inserts section 51C to introduce Schedule 10B. Schedule 10B makes provision with respect to the VAT treatment of vouchers issued on or after 1 January 2019. This paragraph also inserts section 51D. Section 51D makes provision with respect to postage stamps issued on or after 1 January 2019.
6. Paragraph 4 amends the heading of Schedule 10A to make clear that it only covers face value vouchers issued before 1 January 2019.
7. Paragraph 5 inserts the new Schedule 10B to provide for the VAT treatment of vouchers issued on or after 1 January 2019.

New Schedule 10B

8. Paragraph 1 defines a 'voucher' for the purposes of Schedule 10B as an instrument in physical or electronic form in relation to which three conditions must be met. It also

specifies that certain things are not vouchers.

9. Paragraph 2 gives the meaning of certain related expressions used in the Schedule.

10. Paragraph 3 sets out the general rule for the VAT treatment of vouchers, namely that the issue and any subsequent transfer of a voucher is to be treated as a supply of relevant goods or services.

11. Paragraphs 4 and 5 set out the special rules for Single Purpose Vouchers (SPV). Paragraph 4 provides that a voucher is an SPV when both of the following are known at the time it is issued (i) the place of supply of the relevant goods and services and (ii) that the voucher falls into a single 'supply category'. Paragraph 4 goes on to explain the supply categories. Paragraph 5 sets out what happens when an SPV is accepted as consideration for the provision of relevant goods or services and, in particular, what happens where the person who provides the relevant goods or services is not the person who issued the voucher.

12. Paragraphs 6 to 8 set out the special rules for Multi-Purpose Vouchers (MPV). Paragraph 6 provides that an MPV is any voucher that is not an SPV. Paragraph 7 provides that any consideration for the issue and subsequent transfer of an MPV is to be disregarded and any related input VAT may not be deducted. Paragraph 8 sets out what happens when a MPV is accepted as consideration for the provision of relevant goods and services. It provides that the provision of the goods or services is to be treated as a supply and specifies the value of such a supply. If the consideration for the most recent transfer is known to the supplier, VAT is due on that consideration. In any other case VAT is due on the face value of the voucher (as defined).

13. Paragraphs 9 and 10 make provision in relation to intermediaries (also known as agents). Paragraph 9 overrides section 47(3) VATA 1994 where a voucher is issued or transferred by an agent who acts in their own name. Paragraph 10 makes it clear that services provided by intermediaries in addition to the issue or transfer of vouchers are not affected by Schedule 10B.

14. Paragraph 11 makes provision in relation to situations where a voucher forms part of a composite transaction where the total consideration for the transaction is not different or significantly different from what it would be if the voucher were not issued or transferred. In such cases, the supply made on the issue or transfer of the voucher is to be treated as made for no consideration. This is an anti-avoidance provision similar to that provided for at paragraph 7 Schedule 10A VATA 1994.

Background note

15. The government's objective is to ensure that the amounts customers pay when using vouchers to obtain goods or services is better reflected in the tax base. It also wants to make improvements for business by modernising and harmonising the VAT treatment of vouchers. It aims to do this by providing new, clear rules which separate vouchers with a single purpose (e.g. a traditional book token) from the more complex

gift vouchers and set out how and when VAT should be accounted for in each case. The new legislation is not concerned with the scope of VAT and whether VAT is due, but with the question of when VAT is due and - in the case of multi-purpose vouchers - the consideration upon which any VAT is payable.

16. HM Revenue and Customs (HMRC) is engaging with stakeholders about the business impacts of this clause and schedule. For this reason the Tax Information and Impact Note (TIIN) for this clause and schedule will be published on Budget day.

17. If you have any questions about this change, or comments on the legislation, please contact peter.bennet on 03000 585559 (email: peter.bennet@hmrc.gsi.gov.uk)

Clause 18 and Schedule 10: VAT groups: eligibility

Summary

1. This clause introduces amendments to section 43A of the Value Added Tax Act 1994 (VATA) which allow non-corporate entities, subject to certain conditions, to join a VAT group. These changes will come into effect after Royal Assent on a day to be appointed by Treasury regulations.

Details of the Schedule

2. Paragraph 1(2) substitutes the term "UK bodies corporate" for "bodies corporate" and deletes the existing establishment criteria which now appear in a new subsection (6) of section 43A.

3. Paragraph 1(3) removes subsections (2) and (3) of section 43A which are now covered in the new section 43AZA (control test for VAT grouping).

4. Paragraph 1(4) inserts new subsections (4), (5), (6) and (7). New subsections (4), (5) and (6) detail the eligibility requirements for individuals and partnerships. A partnership can comprise individuals, bodies corporate, Scottish partnerships or a mixture of all of them. For these entities to be eligible they must have a business establishment in the UK and be liable or entitled to be registered for VAT in the UK. They must also control the UK body corporate that they wish to group with. New subsection (7) provides that the control test is now contained in a new section 43AZA.

5. Paragraph 2 inserts the new section (43AZA) which contains the control test for VAT grouping previously covered in section 43A (2) and (3). The test that is applied to bodies corporate, is that all members of a group must be controlled by one member of the group, or by a single other person who is not one of the members of the group.

6. New subsection (1) provides that section 43AZA applies for the purposes of section 43A.

7. New subsection (2) details the requirements for a body corporate to demonstrate control for the purposes of VAT grouping. A body corporate is regarded as controlling another body corporate if:

   - It is the body corporate's holding company, or;
   - It is empowered by statue to control the body corporate

8. New subsection (3) details the requirements for an individual to demonstrate control for the purposes of VAT grouping. An individual is regarded as controlling another body corporate if:

- It would be a parent company of the body corporate, if it were a company

An individual must be able to demonstrate that it controls all of the bodies corporate within the VAT group.

9. New subsection (4) details the requirements for a partnership to demonstrate control for the purposes of VAT grouping. A partnership is regarded as controlling a body corporate if:

    - It would be a parent company of the body corporate, if it were a company

    A partnership must be able to demonstrate that it controls all of the body corporates within the VAT group.

10. New subsection (5) defines a "holding company" in relation to section 43A. The test itself relies on a Companies Act 2006 definition of parent company and subsidiary.

11. Part 2, paragraphs 3 through 14 make consequential amendments to section 18A, section 43-43D, section 44, section 53, section 97 of and Schedule 9, Schedule 9A and Schedule 10 to VATA replacing "body corporate" with "person'', or variations of this.

Background note

12. The UK will leave the European Union on 29 March 2019. Until we do so, we will remain a member with all the rights and obligations that membership entails. During this period the government will continue to negotiate, implement and apply EU legislation.

13. UK VAT grouping allows two or more 'bodies corporate' (such as limited companies or limited liability partnerships) – to register as a VAT group if:

    - Each body is established, or has a fixed establishment, in the UK; and
    - They are under common control, for example a parent company and its subsidiaries.

14. VAT group treatment is a business facilitation measure to simplify VAT administration for business and HM Revenue and Customs (HMRC). The effect of a VAT group is that its members account for tax on a single return and supplies between them are disregarded for VAT purposes.

15. Following a judgment from the Court of Justice of the European Union (CJEU) in *Larentia + Minerva* and *Marenave* (C-108/14 and C-109/14) the UK government is extending its eligibility beyond 'bodies corporate'.

16. At Autumn Statement 2016, the government launched a formal consultation on the Scope of VAT grouping and published the summary of responses document on 5 December 2017.

17. This measure will widen the eligibility criteria for VAT grouping to include non-corporate entities (such as partnerships and individuals) who have a business

establishment in the UK and control a body corporate. In determining whether there is a business establishment in the UK, the tests for business establishment for place of supply should be considered.

18. HMRC will update guidance after Royal Assent.

19. Please send any comments to cit.vatregistration&accountingpolicy@hmrc.gsi.gov.uk. HMRC would also be grateful for information on one-off costs and savings anticipated as a result of these amendments, including estimated take-up rates.

20. If you have any questions about this change please contact Samantha Whittaker on 03000 575560 (email: samantha.whittaker@hmrc.gsi.gov.uk).

Clause 19: Stamp Duty: exemption for financial institutions in resolution

Summary

1. This clause ensures that Stamp Duty is not charged following the exercise of certain resolution powers under the special resolution regime in the Banking Act 2009 for managing failing financial institutions. The clause will be introduced in Finance Bill 2018-19 and will have effect for instruments executed on or after Royal Assent. A related change is made in respect of Stamp Duty Land Tax by clause 20.

Details of the clause

2. Subsection 1 inserts new section 85A into Finance Act 1986.

Section 85A Resolution of financial institutions

3. New subsection 85A(1) provides that Stamp Duty is not chargeable on a qualifying transfer of stock and marketable securities.

4. New subsection 85A(2) explains the meaning of a qualifying transfer. This is a transfer of stock or marketable securities which is made by or under an instrument listed in new subsection 85A(3) and is a transfer which would (apart from this new section) be chargeable to Stamp Duty at the rate under Paragraph 3, Part 1 of Schedule 13 to the Finance Act 1999 (0.5%).

5. New subsection 85A(3) contains a list of instruments made under the Banking Act 2009.

6. New subsection 85A(3)(a) refers to mandatory reduction instrument made under section 6B of the Banking Act 2009 (mandatory write-down, conversion of capital instruments).

7. New subsection 85A(3)(b) refers to a share transfer instrument or property transfer instrument made under section 12(2) of that Act (transfer to a bridge bank).

8. New subsection 85A(3)(c) refers to a property transfer instrument made under section 12ZA(3) of that Act (transfer to asset management vehicle).

9. New subsection 85A(3)(d) refers to a resolution instrument made under section 12A of that Act (bail-in).

10. New subsection 85A(3)(e) refers to a share transfer order made in accordance with section 13(2) of that Act (temporary public ownership).

11. New subsection 85A(3)(f) refers to a supplemental share transfer instrument made under section 26 of that Act, where the original instrument was made under section 12(2) of that Act.

12. New subsection 85A(3)(g) refers to a supplemental share transfer order made under section 27 of that Act.

13. New Subsection 85A(3)(h) refers to a property transfer instrument made under section 41A(2) of that Act (transfer of property subsequent to the resolution instrument).

14. New subsection 85(3)(i) provides for a supplemental property transfer instrument made under section 42(2) of that Act where the original instrument was made under section 12(2), 12ZA(3) or 41A(2) of that Act.

15. New subsection 85A(3)(j) provides for a bridge bank supplemental property transfer instrument made under section 44D(2) of that Act.

16. New subsection 85A(3)(k) provides for a property transfer order made under section 45(2) of that Act (temporary public ownership: property transfer), or

17. New subsection 85A(3)(l) provides for a supplemental resolution instrument made under section 48U(2) of that Act, or

18. New subsection 85A(3)(m) provides for an order under section 85 of that Act (temporary public ownership: building societies).

19. New subsection 85A(4) provides that references in new section 85A(3) to a provision of the Banking Act 2009 include references to that provision as applied by or under any other provision of that Act (including where it is applied with modifications or in a substituted form).

20. Subsection (2) sets out the commencement provisions. The amendment made by new section 85A has effect in relation to instruments that are either within new subsection 85A(1) or are made under an instrument within new subsection 85(1) which are executed on or after the day of Royal Assent of Finance Bill 2018-2019.

Background note

21. Under the Banking Act 2009, the Bank of England has various resolution stabilisation powers to manage a failing financial institution in an orderly way. These ensure that an institution's operations can be maintained to protect financial stability, depositors and the taxpayer. Upon exercise of certain stabilisation powers the Bank of England may arrange a transfer of the failing institution's issued share capital to a temporary holding entity appointed by the Bank of England, or a transfer of property which may include securities held by the failing institution to a temporary holding entity appointed by the Bank of England or to a temporary public body.

22. Where shares in UK companies are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or Stamp Duty Reserve Tax (SDRT) on electronic transfers. The rate is 0.5% in both cases.

23. This clause ensures that Stamp Duty at the rate of 0.5% is not charged on certain qualifying shares and property instruments or orders following exercise of a resolution stabilisation power. Where a transfer of shares is not chargeable to a 0.5% Stamp Duty charge under new section 85A, this will also cancel a charge to SDRT at

the rate of 0.5% by virtue of section 99(5) and section 99(5ZA) to Finance Act 1986.

24. This clause reduces the need for specific regulations to be made under section 74 of the Banking Act 2009 to provide an exemption from a Stamp Duty and SDRT charge on each exercise of certain resolution stabilisation powers under the Banking Act 2009. Moreover, by reducing the need for making specific regulations, this clause will strengthen and simplify the process of resolving a failing financial institution and help to uphold the 'no creditor worse off' principle by ensuring an exemption from a 0.5% Stamp Duty and SDRT charge is available at the time of resolution announcement.

25. If you have any questions about this change, or comments on the legislation, please contact Simon English on 03000 585 446 or Stephen Roberts on 03000 585 455 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

Clause 20: SDLT: exemption for financial institutions in resolution

Summary

1. This clause ensures that Stamp Duty Land Tax (SDLT) is not charged on transfers of land following the exercise of certain resolution powers under the special resolution regime in the Banking Act 2009 for managing failing financial institutions. The clause will be introduced in Finance Bill 2018-19 and will have effect for land transactions the effective date of which is on or after Royal Assent. A related change is made in respect of Stamp Duty by clause 19.

Details of the clause

2. Subsection 1 inserts new section 66A into Finance Act 2003.

Section 66A Resolution of financial institutions

3. New subsection 66A(1) provides that a land transaction effected by or under a property transfer instrument or order made under one of the sections of the Banking Act 2009 shown at new subsection 66A(1) is exempt from a SDLT charge.

4. New subsection 66(A)(1) contains a list of instruments and orders made under the Banking Act 2009.

5. New subsection 66A(1)(a) refers to a property transfer instrument made under section 12(2) of the Banking Act 2009 (transfer to a bridge bank).

6. New subsection 66A(1)(b) refers to a property transfer instrument made under section 12ZA(3) of that Act (transfer to an asset management vehicle).

7. New subsection 66A(1)(c) refers to a supplemental property transfer instrument made under section 42(2) of that Act where the original instrument was made under section 12(2), 12ZA(3) or 41A(2) of that Act.

8. New subsection 66A(1)(d) refers to a property transfer instrument made under section 41A(2) of that Act (transfer of property subsequent to a resolution instrument).

9. New subsection 66A(1)(e) refers to a bridge bank supplemental property transfer instrument made under section 44D(2) of that Act.

10. New subsection 66A(1)(f) refers to a property transfer order made under section 45(2) of that Act (temporary public ownership: property transfer).

11. New subsection 66A(2) provides that references in new section 66A(1) to a provision of the Banking Act 2009 include references to that provision as applied by or under any other provision of that Act (including where it is applied with modifications or in

a substituted form).

12. Subsection (2) sets out the commencement provisions. The amendment made by new section 66A has effect in relation to any land transaction the effective date of which is on or after the day of Royal Assent of Finance Bill 2018-2019.

Background note

13. Under the Banking Act 2009, the Bank of England has various resolution stabilisation powers to manage a failing financial institution in an orderly way. These ensure that an institution's operations can be maintained to protect financial stability, depositors and the taxpayer. Upon exercise of certain stabilisation powers the Bank of England may arrange a transfer of property which may include land held by the failing institution to a temporary holding entity appointed by the Bank of England or to a temporary public body.

14. Where an estate, right or power in or over land in England and Northern Ireland is acquired, the transaction is subject to SDLT calculated at the appropriate rate(s) by reference to the consideration given.

15. This clause will provide an exemption from SDLT on land transactions following exercise of certain resolution stabilisation powers. This reduces the need for specific regulations to be made under section 74 of the Banking Act 2009 to provide an exemption from a SDLT charge on each exercise of certain resolution stabilisation powers under the Banking Act 2009. Moreover, by reducing the need for making specific regulations, this clause will strengthen and simplify the process of resolving a failing financial institution and help to uphold the 'no creditor worse off' principle by ensuring an exemption from SDLT is available at the time of resolution announcement.

16. If you have any questions about this change, or comments on the legislation, please contact Simon English on 03000 585 446 or Stephen Roberts on 03000 585 455 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).

Clause 21: SDLT: changes to periods for delivering returns and paying tax

Summary

1. This clause reduces the time limit that purchasers have to file a stamp duty land tax (SDLT) return and pay the tax due, from 30 days after the effective date of the transaction to 14 days. It applies to transactions to purchase land in England and Northern Ireland, with an effective date on or after 1 March 2019.

Details of the clause

2. Subsection 1 introduces amendments to the Finance Act 2003.

3. Subsection 2 amends section 76(1) (duty to deliver a land transaction return), reducing the time limit for filing a land transaction return in relation to notifiable transactions to 14 days after the effective date of the transaction.

4. Subsection 3 amends section 80(2) (adjustment where contingency ceases or consideration is ascertained), reducing the time limit to 14 days for filing a return in cases where a transaction was not previously notifiable but as a result of new information becomes notifiable. It also inserts into section 80, new subsections (2A), (2B) and (2C).

5. New subsection (2A) provides that where a transaction was previously notified but as a result of new information, a further return is required, the 30 day time limit continues to apply.

6. New subsection (2B) provides that where a return or further return is required, tax or additional tax is calculated according to the effective date of the transaction.

7. New subsection (2C) provides that where a return or further return is required it must include a self-assessment of the tax chargeable and that tax or additional tax payable must be paid no later than the filing date for the return.

8. Subsection 4 inserts at section 81(1B) (further return where relief withdrawn), new paragraphs (ca) and (da) and amends section 81(2A). These changes are in relation to the withdrawal of relief under paragraphs 5G to 5K of Schedule 4A (higher rate for certain transactions).

9. New paragraph (ca) defines "the relevant date" for the purposes of the further return required under section 81(1A), in cases where relief under paragraph 5CA of Schedule 4A (acquisition under a regulated home reversion plan) is withdrawn under paragraph 5IA(2) of that Schedule.

10. New paragraph (da) defines "relevant date" for the purposes of the further return

required under section 81(1A), in cases where relief under paragraph 5EA of Schedule 4A (acquisition by management company of flat for occupation by caretaker) is withdrawn under paragraph 5JA(2) of that Schedule.

11. Section 81(2A) is amended to include a specific provision regarding the due date for payment of tax when a further return is required under section 81(1A).

12. Subsection 5 amends section 81A(1) (return or further return in consequence of a later linked transaction), reducing the time limit for filing a return to 14 days in cases where, following a later, linked transaction, an earlier transaction, which was not previously notifiable, becomes notifiable. It also inserts into section 81A, new subsections (1A), (1B) and (1C).

13. New subsection (1A) provides that where a transaction was previously notified but as a result of a later, linked transaction, a further return is required in relation to the earlier transaction, the 30 day time limit continues to apply.

14. New subsection (1B) provides that where a return or further return is required, tax or additional tax is calculated according to the effective date of the earlier transaction.

15. New subsection (1C) provides that where a return or further return is required, it must include a self-assessment of the tax chargeable and that the tax or additional tax payable must be paid no later than the filing date for the return.

16. Subsection 6 inserts into section 86(2) (payment of tax), new paragraph (za).

17. New paragraph (za) provides a due date for payment in relation to relief withdrawn under paragraphs 5G to 5K of Schedule 4A (higher rate for certain transactions).

18. Subsection 7 inserts into section 87 (interest on unpaid tax), new subsection (1A). It also amends section 87(2), and inserts at section 87(3), new paragraph (za).

19. New subsection (1A) provides that where the 14 day time limit applies, interest on any unpaid tax runs from the end of that period until the tax is paid.

20. Section 87(2) is amended to provide the power to make regulations in relation to new subsection (1A) as well as subsection (1).

21. New paragraph (za) provides that when relief is withdrawn under paragraphs 5G to 5K of Schedule 4A (higher rate for certain transactions), "the relevant date" for the purposes of interest under section 87(1), will be the date which is the relevant date for section 81(1A).

22. Subsection 8 amends Schedule 17A (further provisions relating to leases).

23. Subsection 8(a) amends paragraph 3, substituting paragraph 3(3) and inserting new sub-paragraphs (3ZA), (3ZB) and (3ZC). Paragraph 3 contains provisions relating to fixed term leases that continue after the end of the term. Paragraph 3(3) reduces the time limit for filing a return to 14 days, in cases where a fixed term lease, that was not previously notifiable, becomes notifiable as a result of it continuing after the end of the fixed term.

24. New sub-paragraph (3ZA) provides that where such a lease was previously notified but as a result of it continuing after a fixed term, a further return is required, the 30

day time limit continues to apply.

25. New sub-paragraph (3ZB) provides that where a return or further return is required, tax or additional tax is calculated according to the effective date of the transaction.

26. New sub-paragraph (3ZC) provides that where a return or further return is required, it must include a self-assessment of the tax chargeable and the tax or additional tax payable must be paid no later than the filing date for the return.

27. Subsection 8(b) amends paragraph 4, substituting paragraph 4(3) and inserting new sub-paragraphs (3A), (3B) and (3C). Paragraph 4 contains provisions relating to leases granted for an indefinite term. Paragraph 4(3) reduces the time limit for filing a return to 14 days in cases where a lease that was not previously notifiable, becomes notifiable, as a result of it continuing after a deemed fixed term.

28. New sub-paragraph (3A) provides that where such a lease was previously notified, but as a result of the lease continuing after a deemed fixed term, a further return is required, the 30 day time limit applies.

29. New sub-paragraph (3B) provides that where a return or further return is required, tax or additional tax is calculated according to the effective date of the transaction.

30. New sub-paragraph (3C) provides that where a return or further return is required, it must include a self-assessment of the tax chargeable, and the tax or additional tax payable must be paid no later than the filing date for the return.

31. Subsection 8(c) amends paragraph 8, substituting paragraph 8(3) and inserting new sub-paragraphs (3A) and (3B). Paragraph 8 contains provisions relating to leases where rent that was contingent, uncertain or unascertained, ceases to be uncertain. Paragraph 8(3) reduces the time limit for filing a return to 14 days in cases where a lease that was not previously notifiable, becomes notifiable, as a result of rent ceasing to be uncertain in the first five years of the term.

32. New sub-paragraph 3A provides that where such a lease was previously notified and as a result of rent ceasing to be uncertain in the first five years of the term, a further return is required, the 30 day time limit applies.

33. New sub-paragraph 3B provides that where a return or further return is required, it must include a self-assessment of the tax chargeable, calculated by reference to the rates in force at the effective date of the transaction and that the tax or additional tax payable must be paid no later than the filing date for the return.

34. Subsection 9 provides that the clause will apply to land transactions with an effective date on or after 1 March 2019, and to land transactions with an effective date before then which were not previously notifiable but become notifiable on or after 1 March 2019.

Background note

35. This clause will improve the efficiency of the SDLT system. The majority of returns are already filed within 14 days of the transaction. It will not change liabilities for the purchaser.

36. When a chargeable transaction is notifiable, a return must be filed and any tax due, paid within the time limit set out in the legislation. Generally, a transaction is notifiable where the chargeable consideration is £40,000 or more. The provisions that define notifiable transactions are at sections 77 and 77A, and paragraphs 3(5) and 4(4A) of Schedule 17A Finance Act 2003.

37. For most notifiable transactions, the time limit to file the return and pay any tax runs from the effective date of the transaction. The 'effective date of the transaction' is defined at section 119 Finance Act 2003 and is usually the completion date.

38. Further provisions in relation to reducing the time limit and improving the return will be made later this year by amending the Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837).

39. If you have any questions about this change, or comments on the legislation, please contact Anne Berriman on 03000 585901 (email: anne.berriman@hmrc.gsi.gov.uk or Jane Ewart on 03000 585790 or email: jane.ewart1@hmrc.gsi.gov.uk.

Clause 22: Climate change levy: exemption for mineralogical and metallurgical processes

Summary

1. Clause 22 redefines the definition of the exemption from Climate Change Levy for energy used in mineralogical and metallurgical processes in paragraph 12A of Schedule 6 to the Finance Act (FA) 2000. It redefines mineralogical processes by reference to NACE codes and clarifies that the exemption for both processes applies to tenants receiving supplies via a landlord. The changes will take effect from Royal Assent to the Act.

Details of the clause

2. Subsection (2) omits the words "to a person" and "by a person" from paragraph 12A of Schedule 6 to FA 2000.

3. Subsection (3) amends paragraph 12A(2) to define a mineralogical process as one falling within Division 23 of NACE Rev 2.

4. Subsection (4) makes consequential amendments to paragraph 12A.

Background note

5. The exemption from Climate Change Levy for the energy used in mineralogical and metallurgical processes was introduced on 1 April 2014 to help to reduce costs of businesses in these sectors, which are some of the most energy intensive as well as being subject to high levels of international competition.

6. Mineralogical processes are defined by reference to the Energy Taxation Directive. To ensure that the exemption remains operable following the UK's departure from the European Union, the clause redefines the process by reference to NACE codes (an internationally recognised system for classifying economic activity). This aligns the definition with the way metallurgical processes are defined. The change does not affect the scope of the exemption.

7. The exemption for both processes refers to energy (in practice mainly gas and electricity) being supplied "to a person" and used "by a person". This has the unintended consequence of excluding from the exemption tenanted businesses that carry out mineralogical and metallurgical processes because they receive their energy via a landlord rather than directly from an energy utility. In these circumstances, the tenant will receive the supply of energy via the landlord who is not the qualifying person. The deletion of the words "to a person" and "by a person" from the definition clarifies that the landlord is entitled to claim the exemption on behalf of a tenant.

8. If you have any questions or comments on this draft legislation, please contact Andy Jameson on andy.jameson@hmrc.gsi.gov.uk.

Clause 23: Vehicle excise duty: taxis capable of zero emissions

Summary

1. This clause exempts purpose-built zero emission capable taxis from the vehicle excise duty (VED) supplement for cars with a list price of over £40,000 first registered on or after 1 April 2019. The clause also provides for eligible taxis first registered from 1 April 2017 to become exempt from the VED supplement when their licence is renewed on or after 1 April 2019.

Details of the clause

2. This clause amends Part 1AA of Schedule 1 to the Vehicle Excise and Registration Act 1994 (VERA 1994) to exempt purpose-built zero emission taxis from the VED supplement for cars with a list price of over £40,000. The exact models or criteria to qualify for the VED exemption will be dealt with in regulations.

3. Subsection (2) introduces a new exemption to the VED supplement for taxis capable of zero emissions.

4. Subsection (3) inserts into Schedule 1 to VERA 1994 new provisions on the meaning of a taxi capable of zero emissions. In particular, sub-paragraph (3) of new paragraph IGG provides that the Secretary of State for Transport may make regulations defining a zero emissions capable taxi. It then goes on to set out how regulations could define a taxi capable of zero-emissions.

5. Sub-paragraph (4) of new paragraph 1GG specifies how the Secretary of State for Transport may operate a list of eligible taxis, including that models included on the list may have backdated effect.

6. Sub-paragraph (5) of new paragraph 1GG provides that the list of eligible models may make reference to an external document, such as the Plug-in Taxi Grant (PITG). Such a reference may also be to the document as it is amended over time.

7. Sub-paragraph (6) of new paragraph 1GG introduces a retrospective power in case the regulations exempting eligible taxis from the VED supplement have not become law by 1 April 2019.

8. Subsection (4) exempts purpose-built zero emission taxis from the VED supplement that would otherwise be payable on VED renewals first registered on or after 1 April 2019

9. Subsection (5) is a transitional provision for eligible taxis first registered from 1 April

2017 which will become exempt from the VED supplement when their VED is renewed on or after 1 April 2019.

Background note

10. Since 1 April 2017, the VED system for new cars bases first licences on CO2 bands. The second licence duty is a flat standard rate, with vehicles with a list price over £40,000 paying an additional supplement for the first five years after the end of the first licence.

11. Taxis have been classed as "cars" for VED purposes since 2001, and so are liable for the supplement if priced at over £40,000. Drivers of purpose-built zero emissions taxis have a limited range of vehicles available to purchase compared to drivers of private hire vehicles (PHVs).

12. As a consequence of technical specifications (such as a minimum zero emission range, a defined turning circle and disability access), the models produced by the principal manufacturers of purpose-built zero emission capable taxis are priced at above the £40,000 threshold.

13. The Chancellor announced at Autumn Budget 2017 that from 1 April 2019, purpose built zero emission capable taxis would be exempted from the VED supplement. Other non-zero emission capable purpose-built vehicles used as taxis will not be exempted from a VED supplement.

14. If you have any questions about this change, or comments on the legislation, please contact the Energy and Transport Taxes team in HM Treasury (email: ETTAnswers@HMTreasury.gsi.gov.uk)

Clause 24: HGV road user levy and vehicle excise duty

Summary

1. This clause introduces a lower rate of HGV road user levy for vehicles that meet the latest Euro 6 emissions standard, and a higher rate for vehicles that do not. The new rates have effect for levy purchases on or after 1 February 2019.

Details of the clause

2. The clause amends the HGV Road User Levy Act 2013 to introduce new rates for HGVs that meet the Euro 6 emissions standard, and higher rates for those that do not.
3. Subsection 2 and Subsection 3 introduce references to new Table 1A, to contain the new lower rates for Euro 6 HGVs.
4. Subsection 4 provides for the levy to be rebated, upon application, in the case that a vehicle is upgraded to comply with Euro 6 standards during a levy period with more than one month remaining. This would allow a vehicle operator to purchase a new levy at the lower Euro 6 rate and so benefit from the lower rate as soon as possible.
5. Subsection 5 amends the time at which the levy is considered unpaid following the granting of a rebate, as provided for by subsection 4. Subsection 5(b) inserts section 19(4) into the HGV Road User Levy Act 2013 and provides that, for the purpose of calculating when the levy is unpaid and therefore due, regard is had to the day of the month upon which the previous levy period had started. It follows months, for the purposes of the provision, would be dictated by that day. When a rebate was sought, the new levy would be due on the first day following that day of the month.
6. Subsection 6(a) inserts new criteria describing which rates apply to which vehicles. Specifically Table 1 applies to vehicles meeting the Euro 6 emissions standards and Table 1A applies to other vehicles paying the levy.
7. Subsection 6(b) inserts a definition of the Euro 6 standards.
8. Subsection 6(c) amends Table 1 with lower rates than those that currently apply, and inserts Table 1A with higher rates.
9. Subsection 7 revokes previous Regulations that introduced the lower rate for Euro 6 vehicles since these regulations are superseded by the provisions in this clause.
10. Subsection 8 provides for Vehicle Excise Duty to be rebated in the same circumstances and at the same time as the HGV levy, since for UK vehicles the levy and Vehicle Excise Duty are administered using the same system and must both apply for the same time periods. It also requires that the Vehicle Excise Duty rebate

can only apply when the vehicle operator takes out a new vehicle licence for the period immediately following the rebate, so there is no gap between vehicle licences and clarifies the time at which the old vehicle licence ceases to be in force.

11. Subsection 9 and 10 provides that the new rates come into force for levies due on or after 1 February 2019 and licenses taken out on or after the same date.

Background note

12. This measure was announced by the Department for Transport on 28 March 2018. The measure is intended to incentivize vehicle operators to move towards newer, cleaner vehicles, to reduce emissions from HGVs and improve air quality.

13. When the HGV levy was first introduced in 2012, the Government said that it would look into varying the levy in the future by vehicle emissions. The Government's Air quality plan of 2017 said that the Government would look to make changes to the levy, potentially to incentivise improved air quality and more efficient vehicle use. In November 2017 the Department for Transport issued a call for evidence on HGV levy reform which asked for views on these general principles.

14. The HGV levy must be paid by all HGVs with a revenue weight of 12 tonnes and over before they use UK roads. It is currently up to £1,000 a year or £10 a day.

15. This measure will reduce the levy for Euro 6 compliant HGVs by 10%, and increase the levy for other vehicles by 20%, where legal limits allow this.

16. The Driver and Vehicle Licensing Agency (DVLA) administers the HGV levy for UK vehicles, and manages a contractor that administers the levy for foreign vehicles. The DVLA and contractor will publish further information on the administration of the changes nearer the implementation date of 1 February 2019.

17. If you have any questions about this change, or comments on the legislation, please contact the Energy and Transport Taxes team in HM Treasury (email: ETTAnswers@HMTreasury.gsi.gov.uk).

Clause 25: Gaming duty: accounting periods

Summary

1. This is one of three clauses that introduce changes to the administration of gaming duty. This clause provides for the administration of gaming duty against six-monthly accounting periods, with provision for non-standard accounting periods. This measure also allows businesses to carry forward losses from one accounting period to be offset against their gaming duty liabilities in future periods.

Details of the clause

2. Subsection (2) introduces amendments to section 11 of the Finance Act 1997 (FA 1997).

3. Subsection (3) amends section 11(2) of the FA 1997 to substitute its reference to subsection (3) with a reference to new subsections (3), (4A) and (4B).

4. Subsection (4) inserts new subsections (4A) and (4B) to section 11 of the FA 1997. Together these new subsections allow for an apportionment of the amount of gaming duty that will be charged for any premises where HM Revenue and Customs (HMRC) has directed or agreed that the accounting period for those premises shall be longer, or shorter, than standard.

5. Subsection (5) amends section 11(10) of the FA 1997 to substitute a new definition of 'banker's profits' in section 11(10) for the purpose of calculating a premises' gross gaming yield, and a new subsection (10ZA). The new section 11(10) will allow the calculation of the banker's profits to produce a negative amount.

6. This new subsection (10ZA) provides that, where the gross gaming yield for any premises is a negative amount in one accounting period, the gross gaming yield shall be treated as nil for that period's duty calculation. The negative amount may be carried forward and used to reduce the gross gaming yield from those premises in future accounting periods.

7. Subsection (6) introduces amendments to the provisions about accounting periods in paragraph 9 of Schedule 1 to the FA 1997.

8. Subsection (6)(a) substitutes new paragraphs 9(1) - 9(1F) to Schedule 1. The standard accounting periods for gaming duty are six month periods starting on 1 April and 1 October. The new paragraph 9(1) provides for alternative six month accounting periods to start on the first day of any month, or alternative periods that are approximately six months in length. Both these options are subject to agreement.

9. Paragraph 9(1A) provides for HMRC to impose shorter accounting periods where the Commissioners have reason to believe that there is a risk to the revenue.

10. Paragraph 9(1B) allows HMRC to require that accounting periods begin on dates

other than 1 April or 1 October.

11. Paragraph 9(1C) provides for HMRC to introduce transitional accounting periods of other than 6 months duration, in circumstances where a premises ceases to trade or where 'non-standard' periods are withdrawn or ended, to cover the period up until the start of the next standard accounting period.

12. Paragraph 9(1D) requires HMRC to ensure that appropriate measures are in place to protect the revenue in any transitional period that may arise as a result of any agreement or direction to adopt alternative accounting periods.

13. Paragraphs 9(1E) and (1F) provide for any directions made under paragraph 9 to remain in force until they are withdrawn, and to allow further directions to be given in future.

14. Subsection (6)(c) omits sub-paragraphs (3) and (4) from paragraph 9 to Schedule 1. The revenue protection provisions in those sub-paragraphs have been replaced by the provisions in new paragraph 9(1D).

15. Subsection (6)(d) substitutes a new paragraph 9(5), and paragraph 9(6), to Schedule 1. Paragraph 9(5) specifies that decisions mentioned in new paragraph 9(6) to Schedule 1 are to be considered as being included in the list of relevant decisions under section 13A of the Finance Act 1994. New paragraph 9(6) to Schedule 1 provides that any decision by HMRC to impose alternative accounting periods, or to refuse a request for alternative accounting periods is appealable.

16. Subsection (7) amends paragraph 11(2) of Schedule 1 to the FA 1997 so that regulations made under that Act may include provision about the making of directions under paragraph 9 of Schedule 1.

Background note

17. These provisions have been made to bring gaming duty more into line with the administration of other gambling duties, such as general betting duty, machine games duty and remote gaming duty. As well as bringing more administrative consistency across the gambling duties, these provisions simplify the accounting process for gaming duty taxpayers and make the tax system fairer.

18. HMRC will monitor the effect of these changes.

19. If you have any questions about this change, or comments on the legislation, please contact Brian O'Kane on 03000 588011 (email: brian.okane@hmrc.gsi.gov.uk)

Clause 26: Gaming duty: removal of obligation to make payments on account

Summary

1. This is one of three clauses that introduce changes to the administration of gaming duty. This clause removes the requirement that taxpayers make payments on account part-way through an accounting period.

Details of the clause

2. Subsection (1) omits sections 12(4) and (6) of the FA 1997. Section 12(4) imposes an obligation, under regulations, to make payments on account of gaming duty that is likely to be chargeable. Section 12(6) provides that any amount "payable on account" shall be treated as if it were an amount of gaming duty for the purposes of administering that tax.

3. Subsection (2) introduces amendments to the Gaming Duty Regulations 1997 (the Regulations).

4. Subsection (3) removes the definition of "quarter" from the list of defined terms in the Regulations.

5. Subsection (4) amends the Regulations to omit Part II of the Regulations which provides the obligation to make payments on account, and how to calculate the payment on account.

Background note

6. These provisions have been made to bring gaming duty more into line with the administration of other gambling duties, such as general betting duty, machine games duty and remote gaming duty. As well as bringing more administrative consistency across the gambling duties, these provisions simplify the accounting process for gaming duty taxpayers and make the tax system fairer.

7. HM Revenue and Customs (HMRC) will monitor the effect of these changes.

8. If you have any questions about this change, or comments on the legislation, please contact Brian O'Kane on 03000 588011 (email: brian.okane@hmrc.gsi.gov.uk)

Clause 27: Gaming duty: transitional provision

Summary

1. This is one of three clauses that introduce changes to the administration of gaming duty. This clause makes provision for the calculation of duty in the transitional period.

Details of the clause

2. Subsections (1) and (2) provide that where there is an agreement under the Finance Act 1997 that allows an accounting period to straddle 30 September 2019 (the last date before the changes introduced by these clauses come into effect) that accounting period is considered to be a 'transitional accounting period' and is treated as ending on 30 September 2019.

3. Subsections (3) and (4) provide the method for calculating gaming duty so that the amount that is charged is in proportion to the shortened transitional period.

Background note

4. These provisions have been made to bring gaming duty more into line with the administration of other gambling duties, such as general betting duty, machine games duty and remote gaming duty. As well as bringing more administrative consistency across the gambling duties, these provisions simplify the accounting process for gaming duty taxpayers and make the tax system fairer.

5. HM Revenue and Customs (HMRC) will monitor the effect of these changes.

6. If you have any questions about this change, or comments on the legislation, please contact Brian O'Kane on 03000 588011 (email: brian.okane@hmrc.gsi.gov.uk)

Clause 28: Tobacco for heating

Summary

1. This clause amends section 1 of the Tobacco Products Duty Act 1979 (TPDA) (and Schedule 1 to that Act) to introduce excise duty on a new category of tobacco – tobacco for heating. The new duty category will take effect at a date to be appointed by regulations, at a rate to be set at Budget 2018.

Details of the clause

Amends section 1 of TPDA and Schedule 1 as follows:

2. Subsections (1) and (2) introduce a new category of tobacco for heating into the list of tobacco products in the TPDA.
3. Subsection (3) adds tobacco for heating as a category for the purposes of the Tobacco Products (Descriptions of Products) Order 2003 (the Order).
4. Subsection (4) adds tobacco for heating as a category in the table of rates, together with the weight measurement to be used for calculation of the duty.
5. Subsection (5) contains the ability to make changes to regulations other than the Order, where consequential on the tobacco for heating category.
6. Subsection (6) contains the procedure relevant to Subsection (5).
7. Subsection (7) provides for the new duty rate to come into effect on a day to be appointed by regulations.

Background note

8. This clause has been introduced to give greater clarity to manufacturers and consumers on the tax treatment of tobacco for heating.
9. The rules for calculating excise duty due on tobacco products are laid out in TPDA. Under current rules, there are five products, which attract the four different levels of duty set out in schedule 1. While these categories capture tobacco designed for smoking, they do not specifically capture smokeless products (apart from chewing tobacco).
10. At Budget 2016, the government announced it would consult on the tax treatment of tobacco designed for heating. The consultation, which ran from 20 March 2017 to 12 June 2017, set out the rationale for potential changes to the tobacco duty regime. This

was in response to the development of products in which processed tobacco is heated but not burned as in conventional tobacco products, either to produce or to flavour vapour, which is then inhaled by the consumer.

11. At Spring Statement 2018, the government announced that it would introduce a new category of tobacco into the TPDA.

12. If you have any questions about this change, or comments on the legislation, please contact Excise: Enquiries on 0300 200 3700 (email: tobacco.policy@hmrc.gsi.gov.uk)

Clause 29: Excise duty on mid-strength cider

Summary

1. This clause introduces a new duty band for still cider of a strength of at least 6.9% but not exceeding 7.5% abv. It also amends section 62B of the Alcoholic Liquor Duties Act 1979 (ALDA) to ensure that the up-labelling provisions reflect the creation of the new mid-strength cider band. These changes will come into force on 1 February 2019.

Details of the clause

2. Subsection (1) provides that this clause amends ALDA.

3. Subsection (2) provides for a new cider duty band to be added to section 62(1A) of ALDA.

4. Subsection (3)(a) substitutes a new heading to section 62B of ALDA. The previous heading "Cider labelled as strong cider" is replaced as "Cider labelled as strong or mid-strength cider".

5. Subsection (3)(b) amends section 62B(1) of ALDA to include mid-strength cider.

6. Subsection (3)(c) inserts new section 62B(1A) of ALDA to ensure that standard cider up-labelled as mid-strength cider is classed as a mid-strength cider.

7. Subsection (3)(d) replaces paragraphs (a) and (b) of section 62B(2) of ALDA with new paragraphs (a) to (d) to include references to mid-strength and strong cider.

8. Subsection (3)(e)(i) amends section 62(4)(a) of ALDA to reflect the reduced upper bound for the alcoholic strength of standard cider.

9. Subsection (3)(e)(iii) inserts new section 62B(4)(aa) to define the mid-strength cider range.

10. Subsection (3)(f) amends section 62B(5) of ALDA so that it only applies to containers that are up-labelled as containers of strong ciders.

11. Subsection (3)(g) inserts new:

    a. section 62B(7) of ALDA which describes when a container is up-labelled as mid-strength cider,

    b. section 62B(8) of ALDA, which defines the mid-strength cider range,

    c. section 62B(9) of ALDA, which describes how cider should be treated if it is no longer in an up-labelled container,

    d. section 62B(10) of ALDA, which defines an up-labelled container.

12. Subsection (4) provides for the change to be introduced with effect from 1 February 2019.

Background note

13. Autumn Budget 2017 announced the introduction of a new mid-strength cider duty band for still cider of a strength of at least 6.9% but not exceeding 7.5% abv. This means that there will now be three duty bands for still cider.

14. Currently, if standard cider (up to 7.5% abv) is held in a container which shows an abv of a strong cider (exceeding 7.5% but less than 8.5% abv), the cider will be treated for duty purposes as a strong cider. These provisions need to be updated to reflect the creation of the new mid-strength cider band.

15. From 1 February 2019 when the new mid-strength cider band takes effect, the up-labelling provisions will operate as follows:

    a. any standard cider that is in a container up-labelled as a container of mid-strength or strong cider will be deemed to be cider of a strength stated on the up-labelled container,

    b. any standard cider that has, at any time since 31 December 1996, been in a container up-labelled as a container of strong cider and/or has been at any time since 1 February 2019 when the new mid-strength cider band takes effect, been in in a container up-labelled as a container of mid-strength cider (but is no longer in an up-labelled container) will be deemed to be cider of a strength stated on the first up-labelled container in which it was contained,

    c. any mid-strength cider that is in, or has at any time since 31 December 1996 been in, a container up-labelled as a container of strong cider will be deemed to be strong cider.

16. The operation of section 62B of ALDA will continue to be subject to section 55B of ALDA where cider is or has been placed in a container up-labelled as a container of made-wine.

17. These changes will come into force on 1 February 2019.

18. If you have any questions or comments on this legislation, please contact Paul Harrison on paul.harrison@hmrc.gsi.gov.uk.

Clause 30, Schedules 11 and 12: Penalties for failure to make returns and deliberately withholding information

Summary

1. The clause and first schedule introduce a new late filing regime that replaces existing late submission penalties with a points based system. If you miss a deadline a point will be given. A penalty will only be charged when a specified number of points are accrued. The number of points required for a penalty to be levied depends on the filing frequency of the return.

2. The clause and second schedule introduce an amended penalty for deliberately withholding information from HM Revenue and Customs (HMRC). The changes to this penalty are required to accommodate the new points based regime and ensure that the penalty works as intended. The schedule gives HMRC the power to charge penalties where a taxpayer deliberately withholds information which would enable HMRC to assess their tax liability. These penalties are based on a percentage of the tax due and can be reduced based on disclosure of the failing.

Details of the Clause

3. The clause introduces two new schedules:

   - Schedule 1 introduces new points based penalties for failure to submit various returns; and
   - Schedule 2 covers penalties for deliberately withholding information by failing to submit returns.

4. The clause also confers HM Treasury the power to make secondary legislation:

   - to commence the schedules for different taxes and returns at different times; and
   - to make incidental changes to legislation, including consequential and transitional arrangements.

Details of Schedule 11

5. Paragraph 1 describes the purpose of the schedule and its structure.

6. Paragraph 2 provides three tables which list each tax and duty and all returns within these taxes. The three tables separate returns by their filing frequency, namely annual, quarterly and monthly.

7. Within each table returns for different taxes are organized into numbered groups. The effect of these numbered groups in combination with subparagraph 5(1) is to establish a points total for each numbered group.

8. For some taxes in the scope of this schedule it is possible for a taxpayer to agree with HMRC non-standard accounting periods that are not exactly monthly, quarterly or annual. Where these non-standard accounting periods are the period for which returns are usually made, the return is treated as the next longest accounting period. For example, a return period of between 3 and 12 months is treated for the purposes of the schedule as an annual return and the taxpayer will be subject to the relevant thresholds and rules for Table 1 annual returns set out at subparagraphs 5(4)(a), 6(4)(a), 8(4)(a), 9(3) and 10(4).

9. This non-standard accounting period process does not impact on one off or transitional changes to return periods, therefore meaning they would be excluded from attracting points. An example of this would be in Aggregates Levy found in table 1.

10. Paragraph 3 provides definitions of various terms used throughout this schedule.

11. Paragraph 4 explains that when a taxpayer with return obligations has multiple businesses that require them to file returns relating to each business he is treated separately for each return for the purposes of points totals and penalty liabilities. The effect of this provision is that each separate return submitted for separate businesses (or a collection of separate businesses) will attract a separate points total and liability to penalties.

12. Paragraph 5 outlines that a point is earned for failing to file a return on time unless the person has already reached the maximum number of points for annual, quarterly and/or monthly returns. In combination with paragraph 16, this paragraph has the effect of setting the threshold number of late returns (and therefore maximum points); once this has been reached a financial penalty is applied.

13. Paragraph 6 outlines that for a point to be imposed HMRC must notify the taxpayer advising of the failure to which it relates and the group to which it has been awarded within the time limit. Time limits start from the first day of the month after the month in which the failure occurs and are 12 months for returns in table 1 (annual returns), 3 months for returns in table 2 (quarterly returns) and 1 month for returns in table 3 (monthly returns).

14. Paragraph 7 outlines rules for expiration of points, this occurs 24 months after the month in which the failure arose. Points do not expire under this rule if a taxpayer has the maximum number of points for that group as defined in paragraph 5.

15. Paragraph 8 explains that all penalty points for a group expire if two conditions are

met. Condition A is that all returns are filed on time for a period that depends on if the returns are annual, quarterly or monthly. This period starts from the month after the month in which the most recent failure occurred. Condition B is that all returns due in the last 24 months have now been filed.

16. Paragraph 9 sets out that paragraphs 10 to 14 apply to persons who change the filing frequency of their returns. There is a table included (subparagraph 3) that lists each tax and the possible filing frequencies.

17. Paragraph 10 explains that if a taxpayer had no points for the old filing frequency they will have no points for the new filing frequency. If they had any points, the number will be adjusted using the table provided in this paragraph. If the result is a negative number of points then points will be set to zero for the new filing frequency.

Change in reporting frequency	**Adjustment to points**
Annual to annual	*No adjustment*
Annual to quarterly	*+2 points*
Annual to monthly	*+3 points*
Quarterly to annual	*-2 points*
Quarterly to monthly	*+1 point*
Monthly to annual	*-3 points*
Monthly to quarterly	*-1 point*

18. Paragraph 11 deals with isolated cases where a taxpayer changes the type of return they submit, but the frequency does not change. In this case there is no adjustment and hence all points accrued under the old type of return will be considered points for the purposes of the new type of return. The effect is to ensure that the provisions for expiry of points continue to apply consistently after the change.

19. Paragraph 12 outlines that if after the adjustment using the table from paragraph 11 the number of points for the new filing frequency is less than the original number then the points that remain are the points that accrued the most recently. The effect of this paragraph is to ensure the expiry of points covered in paragraphs 7 and 8 is applied consistently.

20. Paragraph 13 states that if after the adjustment using the table from paragraph 10 the number of points for the new filing frequency is more than the number for the old filing frequency then the additional points are treated as being awarded in respect of the most recent relevant failure. The effect of this paragraph is to ensure the expiry of points covered in paragraphs 7 and 8 is applied consistently.

21. Paragraph 14 sets out the rules for expiry of all points for taxpayers whose filing frequency has changed by modifying paragraph 8. This changes the start point for Condition A from the month after the most recent failure occurred to the month after the new filing obligation for the new frequency.

22. Paragraph 15 states that if filing a return that covers more than one business and the

filing frequency changes for some of those businesses then any penalty points expire.

23. Paragraph 16 outlines that if a person fails to file a return on time and either:

- this causes them to reach the points threshold (the maximum number of points); or
- they are already at the points threshold,

They will be liable to a financial penalty. The amount of the financial penalty will be announced in due course.

24. Paragraph 17 sets out the process HMRC must follow to inform taxpayers of the liability to a penalty. HMRC must notify the taxpayer and include details of the filing failures for which they are liable for a penalty. A penalty notice can be issued at the same time as the notice for the final point which immediately led to the penalty.

25. Paragraph 18 sets a 2 year limit for HMRC to assess penalties.

26. Paragraph 19 confers on the Commissioners for HMRC the power to make secondary legislation (affirmative procedure) to change:

- the penalty threshold;
- the period of good compliance required to reset points;
- the period for which outstanding returns are required in order to reset points; and
- the value of the penalty.

27. Paragraph 20 confers on the Commissioners for HMRC the power to make secondary legislation to allow a period of grace where points and penalties do not apply. This 'familiarisation period' may be used where return obligations are changing substantially.

28. Paragraph 21 sets out reasonable excuse provisions.

29. Paragraph 22 explains a taxpayer is not liable to a point or penalty if they also have a criminal conviction as are result of the same failure to file.

30. Paragraph 23 states that if notice to file an income tax, self-assessment or partnership return is withdrawn any point or penalty in relation to that return can be cancelled in the same notice of withdrawal.

31. Paragraph 24 sets out the right to appeal against liability to both points and penalties.

32. Paragraph 25 outlines appeals under paragraph 24 will follow the same process as an appeal against an assessment of tax concerned. There is no requirement to pay the penalty prior to being permitted to appeal.

33. Paragraph 26 states the tribunal can support or overturn HMRC's decision to impose a point or a penalty. If the appeal relates to a penalty the tribunal can also support or overturn any of the points that led to the penalty.

34. Paragraph 27 sets out that amendments made by secondary legislation under paragraph 19 (penalty value, threshold, periods to reset points) must go through an affirmative procedure while regulations under paragraph 20 (familiarisation period) are by negative procedure.

Details of Schedule 12

35. Paragraph 1 provides a table of all the taxes and returns etc. in scope of the deliberate withholding penalty. These are the same as for the points-based penalty as the two are designed to be implemented together for particular taxes.

36. Paragraph 2 provides definitions of various terms used throughout the schedule.

37. Paragraph 3 outlines that for a penalty to be charged under this schedule a person must deliberately fail to file a return on time in order to withhold information from HMRC. If the behavior is deliberate with concealment the penalty is the greater of £300 or the relevant percentage of the tax that would have been due. The percentage is based on the category that the information falls into, this is covered in subparagraph (4). If the behavior is deliberate but with no attempt at concealment the penalty is the greater of £300 or a percentage of the tax that would have been due. The percentages for each category are covered in subparagraph (6).

38. Paragraph 4 defines different categories of information: these have been carried over from Schedule 55 to Finance Act 2009 (FA09).

39. Paragraph 5 outlines what will be classed as an offshore transfer: this replicates Schedule 55 of FA09.

40. Paragraph 6 explains how a penalty can be reduced by disclosing information to HMRC: this replicates Schedule 55 of FA09.

41. Paragraph 7 provides a table that outlines how much the percentage rate of each penalty may be reduced to for both prompted and unprompted disclosure. This reduction cannot reduce the penalty below £300. This replicates Schedule 55 of FA09.

42. Paragraph 8 sets out that penalties under this schedule may be reduced in special circumstances: replicating Schedule 55 of FA09.

43. Paragraph 9 explains the penalty will be reduced by the amount of any penalty charged in relation to the same amount of tax. This only applies to a penalty under this schedule that is tax geared and cannot be used to reduce the £300 penalty. It provides two exceptions to this, i) penalties for late payment of tax ii) penalties where corrective action is not taken after a follower notice. This paragraph does not replicate paragraphs 17(3) and (4) of Schedule 55 as these subparagraphs relate to the interaction between tax geared penalties and are therefore not relevant to the interaction between a fixed rate points-based penalty and a tax geared deliberate withholding penalty.

44. Paragraph 10 outlines the procedures if the amount of tax to charge the penalty on is unknown as a result of the return not being submitted. In this case HMRC may either charge the minimum £300 penalty or determine the amount to base the penalty on using information HMRC does hold. When the return is submitted HMRC must re-

assess the penalty using the figures from the return. When determining liability to corporation tax no account will be taken for any relief due under section 458 of Corporation Tax Act 2010.

45. Paragraph 11 outlines the rules for assessing penalties under this schedule. HMRC must notify the person and provide details of the failings to which the penalty relates. Penalties must be paid within 30 days of issue of the notification. For procedural and enforcement purposes these assessments are treated as the same as an assessment to tax and can be combined with one.

46. Paragraph 12 allows supplementary penalty assessments if the initial penalty is found to be insufficient. If the penalty is found to be excessive this paragraph allows HMRC to reduce the original assessment.

47. Paragraph 13 sets time limits for raising assessments under this schedule, the deadline for raising an assessment is the later of i) 2 years from the filling date, ii) 12 months from the end of the appeal period for the assessment of liability to tax on the return or if there is no assessment the date on which the liability is ascertained.

48. Paragraph 14 explains a taxpayer is not liable to a penalty if they also have a criminal conviction as are result of the same failure to file.

49. Paragraph 15 states that if a notice to file an Income Tax self assessment or partnership return is withdrawn HMRC may cancel liability to a penalty relating to that obligation to file.

50. Paragraph 16 outlines that a person may appeal against the decision to charge a penalty and/or the amount of the penalty.

51. Paragraph 17 appeals under paragraph 16 follow the same process as an appeal against an assessment of the tax concerned. This will not require a person to pay the penalty before appealing against it even if that is required for the tax involved.

52. Paragraph 18 sets out possible outcomes of a tribunal appeal. Appeals against the decision to impose a penalty can result in the penalty being confirmed or cancelled. Appeals against the amount of the penalty may confirm the penalty or substitute it with another that was within HMRC’s powers to impose. The tribunal is bound by the same penalty percentages and reductions as HMRC and may only differ from this if the tribunal believes a special reduction under paragraph 8 is due.

53. Paragraph 19 sets out how the schedule applies to partnerships. For the purposes of partnerships, references to a ‘person’ in the legislation are treated as applying to relevant partners. Relevant partners are defined as a partner in the partnership for the period in which the return was required. Partnership penalties under this schedule will be charged on each relevant partner. Appeals against partnership penalties must be submitted by the representative partner (or successor) or the nominated partner. Once received, an appeal will be treated as an appeal against the penalties charged on every relevant partner.

54. Paragraph 20 allows HMRC, by written notice, to transfer up to 100% of a penalty charged on a company to an officer of that company who was responsible for the deliberate withholding of information.

Background note

55. Taxpayers are required to submit tax returns by specified dates. When taxpayers submit their returns late they generally incur a penalty. There are currently a range of different penalties that penalise the same behaviour in different ways across different taxes.

56. The government wishes to encourage compliance with regular return submission obligations but does not want to punish taxpayers who make occasional mistakes. The new late submission penalty regime, announced at Autumn Budget 2018, is designed to be proportionate, penalising only the small minority who persistently fall foul of the rules. Consistent compliance will be encouraged by the opportunity to clear penalty points without incurring a penalty charge. A stronger deterrent is provided in cases where behaviour is shown to be deliberate, and also by other compliance tools. The new regime is designed to be applicable to as many taxes with regular filing obligations as possible to provide a clear, transparent and consistent approach for taxpayers and HMRC.

57. The new points-based penalty regime will only apply to returns (including Making Tax Digital regular updates) with a regular filing frequency, for example monthly, quarterly or annually. It will not apply to occasional returns (for example a return required for a one-off transaction), which will continue to be covered by the current penalty regime for the relevant return.

58. The new regime is likely to initially apply to regular VAT and ITSA obligations. Other excise, environmental, insurance and transport taxes are included within the scope of legislation since the government intends to introduce the new regime more widely after VAT and ITSA. The government intends to bring Corporation Tax within the scope of the regime at a later date.

59. The regime has been developed through three separate consultations. The first consultation entitled 'HMRC penalties: a discussion document' ran from 2 February to 11 May 2015, leading to the 2016 consultation 'Making Tax Digital: Tax Administration' which ran from 15 August to 7 November 2016 and the latest consultation 'Making Tax Digital - sanctions for late submission and late payment' which ran from 20 March to 11 June 2017. The latter consultation proposed three different penalty models, resulting in the majority of respondents favouring the points based model above the others. The summary of responses to this consultation was published on 1 December 2017 and at the same time the government announced it would be taking forward the points based model. Responses to all of these consultations have helped to shape the details of the new penalty regime

60. If you have any questions about this change, or comments on the legislation, please contact Olly Toop on 03000 576764 (email: mtdta@hmrc.gsi.gov.uk).

Clause 31 and Schedule 13: Penalties for failure to pay tax

Summary

1. This clause and Schedule introduce a new two tiered penalty model for individuals and businesses that fail to pay their tax liability on time. It set outs how the penalty will work, reasonable excuse provisions and the appeal process.

Details of the clause

2. This clause introduces a new schedule comprising of three parts

    a. Part 1 introduces the new two tiered penalty for failure to pay tax liabilities by certain dates;

    b. Part 2 sets out under what circumstances a penalty would apply; and

    c. Part 3 covers the supplementary provisions including reasonable excuses and the appeals process.

Schedule 13: Part 1: Introduction

3. Paragraph 1 introduces the provisions for the new late payment penalty model. It also includes three tables showing the different taxes, the tax liabilities and date by which penalties will be applied from within the new model. The three tables set out the principal amount, amounts payable in default of return being made and amounts shown to be due in other assessments, determinations etc.

4. Paragraph 2 provides for the conditions that apply for the circumstances that are referred to in some items of the schedule. The circumstances relate to where a person fails to make a return and that return, if delivered would have shown an amount was due and payable thus allowing the scope for different treatment of assessments raised in lieu of returns and those that are not.

5. Paragraph 3 refers to corporates and amounts falling due within returns. It sets out that the late payment penalty applies from filing date, which is after the payment date, rather than the payment date where the correct amount was unpaid at the proper date but that the insufficient amount paid was a reasonable estimate of the tax due.

6. Paragraph 4 allows for regulations to be made in relation to late payment penalties and the application to PAYE allowing the effective date for penalties to be after the payment date.

Schedule 13: Part 2: Liability to a Penalty

7. Paragraph 5 states that no penalty is payable by the person if the liability is paid in full before the end of the 15 day after the original due date of the tax. No penalty also applies if proposals are made to HMRC within that time period that lead to a time to pay agreement (TTP) within a reasonable period.

8. Paragraph 6 sets out that if the tax liability has not been paid by day 15 or the time to pay condition is not met then a penalty would apply.

    a. Subparagraphs 6(1-2) provides for a penalty of the Amount A if the debt is paid in full or the 15 day TTP condition is met between days 15 and 30.

    b. Subparagraph 6(3) provides for the situation if the debt is not paid in full before the end the 30 day period. If the 30 day TTP condition is met then again Amount A is charged. If the 30 day TTP condition is not met the amount due is the total of amount A and B.

    c. Subparagraph 6(4) says that amount A is 0.5x% of the amount unpaid at the end of the 15 day period.

    d. Subparagraph 6(5) says that amount B is 0.5x% of the amount unpaid at the end of the 30 day period.

9. Paragraph 7 states that TTP agreements are met if the person contacts HM Revenue and Customs (HMRC) on or before 15 days or 30 days after the original tax liability due date and makes proposals for paying the tax owed and as a result of this an agreement is reached between HMRC and the person.

10. Paragraph 8 states that if the TTP agreement is breached the person will be liable to a penalty on the basis that the time to pay arrangement never was there. If the agreement is breached HMRC may give the person a notice that a penalty is payable under this paragraph.

11. Paragraph 9 outlines that if there is still tax outstanding at the end of day 30 then a second penalty of y% per annum will be applied to the remaining tax liability until it is paid in full or, until the date proposals are received for a TTP which results in an agreement with HMRC.

12. Paragraph 10 sets out that if the TTP is breached the person will be liable to a penalty on the basis that the TTP arrangement was never there.

13. Paragraph 11 gives definitions of certain terms using within this clause including, 15 day period, 30 day period and TTP agreement.

14. Paragraph 12 sets out the future changes that can be made through secondary legislation. These changes include the 15 or 30 days from which the penalties apply from and the percentage values of the penalties.

Schedule 13: Part 3: Supplementary Provision

15. Paragraph 13 sets out the same reasonable excuse provisions that are found in Finance Act 2009 (FA 09).

16. Paragraph 14 states that a person is not liable to penalties covered in this legislation if they have already been convicted of an offence in respect of that failure. This is the same double jeopardy paragraph as found in FA 09.

17. Paragraph 15 explains penalties under this section will not be taken into account under the provisions of section 97A of TMA 1970, paragraph 12(2) of schedule 24 to FA 2007 and paragraph 15(1) of schedule 41 to FA 2008. These pieces of legislation deal with the case where two or more tax geared penalties may apply.

18. Paragraph 16 sets out that HMRC may assess the penalty and must tell the individual the amount and how it has been calculated.

    a. Subparagraph 2 allows that HMRC may make regulations to assess the penalty under paragraph 9 in intervals.

    b. Subparagraph 3 says that HMRC must notify the person of a penalty and describes what detail must be in the notice.

    c. Subparagraph 4 says that the penalty must be paid within 30 days of the date the notice is issued.

    d. Subparagraph 5 provides for how the assessment of the penalty may be treated, and is to be treated as if it were an assessment of tax and may be enforced as such and combined with an assessment of tax.

19. Paragraph 17 says that a further assessment of a late payment penalty amount may be made where an earlier assessment is found to have been too little.

20. Paragraph 18 states that HMRC has one year after the debt is paid in full to make an assessment of any penalty amount.

21. Paragraph 19 - 21 sets out the appeal provisions for this clause. The person may appeal against the penalty being applied and the value of the penalty.

22. Paragraph 22 states that changes made through statutory instrument in relation to part 2 must go through the positive procedure and be approved by the House of Commons. It also states that changes made to assessment under paragraph 16 can go through the negative procedure.

Background note

23. Customers are required to pay tax owed by specific payment dates. If a customer fails to pay their tax on time then they are liable to a penalty in most tax regimes. Currently the value of the penalty applied to customers is varied which can lead to disparity depending upon which tax is owed.

24. The government wishes to encourage customers to pay their tax on time or make contact to discuss solutions to resolve the situation. The new late payment penalty regime has been introduced to ensure that those who pay their tax on time are not disadvantaged by those who do not and to incentivise payment on time where possible. It ensures that customers who have a reasonable excuse for not paying on time or who contact HMRC with the aim of resolving the issue are not negatively affected.

25. The new regime is likely to initially apply to regular VAT, CT and ITSA obligations. Other excise, environmental, insurance and transport taxes are included within the scope of legislation since the government intends to introduce the new regime more widely after VAT and ITSA.

26. The regime has been the subject of consultation on three occasions, initially as part of 'Making Tax Digital: Tax Administration' responses document published on 31 January 2017, then as part of the consultation 'Making Tax Digital: sanctions for late submission and late payment' responses document published on 1 December 2017 and then finally as 'Making Tax Digital: interest harmonization and sanctions for late payment' consultation published on 1 December 2017 and responses document published alongside the draft legislation.

27. If you have any questions about this change, or comments on the legislation, please contact Duncan Calloway on 03000 571813 (email: mtdta@hmrc.gsi.gov.uk).

Clause 32 and Schedule 14: VAT: repayment interest

Summary

1. This clause and Schedule make amendments to Finance Act 2009 relating to repayment interest and VAT. The changes come into force on a day to be announced and by way of regulations. The Schedule introduces changes to FA09 S102 and Schedule 54 that bring VAT into the scope of the provisions for Repayment Interest. The changes generally ensure that repayment interest works in the same way for VAT as it currently does for income tax self assessment with the exception of two areas around reasonable enquiry and missing returns.

Details of the clause

2. This clause introduces a Schedule containing changes to FA09 that bring VAT into scope of Schedule 54 of that act. They provide for regulations to be made to introduce the changes and allows Treasury to make regulations for further incidental provisions, amend, or repeal as may appear to be appropriate.

Details of the Schedule

3. Paragraph 1 amends Finance Act 2009 introducing a new Part 2A outlining the period for which interest can be paid on a VAT credit.

4. Paragraph 2 inserts a new sub-paragraph 102(4)(b)(aa) and introduces the changes to Schedule 54.

5. Paragraph 3(2) inserts in Schedule 54 a new sub-paragraph 12 (c) that ensures that no repayment interest is paid on balancing payments for VAT payments on account when the payments of account exceed the due amount in the prescribed accounting period.

6. Paragraph 3(3) inserts a new sub-paragraph 12D to 12F.

   a. Sub-paragraph 12D defines various VAT terms.

   b. Sub-paragraph 12E Ensures that repayment interest is not paid for any period where HMRC has a reasonable inquiry, nor for any period where HMRC is correcting errors and omissions

c. Sub-paragraph 12F ensures that repayment interest is not made for any period when there are other VAT returns missing at the time of receipt of the relevant return, nor for any period where notice is given to produce evidence or security and that is not produced.

Background note

7. Currently customers can receive repayment interest for the overpaid of a liability in certain taxes. This causes disparity across the tax system.

8. The government wishes to have a consistent approach to how interest in paid to customer to achieve a fairer tax system for all. This clause and Schedule make amendments to repayment interest in VAT to bring it in line with ITSA rule to support the harmonised approach moving forward.

9. The regime has been the subject of consultation on two occasions, initially as part of 'Making Tax Digital: Tax Administration' responses document published on 31 January 2017, then as 'Making Tax Digital: interest harmonization and sanctions for late payment' consultation published on 1 December 2017 and responses document published alongside the draft legislation.

10. If you have any questions about this change, or comments on the legislation, please contact Duncan Calloway on 03000 571813 (email: mtdta@hmrc.gsi.gov.uk)

Clause 33: Time limits for assessments involving offshore matters: IT and CGT

Summary

1. This clause increases the assessment time limits for offshore income and gains to 12 years unless a longer time limit applies. It applies to income tax and capital gains tax where a tax loss arises in respect of offshore tax.

Details of the clause

2. This clause introduces new section 36A to Taxes Management Act (TMA) 1970.

3. New subsection 36A(1) restricts the circumstances in which the 12 years assessment time limit will apply to cases involving offshore matters or offshore transfers.

4. New subsection 36A (2) introduces the new time limit and ensures that the longer time limit of 20 years will still apply where the loss of tax is due to deliberate and other specified behavior as set out in section 36(1A) TMA.

5. New subsections 36A(3) to (6) define offshore matter and offshore transfer. These definitions are consistent with other legislation including the amendments to the penalties legislation introduced by section 120 and Schedule 20 Finance Act 2015 and the Requirement to Correct legislation in Schedule 18 Finance (No 2) Act 2017.

6. New subsections 36A(7) and (8) ensure that the 12 year assessment time limit will not apply where HM Revenue and Customs (HMRC) has received information from another tax authority under automatic exchange of information. This includes information received under the Common Reporting Standard in circumstances where HMRC could reasonably have been expected to identify the lost tax and raise the assessment within the normal time limits on the basis of the information received. Under the Common Reporting Standard, HMRC will receive information about overseas accounts, insurance products and other investments, including those held through overseas structures such as companies and trusts. This includes details of the account holder or owner, including name, address, date of birth, balance of the account, and payments into the account.

7. New subsection 36A(9) provides that the 12 year assessment time limit will not apply where the assessment results from a transfer pricing adjustment. Mutual Agreement Procedures (MAP) are arrangements which allow tax authorities to discuss and seek to agree on international tax matters. MAP may be used in transfer pricing cases to avoid double taxation that would otherwise apply. Some international treaties restrict the time limit for MAP to periods shorter than 12 years so that, without this rule, taxpayers could be subject to double taxation.

8. New subsection 36A(10) provides that the definition of assets is based on that at section 21(1) Taxation of Chargeable Gains Act 1992 but specifically includes sterling for the purposes of this section.

9. New subsection 36A(11) ensures that the specified rules in section 36 TMA apply for the purposes of section 36A. These rules concern assessments on persons in partnership (so that partners may be assessed as well as that person), and provision for certain reliefs and allowances to be given against assessments.

10. Subsections 3 & 4 of Clause 33 make consequential changes including a change to section 40 TMA 1970 (assessment on personal representatives). This ensures that the 12 year assessment time limit in offshore cases will not change the assessment time limits set out in subsections 40(1) and (2) TMA.

11. Subsection 5 of Clause 33 sets out the commencement provisions. The new section 36A will apply for years 2013-14 and 2014-15 in cases where the loss of tax is brought about by careless behaviour and for years 2015-16 onwards in other cases.

Background note

12. It can take longer to establish the facts in cases involving offshore assets and structures as it can be more difficult to access the information needed to understand the transactions. This section has been introduced to give HMRC more time to make assessments in these offshore cases.

13. This measure was announced in Autumn Statement 2017 as part of the government's strategic response to offshore tax evasion, avoidance and non-compliance.

14. A consultation on the design principles for the legislation began on 19 February 2018 and closed on 14 May 2018. A response document is published with the draft legislation on 6 July 2018.

15. If you have any questions about this change, or comments on the legislation, please contact Sarah Weston on 03000 589165 email:sarah.weston@hmrc.gsi.gov.uk)

Clause 34: Time limits for proceedings involving offshore matters: IHT

Summary

1. This clause increases the time limit for proceedings for the recovery of inheritance tax (IHT) to 12 years in cases where a tax loss arises in respect of offshore tax unless a longer time limit applies.

Details of the clause

2. This clause introduces new section 240B to Inheritance Tax Act (IHTA) 1984.

3. It provides that the new 12 year time limit can apply where appropriate instead of the 4 year time limit at section 240(2) IHTA.

4. New subsection 240B(1) restricts the circumstances in which the 12 year time limit will apply to cases involving offshore matters or offshore transfers within section 240(2) IHTA (cases where an account has been delivered to HM Revenue and Customs (HMRC) and payment made and accepted in full satisfaction of the tax so attributable).

5. New subsection 240B(2) introduces the new time limit of 12 years.

6. New subsections 240B(3) and (4) define offshore matter and offshore transfer. These definitions are similar to the definitions used in other legislation including the amendments to the penalties legislation introduced by Section 120 and Schedule 20 Finance Act 2015 and the Requirement to Correct legislation in Schedule 18 Finance (No 2) Act 2017.

7. New subsections 240B(5) and (6) ensure that the 12 year time limit for proceedings will not apply where HMRC has received information from another tax authority under the automatic exchange of information. This includes information received under the Common Reporting Standard in circumstances where HMRC could reasonably have been expected to identify the lost tax and raise the assessment within the normal time limits on the basis of the information received. Under the Common Reporting Standard, HMRC will receive information about overseas accounts, insurance products and other investments, including those held through overseas structures such as companies and trusts. This includes details of the account holder or owner, including name, address, date of birth, balance of the account, and payments into the account.

8. Subsection 4 sets out the commencement provisions. The new section 240B will apply to chargeable transfers on or after 1 April 2013 in cases where the loss of tax is brought about by careless behaviour and from 1 April 2015 in other cases.

9. Subsection 5 provides that the definition of “person liable to tax” in section 240(8)

IHTA applies to cases within subsection 240B(4)(a).

Background note

10. It can take longer to establish the facts in cases involving offshore assets and structures. This section has been introduced to give HMRC more time to bring proceedings in these offshore cases.

11. This measure was announced in Autumn Statement 2017 as part of the government's strategic response to offshore tax evasion, avoidance and non-compliance.

12. A consultation on the design principles for the legislation began on 19 February 2018 and closed on 14 May 2018. A response document is published with the draft legislation on 6 July 2018.

13. If you have any questions about this change, or comments on the legislation, please contact Sarah Weston on 03000 589165 email:sarah.weston@hmrc.gsi.gov.uk).

Clause 35: Security deposits: construction industry scheme and corporation tax

Summary

1. This clause provides HM Revenue and Customs (HMRC) with powers to make secondary legislation to require a person to provide a security for corporation tax liabilities and construction industry scheme deductions that are or may be due to HMRC. It also provides that failure to provide security when required will be a summary offence and a person who has committed that offence will be subject to a fine.

Details of the clause

2. Subsection (1) inserts a new section 70A into Finance Act (FA) 2004.

3. Subsection (2) inserts a new paragraph 88A into Schedule 18 to Finance Act (FA) 1998.

New section 70A

4. New section 70A(1) provides that HMRC may make regulations requiring specified persons to provide a security for amounts of construction industry scheme deductions that they are or may be liable to pay to HMRC.

5. New section 70A(2) provides that security may be required under the regulations only where an HMRC officer considers it to be necessary to protect the revenue.

6. New section 70A(3) requires that regulations made under this section must make provision for certain decisions concerning a security to be reviewed by HMRC and must include a right of appeal against those decisions.

7. New section 70A(4) provides a power for regulations made under this section to include provision for HMRC to obtain information relevant to decisions in respect of a requirement to pay a security.

8. New sections 70A (5) and (6) provide that a person who fails to comply with a requirement to give security commits an offence if the failure continues for a specified period. A person guilty of that offence is liable, on conviction, to a fine.

9. New section 70A(7) provides definitions of 'prescribed' and 'security' for the purposes of section 70A

New Paragraph 88A

10. New paragraph 88A(1) provides that HMRC may make regulations requiring specified persons to provide security in respect of amounts of corporation tax that a company is or may be liable to pay.

11. New paragraph 88A(2) provides that security may be required under the regulations only where an HMRC officer considers it to be necessary to protect the revenue.

12. New paragraph 88A(3) requires that regulations made under this paragraph must make provisions for certain decisions concerning a security to be reviewed by HMRC and must include a right of appeal against those decisions.

13. New paragraph 88A(4) provides a power for regulations made under this paragraph to include provision for HMRC to obtain information relevant to decisions in respect of a requirement to pay a security.

14. New paragraph 88A(5) and (6) provide that a person who fails to comply with a requirement to give security commits an offence if the failure continues for a specified period. A person guilty of that offence is liable, on conviction, to a fine.

15. New paragraph 88A(7) provides definitions of 'prescribed' and 'security' for the purposes of paragraph 88A

Background note

16. HMRC can require some businesses to provide a security, in the form of cash or a performance bond, where this is considered necessary to protect the revenue. Securities may be required where a taxpayer has a poor compliance record and in "phoenix" type cases where a business accrues a tax debt, goes into liquidation or administration and the person responsible for the operation of the business sets up again, with the risk of running up further tax debts.

17. HMRC already has powers to require security in relation to some areas of business tax, including VAT and PAYE. However, there is no similar provision in respect of corporation tax liabilities or deductions made by contractors on account of their subcontractors' income tax under the construction industry scheme. The government intends to extend the existing securities regime to these areas to address these gaps in the coverage of the regime and strengthen HMRC's ability to deal effectively with potential defaulters. The clause is aimed and will be specifically targeted at the minority of businesses that seek financial gain from non-compliance with their tax obligations rather than those that are genuinely unable to pay. It will not affect those who are managing their debts with HMRC under agreed time to pay arrangements with which they are complying.

18. This power will only apply where an HMRC officer considers the provision of a security is necessary to protect the revenue. The persons who may be required to provide a security will be specified in regulations and where a business is a company will include the company's directors and officers. Regulations will also specify rights of review and appeal to provide appropriate safeguards for taxpayers.

19. The clause allowing HMRC to make regulations for and in connection with the requirement to pay a security will come into force on the date that Finance Bill 2018 to 2019 receives Royal Assent, but regulations must be made before any securities can be required. HMRC intends to make regulations in order for this clause to come into effect on 6th April 2019 and will publish the regulations in draft for comment.

20. The government published a consultation document on the implementation of this measure on 13 March 2018. A response to the consultation is published alongside this draft legislation.

21. If you have any questions about this change, or comments on the legislation, please contact Alison Gardiner on 03000 586054 (email: Alison.gardiner@hmrc.gsi.gov.uk).

Clause 36 and Schedule 15: Payment of CGT exit charges

Summary

1. Clause 36 and Schedule 15 introduce CGT exit charge payment plans allowing:

- trusts ceasing to be UK resident **or**
- non-UK resident individuals who trade through a UK branch or agency

to defer, in certain cases, payment of the capital gains tax (CGT) that may arise when, for example, a trust ceases to be tax resident in the UK or, in the case of a non-UK resident individual who trades through a UK branch, assets cease to be used in that UK trade. The deferred CGT will be subject to interest under the usual rules. The change ensures that UK rules taxing such gains are compatible with EU law.

Details of the clause and schedule

2. Clause 36 introduces Schedule 15 which makes various changes to the Taxes Management Act (TMA) 1970.

Schedule 15: CGT Exit charge payment plans

3. Paragraphs 1 and 2 of the Schedule amend TMA 70 by introducing a new section 59BB and new Schedule 3ZAA.

4. New section 59BB introduces the new Schedule 3ZAA.

5. Paragraph 1 of new Schedule 3ZAA explains that persons liable to pay an exit charge for the purposes of either section 25 or 80 Taxation of Chargeable Gains Act (TCGA) 1992 can defer payment by entering into a CGT exit charge payment plan (ECPP). Paragraphs 2 and 3 of the new Schedule 3ZAA set out the eligible persons and circumstances.

6. Paragraph 2 of new Schedule 3ZAA applies to European Economic Area (EEA) resident individuals who have been carrying on a trade in the UK through a branch or agency and transfer assets out of the UK, resulting in an exit charge arising under section 25(1) or (3) TCGA 92. Broadly these provisions deem a disposal and reacquisition to occur when the trade ceases or the assets become situated outside the UK.

7. Non-resident individuals are eligible to enter into an ECPP where they can demonstrate a right to freedom of establishment or carry on that trade in an EEA

state other than the UK.

8. Paragraph 3 of new Schedule 3ZAA applies to the trustees of a settlement who have ceased to be resident in the UK resulting in a charge arising under section 80 TCGA 92. Broadly this provision deems a disposal and reacquisition at market value when trustees cease to be resident in the United Kingdom. Where the trustees can show that when they ceased to be resident they had a right to freedom of establishment and the assets subject to the charge have been, and will be, used for an economically significant economic activity the trustees are eligible to enter into an ECPP.

9. Paragraph 4 of new Schedule 3ZAA explains that the ECPP may apply to all the tax that is due under the exit charge or just part of it. It also defines various terms.

10. Paragraph 5 of new Schedule 3ZAA provides that the amount deferred is payable in six equal instalments; the first payment being due on the day the full amount would have due without entering into an ECPP.

11. Paragraph 6 of new Schedule 3ZAA explains the ECPP application process. In particular an application must be made before the tax would normally fall to be payable. The applicant must also agree to pay the deferred tax, and any interest due on it, in accordance with the plan.

12. An ECPP is void, and no deferral will apply, if the information provided to HMRC does not disclose all material facts, or where a deferral of tax payments is the main purpose, or one of the main purposes of arrangements that include the change of residence or the transfer of the assets that are the subject of exit charges.

13. Paragraph 7 of new Schedule 3ZAA sets out the information the ECPP must contain. This includes details of residency and the amount of tax being deferred. Security may be required where HMRC considers that there would be a serious risk to the collection of tax.

14. Paragraph 8 of new Schedule 3ZAA explains that once the ECPP is entered into the deferred exit charge still remains payable but HMRC will not seek its payment, other than in accordance with the plan.

15. Whilst the ECPP is in place the normal penalty provisions are overridden and will only be activated if the taxpayer fails to make payment under its terms. However, interest is still due. Therefore each time a payment is made under the terms of the plan it should be paid together with the interest due on it. The taxpayer is free to pay any outstanding balance, with interest, before the end of the ECPP period.

16. Where a taxpayer becomes bankrupt, or resident in a country that is not part of the EEA, the full outstanding balance is due on the date the next instalment would have been due.

17. Paragraph 9 of new Schedule 3ZAA provides that where for the purposes of a double taxation agreement a person is treated as being resident in a country outside the EEA, then that person is treated as being resident there for the purposes of this schedule.

18. Paragraph 10 of new Schedule 3ZAA defines various phrases.

19. Paragraphs 3 to 5 insert references to CGT ECPPs into Schedule 56 to Finance Act 2009, which sets out when a taxpayer may incur a penalty for late payment of tax. They also make various consequential amendments.

20. Paragraph 6 makes various amendments to TMA70 to distinguish between the CGT ECPP introduced by this schedule and the existing corporation tax exit charge payment plan at Schedule 3ZB.

21. Paragraph 7 provides that the amendments made by this Schedule take effect on or after 6 April 2019.

Background note

22. The proposed changes set out in the schedule implement recent decisions of the Court of Justice of the European Union where the compatibility of member state exit charges with Article 49 of the Treaty on the Functioning of the European Union was considered. Article 49 is concerned with the Freedom of Establishment of EU nationals.

23. The changes apply only to individuals that are nationals of the EU or EEA, who trade through a branch or agency in the UK, and trustees of UK resident trusts both of whom are seeking to exercise their rights of establishment within the EU/EEA.

24. Where after exercising those rights:

    - the individuals cease trading in the UK or move trading assets outside of the UK; or
    - the UK resident trust moves its residence out of the UK,

    a charge, "the exit charge", may arise on any unrealised gains on assets they hold. This provision allows, in certain circumstances, for those persons to defer payment of that charge and to opt to pay it in six equal instalments, with interest.

25. If you have any questions about this change, or comments on the legislation, please contact Nick Williams on 03000 585660 (email: nicholas.williams@hmrc.gsi.gov.uk)

Clause 37 and Schedule 16: ATAD: corporation tax exit charges

Summary

1. This clause makes changes to corporation tax exit charges, including the rules for deferred payment of exit charges on a transfer of assets or tax residence between the UK and an EEA state by companies resident in the UK or an EEA state. The changes adapt existing rules to implement the EU Anti-Tax Avoidance Directive. These changes have effect from 1 January 2020.

Details of the clause and Schedule

2. The clause introduces Schedule 16 which makes provision to amend the rules for corporation tax exit charge payment plans, repeal provisions that provide for the postponement of exit charges and introduce rules to ensure that market value is used as the starting value for corporation tax purposes where certain assets have been subject to an exit charge in an EEA state. The Schedule is made up of three Parts.

Part 1: CT exit charge payment plans

3. Paragraph 1 introduces changes to Schedule 3ZB of the Taxes Management Act 1970 (TMA), which contains the rules for the deferred payment of exit charges where companies or their assets transfer to an EEA state. Companies can elect to defer their tax payment where they meet the conditions for entering into a corporation tax exit charge payment plan (CT ECPP).

4. Paragraphs 2 and 3 introduce the concept of a 'relevant EEA state' into Part 1 and Part 2 of Schedule 3ZB to the TMA. The effect is that a CT ECPP will only be available if the transfer is to an EU state, or a non-EU state that is a member of the EEA which has entered into an agreement concerning the mutual collection of tax debts with the EU or the UK. This ensures that the power for HMRC to collect any outstanding tax that has been deferred under a CT ECPP is protected.

5. Paragraphs 4 and 5 makes changes consequential upon the removal of the option to choose between the standard instalment and the realisation methods for deferring tax under a CT ECPP.

6. Paragraph 6 provides for the replacement of the two optional methods for a CT ECPP with a single payment method that is described in new paragraphs 11 to 14 of Schedule 3ZB to the TMA.

7. New paragraph 11 of Schedule 3ZB to the TMA provides for tax deferred under a CT ECPP to be initially payable in six equal annual instalments, starting with the normal due date for the payment of corporation tax, for a company that is not in the

quarterly instalments system, of nine months after the end of the accounting period for which the liability is incurred. Unless the assets are later sold or otherwise realised, or one of the events set out in the following paragraphs occur, this pattern of payment matches that which would have been paid under the standard instalment method.

8. New paragraph 12 of Schedule 3ZB to the TMA sets out the circumstances where the full balance outstanding under a CT ECPP may become payable before the end of the initial deferral period. These match those that previously existed under the standard instalment or realisation methods, with the addition of a continuing failure to make a payment that is due under the CT ECPP, in new subparagraph 12 (2)(e). The unchanged circumstances include insolvency, administration or the appointment of a liquidator, or where a company that has entered into the CT ECPP transfers its residence outside a relevant EEA state.

9. New paragraph 13 of Schedule 3ZB to the TMA sets out circumstances where a proportion of the tax outstanding under a CT ECPP that is attributable to a particular asset will become payable. It includes a formula to determine the amount that becomes due as a result; future instalments of any CT ECPP tax are reduced accordingly to take account of any part that becomes immediately due. A trigger event occurs where there is a disposal or other realisation of an asset or liability to which a part of the total CT ECPP tax was attributable. A disposal or realisation for these purposes includes where a company ceases to hold an asset for business purposes in a relevant EEA state, or to be party to a loan relationship or derivative contract.

10. New paragraph 14 of Schedule 3ZB to the TMA adapts the rules in paragraph 13 to deal with situations where only part of an asset or liability is subject to a trigger event. As well as the part disposal of an asset, a partial trigger event will include circumstances where the accounting value of an intangible asset is reduced, but where it is still recognized on the company's balance sheet. It also includes the disposal of a right or liability under a loan relationship or derivative contract which is treated as a 'related transaction' by section 304 or section 596 of CTA 2009. The CT ECPP tax attributable to a partial trigger event is to be determined on a just and reasonable basis.

11. Paragraph 7 of the Schedule makes a change to paragraph 4 of Schedule 56 to Finance Act 2009 (FA 2009), the effect of which is to set an amount of a penalty that a company may incur in respect of a failure to make a payment at the time set out in a CT ECPP. That amount is 5% on the late paid tax with a further 5% on tax paid more than 3, or more than 9 months late. The corporation tax entries on the table in Schedule 56 to FA 2009 are subject to commencement on or after an appointed day.

12. Paragraph 8 is the commencement rule for the changes set out in paragraphs 1 to 6 of the Schedule. These changes have effect for company accounting periods ending on or after 1 January 2020. The migration of a UK resident company will generally cause its accounting period to come to an end for corporation tax purposes.

Part 2: Repeal of certain postponement provisions

13. Paragraph 9 repeals section 187 of the Taxation of Chargeable Gains Act 1992 (TCGA), and makes further changes consequent upon that repeal. Section 187 provides for the postponement of an exit charge under section 185 TCGA, subject to certain conditions, where a UK resident company ceases to be resident here, but its UK resident parent company assumes the liability to pay the exit charge at a future date on the occurrence of certain events. This repeal applies to companies that cease to be UK resident on or after 1 January 2020.

14. Paragraph 10 provides for a similar repeal of sections 860 to 862 of CTA 2009, and consequential amendments. Sections 860 to 862 CTA 2009 provide for the postponement of an exit charge under section 859 CTA 2009, subject to certain conditions, where a chargeable intangible asset ceases to be chargeable on the occasion of a UK resident company ceasing to be resident here, but its UK resident parent company assumes the liability to pay the exit charge at a future date on the occurrence of certain events. This repeal applies to companies that cease to be UK resident on or after 1 January 2020.

Part 3 Treatment of assets subject to EU exit charges

15. Paragraph 11(1) of the Schedule inserts new section 184J of TCGA.

16. New section 184J of TCGA provides a rule to ensure that there is no double taxation of gains on the disposal of an asset that has previously been subject to an exit charge in an EU Member State when the asset came within the charge to UK corporation tax on chargeable gains.

17. Any potential double taxation at the time of disposal will be relieved by treating the asset as having been acquired for its market value at the time that the other state levied an EU exit charge. The amount of any gain or loss accruing before that time will therefore be exempted from UK tax.

18. The rule applies to charges that are levied by an EU Member State in accordance with their obligations under the EU Anti Tax Avoidance Directive.

19. Paragraph 11(2) of the Schedule is the commencement rule for new section 187J TCGA, which applies to assets that are subject to an EU exit charge on or after 1 January 2020.

20. Paragraph 12 amends Part 8 of CTA 2009 to provide a similar market value rule for assets that are intangible fixed assets within Part 8 of CTA 2009, and have been subject to an EU exit charge on or after 1 January 2020. It amends section 863 CTA 2009, making it subject to the market value rule which is inserted as new section 863A of CTA 2009.

Background note

21. The changes made by this clause and Schedule are part of the UK's implementation of the EU Anti Tax Avoidance Directive (Directive (EU) 2016/1164 of the European Parliament and of the Council of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market). Article 5 of the Directive deals with the subject of exit taxation, for which Member States will have implementing legislation in effect as from 1 January 2020.

22. If you have any questions about this change or comments on the legislation, please contact Philip Donlan on 03000 585504 or email Philip.donlan@hmrc.gsi.gov.uk.

Clause 38: Hybrid and other mismatches

Summary

1. This clause introduces amendments to the Hybrid and other Mismatches regime in Part 6A of TIOPA 2010 in relation to the treatment of permanent establishments and regulatory capital.

Details of the clause

2. Subsection 1 introduces amendments to Chapter 8 Part 6A TIOPA 2010
3. Subsection 2 amends section 259HA.
4. Subsection 2(a) amends section 259HA. This amendment brings certain multinational companies within the scope of Chapter 8.
5. The amendment inserts new sub-section 259HA(5)(b) and provides that Condition C within section 259HA(5) can be met when a company which is resident in the UK carries on business through a permanent establishment in another jurisdiction, but where that other jurisdiction does not recognise the existence of that permanent establishment. This amendment brings mismatches involving such "disregarded" permanent establishments within the scope of the hybrids regime.
6. Subsection 2(b) replaces a reference to "company" with a reference to "payee" in section 259HA(9)(a). This amendment is to be regarded as always having effect.
7. Subsection 3 amends section 259HC, which provides for the counteraction of mismatches which fall within Chapter 8.
8. The amendment counteracts mismatches which fall within new sub-section 259HA(5)(b) by treating an amount equal to the mismatch as income arising to the UK resident multinational company in the UK. This amendment provides that mismatches which arise in relation to "disregarded" permanent establishments are counteracted by bringing amounts back into charge for corporation tax purposes.
9. Subsection 4 amends the definition of "financial instrument" in section 259N.
10. Subsection 4(a) amends section 259N(3)(b) by removing the reference to regulatory capital, and replacing it with a power to make regulations. This amendment removes the current exemption for regulatory capital, but enables any exemption from the definition of "financial instrument" to be specified in regulations.
11. Subsection 4(b) removes section 259N(4), which provided for future financial sector regulations to be taken into account. That provision is effectively superseded by the new power inserted into section 259N(3)(b).

12. Subsections 5 and 6 set out the commencement provisions in relation to the amendments to sub-section 259HA(5) and section 259HC, including apportionment rules which deal with payment periods which straddle the commencement date of 1 January 2020. Such periods are dealt with by splitting the "straddling period" into two separate periods, and apportioning amounts either on a time basis or, where appropriate, on a just and reasonable basis.

13. Subsection 7 provides that the amendment made to section 259HA(9)(a) is to be treated as applying from the original commencement date of the hybrids regime on 1 January 2017.

14. Subsection 8 provides that the existing exemption of certain regulatory capital from the definition of "financial instrument" will continue to apply until such time as new regulations under the amended section 259N(3)(b) come into force.

Background note

15. These minor amendments to the Hybrid and other mismatch regime have been introduced to ensure the UK hybrid rules are fully compliant with the requirements of Council Directive (EU) 2016/1164 as amended by Council Directive (EU) 2017/952.

16. The UK Hybrid and other mismatch rules were introduced by Finance Act 2016, and deal with mismatches involving entities, financial instruments and permanent establishments. Mismatches can involve either double deductions for the same expense, or deductions for an expense without any corresponding receipt being taxable.

17. If you have any questions about this change, or comments on the legislation, please contact Mark Bryan on 03000 585607 (email: mark.bryan@hmrc.gsi.gov.uk)

Clause 39: Resolution of double taxation disputes

Summary

1. This clause introduces statutory powers to implement the EU directive on tax dispute resolution mechanisms in the European Union and other similar international agreements.

Details of the clause

2. Sub-section (1) inserts three new sections into Chapter 2 of Part 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation relief: miscellaneous provisions).
3. New section 128A allows the Treasury to make regulations to give effect to: Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union ("the Directive"); any instrument modifying or supplementing it; and any other international agreements or arrangements connected to double taxation disputes.
4. Subsection (2) sets out an inexhaustive list of the type of provision which may be made in the regulations.
5. Subsection (3) sets out some details about the powers (including allowing the regulations to have retrospective effect and to amend other enactments).
6. Subsection (4) says that the regulations may not make a criminal offence punishable on indictment with imprisonment for more than two years.
7. Subsection (5) makes provision about Parliamentary procedure.
8. Subsection (6) defines primary legislation for the purposes of the section.
9. New section 128B applies where the regulations require the Commissioners for Her Majesty's Revenue and Customs (HMRC) to give effect to an agreement, decision or opinion.
10. Subsection (2) requires the Commissioners to give effect to the agreement, decision or opinion irrespective of any other enactment.
11. Subsection (3) allows the Commissioners to make any appropriate adjustment by way of discharge or repayment of tax, the allowance of credit against UK tax, the making of an assessment or otherwise.

12. Subsection (4) provides that time limits in the Taxes Act do not apply to claims relating to such an agreement, decision or opinion.

13. New section 128C permits HMRC to disclose information under international agreements to which the regulations apply.

Background note

14. The European Council adopted Council Directive (EU) 2017/1852 on 10 October 2017 on tax dispute resolution mechanisms in the EU. Article 22 of the Directive requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 30 June 2019 at the latest.

15. The Directive was adopted following a review by the European Commission of existing dispute resolution mechanisms (bilateral double tax conventions between Member States and the EU Arbitration Convention). The review concluded that although the existing dispute resolution mechanisms worked well in practice, there was scope to improve functionality with regard to access, application, timeliness and resolution.

16. The Directive is designed to complement and strengthen rather than supplant existing dispute resolution mechanisms.

17. Double taxation can create serious obstacles for businesses operating across borders by creating excessive tax burdens leading to inefficiencies and an economic disincentive to trade. The aim of the Directive is to introduce an effective and efficient framework for the resolution of tax disputes which ensures legal certainty and a business-friendly environment for investments.

18. If you have any questions about this change, or comments on the legislation please contact Martin O'Rourke on 03000 515912 (email: martin.o'rourke@hmrc.gsi.gov.uk).

Clause 40: International tax enforcement: disclosable arrangements

Summary

1. This clause gives HM Treasury a power to make regulations to require disclosure of information about certain cross border tax arrangements to HM Revenue and Customs (HMRC) to give effect to international rules. This will allow the UK to implement Directive 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. It would also allow the UK to implement the Organisation for Economic Co-operation and Development (OECD) model mandatory disclosure rules if the Government decides to adopt those rules.

Details of the clause

2. Subsection 1 introduces a power to make regulations to require participants in arrangements of a description specified by the regulations to disclose information for the purpose of securing compliance of the UK government with international tax provisions.

3. Subsection 2 sets out particular matters which may be dealt with by the regulations including the timing and form of the disclosure, that the regulations may require disclosure of information about arrangements entered into before as well as after the coming into force of the regulations, and penalties for failing to comply with the regulations.

4. Subsection 3 provides definitions for the purpose of this section.

5. Subsections 4 enables the regulations to make consequential amendments, including to primary legislation, and provide that they must be made by statutory instrument.

6. Subsection 5 provides that the regulations which amend primary legislation must be made using the affirmative procedure.

7. Subsection 6 provides that the regulations which do not amend primary legislation are subject to negative procedure.

Background note

8. This clause enables the government to implement Directive 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements. It will also permit the implementation of new Organisation for Economic Co-operation and

Development (OECD) model mandatory disclosure rules, should the decision be taken to implement those. The UK will continue to implement EU law during the Implementation Period in the Withdrawal Agreement.

9. The Directive requires information about certain cross border tax planning arrangements to be filed with EU Member States' tax administrations. This information will be automatically shared between all EU Member States.

10. The purpose of the Directive and OECD rules is to give tax administrations access to early, useful information about taxpayers, intermediaries who provided services in connection with these arrangements, their activities in other countries, and the types of cross border arrangements that are entered into. The rules will help to control and disrupt cross border tax avoidance and evasion which relies on secrecy. This will aid tax administrations to ensure that everyone pays the right amount of tax.

11. This clause will enable the Treasury to make regulations to require the disclosure of information about relevant arrangements by persons who participate in those arrangements, including taxpayers, promotors and persons who provide services in connection with such arrangements to HMRC.

12. If you have any questions about this section, or comments on the legislation, please contact Helen Baird-Parker on 03000 586141 (email: helen.baird-parker@hmrc.gsi.gov.uk)