HM Treasury

Finance (No. 3) Bill
Explanatory Notes

7 November 2018

Explanatory notes

Introduction

1. These explanatory notes relate to the Finance (No. 3) Bill as introduced into Parliament on 1 November 2018. They have been prepared jointly by HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

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

Part 1: Direct taxes

Clause 1: Income tax charge for tax year 2019-20

Summary

1. This clause imposes a charge to income tax for the tax year 2019-20.

Details of the clause

2. Clause 1 imposes a charge to income tax for the tax year 2019-20.

Background note

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

Clause 2: Corporation tax charge for financial year 2020

Summary

1. This clause charges corporation tax (CT) for the financial year beginning 1 April 2020.

Details of the clause

2. Clause 2 charges CT for the financial year beginning 1 April 2020.

Background note

3. Parliament charges CT for each financial year. This clause charges CT for the financial year beginning 1 April 2020. The rate of CT for financial year 2020 was set at 17% in Finance Act 2016 Part 2 section 46.

Clause 3: Main rates of income tax for tax year 2019-20

Summary

1. This clause sets the main rates of income tax for the tax year 2019-20.

Details of the clause

2. Clause 3 sets the basic, higher and additional rates of income tax for 2019-20.
3. This clause provides that the main rates of income tax for 2019-20 are: the 20% basic rate, the 40% higher rate and the 45% additional rate.

Background note

4. Income tax is an annual tax. It is for Parliament to impose income tax for a year.
5. This clause sets the "main rates", which will apply to "non-savings, non-dividend" income of taxpayers in England, Wales and Northern Ireland. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 4: Default and savings rates of income tax for tax year 2019-20

Summary

1. This clause sets the default rates and savings rates of income tax for the tax year 2019-20.

Details of the clause

2. Subsection (1) provides the default rates of income tax for 2019-20: the 20% default basic rate, the 40% default higher rate and the 45% default additional rate.

3. Subsection (2) provides the savings rates of income tax for 2019-20: the 20% savings basic rate, the 40% savings higher rate and the 45% savings additional rate.

Background note

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

5. This clause sets the 'savings rates' which apply to savings income of all UK taxpayers and the 'default rates' which apply to the non-savings, non-dividend income of taxpayers who are not subject to either the UK main rates of income tax or the Scottish rates of income tax.

6. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 5: Basic rate limit and personal allowance

Summary

1. This clause sets the amount of the basic rate limit for income tax at £37,500 and sets the amount of the personal allowance at £12,500 for the tax years 2019-20 and 2020-21.

Details of the clause

2. Subsection (1) sets the amount of the basic rate limit at £37,500 in section 10(5) of the Income Tax Act 2007 (ITA) in 2019-20 and 2020-21.

3. Subsection (2) sets the amount of the personal allowance in section 35(1) of ITA as £12,500 for 2019-20 and 2020-21.

4. Subsection (4) repeals sections 57(8) and 57A of ITA which linked increases to the personal allowance to the national minimum wage.

5. Subsections (4) and (5) disapply the indexation provisions for the basic rate limit and personal allowance for 2019-20 and 2020-21, and link increases after these tax years to the Consumer Price Index (CPI).

Background note

5. An individual's taxable income is charged to tax at the basic rate of tax up to the basic rate limit.

6. The basic rate limit is subject to indexation (an annual increase based on the percentage increase to the CPI). Parliament can override the indexed amounts by a provision in the Finance Bill.

8. Budget 2018 announced that the basic rate limit will be set at £37,500 for 2019-20 and 2020-21. The effect of this clause is to override the anticipated indexed amount for the basic rate limit for 2019-20 and 2020-21.

9. An individual is entitled to a personal allowance for income tax. Income tax personal allowances are subject to indexation (an annual increase based on the percentage increase to the CPI). Parliament can override the indexed amounts by a provision in the Finance Bill.

10. Budget 2018 announced that the personal allowance will be increased to £12,500 for 2019-20 and 2020-21. The effect of this clause is to override the anticipated indexed amount for the personal allowance for 2019-20 and 2020-21.

11. At Budget 2018 it was announced that the government will repeal the requirement for the Chancellor to consider the financial effect of increasing the personal allowance to an amount of less than £12,500 for individuals who are paid the national minimum wage, in consequence of the personal allowance now having reached £12,500.

Clause 6: Starting rate limit for savings for tax year 2019-20

Summary

1. This clause sets the starting rate limit for savings for the tax year 2019-20.

Details of the clause

2. Clause 6 provides that for the tax year 2019-20 section 21 of the Income Tax Act 2007 (indexation) does not apply to the starting rate limit for savings set out in section 12(3) of the Income Tax Act 2007. The starting rate limit for savings for the tax year 2019-20 therefore remains at £5,000.

Background note

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

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

5. This clause sets the starting rate limit for savings for 2019-20 at £5,000. This clause does not override Section 21 of the Income Tax Act 2007 in relation to the starting rate limit for savings in 2020-21 and subsequently.

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

Clause 7: 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) to the extent that liability in respect of a taxable car or van arises by virtue of section 120A or section 154A. Calculating the amount foregone in accordance with section 121A or section 154A must also include any amounts foregone in respect of connected costs. However, it does not affect the operation of sections 239(1) and (2) in relation to other payments or benefits. For example, should an employer reimburse an employee for costs incurred (such as replacing a tyre), the exemption in section 239(2) will still apply.

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 were 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.

Clause 8: 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.

Clause 9: Exemptions relating to emergency vehicles

Summary

1. 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

2. Subsection (1) introduces amendments to section 248A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

3. 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.

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

5. 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.

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

7. Subsection (5) provides that the amendments made to ITEPA have effect for the tax

year 2017-18 and subsequent years.

8. 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.

9. 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.

10. 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.

11. Subsection (9) notes that for the purposes of subsection (6), "emergency vehicle" has the same meaning as in section 248A of ITEPA 2003.

Background note

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

Clause 10: 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.

Clause 11: Beneficiaries of tax-exempt employer-provided pension benefits

Summary

1. Employers often provide death and retirement benefits to employees. This clause will amend the tax exemption which provides for employer paid premiums into life assurance products and employer contributions to certain overseas pension schemes to be paid free of tax. Currently, premiums and contributions are only exempt from tax if the beneficiary is the employee or a member of the employee's family or household. This clause will allow the 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 any individual, or a charity, to be the beneficiary of the employee's death 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 benefits through a life assurance policy or provides retirement benefits through certain overseas pension schemes, 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 clause premiums paid into these schemes by the employer are tax exempt if the 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 measure modernises and amends the exemption to ensure the tax charge remains relevant and fair. Extending the exemption to include any individual as a beneficiary allows the employee to nominate their preferred recipient irrespective of their relationship in law. The amended exemption will also allow employees to nominate a registered charity, which is consistent with existing government policy of providing tax relief on charitable donations.

Clause 12: Tax treatment of social security income

Summary

1. This clause confirms the tax treatment of four existing and five new social security benefits.

Details of the clause

2. Subsection (1) provides for amendments to Part 10 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

3. Subsection (2) amends Table A in section 660 to add carer's allowance supplement to the list of taxable UK benefits.

4. Subsection (3) amends section 658(4) to include carer's allowance supplement in the list of taxable benefits that are subject to section 661.

5. Subsection (4) amends section 661(1) to include carer's allowance supplement in the list of taxable benefits for which the amount of taxable social security income is the full amount of the benefit the recipient is entitled to receive in the tax year.

6. Subsection (5) amends Part 1 of Table B in section 677(1) to add the following to the list of UK social security benefits payable under primary legislation and wholly exempt from tax: best start grant, discretionary housing payment, discretionary support award, funeral expense assistance, flexible support fund payment, payment under a council tax reduction scheme: England and young carer grant.

7. Subsection (6) amends the heading of Part 1 of Table B in consequence of the insertion of the entry for Norther Ireland discretionary support award.

8. Subsection (7) amends Part 2 of Table B in section 677(1) to add the following to the list of social security benefits payable under regulations and wholly exempt from tax: discretionary housing payment and payment under a council tax reduction scheme: Wales.

9. Subsection (8) amends Part 1 of Schedule 1 to ITEPA 2003 to update the list of abbreviations of Acts and instruments.

Background note

10. The Scottish government is introducing five new social security payments: young carer grant; best start grant; funeral expense assistance; discretionary housing payments; and carer's allowance supplement.

11. The government is also confirming the tax treatment of another four social security benefits:

    - the council tax reduction scheme, discretionary housing payments and the flexible support fund, overseen by the UK Government

    - the discretionary support scheme, overseen by the Northern Ireland Executive

12. Social security benefits are administered by a number of different UK government departments and the devolved administrations. The tax treatment of social security benefits is legislated for within income tax legislation. The tax treatment of new benefits should be confirmed when each one is introduced.

13. The Scottish government's fiscal framework underpins the powers over tax and welfare that are devolved to Scotland through the Scotland Act. This states that "any new benefits or discretionary payments introduced by the Scottish Government will not be deemed to be income for tax purposes, unless topping up a benefit which is deemed taxable such as Carer's Allowance".

Clause 13 and Schedule 1: Disposals by non-UK residents etc

Summary

1. This clause and Schedule introduce from 6 April 2019 new provisions to bring gains from disposals of 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.

Details of the clause

2. Clause 13 introduces Schedule 1 to Finance (No. 3) Bill 2018. Schedule 1 relates to disposals of interests in assets relating to UK land by non-UK residents and related disposals of UK land by collective investment vehicles; brings about the abolition of charge to tax on ATED-related gains; and brings non-UK resident companies into charge to corporation tax on their gains.

Details of the Schedule

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

3. Paragraphs 1 and 2 of Schedule 1 substitute a new Part 1 of the 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 the Act, and also includes new provisions to bring disposals by non-UK residents of UK land into charge and to charge non-UK resident companies to corporation tax.

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

5. 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. The new section 1K also reflects an amendment to increase the annual exempt amount by the consumer prices index to £12,000 for the tax year 2019-2020. The new section 2 applies to non-UK resident companies as it applies to UK resident companies.

    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. Subsection (3)(b) 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 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. Subsection (3)(c) 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 provides that the conditions for section 1A(3)(c) to apply, the 75% test and the substantial interest test, are determined in accordance with the new Schedule 1A to TCGA 1992.

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 1K restates the existing provisions dealing with the annual exempt amount and provides that the amount has been increased by the consumer prices index to £12,000 for the tax year 2019-2020.

g. 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(3) of the new Part 1 as arising to a UK permanent establishment of a non-UK resident company.

h. 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(3) of the new Part 1 as arising to a UK permanent establishment of a non-UK resident company.

6. 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.

7. Paragraph 4 inserts section 36A into TCGA 1992, which introduces 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 5 April 2019.

8. 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.

9. Paragraph 8 inserts a new section 103DB to TCGA 1992 to sign-post the new Schedule 5AAA to TCGA 1992 in Chapter III of Part III of TCGA 1992.

10. Paragraph 9 inserts new sections 271ZA and 271ZB into TCGA 1992, restating provisions previously contained in section 11 of the old Part 1 of TCGA 1992.

11. Paragraphs 10 and 11 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 15 of this Schedule.

12. Paragraph 12 omits Schedule C1 to TCGA 1992, which contained definitional and other provisions relating to the repealed sections 14F and 14G of TCGA 1992, which provided for elections for non-resident CGT not to apply. These definitions are saved for the new Schedule 4AA as they applied on 5 April 2019, in order to establish which re-basing provisions will apply.

13. Paragraph 13 substitutes a new Schedule 1 to TCGA 1992, restating the existing law relating to UK resident individuals not domiciled in the UK.

New Schedule 1A to TCGA 1992

14. Paragraph 14 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)(b), 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 requires this Schedule to be read together with paragraphs 5 and 6 of the new Schedule 5AAA to TCGA 1992.

    c. Paragraph 3 of Schedule 1A contains the basic rule for determining 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, and includes entities deemed to be companies, such as in the new Schedule 5AAA to TCGA 1992 bringing offshore collective investment vehicles into the definition of company for this and other purposes. Paragraph 5 of the new Schedule 5AAA provides for co-ownership authorised contractual schemes to be treated as having shares in a company for the purposes of considering whether a person has an interest in an asset deriving its value from UK land.

d. Paragraph 4 of Schedule 1A defines which assets of a company are "qualifying assets" to consider for the basic rule in paragraph 3. 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 5 of Schedule 1A is an exception 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 at least 90% of the UK land being disposed of is being used in, or if not currently being used was acquired for the use in, the course of a trade.

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

g. Paragraph 6 of Schedule 1A applies in the circumstances where two or more companies 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 3.

h. If, when the assets of the companies are aggregated, the 75% property richness test in paragraph 3 is not met, none of those companies will be taken to meet that test. This is intended to give the effect of a holding company being disposed of which would not be UK property rich if paragraph 3 were applied to it and its subsidiaries, but the facts of the disposal are that those hypothetical subsidiaries are disposed of separately but in linked disposals. Whether disposals are linked is defined by paragraph 6(4).

i. To be linked, the arrangement must involve a disposal by one person or by one set of connected persons, to another person or set of connected persons. "Connected" takes the section 286 TCGA 1992 meaning, but partners are considered to be connected even where the disposal is pursuant to bona fide commercial arrangements.

j. Paragraph 7 of Schedule 1A defines an interest in UK land for Part 2 of this Schedule, referring back to section 1C

k. Paragraph 8 of Schedule 1A provides that a person disposing of a right or interest in an entity that meets the 75% property richness test in paragraph 3 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. The provisions in this Part are subject to paragraphs 6 and 7 of the new Schedule 5AAA in cases relating to collective investment vehicles.

l. Paragraph 9 of Schedule 1A defines the ways in which a 25% investment may be achieved for the purposes of the provision in the new sections 1D(1)(b) and 2B(4)(b), and in this Part.

m. Paragraph 10 of Schedule 1A attributes rights and interests of certain connected parties to a person when considering whether that person meets the test in section 1D(1)(b) and in this Part.

n. Paragraph 11 of Schedule 1A contains anti-avoidance provisions relating to this Schedule.

New Schedule 1B to TCGA 1992

15. Paragraph 15 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, and reflects the principles in Schedules B1 and BA1 TCGA 1992, which were omitted by paragraphs 10 and 11 respectively.

New Schedule 1C to TCGA 1992

16. Paragraph 16 inserts Schedule 1C to TCGA 1992, containing rules for the application of section 1K of the new Part 1 (Annual Exempt Amount) to settled property cases.

New Schedule 4AA to TCGA 1992

17. Paragraph 17 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 re-basing to the market value of the asset at 5 April 2019, but an election can be made under paragraph 4 for the normal 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 where fully chargeable before 6 April 2019.

        i. The default position in this Part under paragraph 7 of Schedule 4AA is re-basing to the market value of the asset at 5 April 2015, but an election can be made under paragraph 8 for the normal 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 re-basing to the market value of the asset at 5 April 2015 and 5 April 2019. If the asset was acquired between those dates, the re-basing to 5 April 2015 does not apply. The relevant commencement provisions interact to bring the relevant parts of any gain into charge, or allows the relevant parts of any loss to accrue, from the appropriate dates.

  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. 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.

Part 5 of Schedule 4AA

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 after 5 April 2019, 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 after 5 April 2019, 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, which may either be in a tax return or in a return under the new Schedule 2 to the Finance Act 2019. An election in a return under Schedule 2 may be revoked by providing a new election in a normal tax return, but an election made in a normal tax return is irrevocable.

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

18. Paragraph 18 of Schedule 1 omits Schedule 4ZZA to TCGA 1992, which provided for the tax on ATED-related chargeable gains that is abolished under clause 13.

19. Paragraph 19 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.

20. Paragraph 20 omits Schedule 4ZZC to TCGA 1992. The relevant provisions still applicable are adapted into the new Schedule 1B inserted by paragraph 14.

New Schedule 5AAA to TCGA 1992

21. Paragraph 21 inserts a new Schedule 5AAA to TCGA 1992, which contains rules pertaining to UK property rich collective investment vehicles, and interacts with the new Schedule 1A, to make provisions relating to disposals of interests in collective investment vehicles and disposals by collective investment vehicles in relation to UK land.

Part 1 of new Schedule 5AAA to TCGA 1992

a. Paragraph 1 of Schedule 5AAA contains the key expressions for the Schedule, and provides for a definition of "collective investment vehicle", to which the Schedule applies. "Participant" and "unit" are also defined for the purposes of the Schedule. Paragraph 1(2) provides a definition to include companies that are broadly equivalent to UK Real Estate Investment Trusts (as within Part 12 of the Corporation Tax Act 2010 (CTA 2010)), but is not a definition of such to be relied upon elsewhere.

b. Paragraph 2 of Schedule 5AAA defines the nexus by which different types of collective investment vehicle are defined as "offshore" collective investment vehicles. Paragraph 4, Part 3, and Part 4 rely on this definition.

c. Paragraph 3 of Schedule 5AAA provides for how to determine whether an entity is UK property rich at any given time by looking at a theoretical disposal of interests in it. Paragraph 3(1)-(3) apply to collective investment vehicles, and paragraph 3(4)-(5) to a company for the purposes of companies that are not collective investment vehicles.

Part 2 of new Schedule 5AAA to TCGA 1992

d. Paragraph 4 of Schedule 5AAA applies to offshore collective investment vehicles, as defined in paragraphs 1 and 2, and provides both for the capital gains treatment of such vehicles and for assumptions to be made from the perspective of non-UK resident investors in such vehicles.

e. Paragraph 4(1) to (3) provides that all offshore collective investment vehicles apart from partnerships or those that are already companies are to be assumed to be companies, and their units to be shares, for the purposes of considering disposals of land by non-UK residents under the new sections 1A(3)(b) and (c), and 2B(4) of TCGA 1992, for any other related provisions of the Taxes Acts, and for Schedule 5AAA.

f. This means that an offshore collective investment vehicle will be charged to corporation tax on its gains on disposals of UK land. A non-UK resident investor in an offshore collective investment vehicle will be treated as having an interest in the shares of a company for the purposes of considering whether the new rules on indirect disposals of UK property rich companies in the new Schedule 1A to TCGA 1992 apply.

g. Paragraph 4(4) makes this treatment subject to a transparency election under paragraph 8.

h. Paragraph 4(5) and (6) dis-applies the provisions of sections 99 and 103D TCGA 1992 where an offshore collective investment scheme would also fall within those provisions. Calculation and related rules in respect of tax transparent funds under section 103D are retained.

i. Paragraph 5 of Schedule 5AAA provides that purely for the purposes of considering whether a non-UK resident has an interest in a UK property rich company, units in a co-ownership authorised contractual scheme are treated as being shares in a company.

j. Paragraph 6 of Schedule 5AAA removes the exemption from charge on indirect disposals for those holding a less than 25% interest in a company (provided for in Part 3 of the new Schedule 1A) in cases where the investment is in, or by, a collective investment vehicle. This paragraph applies to investment in any collective investment vehicle, both UK and offshore.

k. Paragraph 6(1) sets out a two-part test: that the disposal must be of a UK property rich asset, and that the disposal must have an appropriate connection to a collective investment vehicle. These conditions are defined in paragraph 6(3) to (6). This paragraph is subject to paragraph 7.

l. Paragraph 6(2) is the operative provision removing the 25% ownership exemption in Part 3 of the new Schedule 1A by saying that where the conditions in this paragraph are met the disponer will always meet the substantial indirect interest requirement for the purposes of the new sections 1A(3)(c) or 2B(4)(b) of TCGA 1992.

m. Paragraph 6(3) and 6(4) provides for the removal of the 25% ownership exemption from the perspective of those investing in collective investment vehicles with a connection to UK land.

   i. Paragraph 6(3)(a) (with 6(1)(a)) provides that there is no 25% ownership exemption for those disposing of an interest in a collective investment vehicle that is UK property rich.

ii. Paragraph 6(3)(b) (with 6(1)(a)) provides that there is no 25% ownership exemption for those disposing of an interest in a company that is UK property rich and that derives more than 50% of its value from one or more collective investment vehicles.

iii. Paragraph 6(4) (with 6(1)(a)) provides that there is no 25% ownership exemption for those disposing of an interest in UK property rich company (even if it is not a collective investment vehicle) where the disposal is made in respect of the persons investment in a partnership which is a collective investment vehicle. This provision of paragraph 6 is not subject to paragraph 7.

n. Paragraph 6(5) and (6) provides for the removal of the 25% ownership exemption in respect of disposals by collective investment schemes themselves or by companies in their ownership.

i. Paragraph 6(5) (with 6(1)(a)) provides that there is no 25% ownership exemption for a collective investment scheme making a disposal of a UK property rich company. This sub-paragraph applies where the collective investment scheme is a company (including because of the new paragraph 4 of Schedule 5AAA), to distinguish the case from where the collective investment scheme is a partnership (for which, see paragraph 6(6)).

ii. Paragraph 6(6) (with 6(1)(a)) provides that there is no 25% ownership exemption where a company (which is not itself a collective investment vehicle) makes a disposal of a UK property rich company, and 50% or more of the investment in the disponer company is by collective investment vehicles that are UK property rich.

iii. Establishing the percentage of investment is explained in paragraphs 6(7) and (8), and relies on the tracing provisions in the new paragraph 10 of Schedule 1A. This sub-paragraph therefore applies to disposals by companies that are predominantly owned by one or more collective investment vehicles, including (but not limited to) by collective investment vehicles that are partnerships.

o. Paragraph 7 of Schedule 5AAA prevents paragraph 6 from removing the exemption from charge on indirect disposals for those holding a less than 25% interest in a company (provided for in Part 3 of the new Schedule 1A), in cases where the collective investment vehicle meets two conditions as below.

p. Paragraph 7 does not apply to disposals under paragraph 6(4), where the interest is held through a partnership collective investment vehicle; so all such disposals of a UK property rich vehicle will be considered to have a UK substantial indirect interest.

q. The first condition, under paragraph 7(2)(a) and (3), is that the prospectus made available to investors in the collective investment vehicle (or vehicles for paragraph 6(6)) would not lead the investors to believe the vehicle to be likely to hold more than 40% of its assets in UK land on an ongoing basis. This is to prevent the removal of the 25% ownership exemption where a collective investment vehicle meets the mechanical test in paragraph 6(1)(a) at a given point in time, but is not assumed by its investors to be likely to be UK property rich on a general basis.

r. The second condition, under paragraph 7(2)(b) and (5)-(6), is that the vehicle must either meet the genuine diversity of ownership test or be non-close as defined in paragraph 46 of this Schedule.

Part 3 of new Schedule 5AAA to TCGA 1992

s. Paragraph 8 of Schedule 5AAA is the election for offshore collective investment vehicles which are transparent for income tax purposes to elect to be treated as partnerships for the purposes of TCGA 1992. The election also applies for capital gains related reporting provisions of the Taxes Management Act 1970, including the making of returns under section 12AA of that Act; this does not oblige the reporting of information other than relating to capital gains. Transparent for income tax purposes is defined in paragraph 8(7).

t. Paragraph 8(5) provides that an election can be made even where there is no legal certainty whether the collective investment vehicle would not already be transparent for gains.

u. At the point of making the election, the collective investment vehicle must be UK property rich (as assessed under paragraph 3 of this Schedule). In accordance with paragraph 8(6), that condition may also be met where a collective investment vehicle has a prospectus available to investors that, if fulfilled at that point, would lead to the vehicle being UK property rich. "Prospectus" is defined in paragraph 47.

v. Paragraph 8(8) dis-applies sections 99 and 103D of TCGA 1992 in respect of the collective investment vehicle where the election has effect. In accordance with paragraph 4(4) of this Schedule, that paragraph is also dis-applied.

w. Paragraph 9 of Schedule 5AAA provides for the time and manner of the election for transparency under paragraph 8. The election must be made with the consent of all investors at the point of making the election, must be made by notice to HMRC, and must be made within 12 months of the collective investment vehicle first acquiring an interest in UK land (whether a direct interest in the land itself, or an interest in a UK property rich asset).

x. Transitional rules in paragraph 49(2) of this Schedule allow vehicles existing at 6 April 2019 to make an election for transparency before 6 April

2020.

y. An election under paragraph 8 is irrevocable.

z. To prevent complexity of interaction between deemed-transparency and section 212 of TCGA 1992, paragraph 10 of Schedule 5AAA treats an election under paragraph 8 as having no effect from the perspective of any investors in the offshore collective investment vehicle which are insurance companies holding the units for the purposes of their long-term business. The affected insurance companies will continue to hold an interest in the vehicle itself as a capital gains asset rather than in the underlying property of the vehicle. The other investors still consider the vehicle to be a partnership, and the vehicle itself remains transparent for gains (so is not chargeable itself).

aa. Paragraph 11 of Schedule 5AAA provides for a 5 April 2019 rebasing date from the new Part 2 of Schedule 4AA for the underlying assets of the offshore collective investment vehicle from the perspective of its non-UK resident investors. So if the transparency election meant that an investor now held a direct interest in an asset that, in their hands, would otherwise fall into Part 3 or Part 4 of Schedule 4AA, the asset is treated as retaining the 5 April 2019 rebasing date which the disposal of an interest in the vehicle would have had absent the election under paragraph 8.

Part 4 of new Schedule 5AAA to TCGA 1992

bb. Paragraph 12 of Schedule 5AAA allows for the managers of certain collective investment vehicles to make an election for the vehicle and companies it has an interest in to be exempt on gains on disposals of interests in UK land (both direct and indirect disposals).

cc. Paragraph 12 provides cover in two cases:

i. The "Qualifying Fund" (under paragraph 12(2) and (5)), where the manager makes an election on behalf of an offshore collective investment vehicle which is a company (including by reference to paragraph 4), and which must be UK property rich and meet the qualifying conditions in paragraph 13. A company that is within the paragraph 1 definition only by being an Alternative Investment Fund may not make the election. The collective investment vehicle must be an offshore collective investment vehicle as defined in paragraph 2.

ii. The "Qualifying Company" (under paragraph 12(3) and (6)), where the manager makes an election on behalf of either a partnership or a co-ownership authorised contractual scheme, and the election has effect for one or more companies that the entity holds at least a 99% investment in. The company and the collective investment vehicle that holds it between them must meet the qualifying conditions in paragraphs 12 and 13. In the case of the vehicle being a co-ownership authorised contractual scheme paragraph 12(7) dis-applies section 103D TCGA 1992 purely for the purposes of assessing whether the conditions in paragraph 12 (inducing in relation to paragraph 13) are met. The companies owned by the partnership or co-ownership authorised contractual scheme may not be collective investment vehicles.

iii. For a partnership case, the companies must meet the UK property richness test, and for a co-authorised contractual scheme the co-authorised contractual scheme must meet the UK property richness test.

dd. Paragraph 13 of Schedule 5AAA contains the conditions that the qualifying fund or qualifying company need to meet for an election under paragraph 12 to be made.

ee. Under paragraph 13(1) a collective investment vehicle for the purposes of paragraph 12(2) may meet the conditions in paragraph 13 if:

i. it is a collective investment scheme and meets the genuine diversity of ownership condition, or

ii. a company other than because of paragraph 4, its shares are regularly traded on a recognized stock exchange, and it meets the non-close condition (as defined in paragraph 46), or

iii. any collective investment vehicle may meet the conditions by meeting the non-close condition (as defined in paragraph 46) and meeting the UK tax condition in paragraph 13(7).

ff. In the case of a qualifying company under paragraph 12(3), either the collective investment scheme which is invested in the company must meet the genuine diversity of ownership condition, or the company must meet the non-close condition (as defined in paragraph 46) and the UK tax condition in paragraph 13(7).

gg. The genuine diversity of ownership condition is defined in paragraph 13(3), the recognised stock exchange condition in paragraph 13(4), and the non-close condition in paragraph 46.

hh. Paragraph 13(7) provides for the "UK tax condition", which must be met in certain cases by the qualifying fund or qualifying company in order for the election under paragraph 12 to be made. The condition is not met if the person making the election reasonably believes at any given time that more than 25% of the total proceeds of a market value disposal of all of the shares in the vehicle would not be taxable purely because of the provisions of Double Tax Treaties allocating the gains outside of the UK's jurisdiction to tax.

ii. The qualifying conditions in paragraph 13 are part of the "applicable exemption conditions", as defined in paragraph 38. Paragraph 20 provides for the effect of ceasing to meet the applicable exemption conditions: that the election ceases to have effect from that time.

jj. Paragraph 14 of Schedule 5AAA requires that in order for the election to have effect and provide exemption in respect of a given disposal, information regarding disposals in the two years prior to the disposal (or, if shorter, since the fund was constituted) must be provided to HMRC.

kk. Paragraph 15 of Schedule 5AAA provides that information or documents must be provided to an officer of Revenue and Customs in respect of every period of account ending at a time when the election has effect. HMRC may specify what information is to be reported in respect of participants in the fund and what information may be required. The information must be provided in relation to the fund's period of account, and within 12 months of the end of the period of account. This is subject to paragraph 15(8), which provides that for reporting a period of account may not be longer than 12 months.

ll. In the absence of a reasonable excuse, where the requirements of paragraph 15 are not met as regards the provision of information and documents (a breach) a designated officer of HMRC may revoke the election. Where notwithstanding the absence of a reasonable excuse, any breach is considered insignificant it may be ignored. In considering whether a breach is insignificant an officer of Revenue and Customs may take into account the number and seriousness of previous breaches.

mm. Paragraph 16 of Schedule 5AAA provides for exemption from tax on gains on disposals of interests in UK land (both direct and indirect disposals) for companies in which the qualifying fund or qualifying company subject to the paragraph 12 election has an investment. The minimum investment is 40%, and where the investment is less than 100% the exemption is proportionate to the level of investment. Establishing the percentage investment is explained in paragraph 16(5), and relies on the tracing provisions in the new paragraph 10 of Schedule 1A.

nn. Paragraph 17 of Schedule 5AAA specifies the time and manner of an election under paragraph 12. The election must be made by the fund manager to an officer of HMRC, and specify the day from which it is to have effect. If that day is more than 12 months prior to the notice being delivered consent is required from HMRC for the election to take effect from that date. Paragraph 17(6) provides that such consent may be given generally (for example, in guidance) or in relation to a specific case.

oo. Paragraph 18 of Schedule 5AAA provides that a designated officer of HMRC may, by notice to the relevant fund manager, revoke an election under paragraph 12 if the designated officer considers it appropriate to do so in order to protect the public revenue. Paragraph 18 also provides for a fund manager to revoke the election by notice to an officer of HMRC. See also paragraph 22, which provides for a deemed disposal and reacquisition of all participators' interests in the relevant fund or relevant company where the election ceases to have effect.

pp. Paragraph 19 of Schedule 5AAA provides for the time and manner of the notice from HMRC under paragraph 18, and allows for an appeal to be made.

qq. Paragraph 20 of Schedule 5AAA provides that if the fund ceases to meet the applicable exemption conditions, as defined in paragraph 38, then an election under paragraph 12 ceases to have effect. See, however, paragraphs 27, 28 and 30 regarding periods when the election continues to have effect despite the conditions not being met.

rr. Paragraph 21 of Schedule 5AAA provides for a given participant to have a deemed disposal of all of their units in a qualifying fund or, as the case may be, shares in a qualifying company, immediately before the point where they receive payments of a certain kind; and to have reacquired those units or shares immediately after the payment. Any gain arising on this deemed disposal is subject to the rules in paragraph 23. Because of paragraph 33(3), paragraph 21 does not apply to investors listed in paragraph 33(4).

ss. Paragraph 22 of Schedule 5AAA provides for all participants to have a deemed disposal and reacquisition of all of their units in a qualifying fund or, as the case may be, shares in a qualifying company the election under paragraph 12 ceases to have effect.

tt. The deemed disposal under paragraph 22 occurs immediately before the election ceases to have effect Any gain arising on this deemed disposal is subject to the rules in paragraph 23. See also paragraphs 27, 28, and 29 regarding periods when the election continues to have effect despite the conditions not being met.

uu. Paragraph 23 to Schedule 5AAA provides for gains arising in the case of certain deemed disposals to be deferred and brought into charge when actual disposals of a participator's interests in the qualifying fund or qualifying company are made. In the case of a deemed disposal under paragraph 21 any balance of gains remaining is brought into charge when the fund winds up. In the case of a deemed disposal under paragraph 22 any balance of gains remaining is brought into charge when the fund winds up or, if sooner, three years after the deemed disposal. The three years is subject to paragraphs 28 and 29.

vv. Paragraph 24 to Schedule 5AAA provides for the market value disposal and reacquisitions under paragraphs 21 or 22 to reflect relief for any costs the fund manager would reasonably expect to incur had there been an actual disposal, such as in the winding up of the fund.

ww. Paragraph 25 to Schedule 5AAA provides for a requirement on fund managers in the case of an election under paragraph 12 to notify participators of certain circumstances where a deemed disposal has occurred and the participators may not be aware of the disposal.

xx. Paragraph 26 to Schedule 5AAA provides for an appealable penalty on the fund manager if they fail to make a notification under paragraph 25.

yy. Paragraph 27 to Schedule 5AAA provides for a temporary period of up to 30 days which a qualifying fund or qualifying company may fail to meet any of the applicable exemption conditions apart from UK property richness, but still maintain the exemption election under paragraph 12. This will be the case where the fund manager expects the failure to last for no more than such a temporary period and where the conditions are met at the end of that temporary period. There is no deemed disposal on ceasing to meet the conditions if this paragraph applies. If a qualifying fund or qualifying company ceases to meet the relevant applicable exemption conditions for a fifth time in a rolling 12 month period, this provision will not take effect.

zz. Paragraph 28 to Schedule 5AAA provides for a temporary period of up to nine months during which a qualifying fund or qualifying company may fail to meet the applicable exemption conditions but still maintain the exemption election under paragraph 12. This will be the case where the fund manager expects the failure to last for no more than such a temporary period and where the conditions are met at the end of that temporary period. The deemed disposal under paragraph 22 will still occur at the point where the conditions are not met, and any gain will be subject to paragraph 23.

aaa. Paragraph 29 to Schedule 5AAA provides that the bringing into charge of the balance of a gain under paragraph 23(7) is deferred where a qualifying fund or qualifying company comes to meet the applicable exemption conditions again within the nine months provided for in paragraph 28.

bbb. Paragraph 30 to Schedule 5AAA maintains the exemption during a period when a qualifying fund or qualifying company no longer meets the applicable exemption conditions but the fund manager is actively taking steps to wind up the fund.

ccc. Paragraph 31 to Schedule 5AAA provides for a proportionate, market value re-basing of qualifying UK land assets of a company where it is disposed of by a qualifying fund or qualifying company, or a company owned by such a fund or company, and the assets being re-based have been covered by the election (whether wholly or to an appropriate proportion in accordance with paragraph 16(4)) for a period of 12 months prior to disposal.

ddd. Paragraph 31(2)(a) and (4) define the proportion of the asset re-based by considering the treatment of a notional gain of £100 under paragraph 16 of this Schedule and the appropriate proportion of that gain which would be exempt in accordance with paragraph 16(4).

eee. Paragraph 32 of Schedule 5AAA provides for a proportionate, market value re-basing of qualifying UK land assets of a fund where the fund leaves the paragraph 12 exemption regime other than in the disqualifying circumstances described in paragraph 32(1)(c) and (6). Paragraph 32(3)(a) and (5) defines the proportion of the asset re-based by considering the treatment of a notional gain of £100 under paragraph 16 of this Schedule and the appropriate proportion of that gain which would be exempt in accordance with paragraph 16(4).

fff. Paragraph 33 of Schedule 5AAA provides for a company (other than one that is also a collective investment vehicle) to have exemption on any gains on disposals of an interest in a qualifying fund or qualifying company under paragraph 12 of this Schedule, if that company is wholly owned by persons listed in paragraph 33(4). These persons are those, as in paragraph 30A of Schedule 7AC to TCGA 1992, who are themselves not chargeable on gains or subject to special regimes for gains. The persons must be direct participators in the company.

ggg. Paragraph 34 of Schedule 5AAA limits the application of the exemption under paragraph 16 where the company under that paragraph would also benefit from exemption under Schedule 7AC to TCGA 1992, and the reason for both exemptions is the same ownership chain. Where the investors in the paragraph 12 qualifying fund or company which provides the company with exemption under paragraph 16 are also responsible for the company having Substantial Shareholdings Exemption under paragraph 3A of Schedule 7AC (qualifying institutional investors), the exemption provided because that company is ultimately owned by Qualifying Institutional Investors take priority and displaces all but any excess exemption provided because of paragraph 16. A company owned by two or more distinct investors who each provide a source of exemption may combine those exemptions (see paragraph 37).

hhh. Paragraph 35 of Schedule 5AAA prevents a company that is a UK REIT or part of a UK REIT group under Part 12 of CTA 2010 from benefitting from the exemption under Part 4 of Schedule 5AAA for so much of the gain as is exempt under section 535 CTA 2010 or the new section 535A of CTA 2010. Sections 535 and 535A will apply to assets within the REITs Property Rental Business, where exemption under Part 4 of Schedule 5AAA will be in disposals of UK land. This paragraph does not apply to companies where the company is a part of the REIT Group because of a joint venture election under sections 586(1) or 587(1) CTA 2010.

iii. Paragraph 36 of Schedule 5AAA applies where a company that is a member of a UK REIT group under section sections 586(1) or 587(1) CTA 2010 (a joint venture company) is also in a fund making an election under paragraph 12 of this Schedule. If the principal company of the UK REIT group is also a part of the same fund, the exemption provided by Part 4 of this Schedule is reduced by the exemption provided under the REIT rules because of sections 535 or the new 535A of CTA 2010.

jjj. Paragraph 37 of Schedule 5AAA provides for how different exemptions align where they do not fall within paragraphs 34, 35, or 36, and limit the total exemption that can be provided to the total amount of the gain or loss.

kkk. Paragraphs 38 to 42 of Schedule 5AAA contain various definitions for Part 4 of the Schedule.

Part 5 of new Schedule 5AAA to TCGA 1992

lll. Part 5 of Schedule 5AAA provides for powers to make regulations in order to make provision for collective investment vehicles to report and pay on behalf of investors.

Part 6 of new Schedule 5AAA to TCGA 1992

mmm. Paragraph 46 of Schedule 5AAA provides for the non-close test in paragraphs 7 and 13, and related definitions. The list of Qualifying Investors is based on the list of Institutional Investors in section 528(4A) of CTA 2010, but with modifications: that certain of the types of investor on the section 528(4A) list must themselves meet a non-close or genuine diversity of ownership test; and adding qualifying funds or qualifying companies making an election under paragraph 12 of this Schedule. Qualifying Investors may be indirect participants only if they hold their interest through bodies corporate, and not deemed companies.

nnn. Paragraph 47 of Schedule 5AAA contains various definitions for the purposes of the Schedule.

ooo. Paragraph 48 of Schedule 5AAA contains powers to make regulations in relation to UK property rich collective investment vehicles.

Part 7 of new Schedule 5AAA to TCGA 1992

ppp. Paragraph 49 of Schedule 5AAA contains transitional provisions relating to the election for transparency in paragraph 8 of this Schedule. Paragraph 49(4) provides for the effect of the election from the perspective of persons already holding a chargeable asset for TCGA 1992 at commencement of the rules.

qqq. Paragraph 50 of Schedule 5AAA contains transitional provision relating to the election for exemption in paragraph 12 of this Schedule.

Part 2: Consequential amendments

22. Many of the consequential provisions in Part 2 of Schedule 1 relate to restatement of the current law in changing references from old to new sections, and are not explained in detail in this note.

23. Many of the consequential provisions in Part 2 of Schedule 1 arise because non-UK residents are now chargeable on disposals of all UK land, direct and indirect, and so provisions that previously applied in reference to direct disposals of residential UK land now need to apply using updated definitions. No further explanation of these paragraphs is given in this note.

24. Some of the consequential provisions in Part 2 of Schedule 1 arise as a consequence of non-UK resident companies becoming chargeable to corporation tax instead of capital gains tax, and so for example references to eligibility to relief on the basis of UK residence are changed to being chargeable to UK tax on the gain. No further explanation of these paragraphs is given in this note.

25. Some of the consequential provisions are related to the abolition of ATED-related CGT. No further explanation of these paragraphs is given in this note.

26. Paragraph 113 makes changes to section 533 CTA 2010 in order to ensure that the new section 535A of CTA 2010 operates correctly with reference to disposals of non-UK resident companies.

27. Paragraph 114 inserts a new sections 535A and 535B into CTA 2010. Section 535A provides for UK REITs and companies that are members of UK REIT groups to be exempt on disposals of companies which are UK property rich assets within the meaning in the new Schedule 1A to TCGA 1992.

28. Section 535B provides for losses and deficits from the residual business arising on disposals made prior to 6 April 2019 to be available to be offset against gains that would otherwise be exempt under the new section 535A CTA 2010, in order that such an amount of gains as are offset need not be factored into the Property Income Distribution.

29. Paragraphs 115, 116, and 117 align the new section 535A CTA 2010 with existing provisions relating to the exemption provided by section 535 CTA 2010.

Part 3: Commencement and transitional provisions etc

30. Paragraph 118 contains the commencement provisions for this Schedule.

31. Paragraph 119 provides 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 118(4) the definitions in the repealed Schedule 4ZZB to, and section 2B of, TCGA 1992 apply as they did before repeal.

32. Paragraphs 120, 122, and 123 provide and relate to powers for HM Treasury to make regulations by negative resolution to ensure that the re-statement of existing provisions does not affect the continuity or effect of the law. These include the making of transitional and savings provisions where necessary to ensure changes (such as moving companies from Capital Gains Tax to Corporation Tax) proceed as intended; allow changes to primary or secondary legislation to cover consequential

amendments that might have been missed; and ensure that the continuity of the law is undisturbed, and no meanings changed.

33. Paragraph 121 is a continuity provision relating to the repealed parts of TCGA 1992 and the restatements enacted by this Schedule.

Background note

34. This clause and Schedule build on recent changes to the taxation of gains arising on the disposal of land and property.

35. 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.

36. Prior to that, in 2013, certain persons (mainly companies), wherever resident, became chargeable to capital gains tax on gains arising on disposals of residential property that were chargeable to the annual tax on enveloped dwellings (ATED-related gains).

37. 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. A response document and draft legislation were published in July 2018. This clause and Schedule 1 give effect to these proposals, including the abolition of the charge to ATED-related CGT.

Clause 14 and Schedule 2: Disposals of UK land etc: payments on account of capital gains tax

Summary

1. This clause and Schedule extend from 6 April 2019 existing capital gains tax (CGT) reporting and payment on account obligations on non-UK residents disposing of UK property to include new interests chargeable to tax; and also introduce from 6 April 2020 reporting and payment on account obligations for residential property gains chargeable on UK resident persons and UK branches and agencies of non-UK resident persons.

Details of the clause and Schedule

2. Clause 14 introduces Schedule 2, which relates to returns and payments on account for the purposes of CGT in respect of disposals of UK land.

Schedule 2

Part 1: Returns and Payments on Account: Disposals of UK Land etc.

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

4. Paragraph 1(1)(a) with paragraph 2(1) 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).

5. Paragraph 1(1)(b) with paragraph 2(2) 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.

6. Paragraph 1(2) prescribes disposals that the Schedule does not apply to. It excludes disposals in certain circumstances where neither a gain nor a loss arises or where any gain would be exempt. Paragraph 1(3) provides that the excluded disposals may be amended by Treasury order.

7. Paragraph 3 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 paragraph 17(2)).

8. Paragraph 3(2) 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.

9. Paragraph 4 provides that a return is not required to be made when the disposal is one to which paragraph 1(1)(b) applies and, under paragraph 6, no amount is due to be paid on account.

10. Paragraph 5 provides that a return is not required to be made when 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.

11. Paragraph 6 provides that a person who has to make a return under paragraph 3 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 7). The amount payable is the amount of tax notionally chargeable that exceeds any previous amounts paid under paragraph 6 in respect of the tax year.

12. Paragraph 7 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.

13. Paragraph 8 provides that where an amount of tax notionally chargeable (as determined by paragraph 7) is less than the amounts previously paid on account for the tax year concerned then the difference is repayable to the person.

14. Paragraph 9 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 3 securing the application of the repayment provisions at paragraph 8.

15. Paragraph 10 provides that a return is not required to be made when the disposal has an appropriate connection to a collective investment scheme, as defined in paragraph 6(3) of new Schedule 5AAA of the Taxation of Chargeable Gains Act (TCGA) 1992, and, under paragraph 6, no amount is due to be paid on account.

16. Paragraph 11 provides that where a collective investment scheme has made an election under paragraph 8 of new Schedule 5AAA TCGA 1992 to be treated like a partnership, but made a disposal of property which is subject to the requirements to make a return under paragraph 3 before the election, the completion of that disposal is treated as occurring on the date of the election for the purposes of the obligations under Part 1 of this Schedule.

17. Paragraph 12 provides that where a deemed disposal arises to a person under paragraph 21 or 22 of new Schedule 5AAA TCGA 1992, the disposal is treated for the purposes of Part 1 of this Schedule as completing on the later of the date the deemed

gain is treated as accruing to the person and the date the notification under paragraph 25 of Schedule 5AAA TCGA 1992 is given to the person.

18. Paragraph 13 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.

19. Paragraph 14 provides for the making of reasonable expectations and estimates.

20. Paragraph 14(1) provides that anticipated future events can be taken into account when determining whether the Schedule applies to a disposal.

21. Paragraphs 14(2) and (3) provide for the purposes of calculating the amount payable on account that any claim, election of notice has been made where it is reasonable to expect that one will be made or given. This does not affect any requirement to make the claim, election or notice in a self-assessment return or in another way, nor the time by when it is to be made.

22. Paragraphs 14(4) and (5) provide that reasonable estimates can be made of an individual's taxable income for the year, and of valuations and apportionments, where it is reasonable for the person to do so based on the circumstances and the person's knowledge at the time.

23. Paragraph 15 provides that where an expectation or estimate under paragraph 14 changes after being included in a return, a further return may be delivered under paragraph 3 securing the application of the repayment provisions at paragraph 8. For the purpose of determining the amount of tax notionally chargeable under paragraph 7 a new disposal is deemed to take place and the actual disposal is ignored.

24. Paragraph 16 prescribes the contents of a return made under this Schedule.

25. Paragraph 17 provides definitions for Part 1. Paragraph 17(3) ensures that concepts (such as 'disposal') within, and reliefs provided by, 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)).

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

26. Paragraph 18 provides that a person is not required to give HM Revenue & Customs (HMRC) notice of liability to CGT by virtue of a chargeable gain arising on a disposal to which the Schedule applies. This is provided that a return under paragraph 3 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.

27. Paragraph 19 applies the amendment rules for self-assessment returns to returns

made under paragraph 3. Amendments are permitted only so far as the return could have included the amendment by reference to things already done. Where a self-assessment return that takes account of the disposal is or is due to be filed, amendments can only be made to returns under paragraph 3 up to the earlier of the filing date for the self-assessment return and the date it is filed. Where no self-assessment return is due to be filed, the usual amendment time limit of one year after the 31 January following the tax year applies.

28. Paragraph 20 provides that provisions relating to enquiries into self-assessment tax returns and repayments during those enquiries apply in a similar way for and during enquiries into returns made under paragraph 3.

29. Paragraph 21 provides that provisions relating to the amendment of self-assessment returns during an enquiry and the making of payments after an amendment or correction apply in a similar way to returns made under paragraph 3.

30. Paragraph 22 provides that provisions relating to the determination of tax by HMRC where no self-assessment return is delivered apply in a similar way to returns that are not delivered under paragraph 3.

31. Paragraph 23 provides that provisions relating to assessments where a loss of tax is discovered in relation to self-assessment returns apply in a similar way to returns made under paragraph 3.

32. Paragraph 24 provides definitions for Part 2.

Part 3: Consequential amendments

33. Paragraph 25 makes consequential amendments to TMA1970.

34. Paragraph 26 makes consequential amendments to TCGA 1992.

35. Paragraph 27 makes consequential amendments to Schedule 24 to the Finance Act 2007 (penalties for errors).

36. Paragraph 28 makes consequential amendments to Schedule 36 to the Finance Act 2008 (information and inspection powers).

37. Paragraph 29 makes consequential amendments to Schedule 55 to the Finance Act 2009 (penalty for failure to make returns).

38. Paragraph 30 makes consequential amendments to Schedule 56 to the Finance Act 2009 (penalty for failure to make payments on time).

39. Paragraph 31 provides that interest applies to late payments on account and amounts that are repayable under paragraph 8.

40. Paragraph 32 provides for the commencement of Part 3. Paragraph 32(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

41. 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.

42. 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 give effect to these proposals.

Clause 15 and Schedule 3: Offshore receipts in respect of intangible property

Summary

1. This clause and Schedule introduce a new regime which applies an income tax charge to certain receipts of non-UK resident persons where those receipts are in respect of intangible property. The charge is calculated by reference to the extent to which such receipts are referable to the sale of goods or services in the UK.

Details of the clause

2. Clause 15 introduces Schedule 3 which contains provision about offshore receipts in respect of intangible property.

Details of the Schedule

3. Paragraphs 1 to 3 amend Section 574 and 576 of ITTOIA 2005 by inserting references to new Chapter 2A, which contains the new offshore receipts regime.
4. Paragraph 3(3) inserts a new subsection 1 into Section 576 ITTOIA 2005 which provides that where income falls within Chapter 2 and Chapter 2A, that income will only be dealt with under Chapter 2.
5. Paragraph 4 inserts new Chapter 2A into ITTOIA 2005.

New Chapter 2A

Charge to tax on offshore receipts in respect of intangible property

6. New Section 608A sets out the basic conditions for a tax charge to arise under Chapter 2A.
7. Sub-section 608A(1) provides that a charge will arise under Chapter 2A when UK-derived amounts arise to a person who is not resident in the UK, or in a full treaty territory.
8. Sub-section 608A(2) provides that UK-derived amounts are subject to an income tax charge.
9. Sub-section 608A(3) contains cross-references to definitions and exemptions within Chapter 2A.
10. Sub-section 608A(4) provides that references in the Tax Acts to income from a UK

source include UK-derived amounts.

11. New Section 608B provides that the tax charge applies to the total UK-derived amounts arising in the tax year.

12. New Section 608C provides that a liability under Chapter 2A arises to the person receiving or entitled to the UK-derived amounts of income.

13. New Section 608D sets out the definition of residence for the purposes of Chapter 2A.

14. Sub-section 608D(2) provides that a person is "resident" in a full treaty territory if they are liable to tax by reason of domicile, residence or place of management. However, they are not so resident if they are only liable to tax in relation to income from sources in, or capital located in that territory.

15. Sub-section 608D(3) provides that where a person is resident, either generally or for particular purposes, under the laws of a territory outside the UK, but that territory has no provision for tax residence, then that person is resident in that territory for the purposes of Chapter 2A.

16. New Section 608E sets out a definition of "full treaty territory" for the purposes of Chapter 2A.

17. Sub-sections 608E(1) to (3) provide definitions of a "full treaty territory", a "non-discrimination provision" and "national" for the purposes of Chapter 2A.

18. New section 608F provides a definition of "UK-derived amount" and "UK sales".

19. Sub-sections 608F(1) and (2) define a UK-derived amount as any amount in respect of the enjoyment or exercise of any rights (or rights derived from such rights) in relation to any intangible property which is directly or indirectly referable to UK sales in any tax year, by enabling, facilitating or promoting such UK sales.

20. Sub-section 608F(3) defines UK sales as services, goods or other property provided in the UK, whether to persons in the UK, or otherwise provided in the UK.

21. New section 608G sets out apportionment rules which apply where a person is entitled to amounts in relation any intangible property that enables, facilitates or promotes UK sales and is also entitled to other amounts in relation anything else. Sub-section (3) provides for an apportionment based on the proportion of UK sales to total sales, unless this approach can be shown not to be just and reasonable.

22. New Section 608H sets out a definition of intangible property for the purposes of Chapter 2A. This definition works by excluding certain categories of property, including tangible property and financial assets. It also includes a power for further excluded property to be defined by regulation.

23. New section 608I sets out the treatment of certain partnerships for the purposes of Chapter 2A. It provides that where a partnership is regarded as a separate entity in a

full treaty territory, each of the partners are treated as being resident in that territory. Residence is determined in accordance with Section 608D(2).

24. Sub-section 608I(4) confirms that the specific partnership rule in Section 848, and the other provisions of Part 9 continue to apply for the purposes of Chapter 2A.

Exemptions

25. New section 608J provides an exemption from Chapter 2A where the total UK sales of a person for a tax year do not exceed £10 million. The UK sales of connected persons are also taken into account when applying this de minimis limit.

26. New section 608K provides an exemption from Chapter 2A where all or substantially all of the activity which generates the UK-derived amount takes place in the territory in which the relevant person is resident.

27. Sub-section 608K(1) sets out the conditions that have to be met in order for the exemption to apply. They are

    - That the person under consideration (the "relevant person") is resident in the territory for the whole of a tax year

    - That all or substantially all of the "relevant activity" in relation to the "relevant intangible property" takes place, and has taken place, in that territory

    - That there is no "relevant connection" between the relevant intangible property and any related person.

    - That a claim is made under Section 608K.

28. Sub-section 608K(2) defines relevant intangible property as any intangible property that any UK-derived amount relates to.

29. Sub-section 608K(3) defines relevant activity as any activity by any person in relation to the creation, development or maintenance of the relevant intangible property, or in relation to the generation of income from rights in relation to that intangible property.

30. Subsection 608K(4) defines a relevant connection as one where any relevant intangible property has been transferred from a related person, or derived from anything transferred from a related person, or is derived from intangible property held by a related person.

31. Sub-section 608K(5) applies the definition of related as set out in Section 608T.

32. New section 608L provides an exemption from Chapter 2A where the foreign tax suffered in relation to UK-derived amounts, the "local tax amount", is at least 50% of

the UK tax that would be due under Chapter 2A.

33. Sub-section 608L(1)(c) provides that this tax exemption cannot apply if the local tax amount is determined under designer tax provisions.

34. Sub-section 608L(2) states that the local tax provisions are set out in Section 608M.

35. Sub-section 608L(3) provides a definition of "the corresponding UK tax" as the amount which would be payable under Section 608A, disregarding any reliefs or allowances.

36. Sub-section 608L(4) defines "designer tax provisions" as those which appear in the view of the Commissioners to be designed to enable persons to exercise significant control over the amount of tax paid in relation to UK-derived amounts.

37. New section 608M provides a definition of the local tax amount for the purposes of the tax exemption in Section 608L.

38. Sub-section 608M(2) provides for a just and reasonable apportionment of tax paid between tax paid in respect of UK-derived amounts and tax paid in respect of other amounts.

39. Sub-section 608M(3) provides for the local tax amount to be reduced by an appropriate amount of any repayment of tax, or payment of tax credit, made to any person.

40. Sub-sections 608M(4), (5) and (6) provide for the apportionment of any repayment of tax or payment of tax credit on a just and reasonable basis for the purposes of calculating the local tax amount.

41. New Section 608N provides a regulatory power to amend any exemption within Chapter 2A, or to create additional exemptions.

42. Sub-section 608N(3) provides that such regulations may confer a power to make subordinate legislation, or confer a discretion on any person.

43. Sub-section 608N(4) provides that such regulations can be retrospective, unless they restrict or reduce the scope of existing exemptions, and so impose or increase taxation.

44. Sub-section 608N(5) provides that draft statutory instruments containing such regulations must be approved by a resolution of the House of Commons.

Recovery of tax from person in same control group

45. New Section 608O sets out joint and several liability rules in relation to amounts due under Chapter 2A. This section provides for the recovery of tax due from persons within the same control group as the person on whom the charge is originally

assessed.

46. Sub-section 608O(1) provides that these joint and several liability rules apply where the whole or any part of an amount of income tax assessed on a taxpayer under Chapter 2A, or any interest on that amount, is unpaid 6 months after the "relevant date".

47. Sub-sections 608O(2) and (3) provide that a designated officer of HMRC may give a notice to a "relevant person" requiring payment of the unpaid tax and interest within 30 days. The notice must set out the amount of unpaid tax and interest, the date when it was first payable, and the rights of appeal.

48. Sub-section 608O(4) provides that a notice cannot be issued more than 3 years and 6 months after the relevant date.

49. Sub-section 608O(5) defines a relevant person as any person in the same control group as the taxpayer at any time in the tax year, and applies the definition of "control group" in Section 608S.

50. Sub-section 608O(6) defines the relevant date as

- the date on which a determination of tax has been made under Section 28C TMA 1970 or
- the date on which a return was delivered in cases when a taxpayer's return under Section 8 or 8A TMA 1970 was delivered after the last day for making such a return or
- in any other case, the date that the tax due under Chapter 2A became due and payable

51. Sub-section 608O(7) provides that a notice can be given to any relevant person anywhere in the world, irrespective of whether they are UK resident.

52. Sub-section 608O(8) provides definitions of "assessment" and "designated officer" for the purposes of Section 608O.

53. New Section 608P sets out the effect of a payment notice under Section 608O.

54. Sub-section 608P(2) provides that for the purpose of recovering unpaid tax and interest, the person receiving a notice under section 608O is treated as if

- the income tax assessed on a taxpayer under Chapter 2A had been assessed on that person
- that tax became due and payable at the same time as the original tax assessed under Chapter 2A and

- any payments of the original tax or related interest are treated as having been made against the assessment deemed to have been assessed as a result of the section 608O notice.

55. Sub-section 608P(3) provides that none of the deeming provisions in Section 608P(2) grant a right to the person to appeal against the original assessment on the taxpayer, or against the deemed assessment per Section 608P(2).

56. Sub-section 608P(4) provides that an appeal by the taxpayer against an assessment under Chapter 2A does not have any impact on the liabilities which arise as a result of a notice under Section 608O.

57. New Section 608Q sets out the appeal provisions in relation to notices issued under section 608O.

58. Sub-section 608Q(2) provides that a person can only appeal against a Section 608O notice within 30 days of the date of issue on the grounds that they are not a relevant person.

59. Sub-section 608Q(3) provides that amounts due and payable under a Section 608O notice remain due and payable when an appeal is made.

60. Sub-section 608Q(4) applies Section 56 TMA 1970 in respect of any further appeal, but provides that HMRC can apply to a court or tribunal to direct that section 56(2) TMA 1970 does not apply in respect of anything required to be paid under a Section 608O notice.

61. Sub-sections 608Q(5) and (6) provide that "relevant court or tribunal" has the same meaning as in Section 56 TMA 1970, and that such a court or tribunal can give a direction in relation to Section 56(2) TMA 1970 if it is considered necessary for the protection of the tax revenue.

62. New Section 608R sets out the effect of payments in relation to a notice under Section 608O.

63. Sub-section 608R(2) provides that a person who pays an amount under such a notice may recover it from the taxpayer.

64. Sub-section 608R(3) ensures that where a person is reimbursed by the taxpayer in relation to amounts paid under a Section 608O notice, such payments are disregarded for tax purposes by both the payer and the payee.

65. Sub-sections 608R(4) and (5) ensure that amounts paid under a Section 608O notice and amounts paid by the taxpayer are taken into account in calculating the amount of tax due by virtue of the main Chapter 2A charging provisions and any Section 608O notices.

Meaning of 'control group' and 'related person'

66. New Section 608S sets out a definition of a control group for the purpose of the notice requirement in Section 608O.

67. Sub-section 608S(1) provides that two persons are in the same control group if they are consolidated for accounting purposes, or one has a 51% investment in the other, or a third person has a 51% investment in both persons.

68. Sub-section 608S(2) and (3) provide a definition of consolidated for accounting purposes and "group accounts".

69. Sub-section 608S(4) provides a cross-reference to the definition of a 51% investment in Section 608U.

70. New section 608T provides a definition of related persons for the purposes of the exemption in Section 608K for business activities undertaken within the territory of residence.

71. Sub-section 608T(1)(a) provides that two persons are "related" if they are in the same control group, or one has a 25% investment in the other, or a third person has a 25% investment in both persons.

72. Sub-section 608T(1)(b) provides that two persons are related if within a period of 6 months before or after a particular time one directly or indirectly participates in the management, control or capital of the other, or a third person so participates in both persons.

73. Sub-section 608T(2) applies the definitions of control group, 25% investment and direct or indirect participation as set out in Section 608S, Section 608U and Section 608V respectively.

74. New Section 608U provides a definition of "51% investment" and "25% investment" for the purposes of Section 608P and Section 608Q.

75. Sub-section 608U(1) defines a 51% investment in another person by reference the following factors

- Voting power
- Rights to the proceeds of the disposal of all of the equity of that person
- Rights to a distribution of income between equity holders
- Rights to assets in the event of a winding up.

76. Sub-section 608U(2) adjusts the 51% conditions in sub-section (1) for the purposes of defining a 25% investment.

77. Sub-sections 608U(3) and (4) apply certain conditions in Sections 464 and 465 TIOPA 2010 for the purposes of the 25% and 51% investment conditions.

78. New Section 608V provides a definition of direct and indirect participation in the management, control or capital of another person for the purposes of Section 608T.

79. Subsection 608V(2) applies section 157 TIOPA 2010 to determine whether a person is directly participating in another person.

80. Subsection 608V(3) applies sections 159 and section 160 TIOPA 2010 to determine whether a persons is indirectly participating in another person.

General

81. New section 608W provides an anti-avoidance rule for the purposes of Chapter 2A.

82. Sub-section 608W(1) sets out the following conditions which need to be met in order for the anti-avoidance rule to apply

- A person has entered into an arrangement with a main purpose, or one of the main purposes, of obtaining a tax advantage for that person

- The tax advantage has to be wholly or partly due to either

    a. a charge not arising under section 608A, or

    b. double taxation arrangements (a tax treaty) where the tax advantage is contrary to the object and purpose of the relevant tax treaty.

83. Sub-sections 608W(2) and (3) provide that a tax advantage can be counteracted by just and reasonable adjustments via an assessment, a modified assessment, amendment or disallowance of a claim, or any other mechanism, as appropriate.

84. Sub-section 608W(4) provides that a counteraction in relation to an arrangement involving a tax treaty can be made notwithstanding the general provision in relation to tax treaties in Section 6(1) TIOPA 2010.

85. Sub-section 608W(5) provides a definition of "tax advantage" for the purposes of Section 608T.

86. New Section 608X provides that where section 608A applies to a person for a tax year, Part 6 ITTOIA 2005 (exempt income) and Chapter 1 of Part 14 ITA 2007 do not apply in relation to UK-derived amounts arising to that person in that tax year.

87. New section 608Y applies in relation to appeals against an income tax charge under Section 608A.

88. Sub-section 608Y(2) dis-applies the provisions in Sections 55(3) to (8A) TMA 1970,

(which enable to the postponement of tax payments pending appeals) in relation to appeals against income tax charges under Section 608A.

89. Sub-sections 608Y(3) and (4) provide that, in the case of a further appeal, HMRC can apply to a relevant court or tribunal to direct that tax postponement provisions in section 56(2) TMA 1970 do not apply to the tax charged, if it is considered necessary for the protection of the tax revenue.

90. Sub-section 608Y(5) provides that Section 608Y does not apply in relation to any liability arising from a notice given under the recovery of tax provisions in Section 608O.

Interpretation: general

91. New Section 608Z provides definitions for the purposes of Chapter 2A.

92. Paragraph 5 inserts a reference to section 608N into section 873(3) ITTOIA 2005, which deals with procedure for orders and regulations.

93. Paragraph 6 inserts references to section 608T into Section 157, Section 159 and Section 160 of TIOPA 2010.

94. Paragraph 7 provides that the Chapter 2A rules will have effect for the tax year 2019-20 and subsequent years.

95. Paragraph 8 provides that the anti-avoidance provisions in new Section 608W apply to arrangements made on or after 29 October 2018.

96. Paragraph 9 provides that any amendments to the Tax Acts considered appropriate as a consequence of any provision within this Schedule can be made by Treasury regulations.

97. Paragraph 10 provides that Chapter 2A may be amended by Treasury regulations.

98. Paragraph 11 provides that regulations under paragraph 10 can make any provision that could be made by an Act, and deal with any incidental, supplementary, consequential or transitional provisions, including amending any Act or instrument.

99. Paragraph 12 provides that regulations under paragraph 10 cannot be made after 31 December 2019.

100. Paragraph 13 provides that draft statutory instruments containing regulations under paragraph 10 must be approved by a resolution of the House of Commons.

Background note

101. This clause and Schedule will apply a UK income tax charge to amounts receivable in a low tax jurisdiction in respect of intangible property, to the extent that those amounts are referable to the sale of goods or services in the UK.

102. This will apply to income receivable from both related and unrelated parties, and will be effective from 6 April 2019.

Clause 16 and Schedule 4: Avoidance involving profit fragmentation arrangements

Summary

1. This measure introduces new anti-avoidance legislation to ensure that business profits cannot be taken out of the charge to UK tax by arranging for them to be attributed to offshore persons or entities. The new legislation has effect for value transferred on or after 6th April 2019 (income tax) or 1st April 2019 (corporation tax).

Details of the clause and Schedule

2. Clause 16 introduces Schedule 4.

Schedule 4

3. Paragraph 1(1) states that the Schedule contains new rules designed to counter the tax effects of profit fragmentation arrangements.

4. Paragraph 1(2)(a) defines "the resident party". The resident party is a UK resident who is the subject of the legislation and the party to whom the rules will apply. The resident party can be either an individual or a body corporate.

5. Paragraph 1(2)(b) defines "the overseas party" as an overseas person or entity. The legislation targets business profits that have been taken out of the charge to UK tax. The overseas party therefore cannot be a UK resident. An "overseas person or entity" is defined at paragraph 1(3). The overseas party is the party to whom the value is transferred under profit fragmentation arrangements.

6. Paragraph 1(2)(c) defines a "related individual". 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.

    The related individual is the party that must meet the enjoyment conditions set out at paragraph 4.

7. Paragraph 1(3) defines "an overseas person or entity" as a person abroad within the meaning of s718 Income Tax Act 2007 ("ITA 2007") or a company, partnership, trust or other entity or arrangements established or having effect under the law of a country or territory outside the UK. The definition is broad; the overseas party can be

any kind of entity including one that is not recognised under UK law.

8. Paragraph 1(4) to (6) provide an overview of the structure of the rest of the Schedule.

9. Paragraph 2 defines "profit fragmentation arrangements" to which the rules apply. To be profit fragmentation arrangements four conditions must be satisfied, as set out in paragraph 2(1). The arrangements will not be profit fragmentation arrangements if either of the exception conditions set out in paragraph 2(2) is met.

10. Paragraph 2(1)(a) requires there to be a provision made or imposed ("the material provision") between the resident party and the overseas party by means of the arrangements. The definition of "arrangements" is in paragraph 11.

11. Paragraph 2(1)(b) requires that the material provision gives rise to a transfer of value from the resident party to the overseas party (see paragraph 3). The value transferred will be a transfer of value generated directly or indirectly from the profits of a business chargeable to income tax or corporation tax in the tax year or accounting period of the resident 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. A "transfer of value" for the purpose of this paragraph will not include protected foreign source income chargeable in the UK under section 731 ITA 2007 provided that the income has no connection with a UK business. The protected foreign source income chargeable under section 731 ITA 2007 does not make up part of the profits of a business chargeable to income tax and will be charged to tax under the existing provisions in Chapter 2 Part 13 ITA 2007.

12. Paragraph 2(1)(c) requires that the transfer of value (as determined by paragraphs 2(1)(b) and (3)) is not of an amount or on terms that would be applied if the transactions were between independent parties acting at arm's length. If the transfer of value takes place at a price and on terms that reflect those that would be agreed between independent parties acting at arm's length then the arrangements will not be profit fragmentation arrangements and the rules set out in this schedule will not apply.

13. Paragraph 2(1)(d) requires that the "enjoyment conditions" are met by the related individual (see paragraph 4).

14. Paragraph 2(2) provides that where arrangements meet either one of two exception conditions they will not be regarded as "profit fragmentation arrangements".

15. Paragraph 2(2)(a) provides that arrangements will be excepted from being profit fragmentation arrangements if the material provision does not result in a "tax mismatch"(see paragraph 5 and paragraph 6). The application of the tax mismatch test to remittance basis users is covered in the notes to Paragraph 5(1) below.

16. Paragraph 2(2)(b) provides that arrangements will be excepted from being profit fragmentation arrangements if it is not reasonable to conclude that the main purpose, or one of the main purposes, for which the arrangements were entered into was to obtain a tax advantage. The concepts of "the main purpose" and "a main purpose"

are used widely in UK tax law. A person may have more than one main purpose in entering into a transaction, and requiring obtaining a tax advantage to be **a** main purpose is a wider test than requiring it to be **the** main purpose. In order to ascertain the main purpose/s for which an arrangement was entered into, it is necessary to consider all of the circumstances surrounding the arrangements.

17. Paragraph 2(3) sets out how the "provision" described in paragraph 2(1)(a) is interpreted where the resident party is a member of a partnership. This effectively extends the definition of profit fragmentation arrangements to circumstances where the provision is made between the partnership of which the resident party is a member and the overseas party.

18. Paragraph 3 provides further explanation of the term "transfer of value" used in paragraph 2(1)(b).

19. Paragraph 3(1) provides that in determining whether value has been transferred which derives directly or indirectly from a business, account must be taken of any method used to transfer the value. The value can be transferred between the resident party and the overseas party in a number of complex ways all of which are intended to be caught by this legislation.

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

21. Paragraph 3(3) provides that the transfer of value between the resident party and the overseas party being described in paragraph 3 can be traced through any chain of entities, however long and complex that chain may be.

22. Paragraph 3(4) sets out that the property held by companies, partnerships, trusts or other entities (such as the profits, assets and rights), must be attributed to the individuals involved on a just and reasonable basis. This will normally be in proportion to their shares in a company or their rights in a partnership.

23. Paragraph 4 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 and/or procure the transfer of value to the offshore entity in such a way as to avoid meeting the conditions set out in paragraph 4(2)(a). The enjoyment conditions may be met where the arrangements ensure that the related individual does not have legal entitlement to the amounts, if the practical outcome is that they, their family or other connected persons are able to make use of these amounts, directly or indirectly.

24. Paragraph 4(1) sets out the conditions for the enjoyment conditions to be met in relation to a related individual

25. Paragraph 4(1)(a) sets out the first enjoyment condition. It requires a link between the related individual and the value transferred between the resident party and the overseas party as a result of the material provision. This link between the value transferred and the related individual could be to something done by, or any property or purported right of the related individual.

26. Paragraph 4(1)(b) states that either of the further conditions in paragraph 4(2) must also be met.

27. Paragraph 4(2) describes the further conditions that need to be met. This condition will be met if either of the conditions at paragraph 4(2)(a) or (b) as described below are met.

28. Paragraph 4(2)(a) requires that the related individual is able to enjoy the benefit of the value that has been transferred to the offshore entity. Paragraph 4(2)(a)(i)-(v) set out the ways in which the related individual may be able to enjoy the amounts arising from the value transferred to the overseas party.

29. Paragraph 4(2)(b) describes the procurer test which will be met if it is reasonable to conclude that the related individual acting alone or with any other person procurers the transfer of value to the offshore entity with the intention of avoiding the conditions in paragraph 4(2)(a)(i)-(v) being met. The intention of the procurer test is to consider who has arranged for the value to be transferred to the overseas party, and what their intention was in doing so, regardless of who the apparent beneficiary of the arrangements is.

30. Paragraph 4(3) 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.

31. Paragraph 4(4) 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.

32. Paragraph 4(5) 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.

33. Paragraph 5 sets out the definition of a "tax mismatch" for the purposes of applying the exception condition set out in paragraph 2(2)(a).

34. Paragraph 5(1) sets out that a tax mismatch arises where three conditions are met, and the exemption in paragraph 5(5) does not apply. The three conditions are that:

    - Firstly, as a result of the material provision 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 relevant tax payable.
        - If the resident party is an individual who has, as a matter of fact, foreign source income that is not connected to a UK business activity, then if this individual is chargeable on the remittance basis for a tax year this income is not an amount taken into account by the resident party in computing the amount of tax payable.

    - If the resident party is an individual who has, as a matter of fact, protected foreign source income to which the trust protections described below apply and that is not connected to a UK business activity, then it would not be an amount taken into account by the resident party in computing the amount of tax payable. The 'trust protections' are the changes made by Finance Bill 2017 to remove overseas trusts settled by non-UK domiciled settlors from a charge under S624 Income Tax Trading and Other Income Act 2005 ("ITTOIA 05"), S720 ITA 2007 and S727 ITA 2007 in respect of certain trust income and the income of any underlying companies and instead bring them within the scope of S731 ITA 2007 or S643A ITTOIA 05 so that they are assessed on the benefits they receive from the trust and its underlying entities.

- Secondly, that it is reasonable to conclude that 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, that it is reasonable to conclude that the overseas party does not meet the "80% payment test" (see paragraph 5(4)). 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.

35. Paragraph 5(2) defines "the tax reduction" as the amount calculated at paragraph 5(1)(b)(i).

36. Paragraph 5(3) for the purpose of the effective tax mismatch outcome, it does not matter whether the tax reduction results from the application of different tax rates, the operation of a relief, the exclusion of any amount from a charge to tax, or another reason.

37. Paragraph 5(4) 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 of the relevant tax paid by the resident party (Y) – as defined at paragraph 5(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 6 provides more detail about the calculation of the amount of tax payable.

38. Paragraph 5(5) describes the cases in which a material provision which might otherwise result in a tax mismatch is exempted from doing so. These are where the result arises solely by reason of: employer contributions to a qualifying pension scheme; a payment to a charity; a payment to a person entitled to sovereign immunity in respect of a relevant tax; and certain investment funds, provided they

meet the conditions described in this subparagraph.

39. Paragraph 5(6) provides a rule to compare tax periods where the actual tax periods of the parties do not coincide. This works by imposing a notional tax period on the overseas party which coincides with that of the resident party – apportionment to the notional tax period must be done on a just and reasonable basis.

40. Paragraph 5(7) defines a number of terms used in paragraph 5. This includes a definition of "relevant tax" for the purposes of the tax mismatch test.

41. Paragraph 6 sets out 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 5. It should be noted that the tax mismatch defined in paragraphs 5 and 6 is only relevant for determining whether there is a tax mismatch and is not the amount to be considered when making adjustments under this schedule.

42. Paragraph 6(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 5(1)(a)(i) and the actual deduction allowed at that provision to the amount of the reduction in income mentioned in paragraph 5(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 5(1)(a)(i) applies, and income of £50,000 to which paragraph 5(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

43. Paragraph 6(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 6(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 6(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.

44. Paragraph 6(3) sets out a non-exhaustive list of what is meant by "further reasonable steps" in paragraph 6(2).

45. Paragraph 6(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.

46. Paragraph 6(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.

47. Paragraph 6(6) describes how the tax mismatch test should apply where the overseas party is a transparent or hybrid entity – such as an overseas partnership. This paragraph provides an explanation of how paragraph 6 applies in circumstances where the income of the overseas party is charged under the law of a country or territory outside the UK as the income of a person or persons other than the overseas party ("other persons"). In these circumstances any reference to the overseas party's liability to any tax includes reference to the liabilities to tax of the other persons who are charged to tax on the income; references to any tax being payable by the overseas party include tax being payable by the other persons; and references to loss relief obtained by the overseas party include a reference to loss relief obtained by the other persons. Paragraph 6(4) applies to any other persons as it applies to the overseas party. For example if the overseas party was a United States (US) limited liability company (LLC) this could be charged to tax in the US as if it is fiscally transparent, however, for the purposes of UK tax US LLCs are regarded as taxable entities and not fiscally transparent. In these circumstances paragraph 6(6) would apply to treat the US LLC as fiscally transparent and allow the tax mismatch test to take account of tax paid by the members of the overseas party as described above.

48. Paragraph 6(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 actual expenditure. 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.

49. Paragraph 7 sets out the adjustments required in relation to the profit fragmentation arrangements. The adjustments should be made to the profit calculation of the resident party so as to ensure that the profits taken into account in the tax computation are the profits that would have been taken into account by the resident party in the tax period, if the value transferred to the overseas party had reflected the value that would have been transferred by independent parties acting at arm's length. These adjustments are to be made in order to counteract any tax advantages arising from the profit fragmentation arrangements that remain **after the application of other provisions**. If other provisions have already applied to fully counteract the tax advantage then no further adjustments are required. If the tax advantage is partially counteracted by the application of an alternative provision then adjustments should be made to counteract any remaining tax advantage. By virtue of S15 and

Schedule 2 to the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, profits adjusted under this Schedule are chargeable to Class 4 NICs where those profits are not from a trade, profession or vocation carried on wholly outside the UK.

50. Paragraph 7(1) requires that adjustments must be made so as to counteract the tax advantages that would arise from the profit fragmentation arrangements. The tax advantage to be counteracted here is the difference between the tax to be paid on the profits taken into account (ignoring this Schedule), and the tax to be paid on the profits that would have been taken into account by the resident party in the tax period, if the value transferred to the overseas party had reflected the value that would have been transferred by independent parties acting at arm's length.

51. Paragraph 7(2) gives details of how the adjustments must be made. The adjustments:

- Must relate to the expenses, income, profits or losses of the resident party for the tax period in which value is transferred as a result of the material provision.
- Must be based on what the value transferred would have been if it had resulted from a provision made or imposed as between independent parties acting at arm's length.
- Must be made on a just and reasonable basis.

52. Paragraph 7(3) says that references to the resident party are references to that party at the time when the material provision is made or imposed.

53. 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 adjustments may be made. Consequential adjustments may be made to avoid a double payment of tax that arises from any adjustments that have been made in order to counteract any tax advantages arising from the profit fragmentation arrangements that remain **after the application of other provisions** as described above.

54. Paragraph 8(1) sets out the conditions where the double taxation paragraph applies which are as follows:

- The resident party has paid a relevant tax as a result of the application of paragraph 7.
- The relevant party or another person pays a further amount of the relevant tax or an amount of non-UK tax corresponding to the relevant tax.
- The additional tax paid results in a double payment of tax calculated by reference to the same income or profits.

55. Paragraph 8(2) states that the resident party must enter a claim for a consequential

adjustment to be made in respect of the double payment of tax.

56. Paragraph 8(3) provides for an officer of HM Revenue & Customs ("HMRC") to make such a consequential adjustment as they consider just and reasonable.

57. Paragraph 8(4) states that the consequential adjustment must not exceed the lesser of the relevant tax paid by the resident party under an adjustment made in accordance with paragraph 7 and the amount of tax paid under the provisions of paragraph 8(1)(b).

58. Paragraph 8(5) sets out the ways in which a consequential adjustments may be made. Consequential adjustments can be made in respect of any tax period and despite any time limit imposed by or under any enactment.

59. 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 application of this schedule is not to be taken into account in computing the resident party's income or profits for tax purposes.

60. Paragraph 10 sets out how to apply the legislation where any party is carrying on business through a partnership.

61. Paragraph 10(1) and (2) provide that, where a person is a member of a partnership, references to the expenses, income or revenue, or a reduction in income, of the person includes references to the person's share of the expenses, income or revenue, or a reduction in the income, of the partnership.

62. Paragraph 10(3) defines what is meant by "the person's share".

63. Paragraph 11 sets out a list of defined terms.

64. Paragraph 12 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

65. The aim of the measure is to ensure that the amount of profit that should be taxable in the UK is fully taxable in the UK.

66. 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.

67. 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.

68. The legislation counteracts the arrangements by requiring that UK businesses increase their taxable UK profits to the actual commercial level, either by disallowing the expenses or by reattributing receipts to the UK business.

Clause 17 and Schedule 5: Non-UK resident companies carrying on UK property businesses etc

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 5 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

Finance Act 1998

7. Paragraph 6 amends Paragraph 2 of Schedule 18 to the Finance Act 1998 so that a company is not required to give notice of chargeability to Corporation Tax for an accounting period if its liability to that tax is fully offset by tax deducted at source from its income within the charge to Corporation Tax and it has no chargeable gains for that period.

Finance Act 2004

8. Paragraph 7 inserts new section 55A of Finance Act 2004 which makes provision for a company to be excluded from the obligation to notify its chargeability to Corporation Tax for an accounting period if its liability to that tax is fully offset by tax deducted at source from its income within the charge to Corporation Tax and it has no chargeable gains for that period.

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

9. Paragraph 8 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)

10. Paragraph 9 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)

11. Paragraphs 10 to 27 contain consequential amendments to CTA 2009, in particular:

Part 2 of CTA 2009: Chargeable profits

12. Paragraph 11 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.

13. Paragraph 12 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.

14. Paragraph 13 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 4 of CTA 2009: Property Income

15. Paragraph 14 amends section 289 of CTA 2009 so that the profits of a UK property business carried on by a non-UK resident company coming within the scope of Corporation Tax at commencement date will not to be regarded as a deemed commencement of the business and will not trigger a disposal event for Capital Allowances purposes.

Part 5 of CTA 2009: Loan Relationships

16. Paragraph 15 amends section 301 of CTA 2009 to make clear that the non-trading debits and credits to be brought into account for a non-UK resident company under Part 5 of CTA 2009 are those in respect of loan relationships that the company is a party to for the purpose of its UK property business or the generation of other UK property income. This is achieved by inserting new subsection (1A) of section 301 of CTA 2009.

17. Paragraph 16 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.

18. Paragraph 17 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

19. Paragraph 18 amends section 574 of CTA 2009 to make clear that the non-trading debits and credits to be brought into account for a non-UK resident company under Part 5 of CTA 2009 are those in respect of derivative contracts that the company is a party to for the purpose of its UK property business or the generation of other UK property income. This is achieved by inserting new subsection (2A) of section 574 of CTA 2009

20. Paragraphs 19 and 20 make similar changes to sections 609 and 610 of CTA 2009 as those set out at paragraphs 17 and 18 above in respect of the rights and liabilities under a derivative contract in the same circumstances.

21. Paragraph 21 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

22. Paragraphs 22 to 25 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.

23. Paragraph 26 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.

24. Paragraph 27 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)

25. Paragraphs 28 to 31 make consequential amendments to CTA 2010, in particular:

26. Paragraph 29 amends section 9 of CTA 2010 so that it applies in respect of the return of accounts for all activities of a non-UK resident company that are within the charge to CT where the company prepares its accounts in a currency other than sterling.

27. Paragraphs 30 and 31 amend the group relief rules which place a restriction on losses which are surrenderable by a non-UK resident company if they are relievable in another jurisdiction to include a loss arising to a non-UK resident company carrying on a UK property business that is within the charge to CT.

Taxation (International and Other Provisions) Act 2010 (TIOPA 2010)

28. Paragraphs 32 to 34 make consequential amendments to the corporate interest restriction rules at Part 10 of TIOPA 2010, in particular:

29. Paragraph 33 introduces new subsection 415(1A) of TIOPA 2010 which applies for the purpose of the group ratio method. This provides that guarantees, indemnities and other financial assistance provided by a related party which were in existence before 29 October 2018 will not be taken into account when determining what amounts can be included in the qualifying net group interest expense.

30. This applies where the group company in question was a party to the loan or other financial liability for the purpose of its UK property business and that company has not at any time prior to the 29 October 2018 been UK resident.

31. Similarly, Paragraph 34 introduces new subsection 438(5A) of TIOPA 2010 which applies for the purpose of the public infrastructure rules. This provides that guarantees, indemnities and other financial assistance provided to a related party which were in existence before 29 October 2018 will not be taken into account in determining the amounts that can be considered payable to third parties (and hence potentially excluded from the scope of the interest restriction).

32. This applies where the group company in question was a party to the loan or other financial liability for the purpose of its UK property business and that company has not at any time prior to the 29 October 2018 been UK resident.

Part 3 Commencement and Transitional Provisions

33. Paragraph 35 provides the date on which the Schedule comes into force.

34. The effect of Paragraph 36 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.

35. Paragraph 37 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 (or profits arising from loan relationships or derivative contracts that the company is a party to for the purposes of that business) for so long as the company continues to carry on the UK property business.

36. 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.

37. Paragraph 38 applies 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 for Income Tax purposes. This paragraph 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.

38. Paragraph 39 provides that a loss from a loan relationship that arises after the commencement date but which is wholly or partly referable to a period before that date, and would have been allowable under the Income Tax rules had it arisen in that period, the loss is not disallowed by section 327 of CTA 2009 because of the fact that it has not been subject to Corporation Tax.

39. Paragraph 40 includes a rule in line with section 327 of CTA 2009 in respect of derivative contracts coming into charge to Corporation Tax as a result of this Schedule. This paragraph prevents a deduction for an amount of loss arising under a derivative contract which is referable to a period of time when the derivative contract was not within the charge to Corporation Tax so that the company would not have been chargeable to Corporation Tax on any profits arising from the contract. In line with the limitation introduced by Paragraph 39 of this Schedule, no restriction applies where the loss arising on the derivative would have been allowable under the Income Tax rules had the loss arisen in a period before commencement date.

40. In particular, this would apply to disallow amounts to be brought into account under regulation 9(4)(d) of the Disregard Regulations (S.I. 2004/3256) in respect of a derivative contract coming to an end before its stated date of maturity, in cases where had the derivatives been closed out before commencement it would not have been deductible under the Income Tax rules.

41. Paragraph 41 limits the application of section 327 of CTA 2009 and Paragraph 40 of this Schedule in respect of financial instruments in cases where there is a credit brought into account on another financial instrument and there is hedging relationship between the two instruments.

42. Where the credit is referable to a period before commencement date and the credit is to be brought into account, the provisions of section 327 of CTA 2009 or Paragraph 40 of this Schedule are disapplied so that the loss can also be brought into account, up to the amount of the credit. Where the one instrument partially hedges the other, then the amount of the loss to be brought into account is adjusted to reflect the extent of the hedging relationship.

43. Paragraphs 42 and 43 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.

44. Paragraph 42 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.

45. Paragraph 43 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 regarded as 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.

46. In addition, where regulations 7 or 8 of the Disregard Regulations are subsequently in point after the commencement date, regulation 10 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.

47. Paragraph 44 modifies the rules for electing into regulations 7, 8 and 9 of the Disregard Regulations where a company comes within the charge to Corporation Tax for the first time by reason of this Schedule.

48. Regulation 6A of the Disregard Regulations provides certain time limits for a 'new adopter'. This would ordinarily apply where a company came into the charge of Corporation Tax for the first time by reason of this Schedule, except for cases where the company had applied fair value accounting in respect of a relevant derivative contract for the first time on or after 1 January 2015 for the purposes of electing into the Disregard Regulations where it had adopted the measure of its relevant derivative contracts at fair value before 1 January 2015. Paragraph 44 extends this treatment for companies coming into the charge of Corporation Tax by reason of this Schedule, so that it also includes cases where the company had measured its relevant derivative contracts at fair value before 1 January 2015.

49. Paragraph 45 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.

50. Paragraph 46 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 5 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

51. Paragraph 47 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.

52. Paragraph 48 concerns a company that comes within the charge to Corporation Tax as a result of this Schedule. The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) ('the QIPs Regulations') will not have effect for its first Corporation Tax accounting period.

53. Paragraph 49 is a targeted anti-avoidance rule ('the TAAR') which applies to arrangements entered into on or after 29 October 2018 where the main purpose or one of the main purpose is to secure a tax advantage related to the coming into force of this Schedule. The tax advantage is to be counteracted by means of adjustments.

54. Paragraph 50 provides that, if in connection with the coming into force of this Schedule, a company enters into ordinary commercial steps in order to secure the benefit of a relief within the corporate interest restriction rules within Part 10 of TIOPA 2010, the tax advantage secured will not be counteracted by means of adjustment under either Paragraph 49 of this Schedule (the TAAR) or by section 461 of TIOPA 2010 (counteracting effect of avoidance arrangements).

Background note

55. 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.

56. 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.

Clause 18 and Schedule 6: Diverted profits tax

Summary

1. This clause and Schedule amend the diverted profits tax legislation in Part 3 of Finance Act (FA) 2015, to ensure those rules work effectively where avoidance arrangements give rise to tax planning opportunities, to make clear that diverted profits will be taxed under either corporation tax or diverted profits tax, and introduce modifications to the mechanics of the diverted profits tax legislation.

Details of the clause

2. Clause 18 introduces Schedule 6.

Details of the schedule

3. Paragraph 1 introduces amendments to Part 3 of FA 2015.
4. Paragraph 2 amends section 82 to alter the structure of subsection 7(a) which applies to determine whether the "actual provision condition" is met, which will be read in conjunction with the amendment introduced under Paragraph 7 and introduce a new subsection 82(10) which replaces the definition of "diverted profits" in section 83(2).
5. Paragraph 3 amends section 83 in line with the amended definition of "diverted profits".
6. Paragraph 4 amends section 84 in line with the amended definition of "diverted profits".
7. Paragraph 5 amends section 85 to bring the calculation at section 85(4) in line with the amendment to section 84 effected by Paragraph 4. Paragraph 5 also amends section 85(6), including to make sure that all adjustments are ignored in determining the additional amount in subsection (6)(a).
8. Paragraph 6 amends section 88 to make clear that no account should be taken in calculating the "notional PE profits" of any adjustments to the results of any provision made or imposed between the foreign company and the avoided PE if those adjustments are not taken into account in the avoided PE's company tax return before the end of the review period.
9. Paragraph 7 introduces new section 111A which states that a reference to an adjustment required under Part 4 of TIOPA 2010, includes a reference to an adjustment required to be made under any other enactment to the results of the provision if and to the extent, an adjustment would have been required under Part 4 of TIOPA 2010 but for that other enactment.

10. Paragraph 8 sets out specific commencement provisions in relation to Paragraphs 2 to 7.

11. Paragraph 9 amends section 93 to allow for a preliminary notice to be issued where section 80 or 81 applies up until the date on which more than six months have passed after the last day on which an amendment of the company tax return can be made. It also sets out specific commencement provisions in relation to the extension of the period for issuing a preliminary notice.

12. Paragraph 10 introduces new section 100A to make clear diverted profits are not also subject to corporation tax where the diverted profits have been subject to a diverted profits tax and that tax cannot be amended. It also sets out specific commencement provisions in relation to relief from corporation tax.

13. Paragraph 11 amends section 101 to extend the review period from 12 months to 15 months. It also sets out specific commencement provisions in relation to the extension of the review period.

14. Paragraph 12 introduces new section 101A and 101B. Section 101A to allow a company, subject to a charging notice issued under section 80 or 81 to make an amendment to its company tax return during the first 12 months of the review period to bring into account the taxable diverted profits. Where a foreign company has been issued with a charging notice under section 86, section 101B to allow the avoided PE to amend a company tax return made by it so as to bring into account the taxable diverted profits arising to the foreign company.

Background note

15. The diverted profits tax was introduced to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.

16. This measure supports that aim through amendments to close tax planning opportunities.

Clause 19: Hybrid and other mismatches: scope of Chapter 8 and "financial instrument"

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 any new regulations made under section 259N(3)(b) can have effect from 1 January 2019.

15. Subsection 9 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

16. 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. They also enable a new exemption for certain regulatory capital to be introduced by regulation following the repeal of the existing regulations which currently define that exemption.

17. 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.

Clause 20: Controlled foreign companies: finance company exemption and control

Summary

1. This clause introduces amendments to the Controlled Foreign Companies (CFC) regime in Part 9A TIOPA 2010 in relation to the finance company exemption and the definition of control.

Details of the clause

2. Subsection 1 introduces amendments to Part 9A TIOPA 2010.
3. Subsection 2 amends section 371IA in order to restrict the scope of the finance company exemption rules in Chapter 9 Part 9A, to ensure that non-trade finance profits generated by UK activity cannot benefit from the application of the finance company exemption rules in Chapter 9.
4. The amendment removes the reference to the profits of all qualifying loan relationships from section 371IA(4), and replaces it with a reference to non-trade finance profits that are derived from UK capital investment, and which are not generated by UK activities. This is achieved by inserted a cross-reference to the definitions of such amounts in Chapter 5 of Part 9A.
5. Subsection 3 amends section 371RA(2) to include a cross-reference to new section 371RG.
6. Subsection 4 inserts new section 371RG into Chapter 18 Part 9A, which sets out the control provisions for the CFC regime.
7. Section 371RG(1) provides that a non-UK resident company will be a CFC where a UK resident company and its associated enterprises together hold more than a 50% investment in that non-UK resident company.
8. Section 371RG(2) provides a definition of an associated enterprise.
9. Section 371RG(3) applies the definitions of 25% and 50% investment set out in section 259ND for the purposes of Section 371RG.
10. Subsections 5 and 6 set out the commencement provisions in relation to the amendments made by this clause, including apportionment rules which deal with accounting periods which straddle the commencement date of 1 January 2019. 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.

11. Subsection 7 provides that "CFC" has the same meaning in this clause as it does the CFC regime as a whole.

Background note

12. These amendments to the Controlled Foreign Company (CFC) regime have been introduced to ensure that the UK CFC rules are fully compliant with the requirements of Council Directive (EU) 2016/1164, commonly referred to as the Anti-Tax Avoidance Directive.

13. The UK CFC rules were introduced by Finance Act 2012 and deal with cases where UK profits have been diverted into non-UK resident companies in low tax jurisdictions.

Clause 21: Permanent establishments: preparatory or auxiliary activities

Summary

1. This clause modifies the definition of permanent establishment (PE) by restricting the exemption for preparatory and auxiliary activities in section 1143 CTA 2010. It denies that exemption when non-resident companies artificially fragment their operations to take advantage of the exemption. The change has effect from 1 January 2019.

Details of the clause

2. Subsections 1 and 2 amend section 1143 Corporation Tax Act 2010 (CTA 2010) which exempts preparatory or auxiliary activities from creating a PE. Subsection 2 denies the exemption from PE when the activities are part of a fragmented business operation.

3. Subsection 3 inserts new subsections 2A to 2E.

4. New subsections 2A and 2B explain that activities are part of a fragmented business operation when:

   - the non-UK resident company, either alone, or with closely related entities, carries on the activities that would otherwise not create a PE as part of a cohesive business operation, either at the same place, or at different places in the UK; and
   - at least one of them has a PE in the UK where complementary functions are carried on ; or
   - the activities together are more than ancillary to the company's trade and would create a PE if they were in a single company.

5. New subsection 2C extends the concept of permanent establishment to related entities that are not companies for the purpose of the clause.

6. New subsection 2D defines a closely related person in terms of who controls it.

7. New subsection 2E provides more detail about one of the factors, ownership, that determines whether an entity is controlled.

8. Subsection 4 is a drafting change to subsection 3. It means the definition of activities of a preparatory or auxiliary character in subsection 3 applies to all of section 1143 including the new subsections.

9. Subsection 5 gives the date the measure is effective from.

10. Subsection 6 explains how subsection 5 applies when an accounting period straddles that date. The period is apportioned on a time basis unless that produces an unjust or unreasonable result.

Background note

11. A non-resident company is liable to UK corporation tax only if it has a permanent establishment (PE) here. Certain preparatory or auxiliary activities, which are normally low value, such as storing the company's own products, purchasing goods, or collecting information for the non-resident company, are classed as exempt activities and do not create a PE.

12. This clause is an outcome of the OECD and G20 programme to tackle the erosion of the tax base by multinationals. It deals with their avoidance of permanent establishment by the splitting up of activities between locations or between related parties to take advantage of the exemption for preparatory or auxiliary-type activities. It makes effective the same change to the UK's tax treaties which the UK has adopted through the Multilateral Instrument and which took effect on 1 October 2018.

Clause 22 and Schedule 7: Payment of CGT exit charges

Summary

1. Clause 22 and Schedule 7 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 22 introduces Schedule 7 which makes various changes to the Taxes Management Act (TMA) 1970.

Schedule 7: CGT Exit charge payment plans

3. Paragraphs 1 and 2 of schedule 7 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. An application must be made to HMRC. 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 of Schedule 7 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 of Schedule 7 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 of Schedule 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.

Clause 23 and Schedule 8: 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 8 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.

Clause 24: Group relief etc: meaning of "UK related" company

Summary

1. This clause extends the definition of "UK related" company for the purposes of group relief to include non-UK resident companies that are within the charge to Corporation Tax.

Details of the clause

2. Subsections 1 and 2 extend the definition of a "UK related" company for the purposes of group relief to include all non-UK resident companies that are within the charge to corporation tax. This means that the definition is not limited, for non-UK group companies, to those that carry on a trade in the UK through a permanent establishment.

3. Subsection 3 provides that the amendment to this definition has effect on or after 5 July 2016. This is the date when Part 8ZB of CTA 2010 (Transactions in UK Land) came into effect subject to transitional provisions relating to disposals to associated persons on or after 16 March 2016 and before 5 July 2016.

4. Subsection 4 extends the time limit in which to make a claim for group relief as set out at paragraph 74 of Schedule 18 to the Finance Act 1998 to include a date of 31 December 2019 where a claim is made in reliance of this section.

5. This will enable those companies that would have made a claim for group relief but for the limitation of the definition of a "UK related" company, and the subsequent expiry of the existing time limits to make a claim before this section has effect, to make a valid claim for group relief.

Background note

6. 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.

7. As part of that change, this clause has been introduced to ensure that a non-UK resident company carrying on a UK property business, when within the charge to corporation tax, can be regarded as a UK member of a group of companies for group

relief purposes. The clause also ensures that this applies to non-UK companies that fall within the scope of Part 8ZB of CTA 2010.

Clause 25: Intangible fixed assets: exceptions to degrouping charges etc

Summary

1. This clause reforms the degrouping rules in Part 8 of the Corporation Tax Act 2009. It provides that where a company leaves a group as a result of a qualifying share disposal no charge or allowance shall arise.

Details of the clause

2. Subsection (1) introduces amendments to Part 8 of the Corporation Tax Act (CTA) 2009.

3. Subsection (2) inserts a reference to new section 782A into the list of exceptions in section 780(5) CTA 2009.

4. Subsection (3) inserts new section 782A (Company leaving group because of relevant share disposal) into CTA 2009.

5. New section 782A provides for an exception to the degrouping charge in section 780 for a relevant disposal of shares.

6. Subsection (1) of new section 782A provides that the exception applies when a company leaves a group because of a relevant disposal of shares by another company.

7. Subsection (2)(a) of new section 782A defines "relevant" in relation to a share disposal. It imports the requirements of the Substantial Shareholding Exemption in paragraph 1 of Schedule 7AC to the Taxation of Capital Gain Act 1992. In particular it requires that the shares disposed of are shares in a trading company, or the parent company of a trading group or sub-group of companies.

8. Subsection (2)(b) of new section 782A prevents the exception from applying to arrangements involving a series of disposals where the requirement in subsection (2)(a) is not met in relation to every disposal.

9. Subsection (4) amends section 785 CTA 2009.

10. Subsections (4)(a) and (b) amend section 785(2)(b) and insert new sub-sections 785(2A) and (2B). These provisions clarify the circumstances in which a degrouping charge arises under section 785(3) and extend the exception for relevant disposals contained in new section 782A to degrouping charges arising under section 785(3).

11. Subsection (5) is the commencement provision.

Background note

12. The law in relation to the taxation of intangible fixed assets held by companies is contained in Part 8 of CTA 2009.

13. The Part 8 rules allow groups of companies to transfer assets between companies in the group without incurring a tax charge or realising a tax deduction. This is known as "tax neutral" treatment. The rules contain an anti-avoidance provision, known as a degrouping charge, which crystallises a tax charge or deduction if a company that has received an asset on a tax neutral basis leaves the group within six years of the transfer.

14. This clause amends Part 8 so that a degrouping charge will no longer arise in situations in which a company leaves a group as a result of a share disposal that qualifies for the Substantial Shareholding Exemption.

15. This clause is intended to remove an obstacle to commercially-motivated merger and acquisition activity. It aligns the Part 8 degrouping rules with the equivalent provisions in the chargeable gains code.

Clause 26 and Schedule 9: 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:

    a. the allocation of the deductions allowance where a company is a member of more than one group,

    b. the calculation of terminal relief within section 45F CTA 2010,

    c. prevent carried-forward shock losses of insurance companies being surrendered as group relief,

    d. increase the cap on profits against which group relief for carried-forward losses may be allowed in certain circumstances, and

    e. other provisions that are minor and consequential in nature.

Details of the clause and Schedule

4. Clause 26 introduces Schedule 9.

Schedule 9:

5. Paragraph 1 introduces the amendments to CTA 2010.
6. Paragraphs 2 and 3 make amendments to sections 188DD and 188ED to 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's 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 introduces amendments to CTA 2010 for group relief for carried-forward losses.

22. Paragraph 23 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.

23. Paragraphs 24 and 25 amend sections 188DD and 188ED which provide the limit on the amount of profits against which group relief for carried-forward losses may be allowed in certain circumstances. The amendments limit the amount of profits that may be relieved to the "qualifying profits" where these are less than the amount of the deductions allowance. Previously, the limit was the "relevant profits" and this applied where these were less than the amount of the deductions allowance. New sections 188DD(3A) and 188ED(3A) introduce the definition of "qualifying profits" for this purpose (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)).

24. Paragraph 26 introduces amendments to CTA 2010 that relate to the legislation on transferred trades in Chapter 1 of Part 22.

25. Paragraph 27 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.

26. Paragraph 28 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.

27. Paragraph 29 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.

28. Paragraph 30 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.

29. Paragraph 31 amends section 730C of CTA 2010 (disallowance of deductible amounts: relevant claims). Paragraph (aa) is omitted from subsection (2) and in subsection (3A), "paragraph (a) or (b)" of section 188BB(1) of CTA 2010 is substituted for "paragraphs (a) to (e)". Paragraph 172 of Schedule 4 to Finance (No 2) Act 2017 (relief for carried-forward losses) is also omitted.

30. Paragraph 32 includes commencement provisions. For the amendments made to the limit on profits that can be relieved by group relief for carried-forward losses, the changes apply to accounting periods beginning on or after 1 April 2017. For 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

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

32. 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.

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

34. 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.

35. 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.

36. 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 2 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.

37. 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.

38. Group relief for carried-forward losses: This allows a company that is a member of a group to surrender carried-forward losses, deductions and deficits that it cannot use to another group member. That other member may then claim relief for the amounts surrendered.

39. 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.

Clause 27 and Schedule 10: 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 (TIOPA) 2010 to ensure that the regime works as intended.

Details of the clause

2. Clause 27 introduces Schedule 10.

Details of the Schedule

3. Paragraph 2 introduces new section 391A. This applies where interest or other financing costs are capitalised in the carrying value of an intangible fixed asset. In such cases, section 391A ensures that any tax deduction that arises from the write-off of the intangible fixed asset that is attributable to the financing cost is included in tax-interest.

4. In particular, it prevents the exclusivity provision under the intangible fixed asset rules potentially taking priority over the loan relationship or derivative contract rules for the purposes of determining whether an amount is included as tax-interest under the CIR rules. This aligns the treatment with interest or other financing costs that are capitalised in the carrying value of an item of trading stock.

5. Paragraphs 3 and 4 allow unused interest allowance and excess debt cap to be carried forward from an old group to a new group in a case where a top company is interposed between the ultimate parent of the old group and its shareholders. Paragraph 3 inserts new section 395A and paragraph 4 inserts new section 400A.

6. The conditions that must be satisfied for these sections to apply are set out in existing section 724A of Corporation Tax Act (CTA) 2010, which applies to the preservation of certain other carried-forward corporation tax losses and reliefs. In particular, the shareholders' proportional interests in the ultimate parent company of the new group must be identical to, or as close as is possible identical to, their corresponding interests in the ultimate parent company of the old group.

7. Paragraphs 5 to 7 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.

8. Paragraph 5 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.

9. Paragraph 6 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, this confirms that 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 under an amortised cost basis of accounting. In these circumstances, the calculation of ANGIE will follow the amounts of financing costs recognised in the profit or loss / income statement.

10. Paragraph 7 amends section 423 which sets out the calculation of ANGIE in respect of capitalised interest where the group has made an interest allowance (alternative calculation) election. In particular, this amendment ensures that where a GAAP-taxable asset is also a relevant asset (for example, as with an intangible fixed asset), 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. This aligns with the calculation of tax-interest in the case of relevant assets. It also aligns with the calculation of ANGIE in the case of non-relevant assets (such as where interest is capitalised in the carrying value of trading stock).

11. Paragraph 7(4) makes specific provision to ensure that where a company has elected for an intangible fixed asset to be relieved under section 730 CTA 2009 (at 4% per annum), it will fall to be included as a GAAP-taxable asset. This aligns the position with the treatment at section 320 CTA 2009. This also applies where an election could be made in respect of the asset, for example, under the assumption made under section 423(5) TIOPA 2010 that all members of the group are treated as within the charge to corporation tax.

12. Paragraph 8 ensures that, when calculating ANGIE, an upward 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 or 359 CTA 2009. A corresponding amendment is made to subsection 413(4) to ensure that a downward adjustment should be made for any release debit which would be prevented from being brought into account for tax by section 354 CTA 2009.

    Typically sections 354 and 358 CTA 2009 apply intra-group which does 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. Section 359 CTA 2009 applies where there is a release of a loan in an insolvency situation. Where the debtor and creditor were connected prior to the insolvency proceedings, section 359 CTA 2009 acts to exempt the credit from corporation tax.

13. Paragraph 9 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 employee's 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.

14. Paragraph 10 amends how the change of accounting practice (COAP) rules apply where a group has made an interest allowance (alternative calculation) election. In particular, it ensures that the COAP rules apply in relation to property businesses. It also makes clear that groups only need to consider the COAP rules on an actual change of accounting practice, as against a tax provision that requires a particular accounting approach to be applied in calculating amounts brought into account for tax.

15. Paragraph 11 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.

16. Paragraph 12 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.

17. Paragraph 13 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 not counted towards qualifying infrastructure receipts. As a result, such income will not prevent the company's future qualifying infrastructure receipts from being highly predictable.

18. Paragraph 14 makes some changes section 452 which concerns how the CIR rules apply to Real Estate Investment Trusts (REITs).

19. Paragraph 14(2) provides clarification that section 599 CTA 2010 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 CTA 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 CTA 2009) as a result of the application of section 599 CTA 2010 for the purposes of the calculating the profits of the property business.

20. Paragraph 14(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.

21. Paragraph 14(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 CTA 2009 as a result of the application of section 599 CTA 2010.

22. Paragraphs 15 to 18 make amendments to the administrative rules in Schedule 7A of TIOPA 2010.

23. Paragraph 15 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 the 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. This change to the time limits will only take effect once the provisions are enacted.

24. Paragraph 16 makes a consequential 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 15), this does not extend the time limit for filing an interest restriction return.

25. Paragraph 17 may allow additional time for submitting an interest restriction return in the event of a takeover. It inserts new paragraphs 7(5A) and 7A of Schedule 7A. Where a group ceases to exist because its ultimate parent becomes a member of a new group, this brings a period of account of the old group to an end. This may lead to practical difficulties in filing an interest restriction return within the normal 12-month time limit, because the accounting periods of group members may not come to an end until a date several months later than the end of the period of account of the group. In these circumstances, the time limit for filing an interest restriction return is extended to 24 months after the beginning of the period of account, if this is later than the limit that would otherwise apply. This will often coincide with the time limit for filing company tax returns of the group members.

26. Paragraph 18 permits HMRC to specify additional information to be included within an interest restriction return in addition to those items listed in paragraph 20 of Schedule 7A.

27. Paragraphs 19 to 21 set out certain consequential amendments as a result of the above changes.

28. Paragraphs 22 to 26 set out the commencement of these amendments.

29. Paragraph 27 provides that groups which have made an interest allowance (alternative calculation) election before 7 November 2018 in respect of any period of account ending before 7 November 2018 may revoke that election. The revocation will have effect for periods of account beginning on or after 7 November 2018. This is to avoid groups being disadvantaged by the introduction of new section 424A, as described above, in cases where they have already made an alternative calculation election.

Background note

30. The CIR rules restrict the ability of large businesses to reduce their taxable profits through excessive UK interest and similar expenses. 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.

31. 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.

32. 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.

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

34. 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.

35. For further information about the CIR rules, please refer to: https://www.gov.uk/guidance/corporate-interest-restriction-on-deductions-for-groups.

Clause 28 and Schedule 11: Debtor relationships of company where money lent to connected companies

Summary

1. Clause 28 introduces Schedule 11 which prevents a tax mismatch where two linked loan relationships would otherwise be taxed on a different basis, commonly due to only one having hybrid features (such as the requirement to convert into shares).

Details of the clause

2. Clause 28 introduces Schedule 11.

Details of Schedule

3. Paragraph 1 introduces new section 352B into the Corporation Tax Act (CTA) 2009. This is explained in more detail further below.

4. Paragraph 2 amends the definition of "tax-adjusted carrying value" in section 465B CTA 2009 to include a reference to section 352B.

5. Paragraphs 3 and 4 deal with commencement and transitional issues.

6. Paragraph 3 provides that the amendments made by the Schedule apply for accounting periods beginning on or after 1 January 2019. An accounting period straddling 1 January 2019 is split into two deemed accounting periods.

7. Paragraph 4 applies to an accounting period beginning on 1 January 2019. It ensures amounts on the external loan relationship to which the new section 352B applies are taken into account, so nothing is omitted from tax as a result of the change of the basis of taxation for this instrument. Where the tax-adjusted carrying value for the instrument on 31 December 2018 is different from the tax-adjusted carrying value on 1 January 2019 the difference is brought into account as a debit or credit amount in the same way (and subject to the same rules) as though in accordance with generally accepted accounting practice (GAAP).

8. Paragraph 5 contains a Treasury power to make regulations under the negative resolution procedure to amend new section 352B. It may not be exercised after 31 December 2019.

New section 352B CTA 2009: Eliminating tax mismatch for loan relationships with qualifying link

9. Subsection (1) applies the section as a whole if there are two loan relationships with "a qualifying link". One must be a "connected companies relationship" to which an accounting amortised cost basis applies under section 349 CTA 2009, and the other one not, the latter being a debtor "external loan relationship" accounted for on fair value basis.

10. Subsection (2) defines "a qualifying link". This is established if the capital raised under the external loan relationship is wholly or mainly used by the company receiving it to lend money under one or more connected companies relationships.

11. Subsection (3) aligns the tax treatment of both loan relationships. The connected companies relationship will already be on an amortised cost basis for tax purposes and this provision applies the same tax treatment to the other (external) loan relationship.

12. Subsection (4) applies in the unusual situation that the external loan relationship is also subject to a hedging relationship in relation to a derivative contract. It allows a company, in applying an amortised cost basis for tax purposes, to adjust the carrying value as if it were part of a designated fair value hedge.

Background note

13. The clause and Schedule have been introduced to ensure that the tax treatment of linked loan relationships is aligned. Otherwise, when a company borrows funds and lends them on to other companies in the same group, so that it bears little economic exposure to the loans in combination and reports minimal profit or loss in its accounts, it could nevertheless be taxed on movements in the fair value of the external loan.

14. This tax mismatch would arise if both the loans are accounted for on a fair value basis. Loans within groups are taxed, regardless of this accounting, on an amortised cost basis, but the external loan would be taxed in line with the accounting treatment. For accounting purposes fair value movements on the two loans would offset each other, but the fair value movements on the external loan would be brought into tax. These amounts brought into tax would not reflect changes in the economic position of the company.

15. One situation where mismatches may occur is where a banking or insurance company issues debt instruments to meet regulatory capital requirements. Previously the Taxation of Regulatory Capital Securities Regulations 2013 may have prevented any tax mismatches arising in this situation. However, as part of the changes to the tax treatment of hybrid capital instruments in this Bill, these Regulations are being revoked.

16. The Schedule introduces new rules which identify where an external loan relationship and loan relationships internal to the group are linked. They provide that in such cases both external and internal loan relationships are taxed on an amortised cost basis. This will eliminate tax mismatches in all similar situations, including those involving the regulatory capital of a financial business.

Clause 29: Construction expenditure on buildings and structures

Summary

1. This clause, announced at Budget 2018, amends the Capital Allowances Act 2001 (CAA 2001) to provide for allowances under that Act for qualifying expenditure incurred on or after 29 October 2018 on the construction of a building or structure in qualifying use. Provision will be substantively made through regulations made subsequently after this Finance Bill.

Details of the clause

2. Subsection 1 provides that the Treasury may by regulations amend CAA 2001 in order to provide for capital allowances under that Act for buildings and structures, as detailed in further subsections.

3. Subsection 2 provides that regulations made under this section must specify "qualifying expenditure" and "qualifying use" for the purposes of relief. Regulations must also specify a writing-down allowance at two percent annually of the qualifying expenditure, to whom allowances may be made, and how allowances are given effect including claims.

4. Subsection 3 provides that regulations must prevent allowances for expenditure on the acquisition of land or rights in or over land, and restricts qualifying use to only prescribed business purposes.

5. Subsection 4 provides that regulations may restrict or make unavailable allowances for whole or partial use as a dwelling-house or its ancillary purposes, for prescribed kinds of holiday or overnight accommodation, for partial qualifying use or periods of partial qualifying use, and in prescribed cases or circumstances.

6. Subsection 5 provides that regulations may provide that qualifying expenditure on a building or structure incurred up to seven years before the actual qualifying activity commences may be treated as incurred on that commencement date.

7. Subsection 6 provides that regulations may provide for allowances following construction of a building to be transferred through sale of an interest from person (A) to person (B), where (B) can then claim the residue of the qualifying expenditure.

8. Subsection 7 provides that regulations may make provision about leases, including in prescribed circumstances that grant of a lease be treated as the sale of the grantor's interest.

9. Subsection 8 provides that regulations may provide for how allowances are apportioned or otherwise adjusted; how qualifying expenditure is written off; any provision about highway undertakings, additional VAT liability or rebate; rules to

counter tax avoidance; and any supplementary, incidental or consequential provision (including other than in CAA 2001).

10. Subsection 9 provides that regulations may provide for transitional arrangements including treatment of expenditure incurred on or after 29 October 2018.

11. Subsection 10 provides that subsections 2 to 9 in no way limit the scope of subsection 1.

12. Subsection 11 provides that regulations will be made by draft statutory instrument, to be laid before and approved by House of Commons resolution.

13. Subsection 12 provides that any references in this section to expenditure on the construction of a building include that on its repairs, renovation or conversion.

14. Subsection 13 provides that any reference in this section to “building” includes that of structure; that “dwelling-house” has the meaning given by subsequent regulations; and that “prescribed” means as prescribed by those same regulations.

Background note

15. This clause amends CAA 2001 to address a gap in the current capital allowances system, where no relief has been available for most structures and buildings. It is intended explicitly to stimulate investment in commercial activity – specifically on new commercial structures and buildings, the necessary works to bring them into existence and the improvement of existing structures and buildings, including converting existing premises to qualifying use.

16. Once the structure or building enters qualifying use, businesses chargeable to either income or corporation tax that had incurred qualifying expenditure will be able to claim relief over a 50 year period, as a deduction from their profits at an annual rate of two percent. Neither land nor dwellings will be eligible for relief, including workspaces within domestic settings. Where use is mixed between commercial and residential, relief will be reduced by apportionment. Similarly, where an asset’s value appreciates after its acquisition, relief will not increase.

Clause 30: Special rate expenditure on plant and machinery

Summary

1. This clause reduces the rate of special writing down allowance for new and unrelieved expenditure from the relevant date of 1 April 2019 (corporation tax) or 6 April 2019 (income tax). The special rate is reduced from 8% to 6%. For chargeable periods spanning the relevant date, the rate of writing down allowances will be a hybrid of the rates before and after the change.

Details of the clause

2. Subsection 1 provides for the amendment of Part 2 the Capital Allowances Act 2001 (CAA 2001) which covers Plant and Machinery Allowances.

3. Subsection 2 amends section 104D(1) to reduce the special rate of writing down allowances from 8% to 6%.

4. Subsection 3 substitutes "8%" for "6%" in the specified paragraphs within Part 2.

5. Subsection 4 explains that the changes made to the special rate apply to chargeable periods that begin on or after the relevant date.

6. Subsection 5 explains that chargeable periods that begin before, but end on or after the relevant date will be entitled to writing down allowances at X%. This X% rate is used instead of either 8% or 6%.

7. Subsection 6 provides the formula to calculate X%. To calculate X%, the proportion of the chargeable period that falls before the relevant date is multiplied by 8. Then, the proportion of the chargeable period that falls on or after the relevant date is multiplied by 6. The rate for the chargeable period is the sum of these two numbers.

8. Subsection 7 provides that X% should be rounded up to the nearest second decimal place where it is a figure with more than two decimal places.

9. Subsection 8 gives the relevant date as 1 April 2019 for corporation tax purposes and 6 April 2019 for income tax purposes.

Background note

10. Capital allowances enable businesses to write off the costs of capital assets, such as plant or machinery, against their taxable income. They take the place of commercial depreciation, which is not deductible for tax purposes.

11. Special rate expenditure includes, but is not limited to, expenditure on long-life assets, thermal insulation, integral features and certain cars with high CO_2 emissions.
12. The reduction of the special rate of writing down allowances means that businesses will continue to receive full tax relief to reflect the depreciation of plant and machinery assets, but over an extended timeframe.
13. The main rate of writing down allowances remains at 18%. Similarly, the special rate of writing down allowances within ring fence trades remains at 10%.

Clause 31 and Schedule 12: Temporary increase in annual investment allowance

Summary

1. This clause increases the maximum amount of the annual investment allowance (AIA) to £1,000,000 for a temporary period from 1 January 2019 to 31 December 2020.

Details of the clause

2. Subsection 1 amends section 51A(5) of the Capital Allowances Act 2001 (CAA) so that the maximum AIA that can be claimed for a 12 month chargeable period is increased from £200,000 to £1,000,000, in relation to expenditure incurred on or after the start date of 1 January 2019 and on or before 31 December 2020. For expenditure incurred on or after 1 January 2021, the maximum AIA returns to its previous limit of £200,000.

3. Subsection 2 introduces Schedule 12 which contains provisions about chargeable periods that straddle the start date or the end date.

Details of the schedule

4. Paragraph 1(1) explains that the paragraph applies to a chargeable period that begins before 1 January 2019 and ends on or after that date. Such a period is referred to as the "first straddling period".

5. Paragraph 1(2) provides that the maximum allowance for the first straddling period will be the sum of each maximum allowance that would be found if the actual chargeable period were split into separate chargeable periods by reference to 1 January 2019.

6. Paragraph 1(3) provides that the maximum allowance for expenditure incurred in the first straddling period before 1 January 2019 will be the allowance before the temporary increase was announced.

7. Paragraph 2(1) explains that the paragraph applies to a chargeable period that begins before 1 January 2021 and ends on or after that date. Such a period is referred to as the "second straddling period".

8. Paragraph 2(2) provides that the maximum allowance for such a period will be the sum of each maximum allowance that would be found if the actual chargeable period were split into separate chargeable periods by reference to 1 January 2021.

9. Paragraph 2(3) provides that the maximum allowance for expenditure incurred in the second straddling period but after 31 December 2020 will be the maximum available in respect of the part of the second straddling period beginning with 1 January 2021 (calculated in accordance with Paragraph 2(2)(b)).

10. Paragraph 3(1) provides that paragraphs 1 and 2 also apply for the purposes of determining the maximum allowance in relation to businesses that are required to share a single AIA (where restrictions apply).

11. Paragraph 3(2) to (4) (provide that, for the purposes of determining the maximum allowance in cases where businesses must share a single AIA, and one or more of the affected businesses has a straddling chargeable period, only chargeable periods of one year or less may be taken into account, and, if there is more than one such period, only that period which gives rise to the maximum allowance.

Background note

12. Since 1 April 2008 (CT) and 6 April 2008 (income tax) most businesses, regardless of size, have been able to claim the AIA on their expenditure on plant or machinery, up to a specified annual amount each year (subject to certain conditions mentioned below). With effect from 1 January 2016 the permanent amount of the AIA was set at £200,000.

13. At Budget 2018, the Chancellor announced that legislation would be introduced in Finance Act 2018 to increase the limit of the AIA from £200,000 to £1,000,000 from 1 January 2019, for a temporary period of two years.

14. The temporary increase is designed to stimulate growth in the economy by providing an additional, time-limited incentive for businesses (particularly medium-sized businesses) to increase, or bring forward, their capital expenditure on plant or machinery.

15. Businesses are able to claim the AIA in respect of their expenditure on both general and "special rate" plant and machinery. The AIA is effectively a 100 per cent allowance that applies to most qualifying expenditure (with expenditure on cars being the most important exception) up to an annual limit or cap. Where businesses spend more than the annual limit, any additional qualifying expenditure is dealt with in the normal capital allowances regime, entering either the main rate or the special rate pool, where it will attract writing-down allowances (WDAs) at the 18 per cent or 6 per cent rates respectively.

16. Because the AIA is a generous relief there are certain restrictions

    It is available to:

    a. any individual carrying on a qualifying activity (this includes trades, professions, vocations, ordinary property businesses and individuals having an employment or office);

    b. any partnership consisting only of individuals; and,

    c. any company (subject to certain restriction).

17. In the case of companies in a group there is one AIA available to all the companies in the group.

18. In the case of single companies, each company receives its own AIA unless it and

another company are under common control.

19. In cases where companies are under common control (for example, two companies owned by the same individual) each company will still be entitled to a separate AIA, unless they are engaged in "similar activities" or share the same premises in a financial year.

20. The rules provide that a company is related to another company in a financial year and, separately, that an unincorporated qualifying activity is related to another qualifying activity in a tax year, if either or both of:

    a. the shared premises condition; and/or,

    b. the similar activities condition,

    are met in relation to the companies or the qualifying activities with chargeable periods ending in that financial year, or that tax year, as the case may be.

21. The rules provide businesses with almost complete freedom to allocate the AIA between different types of expenditure. For example, they may allocate it first against any expenditure on "integral features", qualifying for the lower 6 per cent "special rate" of WDA.

Clause 32: First-year allowances and first-year tax credits

Summary

1. This clause will end, from April 2020, the first year allowance (FYA) for all products on the Energy Technology List (ETL) and Water Technology List (WTL), including the associated first-year tax credit (FYTC).

Details of the clause

2. Subsection 1 repeals the following sections of the Capital Allowances Act (CAA) 2001:

   - sections 45A to 45C (energy-saving plant or machinery);
   - sections 45H to 45J (environmentally beneficial plant or machinery); and
   - section 262A and Schedule A1 (first-year tax credits).

3. Subsection 2 contains consequential amendments that flow from this new legislation.
4. Subsections 3 and 4 repeal the statutory instruments, which were made under powers contained under Subsection 1.

Background note

5. The water and energy technology lists will be updated to reflect the most efficient technology in 2019. The schemes will end in 2020, including the associated first-year tax credits.
6. This scheme was introduced to support the Government's policy to reflect technological advances and changes in standards in its support for business investment.

Clause 33: First-year allowance: expenditure on electric vehicle charge points

Summary

1. The first-year allowance for electric charge-points will be extended for four years. This will extend such allowances until 31 March 2023 for Corporation Tax and 5 April 2023 for Income Tax purposes.

Details of the clause

2. This clause sets out the "relevant period" for claiming the relief, which has been extended by four years.

Background note

3. This first-year allowance has been extended to encourage the use of electric vehicles by supporting the installation of electric charging equipment of such vehicles. This supports the transition in the UK to cleaner vehicles with zero or ultra-low emissions, which will improve air quality and make the UK more environmentally friendly.

4. HM Revenue & Customs (HMRC) will update guidance after Royal Assent.

Clause 34: Qualifying expenditure: buildings, structures and land

Summary

1. This clause, announced at Budget 2018, amends Part 2 of the Capital Allowances Act 2001 (CAA 2001) to clarify that the exceptions from the exclusions for expenditure on the provision of buildings, structures and alterations to land are not intended to enable allowances to be claimed on costs relating to assets for which the expenditure on the provision is excluded from allowances. The amendment is treated as always having had effect but it does not apply to claims for capital allowances made before 29 October 2018.

Details of the clause

2. Subsection (1) indicates that Chapter 3 of Part 2 of CAA 2001 is amended as detailed below.

3. Subsection (2) inserts text at the end of subsection (4) in each of sections 21 and 22 to clarify that in section 23, to which sections 21 and 22 are subject, any reference to 'plant' in List C, subsection (4) does not include anything where expenditure on its provision is excluded by sections 21 or 22.

4. Subsection (3) provides that the amendment is treated as always having had effect but does not apply to claims for capital allowances made before 29 October 2018.

Background note

5. This amendment has been introduced to clarify the legislation to ensure that it is explicit about the scope of the relief and in particular to put it beyond doubt that land excavation costs for the purpose of creating an asset that functions as plant in common law are not allowable if the asset is excluded under section 21 or 22 CAA 2001.

6. The amendment applies to claims from 29 October 2018 for either historic or new expenditure.

Clause 35 and Schedule 13: Changes to accounting standards etc

Summary

1. Clause 35 and Schedule 13 implement a package of changes 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 (IFRS), 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:

    - Amendments to current legislation that relies on lease accounting definitions
    - Minor amendments to the rules for Long Funding Leases
    - Repeal of legislation that disregarded for tax purposes changes to accounting standards related to leasing, including IFRS 16, and
    - Introduction of rules for the spreading of any transitional adjustment recognised upon adoption of IFRS 16.

Details of the clause and Schedule

3. Clause 35 introduces Schedule 13.

Details of the Schedule

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

4. Part 1 of the Schedule makes changes to ensure that relevant legislation will continue to apply as intended, including to a lessee adopting IFRS16 (an "IFRS 16 lessee").

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 allowances 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 forward, if the lessee uses

IFRS 16, they must determine whether they would have accounted for the lease as a finance lease, were they required to make that determination under generally accepted accounting practice (GAAP).

7. Paragraph 1(3) inserts the new terminology of "interest expenses" into section 70E 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 adoption of a different accounting standard and also introduces a new Case 3 deeming a disposal and reacquisition where the lease is a right-of-use lease and begins to be accounted for as an operating lease. Case 3 will apply where the lessee adopts a different accounting standard.

9. 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 considered to have 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. The definition also grandfathers long funding operating leases where the lessee changes the accounting standard for the lease.

10. The following example illustrates how the changes to section 70YA and 70YI will apply:

    - A lessee uses IFRS and has a long funding operating lease which has three years left to run as at 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 section 70YI determines that the lease will continue to be taxed using the rules for a long funding operating lease.

11. Paragraph 1(6) amends section 228J which provides for the treatment of 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 GAAP to determine whether the lease was a finance lease or not.

12. Paragraph 2 amends the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 for computing the tax 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 by 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.

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, nor 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 that the accounting deduction in its profit and loss account is adjusted as a result of a change in rentals which meet 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. The following two examples illustrate how this applies:

    - 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 and loss account, 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 inserts new subsections 809BZN(9A) and (9B) of Income Tax Act (ITA) 2007. This provides that the finance arrangements code does not apply to an arrangement where the borrower has a right-of-use lease and would not have accounted for the arrangement as a finance lease or loan, if they were required to distinguish finance leases and loans under GAAP.

20. Paragraph 4 makes the changes to Corporation Tax Act (CTA) 2010, the most significant of which are described below.

21. Paragraph 4(2) amends section 288 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 if they were required to distinguish finance leases under GAAP.

22. Paragraph 4(3) amends section 331 and inserts a new subsection 331(3)(da) to ensure that the rules continue to apply as intended to a lessee using IFRS 16.

23. Paragraph 4(5) inserts new section 377A. 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.

24. 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.

25. 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.

26. 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).

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

28. 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.

29. Paragraph 4(6) amends the definition of a "long funding finance lease" in section 381 so that all lessees using IFRS 16 with a long funding lease will be defined as having a long funding finance lease. A new definition is inserted into section 381 that defines a "right-of-use lease".

30. Paragraph 4(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.

31. Paragraph 4(8) inserts new subsections 544(5A) and (5B) amending 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.

32. Paragraph 4(9) inserts new subsections 771(9A) and (9B). This provides that the finance arrangements code does not apply to an arrangement where the borrower has a right-of-use lease and would not have, if they were required to distinguish finance leases under GAAP, accounted for the arrangement as a finance lease or loan.

33. Paragraph 5 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 upon the adoption of IFRS 16.

34. 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 IFRS) that does not apply such a categorisation, the lessee must still determine whether or not the lease is a finance lease.

35. 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 balance sheet, this lease need not be classified for CIR purposes – that is, such leases cannot be "finance leases" under the CIR rules.

36. Paragraph 6 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 5 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

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

38. Paragraph 8(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.

39. Paragraph 8(2) makes necessary consequential amendments to section 70YF.

40. Paragraph 8(3) amends section 220. This extends one of the conditions for a "qualifying operating lease" from "a plant and machinery lease which has a term of between 4 years and 5 years" to "a plant and machinery lease which has a term of between 4 and 7 years".

41. Paragraph 9 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 lease cannot be determined.

42. Paragraph 10 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

43. Part 3 of the schedule governs the repeal of section 53 of Finance Act (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.

44. Paragraph 11 repeals section 53. 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.

45. 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.

46. Paragraphs 12 to 17 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.

47. Paragraph 13 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 13 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.

48. Paragraph 13(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.

49. Paragraph 13(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 (treating such amounts as positive amounts) and multiplying by 100.

- 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 GAAP.

- Step 4 requires the lessee to add together all of the amounts calculated under Step 3. This will result in the weighted average or weighted mean of remaining periods of the leases affected by IFRS 16 transitional accounting adjustments taken to equity.

- 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.

50. Paragraph 13(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.

51. Paragraph 13(4) provides that any amount calculated by paragraph 13 is also subject to paragraphs 15 and 16.

52. 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 (remaining lease term on IFRS 16 adoption)	**Transitional accounting adjustment (A)**	**Relevant percentage A/SUM (A^1-A^n) x 100**	**Apply relevant percentage to remaining lease term on IFRS 16 adoption**	**Mean lease period (days)**
Lease 1 (1,826 days)	£(10,000,000) credit	26.32% (= 10m/38m x 100)	481 (1,826 days*26.32%)	481 +
Lease 2 (730 days)	£8,000,000 debit	21.05% (= 8m/38m x 100)	154 (730 days*21.05%)	154 +
Lease 3 (1,826 days)	Nil	Excluded	Excluded	Excluded +
Portfolio of leases (1,461 days)	£20,000,000 debit	52.63% (=20m/38m x 100)	769 (1,461 days*52.63%)	769
Overall	**Net £18,000,000 debit**	**100%**		**1,404 days**

The 5 steps result in a spreading period of 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).

53. Paragraph 14 provides that where a lessee has adopted IFRS 16 for a period of account earlier than the first period of account beginning on or after 1 January 2019, the transitional provisions provided for in paragraph 13 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.

54. Paragraph 15 provides for circumstances where a lessee has an amount that is being spread under the rules provided for by paragraph 13 and the lease is transferred to a connected party. The paragraph has the effect of requiring the transferee to continue to recognise for tax purposes the amounts that have been spread.

55. Illustrating paragraph 15 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 13. The first period of account ran from 1 January 2019 to 31 December 2019 and the lessee claims a tax deduction of £243,333 in that period of account. 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 tax 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 tax 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 13 of £512,667 (= 1,000,000 - 243,333 (365 days) - 56,667 (85 days) - 187,333 (281 days)) from 1 January 2021 over the remaining spreading period of 769 days.

56. Paragraph 16 provides for circumstances where the lessee has an amount treated under paragraph 13 and ceases its activities. The lessee brings into the account the remaining amount that has not been relieved immediately before the cessation.

57. Paragraph 17 provides that paragraphs 12 to 16 apply equally to a portfolio of leases having similar characteristics as they do for individual leases.

58. Paragraph 18 provides that transitional adjustments following the repeal of section 53 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.

59. Paragraph 19 prescribes the treatment under the CIR rules of certain transitional adjustments arising on the repeal of section 53 and the introduction of IFRS 16. In particular, it applies to tax adjustments that (i) arise from a lease that was treated as a finance lease under the old accounting (such as FRS 102); and where (ii) the company opts not to treat the lease as a giving rise to a “right-of-use asset” because it is a short term or low value lease. Such transitional amounts are treated as tax-EBITDA amounts (and not tax-interest amounts) in the CIR calculations.

Background note

60. Entities applying FRS 101 or IFRSs 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 change will mainly affect the treatment for the lessee.

61. 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, 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, it recognises lease payments as an expense over the lease term, and is considered to have an operating lease. This treatment will continue under FRS 102, the main Financial Reporting Standard

applicable in the UK and Republic of Ireland.

62. The new accounting standard (IFRS 16) will remove the distinction between finance leases and operating leases for a lessee (but not a lessor). Going forward, under IFRS 16, a lessee will recognise all leases on its balance sheet other than certain exempted leases which are short term or of low value.

63. 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.

64. 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.

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

66. 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 legislative changes ensure that those rules will continue to apply as intended for an IFRS 16 lessee.

67. 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. The legislative changes 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 legislative changes make several simplifications to the tests to identify a long funding lease which are not connected to the accounting standard changes.

68. 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 legislative changes ensure that the CIR rules continue to be consistent with the OECD's recommendations, and mean that any interest restriction will not vary significantly depending on the accounting framework used.

69. In particular, where a lessee has a right-of-use asset under IFRS 16, 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 that are not classified as finance leases, or leases that would not have been classified as finance leases had the lessee been required to make such a classification under GAAP, 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.

70. 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.

71. The draft legislation published on the 6 July 2018 has been amended following the technical consultation that ended on 31 August 2018. The main changes are:

- Legislation deeming a disposal and reacquisition of a long funding lease has been amended to widen the exemption from the rules where there is any change of accounting standard, but not to provide exemption where the lessee goes from accounting for a long funding lease as a right-of-use lease to an operating lease. (Paragraph 1(4) amending section 70YA CAA 2001).

- The definition of a long funding finance lease has been updated to ensure that long funding operating leases continue to be taxed as long funding operating leases after a change of accounting standard. (Paragraph 1(5) amending section 70YF of CAA 2001).

- Legislation restricting writing down allowances for a finance lessor when certain conditions have been met has been amended to align an exemption with the new definition of short leases in the long funding lease rules. (Paragraph 8(3) amending section 220 of CAA 2001).

- The finance arrangements code has been amended to ensure that the same transactions are caught by the anti-avoidance legislation regardless of the accounting standard used by the relevant person. (Paragraph 3 amending section 809BZN of ITA 2007 and paragraph 4(9) amending section 771 of CTA 2010).

- Step 4 of the calculation for the transitional adjustment has been amended to ensure that the adjustment is spread over the average remaining term of the lessee's leases. (Paragraph 13).

Clause 36 and Schedule 14: 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 clause and Schedule will have effect in relation to licence transfers approved after 1 November 2018.

Details of the clause and Schedule

2. Paragraph 1 introduces Schedule 14 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 14

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 102 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 periods ending before 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 net cost amount must be calculated in accordance with paragraph 6. The transferred proportion of that amount must then be identified in accordance with paragraph 7, and the proportion of that amount that is attributable to the TTH asset is then identified in accordance with paragraph 8. Adjustments must then be made to that amount in accordance with paragraph 9. 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 'transferred 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, if that agreement is entered into prior to the date of the sale of the licence interest, or the purchaser's share, if the agreement is entered into on or after that date.

12. Paragraph 8 defines the 'relevant proportion' of the transferred 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 sets out the adjustments that are to be made to the net cost amount as required by paragraph 5.

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 qualifying 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.

19. Paragraph 14 provides for an apportionment of profits where an accounting period straddles the 17 April 2002, and profits for that accounting period are to be transferred.

Part 3: Effect of a TTH Election on the Seller

20. 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.

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

22. 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.

23. 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.

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

25. Paragraph 19 states that paragraphs 20 and 21 apply in regards to accounting periods for which there is a transferred profits amount.

26. Sub-Paragraph 20(1) disregards 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.

27. Sub-paragraph 20(2) defines the "transferred adjusted ring fence profits amount" for

an accounting period as the seller's eligible adjusted ring fence profits for the period. However, where the accounting period is the earliest period, the "transferred adjusted ring fence profits amount" is the seller's eligible adjusted ring fence profits for the period in proportion to how much the transferred profits amount bears to the seller's ring fence profits amount for the period.

28. Sub-paragraph 21(1) ensures that the seller, for the purposes of any provisions of Part 4 or Part 8 of the Corporation Tax Act 2010,

- disregards the ARFP components or, in the case of the earliest period, an amount equal to the transferred proportion of the ARFP components for the accounting period, and
- retains a proportion of the ARFP components in the earliest period

29. Sub-paragraph 21(2) defines ARFP components.

30. Sub-paragraphs 21(3) provides the reference to the disregarding provisions which apply in regards to the transferred profits amount for an accounting period.

31. Sub-paragraph 21(4) ensures that the ARFP components are not to be disregarded for the purposes of determining the amount of the adjusted ring fence profits amount to be transferred.

32. Sub-paragraphs 22(1) and (2) provide definitions of the various terms used in sub-paragraphs 20(2) and 21(1).

33. Sub-paragraph 22(3) 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 licence transfer date.

Part 4: Effect of a TTH Election on the Purchaser

34. Paragraph 23 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 23(d) are met.

35. Sub-paragraph 23(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.

36. Paragraph 24 defines a decommissioning loss for the purposes of sub-paragraph 23(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.

37. Paragraph 25 states that where the conditions in paragraph 23 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.

38. Sub-paragraphs 26(1) and (2) allow for there to be a repayment of supplementary charge in respect of the pre-acquisition accounting period referred to in sub-paragraphs 25(2)(b) or (3)(b) as if the amount of supplementary charge was charged on and paid by the purchaser. The repayment is determined in respect of the activated ARFP amount for the pre-acquisition period as if the transferred adjusted ring fence profits amount for the pre-acquisition period was recalculated in accordance with paragraph 50. Paragraph 26 only applies where an activated transferred profits amount is applied in accordance with sub-paragraph 25(2)(b) or (3)(b) in respect of a loss period.

39. Sub-paragraph 26(3) refers to paragraph 53 for provisions relating to the activated ARFP amount.

40. Sub-paragraph 27(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 20(2)) 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.

41. Sub-paragraph 27(2) states that the overlapping proportion relating to the seller's accounting period is the proportion that the seller's accounting period that overlaps with the purchaser's pre-acquisition accounting period bears to the whole of the seller's accounting period.

42. Paragraph 28 treats corporation tax and supplementary charge 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 and supplementary charge paid by the seller may be repaid to the purchaser.

43. Paragraph 29 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

44. Sub-paragraph 30(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.

45. Sub-paragraph 30(2) states that the total decommissioning expenditure amount is the proportion of the sum of the decommissioning expenditure amounts as defined in paragraph 31 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.

46. Sub-paragraph 30(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.

47. Paragraph 31 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.

48. Paragraph 32 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.

49. Paragraph 33 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.

50. Paragraph 34 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.

51. Paragraph 35 requires that any apportionment of amounts under paragraph 32, 33 or 34 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

52. Paragraph 36 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.

53. Paragraph 37 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.

54. Paragraph 38 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.

55. Paragraph 39 defines the total activated TTH amount for any post-activation period as the lower of the adjusted activated TTH amount (as defined in paragraphs 40-41), and the closing balance of the total TTH amount at the end of the preceding accounting period(as defined in paragraph 49).

56. Paragraph 40 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.

57. Paragraph 41 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 decommissioning expenditure for the post-activation period. Where the excess is greater than the closing balance of activated TTH for the preceding period, the adjusted activated TTH amount is nil.

58. Paragraph 42 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 activated TTH for the previous accounting period, or nil is the closing balance is negative.

59. Paragraph 43 introduces paragraph 44, 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.

60. Paragraph 44 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.

61. Paragraph 45 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.

62. Paragraph 46 defines the unused transferred profits amount of an accounting period as the transferred profits amount, less any amounts previously applied in accordance with paragraph 25.

63. Paragraph 47 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 44 of the Schedule.

64. Paragraph 48 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 25 of the Schedule.

65. Paragraph 49 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 25 of the Schedule.

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

66. Sub-paragraph 50(1) provides that paragraph 50 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 26(1), for the purposes of paragraph 26(2)(c).

67. Sub-paragraphs 50(2) and (3) state that the recalculated transferred adjusted ring fence profits amount for the relevant pre-acquisition accounting period mentioned in sub-paragraph 50(1) is the total of (a) the reduced ARFP amount for the pre-acquisition period, 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.

68. Paragraph 51 explains how to calculate the reduced ARFP amount for a pre-acquisition accounting period, subject to paragraph 52.

69. Paragraph 52 applies instead of paragraph 51 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 26(1). This paragraph instead determines how the "reduced ARFP amount" is calculated.

70. Paragraph 53 provides the rules for calculating the "Activated ARFP amount".

71. Paragraph 54 provides the rules for calculating the "ARFP uplift amount".

72. Paragraph 55 provides the rules for calculating the "Adjusted finance cost amount".

Part 8: TTH Elections: Conditions and Procedure

73. Sub-paragraph 56(1)(a) provides that in order to make a TTH election the seller and the purchaser must not be associated with each other.

74. Sub-paragraphs 56(1)(b) and (c), 56(2), 56(3), 56(4) and 56(5) set out exceptions to this rule, where the transfer of TTH is part of a hive-down, or a corporate restructuring.

75. Sub-paragraph 56(6) defines associated companies for the purposes of sub-paragraph 56(1)(a).

76. Paragraph 57 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.

77. Paragraph 58 requires that a TTH election must be made by the later of 1 June 2019 or 90 days after the date of the transfer of the oil licence to the purchaser, but cannot be made prior to the licence transfer date.

78. Paragraph 59 allows HMRC to specify the form and content of a TTH election.

79. Paragraph 60 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

80. Paragraph 61 provides that a TTH election may be approved by an officer of HMRC giving notice of approval to the seller and the purchaser.

81. Paragraph 62 provides that if an election is not approved under paragraph 61, and no enquiry is opened into the election, the election shall be deemed to be approved.

82. Paragraph 63 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.

83. Paragraph 64 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.

84. Paragraph 65 requires the tracked profit or loss amount to be calculated on a basis that is just and reasonable.

85. Paragraph 66 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.

86. Paragraph 67 sets out who may be the STO of a purchaser company.

87. Sub-paragraphs 68(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.

88. Sub-paragraph 68(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.

89. Paragraph 69 makes provision for how a penalty under paragraph 68 may be assessed.

90. Paragraph 70 makes provision for how penalties charged under paragraph 68 must be paid, and how they can be enforced.

Part 10: TTH Elections: Effective Date and Withdrawal

91. Paragraph 71 provides that a TTH election has effect from the date of the licence transfer and that the consequences of the election are permanent unless it is withdrawn.

92. Paragraph 72 makes provision for the circumstances in which a TTH election may be withdrawn by HMRC in respect of the purchaser.

93. Sub-paragraph 72(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

94. Paragraph 73 provides that a penalty may be charged on the seller if an inaccurate TTH election is submitted.

95. Sub-paragraph 73(c) sets out how to determine the ‘potential lost revenue’ where a penalty is charged.

96. Paragraph 74 allows HMRC to amend a TTH election by giving notice to the purchaser if the election is discovered to be inaccurate.

97. Sub-paragraphs 74(3) and (4) set out certain restrictions on when an amendment under this paragraph can be made.

98. Paragraph 75 provides that an amendment under paragraph 74 will not interfere with claims already made by the purchaser under which losses are carried back against activated TTH.

Part 12: Chargeable Gains

99. Paragraph 76 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, or the disposal of an intangible fixed asset for the purposes of Part 8 of CTA 2009.

100. Paragraph 77 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.

101. Paragraph 78 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.

102. Paragraph 79 provides that the transfer of tax history is to be treated as included in any reference to the disposal of a licence interest where there is an oil licence swap.

103. Paragraph 80 defines "the transfer of tax history" for the purposes of this part.

Part 13: Onward Sale

104. Paragraph 81 provides that this part applies if the purchaser of a TTH asset subsequently sells on that TTH asset, or a part of it, to a new purchaser.

105. Paragraph 82 provides that where the original purchaser has other interests in the transferred oil licence, for the purposes of the onward sale provisions interests acquired by the original purchaser later are to be treated as being transferred to the new purchaser prior to interest that are acquired earlier.

106. Paragraph 83 provides that any amount of tax history that was transferred under the original election from the seller to the first purchaser is to 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.

107. Sub-paragraphs 83(4)(b) and 83(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.

108. Paragraph 84 provides that where there is an onward sale, the unused transferred profits amounts of each relevant accounting period cease to be available to the first purchaser for the purposes of the first election.

109. Paragraph 85 ensures tracked profits of previous purchasers are taken into account for activation purposes where any part of the original TTH amount relating to the first TTH election is being transferred in a subsequent TTH election.

110. Paragraph 86 provides that paragraphs 87 and 88 apply in relation to the subsequent TTH election, unless the first purchaser and the second purchaser elect that both

these two paragraphs do not apply.

111. Paragraph 87 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.

112. Paragraph 88 expands 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.

113. Sub-paragraph 89(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.

114. Sub-paragraph 89(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.

115. Paragraph 90 provides that where, following an onward sale, the first purchaser continues to be liable for some or all of the decommissioning costs of the subsequent 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.

116. Paragraph 91 provides that the onward sale rules in this part also apply to sales of the TTH asset by the second and subsequent purchasers.

Part 14: Supplementary

117. Paragraph 92 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.

118. Paragraph 93 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.

119. Paragraph 94 makes provisions for appeals to be made under this schedule against decisions to amend a TTH election, withdraw a TTH election, or charge a penalty in accordance with the STO provisions.

120. Sub-paragraph 94(4) provides the tribunal may overturn the decision that is the subject of the appeal.

121. Sub-paragraph 94(5) provides that where a decision to withdraw a TTH election is overturned, the election is treated as having had continual effect throughout.

122. Sub-paragraph 95(1) allows an officer of HMRC to amend an election or amend 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.

123. Sub-paragraph 95(2) provides that arrangements are within sub-paragraph 95(1) if they are designed to secure an entitlement to repayment of tax or an earlier repayment of tax than would otherwise have bene the case, or otherwise circumvents the intended limits of the legislation.

124. Paragraph 96 provides that relief may not be given to two different people in respect of the same amount of transferred profits.

Part 15: Interpretation

125. Paragraph 97 introduces Part 15 which provide definitions for the Schedule.

126. Paragraph 98 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.

127. Paragraph 99 defines a UK oil licence in accordance with the Petroleum Act 1998 or the Petroleum (Production) Act (Northern Ireland) 1964.

128. Paragraph 100 defines licensed area and transferred oil field.

129. Paragraph 101 defines licence transfer date.

130. Paragraph 102 defines the seller's reference accounting period.

131. Paragraph 103 defines the purchaser's reference accounting period.

132. Paragraph 104 defines the seller's pre-transfer accounting periods.

133. Paragraph 105 defines the purchaser's pre-acquisition accounting periods and post-acquisition accounting periods.

134. Paragraph 106 makes provision for the purchaser to be treated as having 12 month accounting periods ending on the date that it comes within the charge to corporation tax and successive 12 month periods prior to that, where the purchaser comes within the charge to corporation tax after the seller's reference accounting period.

135. Paragraph 107 defines transferred profits amount and activated transferred profits amount.

136. Paragraph 108 defines trade loss relief provisions.

Background Note

137. This measure introduces 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.

138. 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.

139. 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.

140. 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.

Clause 37: 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.
7. Subparagraph 3 provides that subparagraph (4) applies where the old participator has ceased to be a licensee or participator in the field at the end of the transfer period.
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 (j) OTA 75.

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

11. Subparagraph 7 provides that where there is a subsequent transfer of a field interest to which the paragraph applied then references to “the old participator” includes those participators who held the interest previously. This ensures that the legislation applies where the old participator incurs or funds decommissioning expenditure of a participator who is not the immediate successor.

Background note

12. 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”).

13. 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.

14. 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.

15. 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.

Clause 38 and Schedule 15: Entrepreneurs' relief

Summary

1. This clause and Schedule introduce various amendments to the rules for entrepreneurs' relief (ER). These are:

- Increasing the period of time during which specified conditions must be met in order for ER to be available when assets are disposed of. The period will increase from one year to two years.

- Introducing two new tests into the definition of a claimant's 'personal company' which applies for ER purposes. Both of the new tests must be met, along with the existing two tests, throughout the specified period in order for relief to be due. The new tests require the claimant to have (as a minimum) 5% interests in the company's distributable profits and in the assets available to equity holders on a winding-up.

- Enabling 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 and Schedule

2. Clause 38 introduces Schedule 15, which contains provisions amending Part 5 of the Taxation of Chargeable Gains Act (TCGA) 1992.

Details of the Schedule

3. Paragraph 1 extends the period through which certain conditions must be met to qualify for ER from one year to two years.

4. Paragraph 1(1) introduces amendments to TCGA 1992.

5. Paragraphs 1(2) to 1(6) change references to one year to two years in various provisions in Part 5 of TCGA1992. These are:

- Section 169I(3), which specifies the period, ending with the disposal, for which a business must have been owned by the claimant.

- Section 169I(4)(a), which specifies the period for which a business must have been owned by the claimant where that business has ceased before the disposal.

- Section 169I(6), which specifies the period, ending with a disposal of shares, for which the company in question must have been the claimant's personal company and his or her employer, as well as a being a trading company or the holding company of a trading group.
- Section 169I(7), which specifies the period for which the conditions in subsection (6) must have been met where the company ceased to be a trading company before the disposal of its shares.
- Section 169I(7A)(b), which specifies how long before a disposal of enterprise management incentive (EMI) shares the grant of the option to acquire them must have taken place.
- Section 169I(7A)(c), which specifies the period, ending with a disposal of EMI shares, for which the company must have been the claimant's employer, and a trading company or the holding company of a trading group.
- Section 169I(7B)(b), which specifies how long before a company ceased to be a trading company or the holding company of a trading group the grant of an option to acquire EMI shares must have taken place.
- Section 169I(7B)(c), which specifies the period for which the conditions in subsection (7A) must have been met where the company ceased to be a trading company before the disposal of its EMI shares.
- Section 169J(4), which specifies the period, ending with a disposal of shares by trustees of a settlement, for which the company in question must have been the qualifying beneficiary's personal company and his or her employer, as well as a trading company or the holding company of a trading group.
- Section 169J(5)(a), which specifies the period for which assets must have been used in a business carried on by a qualifying beneficiary where trustees of a settlement dispose of those assets.
- Section 169K(4), which specifies the period for which an asset must have been used in a business for its disposal to be associated with a relevant material disposal.
- Section 169O(6), which specifies the period by reference to which the 'material time' is determined for the purposes of computing ER due to trustees when their settlement has more than one beneficiary.
- Paragraph 25 of Schedule 7ZA TCGA 1992, which defines the 'relevant period' for the purposes of Schedule 7ZA.

6. Paragraph 1(2)(d) also inserts new subsections (7ZA) and (7ZB) into section 169I. These allow a period immediately before a transfer of a business to a company to which section 162 applies, throughout which the business was owned by the claimant, to be treated as if the conditions in subsections 6(a) and (b) of section 169I are met.

7. Paragraph 2 introduces two new tests into the definition of a claimant's 'personal company' which applies for ER purposes. The new tests require the claimant to have (as a minimum) 5% interests in the company's distributable profits and in the assets available to equity holders on a winding-up.

8. Paragraph 2(1) introduces amendments to TCGA 1992.

9. Paragraph 2(2) inserts the two new tests into section 169K(1B), so that the conditions for entrepreneurs' relief on an associated disposal are consistent with the new extended definition of the claimant's 'personal company'.

10. Paragraph 2(3) amends section 169LA TCGA 1992. New section 169LA(1) adds the two new tests to the existing shareholding and voting rights tests which, if any are met, will disallow relief on business goodwill. Note that, as before, only one of the tests must be met in order for relief not to be due. Subparagraph (3)(b) makes a consequential amendment to section 169LA(1A) and subparagraph (3)(c) introduces a definition of a 'relevant group company' into section 169LA(8) for the purposes of new section 169LA(1).

11. Paragraph 2(4) amends section 169S TCGA 1992. New subsection (3) of section 169S contains the extended definition of a 'personal company'. The test requiring a 5% holding of ordinary share capital in the company is retained. The two new tests must be met by virtue of the claimant's holding of ordinary share capital (as well as the existing test requiring 5% of the voting rights in the company). The new tests are written in terms of amounts available to equity holders in the company, and not just to holders of shares.

12. Paragraph 2(4)(b) makes a consequential change to section 169S(4) to ensure the new tests operate correctly where the claimant is a joint owner of shares.

13. Paragraph 2(4)(c) inserts new subsection (4ZA), which imports the definition of an equity holder, along with other terms, from the Corporation Tax Act (CTA) 2010.

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

Chapter 3A

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

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

17. 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.

18. New sections 169SC (1) to (3) 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 section 169SC(5) 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.

19. New section 169SC(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. New section 169SC(5) defines '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.

20. New sections 169SC (5) to (7) provides various definitions for the purposes of the section and chapter.

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

22. New section 169SD(1) 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.

23. New section 169SD(2) sets out the rules for calculating the amount of deferred gain that accrues on the later disposal. This is done in three steps.

24. 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.

25. Step 2 is to apportion the amounts identified under step 1 by reference to the nominal value of the shares or securities which were the subject of the deemed disposal that have actually been disposed of. Example: if X sold 25 of her 50 £1 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.

26. 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.

27. New section 169SD(3) provides that where the subsequent disposal of shares is a capital distribution under section 122 TCGA 1992, 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.

28. New section 169SE provides rules for where there is a reorganisation of share capital following elections under sections 169SC and 169SD, and the new holding consists wholly or in part of qualifying corporate bonds (QCBs), such that section 116 TCGA 1992 applies. A chargeable gain is calculated at the time of the reorganisation, but is only treated as accruing when the QCBs are disposed of.

29. New section 169SF provides rules for establishing how much of the deferred gain accrues on a disposal of shares or securities where there has been a reorganisation of share capital under Chapter 2 Part 4 TCGA 1992 after the deemed disposal. The new holding is equated to the original shares using the same apportionment methods as those used to apportion the acquisition costs of the holdings as per Chapter 2 Part 4 of TCGA 1992.

30. New section 169SG sets out the rules for making elections under new sections 169SC and 169SD. New section 169SG(1) ensures that both elections are irrevocable. New section 169SG(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 section 169SG(3) gives the time limit for an election under new section 169SD as four years after that tax year. New section 169SG(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.

31. New section 169SH 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.

32. Paragraph 4 contains the commencement provisions for the Schedule. Paragraphs 4(1) to 4(3) provide that the amendments made by Paragraph 1 have effect for disposals on or after 6 April 2019, except where a business ceased before 29 October 2018. Where the claimant's business ceased, or their personal company ceased to be a trading company (or the holding company of a trading group), before 29 October 2018, the existing one year qualifying period will continue to apply. Paragraph 4(4) provides that paragraph 2 has effect for disposals on or after 29 October 2018. Paragraph 4(5) provides that paragraph 3 has effect for disposals on or after 6 April 2019.

Background note

33. Entrepreneurs' relief was introduced in 2008 to support business investment and growth of new enterprises. Claimants include self-employed small business owners and individuals who own substantial stakes in limited companies which employ them.

34. This clause and Schedule improve the effectiveness of ER by requiring claimants to have an interest in their business for a longer period of time, and ensuring that claimants disposing of shares had a minimum economic stake in the company. The government considers longer-term involvement and entitlement to share in the profits and assets of a company to be more characteristic of entrepreneurial activity.

35. Changes allowing ER to be claimed on gains made prior to an individual's shareholding being 'diluted' below the 5% threshold in certain circumstances have been introduced as part of the government's response to the Patient Capital Review. This clause and Schedule act to remove a perceived barrier to growth by allowing these individuals 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.

36. This is in line with the government's policy of supporting enterprise creation and growth in the UK.

Clause 39: Gift aid etc: 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 clause 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.

Clause 40: Charities: exemption for small trades etc

Summary

1. This clause increases the non-primary purpose small trading tax exemption limit for charities. The changes come into effect on or after 1 April 2019 for changes to the Corporation Tax Act and on or after 6 April 2019 for the Income Tax Act.

Details of the clause

2. Subsection 1 makes changes to section 528 of Income Tax Act 2007 (ITA 2007). Section 528 sets out the small trading tax exemption limits. The limit is £5,000 or if the turnover is greater than £5,000, 25% of the charity's total incoming resources, subject to an overall upper limit of £50,000. The changes will increase these limits to £8,000 and £80,000 respectively.

3. Subsection 2 applies the changes made to section 528 ITA 2007 for tax year 2019-20 and subsequent tax years.

4. Subsection 3 makes changes to section 482 of Corporation Tax Act 2010 (CTA 2010). Section 482 sets out the requisite limit that applies to non-exempt trade of charitable companies.

5. Subsections 4 and 5 increase the limits in subsection (6) and (7) of CTA 2010 to £8,000 and £80,000 respectively.

6. Subsection 6 applies the changes made to section 482 CTA 2010 in relation to accounting periods on or after 1 April 2019.

Background note

7. A charity does not pay tax on profits that it makes from charitable trading that is part of its primary purpose, for example, sale of tickets for a theatrical production staged by a theatre. Where a charity's trading does not relate to its primary purpose, for example, a charity sells Christmas cards to raise additional funds, its profits are also exempt from tax if its turnover is below the small trading tax exemption limits. Two of these are currently set at £5,000 where turnover is under £20,000 and £50,000 where turnover exceeds £200,000. The exemption recognises that in practice charities may engage in some small scale non-primary purpose trading, and means that they do not incur a tax liability on the profits of that trade. This measure will increase the above small trading exemption limits for charities to £8,000 and £80,000 respectively.

Part 2: Other taxes

Clause 41: Relief for first-time buyers in cases of shared ownership

Summary

1. This clause extends the relief from stamp duty land tax ("SDLT") for first time buyers purchasing a property under a shared ownership scheme, to include purchases where no market value election is made and the purchaser decides to pay the SDLT in stages.

Details of the clause

2. Subsection 1 amends Schedule 9 of Part 4 of Finance Act 2003, which sets out how stamp duty land tax applies to shared ownership purchases.

3. Subsection 2 inserts new sub-paragraph (4A) at paragraph 4 of Schedule 9 which refers to the further provisions for first time buyers at paragraph 15.

4. Subsections 3 and 4 insert new paragraphs 15, 15A and 15B into Schedule 9 of Part 4 of Finance Act 2003, extending the rules so that first time buyers' relief is available for the purchase of a shared ownership lease, or under a shared ownership trust, regardless of whether or not a market value election is made.

5. Subsections 5 and 6 make various minor consequential amendments.

6. Subsection 7 provides that the section as a whole is effective for land transactions where the date of acquisition is on or after 29 October 2018, as well as affected transactions which took place before that date but where no land transaction return had been made by that date.

New Paragraph 15 of Schedule 9: Relief for first-time buyers: shared ownership lease where election made

7. Paragraph 15 applies where a market value election is made under paragraph 4 of Schedule 9 (*Shared Ownership lease: election where staircasing allowed*) and relief is claimed under paragraph 1 of Schedule 6ZA (*first time buyers relief*). Where the relief is claimed no SDLT will be due on the rent payable under a shared ownership lease.

New Paragraph 15A of Schedule 9: Relief for first-time buyers: shared ownership lease where no election made

8. Sub-paragraph (1) applies where a shared ownership lease is granted, no market value election is made and instead the purchaser decides to pay the SDLT in stages.

9. Sub-paragraph (2) provides that the market value of the property as stated in the lease is the amount to be used to determine whether first time buyers' relief is available in respect of the property (that is, whether the value of the property does not exceed the £300,000 or £500,000 thresholds).

10. Sub-paragraph (3) provides that if first time buyers' relief is claimed, no SDLT is chargeable on the rent payments.

11. Sub-paragraph (4) says the meaning of 'shared ownership lease' is the same as that in paragraph 4A(3) Schedule 9, which is a lease granted by a qualifying body (such as a local authority or a housing association) or in pursuance of a preserved right to buy.

New Paragraph 15B in Schedule 9: Relief for first-time buyers: shared ownership trust where no election made

12. Sub-paragraphs (1) to (3) of Paragraph 15B work in the same manner as paragraph 15A but applies to shared ownership trusts where a shared ownership trust is declared, and no election is made for tax to be charged in accordance with paragraph 9 (*Shared Ownership Trust: election for market value election*). The market value of the property is used when determining eligibility for the second condition of Paragraph 1 of Schedule 6ZA.

13. For the purposes of calculating SDLT the chargeable consideration is to be taken as being the consideration given representing the initial capital payment. Where the relief is claimed no SDLT will be chargeable on any rent equivalent payment treated by reason of paragraph 11(b) (*Shared ownership trust: treatment of additional of additional payments where no election is made*) as rent.

Background note

14. Stamp Duty Land Tax (SDLT) is a tax on purchases of land in England, and Northern Ireland. SDLT was devolved to Wales with effect from 1 April 2018. SDLT was devolved to Scotland in April 2015. There are two main charging regimes within SDLT: one for transactions in residential property; the other for transactions involving non-residential and mixed use property (e.g. commercial property transactions). Purchasers are charged at a percentage of the consideration they pay for an interest in land (e.g. the price paid for the property).

15. Relief for first time buyers was introduced at Autumn Budget 2017 and applies where the purchaser is a first time buyer buying their first home. Relief is available where the relevant consideration for the residential property is £500,000 or less. Where the

relief is claimed SDLT is charged at 0% on the first £300,000 of consideration, and then at 5% on any remainder of consideration so far as not exceeding £500,000.

16. A first time buyer is defined as an individual who has never owned an interest in a residential property in the United Kingdom or anywhere else in the world and who intends to occupy the property as their main residence.

17. Qualifying shared ownership schemes are provided by approved bodies such as local authorities and housing associations, and help people buy a home by allowing them to buy a share in the home, and pay rent on the remainder.

18. First time buyers purchasing through a qualifying shared ownership scheme, are eligible for the relief when they are first granted the lease, or in the case of a shared ownership trust on the declaration of the trust. Relief is available on that first transaction where they elect to pay SDLT on the market value of the property (market value election).

19. This clause introduces amendments to Schedule 9 of Finance Act 2003 to extend the relief to include purchases where the first time buyer does not make a market value election on that first transaction. Where the relevant conditions are met the relief will apply to the first transaction only.

20. Because of the nature of shared ownership arrangements, the SDLT payable on the first transaction can include tax due on the net present value of the rent. This clause also introduces relief in respect of the rent payments, so that where first time buyers' relief is claimed no SDLT will be payable on the rent.

21. Staircasing transactions where the purchaser increases their ownership in the property will not be eligible for the relief. Staircasing transactions will not though disqualify the first transaction on which the relief is claimed by virtue of paragraphs 4B or 12 of Schedule 9 FA2003 which deals with staircasing transactions.

22. The clause has effect for relevant shared ownership transactions where the effective date is on or after the 29 October 2018.

Clause 42: Repayment to first-time buyers in cases of shared ownership

Summary

1. This clause extends the normal time limit for stamp duty land tax repayment claims, for first-time buyers who have bought a property via a shared ownership arrangement and who are now eligible for relief (or for increased relief) as a result of new clause 41. The extended time limit runs until 29 October 2019.

Details of the clause

2. Subsection 1 allows relief to be claimed by 29 October 2019, by first-time buyers who meet the conditions set out.

3. Subsection 2 and 4(a) deal with cases where at the time of purchase, the first-time buyer made an election to pay stamp duty land tax on the market value of the property at the time of purchase and who were eligible for first-time buyers' relief under Schedule 4ZA of Finance Act 2003. If buyers in that situation would have been chargeable to less tax if the amendments included in clause 41 paragraph (3) had been in force at the time of their purchase, then HM Revenue and Customs must repay the excess if a claim is made within the time limit mentioned above.

4. Subsections 3 and 4(b) deal with cases where at the time of purchase, the first-time buyer was not eligible to claim first-time buyers' relief because they did not make an election to pay stamp duty land tax on the market value of the property. If first-time buyers in that category would have been eligible to claim relief if the amendments included in clause 41 paragraphs (4), (5) and (6) had been in force at the time of their purchase, then HMRC must repay the excess if a claim is made within the time limit mentioned above.

5. Subsection 5 stipulates that a claim must be made by amendment of the original land transaction return. This ensures that the normal rules allowing HMRC to enquire into stamp duty land tax returns, apply equally to claims made under this section.

6. Subsection 6 disapplies the rules in paragraph 6 of Schedule 10 to Finance Act 2003 for claims made under this section. That means that claimants will not be required to produce the contracts relating to the transaction in support of their claim.

Background note

7. Stamp Duty Land Tax (SDLT) is a tax on purchases of land in England, and Northern Ireland. Land transaction taxes were devolved to Scotland with effect from April 2015, and to Wales from April 2018.

8. There are two main charging regimes within SDLT: one for transactions in residential property; the other for transactions involving non-residential and mixed use property (e.g. commercial property transactions). Purchasers are charged at a percentage of the consideration they pay for an interest in land (e.g. the price paid for the property).

9. Relief for first-time buyers was introduced in Finance Act 2018 and applies where the purchaser is a first time buyer buying their first home. Relief is available where the relevant consideration for the residential property is £500,000 or less. Where the relief is claimed SDLT is charged at 0% on the first £300,000 of consideration, and then at 5% on any remainder of consideration so far as not exceeding £500,000.

10. A first time buyer is defined as an individual who has never owned an interest in a residential property in the United Kingdom or anywhere else in the world and who intends to occupy the property as their main residence.

11. Qualifying shared ownership schemes are provided by approved bodies such as local authorities and housing associations, and help people buy a home by allowing them to buy a share in the home, and pay rent on the remainder.

12. First-time buyers purchasing through a qualifying shared ownership scheme, are eligible for the relief when they are first granted the lease, or in the case of a shared ownership trust on the declaration of the trust. Relief is available on that first transaction where they elect to pay SDLT on the market value of the property (market value election).

13. Clause 41 introduces amendments to Schedule 9 of Finance Act 2003 to extend the relief to include purchases where the first time buyer does not make a market value election on that first transaction. It also allows relief in respect of the rent payments under the lease.

14. This clause allows first-time buyers who bought their property before 29 October 2018 without the benefit of the new rules, to claim repayment as though the new rules had been in place at the introduction of first-time buyers' relief.

Clause 43: Higher rates of tax for additional dwellings etc

Summary

1. This clause will extend the time allowed to claim back the higher rates of tax for additional dwellings of Stamp Duty Land Tax (HRAD) where an individual sells their old home within 3 years of buying a new home. This clause also clarifies the meaning of `major interest` in land for the general purpose of HRAD.

Details of the clause

2. Subsection (1) makes provision to amend Schedule 4ZA to the Finance Act 2003 (Stamp Duty Land Tax: higher rates for additional dwellings and dwellings purchased by companies). These amendments are specified in subsections (2) and (3).

3. Subsection (2) makes provision to insert a new sub-paragraph (5) after sub-paragraph (4) of Schedule 4ZA to make clear that, for the purposes of HRAD, an 'undivided share in land' constitutes a 'major interest'. The new sub-paragraph (5) states that a `major interest in a dwelling` includes an `undivided share in a major interest in a dwelling` for the general purpose of Schedule 4ZA.

4. Subsection (3) brings that into effect for land transactions whose effective date is on or after 29 October 2018.

5. Paragraph 8(3) of Schedule 4ZA concerns the time limits for an amended SDLT return for the purposes of reclaiming the HRAD element of the tax charge. An amended return must be made by the later of: (a) three months from selling the old home; or (b) twelve months from the filing date for the SDLT return for the new home.

6. Subsection (4) amends paragraph 8(3) of Schedule 4ZA so that the three month period referred to in paragraph 8(3) (a) of Schedule 4ZA becomes a 12 month period.

7. Subsection (5) brings the new time limit into effect for cases where the effective date of the sale of the old home is on or after 29 October 2018.

Background note

8. Schedule 4ZA was inserted into the Finance Act 2003 by section 128 of the 2016 Finance Act. This contains legislation to charge higher rates of SDLT when a company buys residential property and when individuals who already own residential property do so.

9. An exception to this rule arises when someone sells an old home and buys a new home. HRAD won't be chargeable if the old home is sold before the new home is bought or if the old home is sold within three years of buying the new home. In the latter case, HRAD must be paid upfront and can be claimed back so long as certain conditions are met.

10. The changes made by this legislation will ensure that Schedule 4ZA is easier to understand and more transparent when someone –

    a. amends an HRAD return after disposal of a previous main residence; or

    b. buys an undivided share in a property as a tenant in common.

Clause 44: 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 (No. 3) Bill 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 48.

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 made under a property transfer instrument or order made under one of the sections of the Banking Act 2009 shown at new subsection 66A(2) is exempt from a SDLT charge.

4. New subsection 66A(2) contains a list of instruments and orders made under the Banking Act 2009.

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

10. New subsection 66A(2)(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)(g) refers to a third-country instrument made in accordance with section 89H(2) or 89I(4) of that Act.

12. New subsection 66A(3) provides that references in new section 66A(2) 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).

13. 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 (No. 3) Bill.

Background note

14. 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.

15. 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.

16. 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.

Clause 45: 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 amends Schedule 61 of the Finance Act 2009 (Alternative Finance Investment Bonds).

35. Subsection 9(a) amends paragraph 7(5), to provide that where relief is withdrawn following the first transaction, interest on unpaid tax runs from the end of 14 days after the effective date of that transaction until the tax is paid.

36. Subsection 9(b) amends paragraph 20(3)(a), to provide that where a bond-holder acquires control of the underlying asset within 14 days beginning with the effective date of the first transaction, relief is not available.

37. Subsection 10 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

38. 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.

39. 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.

40. 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.

41. 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).

Clause 46: Stamp duty: transfers of listed securities and connected persons

Summary

1. This clause introduces a new Stamp Duty market value rule for listed securities transferred to connected companies. The clause will apply where money is paid or there is nil consideration or where the consideration is other than money. The tax has effect in relation to instruments executed on or after 29 October 2018. A related change is made in respect of Stamp Duty Reserve Tax (SDRT) by clause 47.

Details of the clause

2. Subsection (1) provides that this section will apply if an instrument transfers listed securities to a company or a company's nominee (whether or not for consideration), and the person transferring the securities is connected with the company or is the nominee of a person connected with the company.

3. Subsection (2) defines the meaning of 'listed securities' as stock or marketable securities which are regularly traded on a regulated market, or a multilateral trading facility, or a recognised foreign exchange. Regulated market, multilateral trading facility and recognised foreign exchange have the same meaning as in section 80B of Finance Act 1986 (intermediaries: supplementary).

4. Subsection (3) provides that for the purposes of the enactments relating to Stamp Duty within the meaning of new subsection (4) and where new subsection (1) applies, any transfer effected by an instrument is to be charged by reference to the following.

   - Where there is consideration consisting of money or any stock or security or debt, the amount or value of the consideration is to be treated as being equal to the amount or value of the consideration for the transfer or, if higher, the value of the listed securities.

   - In any other case, the transfer of listed securities is to be treated as being for an amount of consideration in money equal to the value of the listed securities.

5. Subsection (4) provides that the enactments for Stamp Duty under new subsection (3) means the Stamp Act 1891 and any enactment amending that Act or that it is to be construed as one with that Act. It also provides that, for the purposes of new subsection (3), the value of listed securities is to be taken to be the price which they might reasonably be expected to fetch on a sale in the open market at the date the instrument is executed.

6. Subsection (5) defines connected persons for the purposes of this section by the

meaning in section 1122 of CTA 2010.

7. Subsection (6) provides that the Treasury may by regulations made by statutory instrument provide for this section not to apply in relation to particular cases.

8. Subsection (7) provides that a statutory instrument made under new subsection (6) may make provision which has retrospective effect.

9. Subsection (8) provides that a statutory instrument made under new subsection (6) is to be made under a negative procedure.

10. Subsection (9) provides that this section is to be construed as one with the Stamp Act 1891.

11. Subsection (10) sets out the commencement provision. This section has effect in relation to instruments executed on and after 29 October 2018.

Background note

12. 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. A higher Stamp Duty or SDRT 1.5% rate applies where shares in UK companies are transferred to a person who provides clearance services or issues depositary receipts.

13. HM Revenue & Customs has become aware of contrived arrangements involving the transfer of listed securities to connected companies for low consideration to minimise stamp taxes on shares liability.

14. This clause inserts a market value rule to ensure where listed securities are transferred to a connected company, Stamp Duty is charged based on the higher of the amount or value of the consideration (if any) for the transfer or the market value of the securities.

Clause 47: SDRT: listed securities and connected persons

Summary

1. This clause introduces a new Stamp Duty Reserve tax (SDRT) market value rule for listed securities transferred to connected companies. The clause will apply where money is paid or there is nil consideration or where the consideration is other than money. The tax has effect in relation to transfers and agreements to transfer securities on or after 29 October 2018. A related change is made in respect of Stamp Duty by clause 46.

Details of the clause

2. Subsection (1) provides that this section will apply if a person is connected with a company and the person or the person's nominee agrees to transfer listed securities to the company or the company's nominee (whether or not for consideration), or the person or the person's nominee transfers such securities to the company or the company's nominee for consideration in money or money's worth.

3. Subsection (2) defines the meaning of 'listed securities' as chargeable securities which are regularly traded on a regulated market, or a multilateral trading facility, or a recognised foreign exchange. Regulated market, multilateral trading facility and recognised foreign exchange have the same meaning as in section 88B of Finance Act 1986 (intermediaries: supplementary).

4. Subsection (3) provides, for the purposes of a charge to SDRT under section 87 of FA 1986, and where new subsection (1) applies, that any agreement to transfer listed securities is to be charged by reference to the following.

   - Where the agreement is one to transfer listed securities for consideration in money or money's worth, the amount or value of the consideration is to be treated as being equal to the amount or value of the consideration for the transfer, or if higher, the value of the listed securities at the time the agreement is made.

   - In any other case, the agreement to transfer listed securities is to be treated as being one for an amount of consideration in money equal to the value of the listed securities at the time the agreement is made.

5. Subsection (4) provides that new subsection (5) applies for the purposes of a charge to SDRT under section 93 (depositary receipts) or 96 (clearance services) of FA 1986 on a transfer of listed securities where new subsection (1) applies.

6. Subsection (5) provides for the purposes of a charge to SDRT under section 93 or 96

of FA 1986 that if the amount or value of the consideration for any transfer of listed securities is less than the value of those securities at the time they are transferred, the transfer is to be treated as being for an amount of consideration in money equal to that value.

7. Subsection (6) provides that, for the purposes of this section, the value of listed securities at any time is the price which they may reasonably be expected to fetch on a sale in the open market at that time.

8. Subsection (7) defines connected persons for this section by the meaning in section 1122 of CTA 2010.

9. Subsection (8) provides that the Treasury may by regulations made by statutory instrument provide for this section not to apply in relation to particular cases.

10. Subsection (9) provides that a statutory instrument made under new subsection (8) may make provision which has retrospective effect.

11. Subsection (10) provides that a statutory instrument made under new subsection (8) is to be made under a negative procedure.

12. Subsection (11) provides that this section is to be construed as one with Part 4 of FA 1986.

13. Subsection (12) sets out the commencement provision. This section has effect in relation to a charge to SDRT at the rate of 0.5% under section 87 FA 1986 where the agreement to transfer is conditional and the condition is satisfied on or after 29 October 2018, or in any other case, the agreement is made on or after that date. In relation to a charge to SDRT at the rate of 1.5% under section 93 or 96 of FA 1986, this section has effect where the transfer is on or after 29 October 2018 (whenever the arrangement was made).

Background note

14. 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 SDRT on electronic transfers. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where shares in UK companies are transferred to a person who provides clearance services or issues depositary receipts.

15. HM Revenue & Customs has become aware of contrived arrangements involving the transfer of listed securities to connected companies for low consideration to minimise stamp taxes on shares liability.

16. This clause inserts a market value rule to ensure where listed securities are transferred to a connected company, SDRT is charged based on the higher of the amount or value of the consideration (if any) for the transfer or the market value of the securities.

Clause 48: 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 (No. 3) Bill 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 44.

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 transfer of stock and marketable securities by an instrument, or an instrument made under an instrument, listed in new subsection 85A(2).
4. New subsection 85A(2) contains a list of instruments made under the Banking Act 2009.
5. New subsection 85A(2)(a) refers to mandatory reduction instrument made under section 6B of the Banking Act 2009 (mandatory write-down, conversion of capital instruments).
6. New subsection 85A(2)(b) refers to a share transfer instrument or property transfer instrument made under section 12(2) of that Act (transfer to a bridge bank).
7. New subsection 85A(2)(c) refers to a property transfer instrument made under section 12ZA(3) of that Act (transfer to asset management vehicle).
8. New subsection 85A(2)(d) refers to a resolution instrument made under section 12A of that Act (bail-in).
9. New subsection 85A(2)(e) refers to a share transfer order made in accordance with section 13(2) of that Act (temporary public ownership).
10. New subsection 85A(2)(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) or 13(2) of that Act.
11. New subsection 85A(2)(g) refers to a supplemental share transfer order made under section 27 of that Act.

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

13. New subsection 85(2)(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.

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

15. New subsection 85A(2)(k) provides for a property transfer order made under section 45(2) of that Act.

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

17. New subsection 85A(2)(m) provides for an onward transfer resolution instrument made under section 48V of that Act in the circumstances set out in new subsection 85A(3).

18. New subsection 85A(2)(n) provides for an order under section 85 of that Act (temporary public ownership: building societies), or

19. New subsection 85A(2)(o) provides for a third-country instrument made under section 89H or 89I(4) of that Act.

20. New subsection 85A(3) explains the circumstances referred to in new subsection 85A(2)(m). That is an onward resolution instrument provides for a transfer to a person within section 67(6), (7) or (8) (depositary receipt issuer), or section 70(6), (7) or (8) (clearance services) of this Act and is made by way of compensation to a creditor of the financial institution in respect of which the original instrument (within the meaning of section 48V of the Banking Act 2009) was made.

21. New subsection 85A(4) provides that references in new section 85A 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).

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

Background note

23. 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.

24. 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. A higher Stamp Duty or SDRT 1.5% rate applies where shares in UK companies are transferred to a person who provides clearance services or issues depositary receipts.

25. This clause ensures that Stamp Duty at the rate of 0.5% or 1.5% is not charged on certain qualifying share and property instruments or orders following exercise of a resolution stabilisation power. Where a transfer of shares is not chargeable to a 0.5% or 1.5% Stamp Duty charge under new section 85A, this will also cancel a charge to SDRT at the rate of 0.5% or 1.5% by virtue of section 99(5) and section 99(5ZA) to Finance Act 1986.

26. 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% and 1.5% Stamp Duty and SDRT charge is available at the time of resolution announcement.

Clause 49: Stamp duty and SDRT: exemptions for share incentive plans

Summary

1. This clause makes a minor change to ensure that the existing stamp duty relief continues to apply to share incentive plans (SIPs). This measure will have effect from 6 April 2014.

Details of the clause

2. Subsection 1(a) removes the word "approved" from subsections (1), and (2) and from the heading of section 95 of the Finance Act (FA) 2001.

3. Subsection 1 (b) replaces the words "an approved share incentive plan" in subsection (3) of section 95 FA 2001 with the words "a Schedule 2 SIP".

4. Subsection 2 gives effect to the measure from 6 April 2014.

Background note

5. Stamp duty (SD) and stamp duty reserve tax (SDRT) may be payable on the transfer of shares. In 2001 a relief was introduced so that SD or SDRT would not be due when shares held in a SIP are transferred by the trustees to the employee. This long standing relief was introduced to prevent a double charge from arising.

6. Until 2014, tax advantaged share schemes, such as SIPs, had to be approved by HMRC before an employer could begin to operate them. SIPs were described as "approved share incentive plans" in legislation.

7. In 2014, the Government introduced self-certification for SIPs. This meant that SIPs no longer had to be approved by HMRC before an employer could begin to operate them. The changes were made in FA 2014.

8. Among the changes made to the SIP legislation by FA 2014, were that references to 'approved share incentive plans' were amended to 'Schedule 2 SIPs'. In error such references in section 95 FA 2001 were not amended.

9. This legislation will make the necessary amendments to section 95 FA2001 to ensure consistency across all legislation relating to stamp duty relief for SIPs and will not change the basis on which relief is available.

Clause 50: Duty of customers to account for tax on supplies

Summary

1. This clause amends section 55A of the Value Added Tax Act 1994 (VATA) so that an order made under subsection (9) can modify the application of subsection (3). Under the amended provision, when making an order specifying goods and services that are to be subject to the reverse charge, the Treasury may also modify the rule in subsection (3) which requires that the value of reverse-charged supplies received must be included in a person's taxable turnover for VAT registration purposes.

Details of the clause

2. This clause inserts a new subsection (9A) into section 55A of VATA.

3. New subsection (9A) allows an order made under subsection (9) to modify the application of subsection (3) in relation to any description of goods or services.

Background note

4. Subsection (3) of section 55A of VATA provides that the supply of specified goods and services in an order made under subsection (9) that exceeds £1000 in a given month must be included in the recipient's turnover for VAT registration purposes.

5. In certain well-established business sectors populated by a large number of small businesses, the overall effect of the aggregation rule in subsection (3) on the sector would be to increase regulatory burdens on small traders. This change will permit the Treasury to identify and make provision for such cases so that small businesses who are affected will have certainty that they will not exceed the VAT registration threshold as a result of receiving supplies that would otherwise be subject to the reverse charge and the aggregation rule.

Clause 51 and Schedule 16: Treatment of vouchers

Summary

1. This clause and Schedule transposes 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 can 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. The clause makes a consequential amendment to VAT Regulations (SI 1995/2518) Regulation 38ZA to include reference to Schedule 10B.

Details of the clause

2. The clause introduces Schedule 16 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.

8. Paragraph 6 Amends VAT Regulation 38ZA to include reference to Schedule 10B.

New Schedule 10B

9. 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.

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

11. 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.

12. 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.

13. 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).

14. 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.

15. 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

16. 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.

17. HM Revenue & Customs (HMRC) has engaged with stakeholders about the business impacts of this clause and schedule.

Clause 52 and Schedule 17: Groups: eligibility

Summary

1. This clause and Schedule amend section 43A of the Value Added Tax Act 1994 (VATA). Schedule 17 widens the eligibility criteria for VAT grouping and allows 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 clause

2. Clause 52 introduces Schedule 17.

Details of the Schedule

Part 1: Eligibility of individuals and partnerships

3. 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.

4. Paragraph 1(3) removes subsections (2) and (3) of section 43A. These subsections detailed the requirements for establishing whether a body corporate controls another body corporate for the purposes of VAT grouping. These requirements are now covered in the new section 43AZA (control test for VAT grouping) and have been expanded to cover the requirements for individuals and partnerships.

5. Paragraph 1(4) inserts new subsections (4), (5), (6) and (7). These widen the eligibility criteria to allow individuals and partnership to be treated as members of a VAT group and specify the criteria that must be met for them to do so. New subsections (4), (5) and (6) detail the eligibility requirements for individuals and partnerships. This requires the individual or partnership to be carrying on a business, ensuring that those not engaged in economic activities are unable to join a group. A partnership can comprise individuals, bodies corporate, Scottish partnerships or a mixture of all of them. For these entities to be eligible they must be established in the UK or have a fixed establishment in the UK. They must also control the UK body corporate that they wish to group with. New subsection (7) states that that the test for determining control in relation to VAT groups is now contained in a new section 43AZA.

6. 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 body corporates, 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.

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

43A.

8. 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 corporates holding company, or;
   - It is empowered by statue to control the body corporate

9. 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 the holding company of the body corporate, if it were a company

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

10. 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 the holding 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.

11. 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 and remains the same as the requirement previously found in subsection 43A(2).

Part 2: Consequential Amendments

12. Part 2, paragraphs 3 through 15 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

13. 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.

14. 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.

15. VAT group treatment is a business facilitation measure to simplify VAT administration for business and HM Revenue & 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.

16. 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'.

17. 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. Draft legislation was published on 6 July 2018.

18. 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.

19. In determining whether there is an establishment in the UK, a company is 'established' in the UK if it has its principal place of business or registered office in the UK, which means if either:

    - the central management and control of the company are carried on in the UK
    - its headquarters or head office are in the UK

    A company will, generally speaking, be 'established' in only one country.

20. A company has a 'fixed establishment' in the UK for VAT grouping purposes if it has a real and permanent trading presence in the UK. For example, if either:

    - it has a permanent place of business which comprises the necessary human and technical resources to carry on its business activities
    - it has a branch or office in the UK, which comprises its own staff and equipment

21. HMRC will update guidance in relation to non-corporate entities after Royal Assent.

Clause 53: Rates of duty on cider, wine and made-wine

Summary

1. This clause provides for an increase in line with inflation (based on RPI) in the rates of excise duty charged on all wine and made-wine of a strength at or below 22% alcohol by volume (abv) and sparkling cider and perry exceeding 5.5% abv but less than 8.5% abv. These changes will have effect on and after 1 February 2019.

Details of the clause

2. Subsection (2) substitutes a new rate of excise duty for sparkling cider of a strength exceeding 5.5% in section 62(1A) (a) of ALDA. The previous rate of £279.46 is replaced by £288.10.

3. Subsection (3) substitutes new rates of duty in the table in Schedule 1 to ALDA as follows:

   a. For wine or made-wine of a strength not exceeding 4% the previous rate of £88.93 is replaced by £91.68.

   b. For wine or made-wine of a strength exceeding 4% but not exceeding 5.5% the previous rate of £122.30 is replaced by £126.08.

   c. For wine or made-wine of a strength exceeding 5.5% but not exceeding 15% and not being sparkling the previous rate of £288.65 is replaced by £297.57.

   d. For sparkling wine or sparkling made-wine of a strength exceeding 5.5% but less than 8.5% the previous rate of £279.46 is replaced by £288.10.

   e. For sparkling wine or sparkling made-wine of a strength of at least 8.5% but not exceeding 15% the previous rate of £369.72 is replaced by £381.15.

   f. For wine or made-wine of a strength exceeding 15% but not exceeding 22% the previous rate of £384.82 is replaced by £396.72.

Background note

4. Budget 2018 announced an increase in line with inflation (based on RPI) in the rates of excise duty on the following alcoholic drinks:

    - Wine and made-wine at or below 22% abv; and
    - Sparkling cider and perry exceeding 5.5% abv but less than 8.5% abv.

5. These changes will take effect from 1 February 2019.

6. The rates of duty on beer, spirits, wine and made-wine exceeding 22%, still cider and perry, and sparkling cider and perry not exceeding 5.5% abv will be frozen; this does not require legislation.

Clause 54: Excise duty on mid-strength cider

Summary

1. This clause introduces a new duty band and rate 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 the Alcoholic Liquor Duties Act 1979.
3. Subsection (2) provides for a new cider duty band and rate 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:
    - section 62B(7) of ALDA which describes when a container is up-labelled as mid-strength cider,
    - section 62B(8) of ALDA, which defines the mid-strength cider range,
    - section 62B(9) of ALDA, which describes how cider should be treated if it is no longer in an up-labelled container,
    - 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:

- 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,
- 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,
- 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. Autumn Budget 2018 announced the duty rate for the new mid-strength cider.

18. These changes will come into force on 1 February 2019.

19. This clause was notified to the European Commission under Directive (EU) 2015/1535 on 11 July 2018.

Clause 55: Rates

Summary

1. Clause 55 provides for changes to the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco) and to the Minimum Excise Tax (MET) on cigarettes. These changes are to have effect from 6pm on 29 October 2018.
2. A further clause in this Bill, Clause 56, makes the necessary amendments to Section 1 and Schedule 1 of the Tobacco Products Duty Act 1979 to introduce excise duty on a new category of tobacco – tobacco for heating. The tobacco for heating duty rate will commence on 1 July 2019 and will be £234.65 per kilogram

Details of the clause

3. Subsection (1) amends Tobacco Products Duty Act 1979
4. Subsection (2) amends the table contained in Schedule 1 to the Tobacco Products Duty Act 1979. The duty on tobacco products is changed as follows:
    - Cigarettes – The duty rate on cigarettes is the higher of either the usual application of duty, or the MET. The usual application of duty consists of two components, which are added together. The first component is a specific duty element, which is increased from £217.23 per thousand cigarettes to £228.29 per thousand cigarettes. The second component is a percentage of the retail price, which remains unchanged at 16.5%. The MET for cigarettes will be increased from £280.15 to £293.95 per 1000 cigarettes.
    - Cigars – The duty rate on cigars is increased from £270.96 to £284.76 per kilogram;
    - Hand rolling tobacco – The duty rate on hand-rolling tobacco is increased from £221.18 to £234.65 per kilogram;
    - Other smoking tobacco and chewing tobacco – The duty rate on other smoking tobacco and chewing tobacco is increased from £119.13 to £125.20 per kilogram.
5. Subsection (3) provides for a new table containing duty rates and the MET to have effect from 6pm on 29 October 2018.

Background note

6. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between the richest and poorest in the UK. The Government is committed to maintaining high tobacco duty rates to support public health objectives and the public finances. Research has consistently shown that the price of tobacco products negatively affects demand.

7. This clause increases excise duty on all tobacco products by 2% above the rate of inflation (Retail Price Index), in accordance with the announcement at Budget 2018. The excise duty rate for hand-rolling tobacco is increased by an additional 1%. The clause also increases the MET on cigarettes from £280.15 to £293.95 per 1000 cigarettes.

8. These duty increases, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 33p, a 30 gram pack of hand-rolling tobacco by 48p, 10 grams of cigars by 17p and a 30 gram pack of pipe tobacco by 22p.

9. The change to the MET on cigarettes supports public health objectives and tackles the very cheapest cigarettes. A MET sets a minimum level of excise duty for any packet of cigarettes. This means that the total excise duty on a packet of cigarettes is the higher of either the usual application of duty, or the MET.

Clause 56: Tobacco for heating

Summary

1. This clause amends Section 1 of the Tobacco Products Duty Act (TPDA) 1979 (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 set at Budget 2018.

Details of the clause

2. Subsections (1) and (2) introduce a new category of tobacco for heating into the list of tobacco products in the TPDA 1979.

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 the TPDA 1979. 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 1979.

Clause 57: VED: rates for light passenger vehicles, light goods vehicles, motorcycles etc

Summary

1. This clause provides for changes to certain rates of Vehicle Excise Duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licenses taken out on or after 1 April 2019.

Details of the clause

2. Subsection (2) amends paragraph 1(2) of Schedule 1 to VERA to change the rates of vehicles first registered before March 2001 with an engine capacity exceeding 1,549cc to increase the duty rate by £10. It also amends paragraph 1(2A) of Schedule 1 to VERA to change the rates of vehicles first registered before March 2001 with an engine capacity not exceeding 1,549cc to increase the duty rate by £5.

3. Subsection (3) amends paragraph 1B of Schedule 1 to VERA to substitute new VED rates for light passenger vehicles first registered between 1 March 2001 and 31 March 2017. The reduced rate applies to alternatively fuelled light passenger vehicles, including those powered by bioethanol and liquid petroleum gas and hybrids.

4. Subsection (4) amends paragraph 1GC of Schedule 1 to VERA to change rates on the first vehicle licence for light passenger vehicles first registered on or after 1 April 2017. Table A includes the standard rate and reduced rate. Table B changes the rates for higher rate diesel vehicles, applying to light passenger vehicles which are propelled by diesel and do not meet the Euro 6d emissions standard.

5. Subsection (5) amends paragraph 1GD of Schedule 1 to VERA to change the rate of duty applicable to light passenger vehicles first registered on or after 1 April 2017 from the second vehicle licence onwards. The reduced rate of duty is increased by £5 to £135 per annum. The standard rate of duty is increased by £5 to £145 per annum.

6. Subsection (6) amends paragraph 1GE of Schedule 1 to VERA to change the higher rate of duty applicable to light passenger vehicles with a price exceeding £40,000 from £310 to £320.

7. Subsection (7) amends paragraph 1J of Schedule 1 to VERA to change rates for some light goods vehicles first registered on or after March 2001 by increasing the duty rate by £10 to £260. The rate of duty for light goods vehicles first registered between 1 March 2003 and 31 December 2006 and those first registered between 1 January 2009 and 31 December 2010 is unchanged at £140.

8. Subsection (8) amends paragraph 2(1) of Schedule 1 to VERA to change rates for motorcycles weighing no more than 450 kilograms unladen. The rate of duty

increases by £1 to £19 for motorcycles with an engine size not over 150cc; by £1 to £43 for motorcycles with an engine size of over 150cc but not more than 400cc; by £2 to £66 for motorcycles with an engine size of over 400cc but not more than 600cc; and by £3 to £91 for motorcycles with an engine size of over 600cc, motor tricycles with an engine size over 150cc and trade licences for motorcycles.

Background note

9. The rate of Vehicle Excise Duty (VED) is chargeable on vehicles dependent on various factors including the vehicle type, engine size, date of first registration and CO_2 emissions data. In general:

   a. cars and vans first registered prior to March 2001, and all motorcycles, pay VED by reference to the engine size

   b. vans registered on or after 1 March 2001 pay a flat rate of VED

   c. cars first registered between 1 March 2001 and 31 March 2017 pay VED according to CO_2 emissions

   d. cars first registered on or after 1 April 2017 pay VED based on CO_2 emissions when first licensed, followed by a standard rate for subsequent licences

Clause 58: VED: 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).
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.

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.

Clause 59: HGV road user levy

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 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.

Clause 60: Rates of duty from 1 April 2020

Summary

1. This clause provides for changes to the rates of air passenger duty (APD). The rates for APD are set out in section 30 of the Finance Act 1994. The rates of APD for flights to Band A destinations are unchanged. Rate changes to Band B destinations will be as follows:
   - Reduced rates will rise by £ 2 (from £ 78 to £ 80)
   - Standard rates will rise by £ 4 (from £ 172 to £ 176)
   - Higher rates will rise by £ 13 (from £ 515 to £ 528)
2. These changes to the rates of APD in relation to the carriage of passengers will come into effect beginning on or after 1 April 2020.

Details of the clause

3. Subsection 1 amends the APD rates for flights to Band B destinations.
4. Subsection 2 states that these changes apply to the carriage of passengers beginning on or after 1 April 2020.

Background note

5. APD rates are dependent on a passenger's class of travel and final destination. The reduced rates apply to the lowest class of travel available on the aircraft, the standard rates to any other class, and the higher rates to travel in aircraft of 20 tonnes or more equipped to carry fewer than 19 passengers. There are two destination bands: band A includes destinations whose capital is up to 2,000 miles from London and band B includes all other destinations.
6. The airline industry made a request to the government to give sufficient advance notice of changes in APD rates. In response to this it was announced at the Budget 2018 that APD rates for 2020 – 2021 would increase in line with inflation (based on the retail price index RPI)).

Clause 61: Remote gaming duty: rate

Summary

1. This clause introduces an increase in the rate of remote gaming duty to 21% with effect from 1 October 2019.

Details of the clause

2. Subsection 1 introduces an amendment to section 155(3) of Finance Act 2014 to amend the rate of gaming duty to 21%.
3. Subsection 2 provides for this new rate to have effect from 1 October 2019.
4. Subsection 3 provides that for any for accounting periods that begin before and end on or after 1 October 2019, the amount of duty is the aggregate of the amount that would have been due at the old rate of 15% from the start of the accounting period up until 30 September 2019 and the amount due at the new rate of 21% from 1 October 2019 until the end of the accounting period. The accounting period end date is not changed by this sub-section.

Background note

5. In May 2018, following a consultation on proposals for changes to gaming machines and social responsibility measures, the Government also announced that there would be an increase in the rate of Remote Gaming Duty. This clause increases the rate of Remote Gaming Duty from 15% to 21% of a gaming provider's profits for an accounting period starting on or after 1 October 2019.
6. For the majority of businesses with accounting periods ending 30 September 2019, it will be a straightforward change to implement the new rate of 21% for their accounting period starting on 1 October 2019. However a small number of businesses have alternative accounting periods that straddle the 1 October implementation date. These businesses will be required to make two calculations; one to apply the duty rate of 15% to profits for the part of the accounting period up to 30 September 2019 and another applying the new duty rate of 21% to profits arising from 1 October 2019 to the end of their accounting period. The totals for each part of the accounting period are then aggregated and included on one return for the entire accounting period. This ensures that the rate change is implemented fairly for all taxpayers including those whose accounting periods straddle 1 October 2019.
7. HM Revenue & Customs (HMRC) will update the RGD guidance to reflect the rate change.

Clause 62 and Schedule 18: Gaming duty

Summary

1. This clause and Schedule introduce changes to the administration of gaming duty. Together they provide for the administration of gaming duty against six-monthly accounting periods, with provision for non-standard accounting periods and the calculation of duty in the transitional period. The Schedule introduces provision that allows businesses to carry forward losses from one accounting period to be offset against their gaming duty liabilities in future periods. It also removes the requirement that taxpayers make payments on account part-way through an accounting period.

Details of the Schedule

2. Paragraph 1(1) introduces amendments to section 11 of the Finance Act 1997 (FA 1997).

3. Paragraph 1(2) 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. Paragraph 1(3) 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 & Customs (HMRC) has directed or agreed that the accounting period for those premises shall be longer, or shorter, than standard.

5. Paragraph 2(1) introduces amendments to the provisions about accounting periods in paragraph 9 of Schedule 1 to the FA 1997.

6. Paragraph 2(2) 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.

7. 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.

8. Paragraph 9(1B) allows HMRC to require that accounting periods begin on dates other than 1 April or 1 October.

9. 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.

10. 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.

11. 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.

12. Paragraph 2(4) 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).

13. Paragraph 2(5) 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.

14. Paragraph 3 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.

15. Paragraph 4 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.

16. 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.

17. Paragraph 5 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.

18. Paragraph 6(1) introduces amendments to the Gaming Duty Regulations 1997 (the Regulations).

19. Paragraph 6(2) removes the definition of "quarter" from the list of defined terms in the Regulations.

20. Paragraph 6(3) 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.

21. Paragraph 7 provides that the changes come into effect from 1 October 2019.

22. Paragraph 8(1) and 8(2) provide that where there is an agreement under the FA1997 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.

23. Paragraph 8(3) and 8(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

24. 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.

25. HMRC will monitor the effect of these changes.

Clause 63: Climate change levy: exemption for mineralogical and metallurgical processes

Summary

1. This clause 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 Finance (No. 3) Bill.

Details of the clause

2. Subsection (2) omits the words "to a person" and "by a person" from paragraph 12A of Schedule 6 to FA2000.

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.

Clause 64: Landfill tax rates

Summary

1. Clause 64 amends section 42(1)(a) and 42(2) of the Finance Act 1996 ("FA96") to increase both rates of Landfill tax in line with inflation (rounded to the nearest 5 pence). The increased rates apply to any disposal of relevant materials made (or treated as made) at a landfill site in England or Northern Ireland on or after 1 April 2019. The increased standard rate also applies from the same date to any disposal of relevant materials made (or treated as made) at an unauthorized waste site in England or Northern Ireland. The standard rate will increase to £91.35 per tonne and the lower rate to £2.90 per tonne.

Details of the clause [and Schedule]

2. Subsections (2) and (3) substitute "£88.95" to "£91.35" in sections 42(1)(a) and 42(2) of FA96. Subsection (3) substitutes "£2.80" to "£2.90" in section 42(2) of FA96.

3. Subsection (4) provides the commencement date for the change to the standard and lower rate of tax.

Background note

4. Landfill Tax was introduced on 1 October 1996 to encourage waste producers and the waste management industry to switch to more sustainable alternatives for disposing of waste material through increasing the cost of waste disposal at landfills.

5. There is a lower rate of tax, which applies to less polluting qualifying materials listed in two Treasury Orders, and a standard rate which applies to all other taxable material. From 1 April 2018 the scope of Landfill tax was extended to include the disposal of relevant materials made to unauthorized waste sites. Previously, the tax applied across the UK but from 1 April 2015 it was devolved in Scotland and from 1 April 2018 in Wales.

Clause 65: Residence nil-rate band

Summary

1. This clause introduces amendments to the residence nil-rate band (RNRB) clarifying the downsizing provisions and the definition of 'inheriting' property for RNRB purposes. The changes will have effect from 29 October 2018.

Details of the clause

2. Subsection (1) introduces the amendments to the Inheritance Tax Act 1984 (IHTA 1984).

3. Subsection (2) provides that "the value transferred by the transfer of value under section 4 on the person's death" will replace "VT" in section 8FA(2)(b) and (5) IHTA 1984, ensuring the downsizing provisions work as intended.

4. Subsection (3) provides that in Step 2 of the calculation at section 8FE(9) IHTA 1984, "the value transferred by the transfer of value under section 4 on the person's death" will be used in place of "VT", ensuring the downsizing provisions work as intended.

5. Subsection (4) inserts "on the person's death" in section 8E(1) IHTA 1984

6. Subsection (5) substitutes the words after "by way of" in section 8J(6) with the words at paragraph 5(a) and (b). This amendment clarifies the definition of "inherited" for RNRB purposes.

7. Subsection (6) provides that the amendments apply for the purposes of calculating the charge to inheritance tax under section 4 IHTA 1984 in relation to a person's death after 29 October 2018.

Background note

8. The RNRB was announced at Summer Budget 2015 and commenced on 6 April 2017. The RNRB is an additional Inheritance Tax nil-rate band, conditional on a residence being passed on death to a direct descendant. This is currently £125,000, and will rise to £150,000 in 2019/20, and £175,000 in 2020/21. Any unused RNRB can be transferred to a surviving spouse or civil partner. For estates with a net value of more than £2m there is a tapered withdrawal of the RNRB at a rate of £1 for every £2 over this threshold.

9. The RNRB is also available when a person downsizes or ceases to own a home on or after 8 July 2015 where the former home would have qualified for the RNRB if it was still owned and assets of an equivalent value, up to the value of the RNRB, are passed on death to direct descendants.

Clause 66: Application of penalty provisions

Summary

1. This clause allows penalties to be raised against businesses registered for the Soft Drinks Industry Levy (SDIL) that fail to submit a quarterly return by the due date. It also ensures that a penalty can still be raised for non-payment of any SDIL due in the event that certain provisions within the Finance (No.3) Act 2010 are enacted. This measure will have effect from Royal Assent.

Details of the clause

2. Subsection (1) provides for item 13A (returns relating to soft drinks industry levy) to be added to the list of items in the part of Schedule 10 to Finance (No. 3) Act 2010 that proposes to insert paragraph 13A into Schedule 55 to Finance Act 2009.

3. Subsection (2) then commences the amendments made by Schedule 10 to Finance (No. 3) Act 2010 (as amended by sub-clause (1) for the purposes of SDIL.

4. Subsection (3) provides for item 11ZA (payments of amounts of SDIL) to be added to the list of items in the part of Schedule 11 to Finance (No. 3) Act 2010 that proposes to amend paragraph 3 of Schedule 56 to Finance Act 2009.

5. Subsection (4) provides that the provisions of section 27 of Finance (No. 3) Act 2010 applying the amendments made by Schedule 11 to that Act will also apply to the amendment made by sub-clause (3).

Background note

6. SDIL came into force on 6 April 2018.

7. Schedule 55 to the Finance Act 2009 (Schedule 55) provides for penalties to be payable for failures to submit returns on time across a range of taxes. Schedule 10 to the Finance (No. 3) Act 2010 contains significant amendments to Schedule 55, but those amendments have only been brought into force for limited purposes.

8. Schedule 56 to the Finance Act 2009 (Schedule 56) provides for penalties to be payable for failures to pay amounts of tax on time across a range of taxes (including SDIL). Schedule 11 to the Finance (No. 3) Act 2010 contains significant amendments to Schedule 56, but those amendments have only been brought into force for limited purposes.

9. These changes will:

   - provide for penalties under Schedule 55, as amended by Schedule 10 of the Finance (No. 3) Act 2010, to be payable in relation to failures to pay Soft Drinks Industry Levy by the due date;

- update the proposed amendments to Schedule 56 that are in Schedule 11 to the Finance (No. 3) Act 2010 so that they take account of the changes made to Schedule 56 to accommodate SDIL and will not affect the ability to charge penalties for a failure to pay SDIL if the amendments come into force.

Clause 67: Isle of Man

Summary

1. This clause will allow the movement of levy-paid soft drinks between the UK and Isle of Man to be seen as neither an import nor an export for the purposes of the UK's Soft Drinks Industry Levy (UK SDIL). It also adds UK SDIL and the equivalent levy proposed by the government of the Isle of Man (Manx SDIL) to the list of common duties in the Isle of Man Act 1979.

Details of the clause

2. Subsection (1) inserts a new paragraph (f) into section 1(1) of the Isle of Man Act 1979 (IoM Act) so that UK and Manx SDIL are included in the definition of common duties that applies for the purposes of the IoM Act.

3. Subsections (2) to (5) amend the Finance Act 2017 (FA2017) by inserting new sections 58A, 33(10) and 39(5A).

4. New sections 58A(1), 58A(2) and 33(10) of FA2017 provide that movements of chargeable soft drinks from the Isle of Man to the UK do not trigger a chargeable event under section 33 of FA2017 if Manx SDIL of an equal or greater amount to UK SDIL has already been paid in relation to those drinks.

5. New sections 58A(3) and 33(10) of FA2017 provide that movements of chargeable soft drinks from the Isle of Man to the UK will trigger a chargeable event under section 33 of FA2017 if the amount of Manx SDIL paid is less than UK SDIL. The amount payable in the UK will be the difference between the Manx and UK SDIL.

6. New section 58A(5) and 39(5A) of FA2017 provide that movements of chargeable soft drinks from the UK to the Isle of Man do not attract an export credit under regulations made under section 33 of FA2017.

Background note

7. The UK introduced UK SDIL with effect from 6 April 2018 pursuant to Part 2 of FA2017. Chargeable soft drinks brought into the UK can create a chargeable event under section 33 of FA2017, and goods removed from the UK can attract an export credit under regulations made under section 39 of FA2017.

8. The Isle of Man Act 1979 contains a number of provisions that apply to "common duties" as defined in section 1 of that Act. These provisions facilitate the sharing of revenue and administrative co-operation and enforcement for the levy between the UK and Isle of Man in relation to those common duties.

9. The Isle of Man is introducing Manx SDIL, which is modelled on UK SDIL and will commence on 1 April 2019.

10. The UK and Manx governments have agreed, in principle, to treat soft drinks that have been levy-paid in one jurisdiction as being levy-paid in the other, to share revenue and to co-operate in the administration and enforcement of the respective levies.

Part 3: Carbon emissions tax

Clause 68: Carbon emissions tax

Summary

1. This clause establishes a new tax called the Carbon Emissions Tax and provides that HM Revenue & Customs will be responsible for its collection and management.

Details of the clause

2. Subsection (1) establishes the new tax.

3. Subsection (2) provides that the Commissioners of Her Majesty's Revenue and Customs are responsible for the collection and management of the tax.

Background note

4. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

5. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

6. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

7. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be

laid in early 2020.

Clause 69: Charge to carbon emissions tax

Summary

1. This clause introduces the charging provision for the new Carbon Emissions Tax.

Details of the clause

2. Subsections (1) and (2) require that regulated installations must pay the tax on emissions that exceed the allowance amount in the relevant period.

3. Subsection (3) makes those excess emissions liable to a tax rate of £16 per tonne of carbon equivalent.

Background note

4. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

5. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

6. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

7. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Clause 70: "Reported carbon emissions"

Summary

1. This clause provides a definition of "reported carbon emissions" for the purposes of the Carbon Emissions Tax.

Details of the clause

2. Subsection (1) provides that the quantity of reported emissions subject to the tax is the amount stated in the installation's latest emissions determination, or the amount set out in the emissions report if there is no such determination.

3. Subsection (2) provides that the "emissions determination" referred to in subsection (1) is the regulator's estimate of the total amount of emissions in a period that is determined in accordance with the legislation listed in the subsection.

Background note

4. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

5. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

6. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

7. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Clause 71: “Emissions report” and “reporting period”

Summary

1. This clause defines "emissions report" and "reporting period" for the purposes of the Carbon Emissions Tax.

Details of the clause

2. Subsection (1) defines the term “emissions report” for the purposes of Part 3 of the Bill as a report submitted to the regulator for the purpose of complying with any of the obligations listed in the subsection.

3. Subsection (2) defines “reporting period” as the 12 month period covered by “the scheme”, which is itself defined in the Emissions Regulations (S.I. 2012/3038). It provides that it can be a shorter period – for example where a permit to emit is surrendered during that period. There is a separate definition of the reporting period that will apply in 2019 in clause 78(4).

Background note

4. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including ‘no deal’, until the outcome of those negotiations is certain.

5. The UK would be excluded from participating in the EU ETS in a ‘no deal’ scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting

period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

6. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

7. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Clause 72: "Emissions allowance"

Summary

1. This clause provides that, for the Carbon Emissions Tax, the emissions allowance amounts will be specified in regulations made by HMRC.

Details of the clause

2. This clause provides that the emissions allowance amounts, expressed in tonnes of carbon dioxide equivalent for the reporting period, will be specified in regulations made by the Commissioners for HMRC under this clause. It will be the emissions above this emissions allowance that will taxed.

Background note

3. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

4. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

5. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

6. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be

laid in early 2020.

Clause 73: Liability to pay carbon emissions tax

Summary

1. This clause sets out who is liable to pay the Carbon Emissions Tax.

Details of the clause

2. Subsection (1) provides that the permit holder for an installation at the end of the reporting date is the person liable to pay the tax.

3. Subsection (2) defines the "reporting date" in relation to the reporting period as the date on which an emissions report is required to be submitted to the relevant regulator in accordance with specified legislation.

Background note

4. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

5. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

6. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

7. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be

laid in early 2020.

Clause 74: Power to make further provision about carbon emissions tax

Summary

1. This clause provides for regulations to be made to support the Carbon Emissions Tax.

Details of the clause

2. Subsection (1) provides that the regulations may include provision relation to the following matters:

    a. the administrative arrangements for the collection of the tax (paragraph (a));

    b. record-keeping requirements (paragraph (b));

    c. reviews and appeals of decisions made by HMRC (paragraph (c));

    d. enforcement of the tax (paragraph (d));

    e. sharing of information between government departments and agencies (paragraph (e));

    f. the form, manner or content of applications to HMRC and other communications with HMRC relating to the tax (paragraph (f)); and

    g. the administrative arrangements for dealing with a situation where a taxpayer has died, become incapacitated or is subject to an insolvency procedure (paragraph (g)).

3. Subsection (2) provides that the regulations may also include provision relating to the following additional matters (subject to a requirement that the provision must be for a purpose connected with the Carbon Emissions Tax):

    a. emissions reports (paragraph (a));

    b. emissions determinations (paragraph (b));

    c. the conditions to which a greenhouse gas emissions permit or an excluded installations emissions permit may be subject under the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) (paragraph (c));

    d. reviews and appeals of decisions made by a regulator (paragraph (d));

    e. the regulators' functions (paragraph (e)); and

    f. the form, manner or content of applications to a regulator and other communications with a regulator (paragraph (f)).

4. Subsection (3)(a) provides that the regulations made under this section may be exercised by adopting (with or without modification) any provision of an existing

enactment relating to tax. Subsection (3)(b) provides that regulations made under this section may amend certain other legislation specified in that subsection.

Background note

5. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

6. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

7. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

8. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Clause 75: Consequential provision

Summary

1. This clause makes consequential amendments to various legislation that are needed as a result of the introduction of the Carbon Emissions Tax, including adding the tax to the list of taxes covered by section 1 of the Provisional Collection of Taxes Act 1968.

Details of the clause

2. Subsection (1) adds the Carbon Emissions Tax to the list of taxes covered by section 1 of the Provisional Collection of Taxes Act 1968, enabling future amendments to the tax to be given provisional statutory effect by a resolution of the House of Commons.

3. Subsection (2) amends regulation 52 of the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038) so that any amount of Carbon Emissions Tax avoided as a consequence of failing to obtain a permit is taken into account in assessing the amount of the penalty payable under that regulation.

4. Subsection (3) disapplies section 4(1) of the European Union (Withdrawal) Act 2018 for the purposes of the Carbon Emissions Tax in relation to rights, powers, liabilities, obligations, restrictions, remedies and procedures arising under two specified directives, one covering administration of excise duties and the other covering taxation of energy products. The effect of this provision is that certain directly effective aspects of EU law derived from those directives that are retained in UK law as a consequence of section 4 of the European Union (Withdrawal) Act 2018 will not have any application in the context of Carbon Emissions Tax.

5. Subsections (4) and (5) provide for a power to make such consequential provision, including the amendment, repeal or revocation of any enactment (whenever passed or made) as the Commissioners consider appropriate. The term "enactment" is to be read in accordance with both clause 76(1) and Schedule 1 to the Interpretation Act 1978, so that it includes Acts of Parliament (such as the Environment Act 1995), subordinate legislation (such as the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038)) and retained direct EU legislation (such as the Monitoring and Reporting Regulation (600/2012) and the Verification Regulation (601/2012)). If the power is used to amend an Act of Parliament, clause 77(3) provides for the draft affirmative parliamentary procedure to apply.

Background note

6. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

7. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

8. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

9. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Clause 76: Interpretation

Summary

1. This clause defines various terms used in Part 3 of the Bill (covering Carbon Emissions Tax).

Details of the clause

2. Subsection (1) defines various terms used in this section, including European legislation that the Carbon Emissions Tax makes reference to in Part 3 of the Bill.

3. Subsection (2) defines certain other terms as having the same meaning as in the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038).

4. Subsection (3) defines a regulated installation as an installation in respect of which a greenhouse gas emissions permit or an excluded installations permit has been issued under the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038).

5. Subsection (4) provides that references to the Monitoring and Reporting Regulation (601/2012) or the Verification Regulation (600/2012) include references to any other EU regulation which replaces either of them and is incorporated in UK law under section 3 of the European Union (Withdrawal) Act 2018. It also provides for the references to Article 70 of the Monitoring and Reporting Regulation to be read as a reference to the corresponding provision of any replacement Regulation. This subsection anticipates changes that the European Commission plan to make to these regulations between publication of this Bill and EU exit day, and which might have an impact on provisions relevant to the tax.

Background note

6. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

7. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment

due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

8. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

9. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Clause 77: Regulations

Summary

1. This clause makes further provision in regards of regulations that may made under this Part of the Bill (covering Carbon Emissions Tax).

Details of the clause

2. Subsection (1) makes further provision about the scope of regulations to be made under clauses 72, 74 or 75.
3. Subsection (2) provides that any regulations are to be made by statutory instrument.
4. Subsection (3) provides that that a statutory instrument containing regulations made under clause 75(4) that amends or repeals any Act of Parliament is to be made under the draft affirmative parliamentary procedure.
5. Subsection (4) provides that any statutory instruments containing regulations made under Part of the Bill that are not within the scope of subsection (3) are to be made under the negative parliamentary procedure. This is subject to subsection (5).
6. Subsection (5) provides that the negative parliamentary procedure does not apply to the appointed day regulations provided for in clause 78(1). Those regulations will not be subject to any parliamentary procedure.

Background note

7. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.
8. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage,

to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

9. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

10. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Clause 78: Commencement and transitional provision

Summary

1. This clause provides for the Carbon Emissions Tax to be commenced from a date to be appointed by the Commissioners for HMRC in regulations and make provision about the first reporting period, beginning 1 April 2019, which will not cover the usual 12 months.

Details of the clause

2. Subsection (1) provides that Part 3 of the Bill (covering all the provisions about Carbon Emissions Tax) will come into effect from a date to be appointed by HMRC in regulations.
3. Subsection (2) provides that commencement regulations made under subsection (1) may appoint different days for different purposes within Part 3 of the Bill, and that the regulations may include transitional or transitory provisions.
4. Subsection (3) provides that the definition of reporting period in subsection (4) shall apply instead of the definition in clause 71(2) during the period specified in subsection (4).
5. Subsection (4) defines reporting period for the first reporting year as starting 1 April 2019 and ending on 31 December 2019. It provides that it can be a shorter period – for example where a permit to emit is surrendered during that period.
6. Subsection (5) provides for modifications to the application and effect of the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038), the Monitoring and Reporting Regulation (601/2012) and the Verification Regulation (600/2012), or anything done under those provisions (such as a monitoring plan or a permit). In particular, it provides that references to a period beginning on 1 January 2019 (such as a scheme year or calendar year) is to be a reference to a period beginning on 1 April 2019, but ending on the same day it would otherwise have ended; and that more generally these regulations should be read modified for tax purposes to reflect the start date for tax of 1 April 2019. These modifications only apply for the purposes of reporting and determining emissions from installations, meaning they do not affect:
    - the monitoring obligations of installations, which will apply throughout all of 2019;
    - the monitoring and reporting obligations of aircraft operators, which will oblige them to monitor and report on all emissions throughout 2019;

- determinations of the emissions from aviation activities, which will be estimated for the entirety of 2019.

The effect of this subsection is that, in 2019, operators of installations will be obliged to monitor their emissions throughout all of 2019, but will only be obliged to report on, and ultimately pay, Carbon Emissions Tax for, their emissions between 1 April 2019 and 31 December 2019 (or such earlier date as is specified in a surrender or revocation notice). After 2019, emissions reports will need to be submitted on the usual, calendar year basis.

Background note

7. A Carbon Emissions Tax has been prepared to cover the contingency that the UK leaves the EU without an agreement. Part 3 of the Bill covers the legislation for the tax and will only be brought into force if there is no agreement. It is in the interests of both the EU and the UK to strike a deal and the government remains confident that a mutually advantageous deal will be agreed. Both the UK and the EU continue to work hard to seek a positive deal. However, it is the duty of a responsible government to prepare for all eventualities, including 'no deal', until the outcome of those negotiations is certain.

8. The UK would be excluded from participating in the EU ETS in a 'no deal' scenario. A consequence of this is that current participants in the system that are UK operators of stationary installations would no longer take part. Budget 2018 announced that, in the event that the UK leaves the EU without an agreement in March 2019, a new Carbon Emissions Tax would be introduced from 1 April 2019, with the first payment due in 2020. All current participants in the EU ETS who are operators of stationary installations in the UK would be set an annual emissions allowance for the purposes of the tax allowing the government to maintain similar arrangements to the EU ETS for industrial installations deemed to be exposed to significant risk of carbon leakage, to support their competitiveness. Installations would continue to report their activities annually under the existing Monitoring, Reporting and Verification scheme to establish how many tonnes of greenhouse gases they emitted during the reporting period. Emissions above the emissions allowance would be taxed on a carbon equivalent basis.

9. A technical document "Carbon Emissions Tax" was published on gov.uk alongside Budget 2018 setting out more details on how the tax would operate.

10. If the tax were introduced, a consultation on the more detailed arrangements would take place during 2019 to inform a statutory instrument or instruments that would be laid in early 2020.

Part 4: Administration and enforcement

Clause 79: Offshore matters or transfers: income tax and capital gains tax

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. Clause 79 introduces new section 36A to Taxes Management Act 1970 (TMA).

3. New subsection 36A(1) provides that the 12 year assessment time limit (which is set out in subsection (2)) will apply only to cases involving a loss of income tax or capital gains tax that involves an offshore matter or an offshore transfer. A case involving an offshore transfer is further qualified so that the 12 year assessment time limit only applies where the offshore transfer has made the lost tax "significantly harder" to identify.

4. New subsection 36A(2) sets out the new time limit but ensures that the current longer time limits that already apply will not be reduced e.g. the current 20 year time limit where the loss of tax is due to deliberate and other specified behaviour as set out in section 36(1A) TMA.

5. New subsection 36A(3) defines lost tax that "involves an offshore matter". The definition includes tax charged on or by reference to "income or assets received in a territory outside the United Kingdom".

6. New subsection 36A(4) and (5) provide that lost tax "involves an offshore transfer" if it does not involve an offshore matter (as described in subsection 36A(3)) and the income or proceeds of disposal relating to the lost tax is transferred outside the UK before the relevant date (as described in subsection 36A(5)).

7. New subsection 36A(6) provides that the cases where an offshore transfer makes lost tax significantly harder to identify include any case where HMRC was significantly less likely to become aware of the lost tax, or was likely to become aware of it only at a significantly later time.

8. New subsections 36A(7) and (8) ensure that the 12 year assessment time limit will not apply where HM Revenue & Customs (HMRC) has received "relevant overseas information" (as defined in subsection (8) e.g. information from a tax authority of an EU Member State provided under EU law relating to tax) on the basis of which HMRC could reasonably have been expected to identify the lost tax and make the tax

assessment within the normal time limits.

9. New subsection 36A(9) provides that the 12 year assessment time limit will not apply where the lost tax results from a transfer pricing adjustment made under Part 4 of the Taxation (International and Other Provisions) Act 2010.

10. New subsection 36A(10) defines "assets" so that it has the same meaning as in section 21(1) of the Taxation of Capital Gains Act 1992, but also includes sterling.

11. New subsection 36A(11) ensures that section 36(2) to 36(3A) TMA apply for the purposes of section 36A. Section 36(2) TMA allows assessments made on persons who are in partnership with others to be made against partners (as well as the person in question) where the assessment relates to partnership income etc. Section 36(3) provides for certain reliefs or allowances to be claimed by the person on whom the assessment is raised. Section 36(3A) excludes from those reliefs and allowances the specified elections for the transfer of reliefs between married couples or civil partners.

12. Subsection 3 makes a consequential change to section 37A TMA so that (as with assessments made within current time limits) an assessment made within the 12 year limit will not affect the tax affairs of a spouse or civil partner of the person assessed to whom the benefit of any allowances which reduce tax payable by the spouse or civil partner have been transferred by the person assessed. Accordingly, the allowances of the person on whom the assessment is made are correspondingly reduced.

13. Subsection 4 makes a consequential change to section 40 TMA (time limits for assessments on the personal representatives of deceased taxpayers) so that the new 12 year assessment time limit will not change the current assessment time limits relevant to personal representatives set out in subsections 40(1) and (2) TMA.

14. Subsection 5 sets out the commencement provisions. The new section 36A will apply for years 2013-14 onwards in cases where the loss of tax is brought about by careless behaviour and for years 2015-16 onwards in all other cases.

Background note

15. 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.

16. This measure was announced in Autumn Statement 2017 as part of the government's strategic response to offshore tax evasion, avoidance and non-compliance.

17. A consultation on the design principles for the legislation began on 19 February 2018 and closed on 14 May 2018. A response document was published with the draft legislation on 6 July 2018.

Clause 80: Offshore matters or transfers: inheritance tax

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. Section 240(2) IHTA applies where an account has been delivered to HM Revenue and Customs (HMRC) and payment has been made and accepted in full satisfaction of the tax so attributable.

4. New subsection 240B(1) provides that the 12 year time limit (which is set out in subsection(2)) will apply only to a case within section 240(2) IHTA involving a loss of inheritance tax that "involves an offshore matter" or "involves an offshore transfer". A case involving an offshore transfer is further qualified so that the 12 year assessment time limit only applies where the offshore transfer has made the lost tax "significantly harder" to identify.

5. New subsection 240B(2) sets out the new time limit of 12 years beginning on the later of the date of the payment described in section 240(2)(a) IHTA or the date on which the inheritance tax (or last instalment of it) became due as described in section 240(2)(b) IHTA.

6. New subsection 240B(3) defines lost tax that "involves an offshore matter".

7. New subsections 240B(4) and (5) define lost tax that "involves an offshore transfer".

8. New subsection 240B(6) provides that the cases where an offshore transfer makes lost tax significantly harder to identify include any case where HMRC was significantly less likely to become aware of the lost tax, or was likely to become aware only at a significantly later time.

9. New subsections 240B(7) and 240B(8) ensure that the 12 year time limit for proceedings will not apply where HMRC has "relevant overseas information" (as defined in subsection (8) e.g. information from a tax authority of an EU Member State provided under EU law relating to tax) on the basis of which HMRC could reasonably have been expected to identify the lost tax and bring proceedings within the normal time limits.

10. New subsection 240B(9) ensures that any provision of the IHTA that allows a longer

time limit will continue to apply (e.g. sections 240(5) and 240(5A) which provide for a time limit of 20 years).

11. Subsection 4 sets out the commencement provisions. 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.

12. Subsection 5 provides that the extension made by section 240(8) IHTA of the reference to a "person liable to tax" to include a person who is the settlor in relation to a settlement also applies to the reference to "person liable to tax" made in subsection (4)(a) of this clause.

Background note

13. 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.

14. This measure was announced in Autumn Statement 2017 as part of the government's strategic response to offshore tax evasion, avoidance and non-compliance.

15. A consultation on the design principles for the legislation began on 19 February 2018 and closed on 14 May 2018. A response document was published with the draft legislation on 6 July 2018.

Clause 81: Construction industry scheme and corporation tax etc

Summary

1. This clause provides 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 2004.

3. Subsection (2) inserts a new paragraph 88A into Schedule 18 to Finance Act 1998

4. Subsection (3) contains a consequential amendment to section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003 flowing from section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

New section 70A

5. 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.

6. 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.

7. New section 70A(3) requires that regulations made under this section must make provision for a right of appeal against certain decisions concerning a security.

8. New section 70A(4) and (5) 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(6) 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 a right of appeal against certain decisions concerning a security.

13. New paragraph 88A(4) and (5) 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.

14. New paragraph 88A(6) provides definitions of 'prescribed' and 'security' for the purposes of paragraph 88A

Background note

15. HM Revenue & Customs (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.

16. 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.

17. 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 appeal to provide appropriate safeguards for taxpayers.

18. The clause includes an amendment to the PAYE securities legislation in the Income Tax (Earnings and Pensions) Act 2003 to remove a redundant reference to 'a fine not exceeding level 5 on the standard scale' and make the wording consistent with the new provisions for corporation tax and construction industry scheme deductions. This does not alter the effect of the existing PAYE securities legislation.

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 these regulations to come into effect no earlier

than 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 was published on 6 July 2018.

Clause 82: 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. New section 128C permits HMRC to disclose information under international agreements to which the regulations apply.

Background note

13. 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.

14. 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.

15. The Directive is designed to complement and strengthen rather than supplant existing dispute resolution mechanisms.

16. 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.

Clause 83: 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 & 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.

6. Subsection 5 provides that the regulations are to be made by statutory instrument.

7. Subsection 6 provides that the regulations which amend primary legislation must be made using the affirmative procedure.

8. Subsection 7 provides that the regulations which do not amend primary legislation are subject to negative procedure.

Background note

9. 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.

10. 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.

11. 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.

12. 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.

Clause 84: Interest in respect of unlawful ACT

Summary

1. This clause together with clause 85 provides a new non-exclusive interest like remedy in relation to certain claims against HM Revenue & Customs (HMRC) and its predecessor the Inland Revenue in respect of advance corporation tax (ACT) that was paid and subsequently set off or repaid before the time of the claim. The clause will apply with effect from Royal Assent, in relation to claims made before 12 December 2012.

Details of the clause

2. Subsection 1 sets out when the clause applies, by reference to proceedings begun in respect of "relevant payments".
3. Subsection 2 defines a relevant payment.
4. Subsection 3 provides for entitlement to an order requiring the Commissioners for HMRC to pay an amount and the basis upon which that amount is calculated.
5. Subsection 4 provides a table setting out rates which apply in the calculations and for a Treasury power under the negative resolution procedure to make regulations specifying a rate in relation to periods from 30 October 2018.
6. Subsection 5 provides that the principal amount mentioned at subsection (3) is adjusted for any related amount of interest or repayment supplement previously paid by the Commissioners.
7. Subsection 6 treats as separate payments amounts of ACT that have been set off or repaid at separate times or have not been set off or repaid.
8. Subsection 7 provides definitions.
9. Subsection 8 provides for a Treasury power to alter the date in subsection 1 which defines which claims are covered by this clause to a later date.
10. Subsections 9 and 10 set the process for laying secondary legislation under this clause.

Background note

Clauses 84 and 85 address uncertainty that has arisen for both taxpayers and HMRC following the recent Supreme Court decision in **Prudential Assurance Company Ltd v Commissioners for Her Majesty's Revenue and Customs** 2018 UKSC 39.

Clause 85: Section 84: supplementary

Summary

1. This clause provides supplementary details to clause 84 which provides a new non-exclusive interest like remedy in relation to certain claims against HM Revenue & Customs (HMRC) and its predecessor the Inland Revenue in respect of advance corporation tax (ACT) that was paid and subsequently set off or repaid before the time of the claim.

Details of the clause

2. Subsection 1 provides that the clause is supplementary to clause 84.
3. Subsection 2 provides that clause 84 does not exclude alternative remedies.
4. Subsections 3 and 4 ensure that only a single remedy is available for a particular claim, and contain a definition of "relevant remedy".
5. Subsection 5 amends the definition of a relevant payment in relation to interest paid under the Taxes Acts on the initial repayment of a relevant payment or on corporation tax occurring as a result of a relevant payment.
6. Subsection 6 deals with the possibility that a right to bring a claim may be transferred to a person other than the person who made the payment of ACT.
7. Subsection 7 deals with how any amount paid by virtue of clause 84 is brought into account for tax purposes.

Background note

8. Clauses 84 and 85 address uncertainty that has arisen for both taxpayers and HMRC following the recent Supreme Court decision in **Prudential Assurance Company Ltd v Commissioners for Her Majesty's Revenue and Customs** 2018 UKSC 39.

Clause 86: Voluntary returns

Summary

1. This clause amends the Taxes Management Act 1970 and Schedule 18 to the Finance Act 1998 and introduces a new power for HMRC to treat tax returns that have been made on a voluntary basis in the same way as tax returns delivered under statutory notice. This applies to voluntary tax returns from individuals, partnerships, trustees and companies.
2. The clause will come into effect at Royal Assent of the Finance Bill. It will apply retrospectively to any voluntary return, whenever made. It will also have prospective effect.

Details of the clause

3. Subsection 1 inserts new section 12D into part 2 of the Taxes Management Act 1970 ("TMA"). This new section provides for certain tax returns made on a voluntary basis, i.e. which have not been requested by HMRC under formal notice, to be treated for the purposes of tax legislation as if they were made in response to a formal notice.

4. New subsection 12D(1) sets out the three conditions which must be satisfied before the new section applies. Firstly, a person has delivered a purported return, as defined in new subsection 12D(4), for a certain period, under one of the following sections of the TMA: section 8 (personal return); 8A (trustee return); or 12AA (partnership return). Secondly, HMRC has not given the person a statutory notice requiring a return under the relevant section for that period. Thirdly, HMRC treats the purported return as a return made pursuant to a statutory notice under the relevant section.

5. New subsection 12D(2) provides for the consequences where these conditions are satisfied. The consequences, which apply for the purposes of the Taxes Acts, are as follows. Firstly, a relevant notice (defined in new subsection 12D(3)) is treated as having been given to the person on the day when the purported return was delivered. Secondly, the purported return is treated as having been made and delivered in response to that notice, i.e. as a return under the relevant section of the TMA.

6. New subsection 12D(3) defines a "relevant notice", a term which is introduced in new subsection 12D(2)(a).

7. New subsection 12D(3)(a) defines a relevant notice in relation to section 8 or 8A TMA. It is a notice under that section in respect of the relevant period, i.e. the period to which the purported return relates.

8. New subsection 12D(3)(b) defines a relevant notice in relation to section 12AA TMA. It is a notice under section 12AA(3) requiring the person who delivered the

purported return to deliver a return in respect of the relevant period. In this case a relevant notice also specifies the notional date by which the return had to be delivered: either the date of delivery of the purported return or (if later) the earliest date that could be specified under the rules in s.12AA.

9. New subsection 12D(4) defines a "purported return", a term which is introduced in new subsection 12D(1)(a). It is anything which is in a form and is delivered in a way which would be appropriate if a relevant statutory notice had been given, and which purports to be a return under the relevant section of the TMA.

10. New subsection 12D(5) provides that new section 12D does not affect any provision specifying the period for making or delivering any assessment or self-assessment.

11. Subsection 2 inserts new paragraph 20A at the end of Part 2 of Schedule 18 to the Finance Act 1998 ("Schedule 18"). This new paragraph provides for company tax returns made on a voluntary basis, i.e. which have not been requested by HMRC under formal notice, to be treated for the purposes of tax legislation as if they were made in response to a formal notice.

12. New sub-paragraph 20A(1) sets out the three conditions which must be satisfied before the new paragraph applies. Firstly, a company has delivered a purported return, as defined in new sub-paragraph 20A(4), for a certain period. Secondly, HMRC has not given the company a notice under paragraph 3 of Schedule 18 requiring a company tax return for that period. Thirdly, HMRC treats the purported return as a company tax return made pursuant to such a notice.

13. New sub-paragraph 20A(2) provides for the consequences where these conditions are satisfied. The consequences, which apply for the purposes of the Taxes Acts, are as follows. Firstly, a relevant notice (defined in new paragraph 20A(3)) is treated as having been given to the company on the day when the purported return was delivered. Secondly, the purported return is treated as having been made and delivered in response to that notice, i.e. as a company tax return under paragraph 3 of Schedule 18.

14. New sub-paragraph 20A(3) defines a "relevant notice", a term which is introduced in new sub-paragraph 20A(2)(a). It is a notice under paragraph 3 of Schedule 18 in respect of the relevant period, i.e. the period to which the purported return relates.

15. New sub-paragraph 20A(4) defines a "purported return", a term which is introduced in new sub-paragraph 20A(1)(a). It is anything which is in a form and is delivered in a way which would be appropriate if a notice under paragraph 3 of Schedule 18 had been given, and which purports to be a company tax return.

16. New sub-paragraph 20A(5) provides that new paragraph 20A does not affect any provision specifying the period for making or delivering any assessment or self-assessment.

17. Subsection 3 provides that the amendments made by the clause have retrospective effect.

18. Subsection 4 provides for an exception to the retrospective effect of the clause. Where

two conditions apply, the amendments made by the clause do not apply to purported returns delivered to HMRC prior to 29 October 2018. The first condition is that an appeal under the Taxes Acts or claim for judicial review must have been made before that date. The second condition is that a ground for the appeal or claim is that the purported return was not a return under the relevant section of the TMA or Schedule 18 because no relevant notice was given by HMRC.

19. Subsection 5 provides that certain amendments of existing legislation may be made by regulations in two circumstances. Firstly, amendments to relevant legislation (defined in subsection 6) may be made in consequence of subsections 1 and 2. Secondly, new section 12D (which is inserted by subsection 1 of the clause) may be amended as appropriate in connection with the coming into force of the digital reporting and record keeping obligations contained within section 61 of, and Schedule 14 to, the Finance (No.2) Act 2017.

20. Subsection 6 defines "relevant tax legislation", a term which is introduced in subsection 5(a). It means the TMA, Schedule 18 and any other enactment relating to income tax, corporation tax or capital gains tax.

21. Subsection 7 provides that regulations under the section must be made by statutory instrument.

22. Subsection 8 provides that any such regulations are subject to negative resolution procedure.

Background note

23. Some tax returns are delivered each year 'voluntarily' to HMRC by taxpayers, i.e. they are delivered before HMRC has given a statutory notice requiring the return to be delivered. HMRC has historically operated a policy of accepting such voluntary returns and has charged or repaid tax based on them, opened enquiries into them if necessary, and generally has treated them as valid tax returns for all purposes. If HMRC did not accept voluntary returns it would have to ignore the information sent and formally ask taxpayers to resend the same information, which would cause delays and inconvenience both to taxpayers and HMRC.

24. In April 2018 the First-tier Tribunal ruled that this policy was not supported by the law. HMRC has appealed this decision. If this finding were to be upheld by a higher court it could mean that all voluntary returns, and the steps taken by HMRC or taxpayers in reliance on them, were invalid.

25. To put the matter beyond doubt and confirm the long standing policy, this retrospective and prospective legislation makes clear that it is lawful for HMRC to have accepted, as statutory returns, the voluntary returns already received and to continue to accept them as such in the future.

26. The new legislation will, however, not apply to any voluntary return where an appeal or judicial claim has been made prior to 29 October 2018 on the ground that the voluntary return was not a statutory return because it was not made and

delivered pursuant to a statutory notice given by HMRC.

Clause 87: Interest under section 178 of FA 1989 and section 101 of FA 2009

Summary

1. This clause amends legislation retrospectively to remove the need for an Appointed Day Order before interest can be charged or paid on tax and other amounts under section 178 Finance Act 1989. It also sets interest rates for certain purposes including retrospectively for Diverted Profits Tax and provides for interest to be charged under Section 101 Finance Act 2009 to certain penalties for Pay As You Earn (PAYE), from 6 May 2014.

Details of the clause

2. Subsection 1 provides that where no Appointed Day Order has been made under section 178(7) Finance Act 1989 interest may be charged or paid from the date a rate was set in the Taxes (Interest rate) Regulations 1989.

3. Subsection 2 amends section 178 Finance Act 1989 in the following way:

   - The section no longer applies to penalties for promoters of tax avoidance schemes
   - The requirement for an Appointed Day Order for each rate is removed, without affecting any existing such order.

4. Subsection 3 applies the interest provisions of section 101 Finance Act 2009 to penalties for promoters of tax avoidance schemes.

5. Subsection 4(a) inserts rates in the Taxes (Interest rate) Regulations 1989 for the purposes of late payment of the levy on sale of securities under the Ports Act 1991 and of penalties for failure to comply with disclosure under the Employment Act 2002.

6. Subsection 4(b) inserts a rate in the Taxes (Interest rate) Regulations 1989 for the purposes of calculating the Diverted Profits Tax contained in Finance Act 2015.

7. Subsection (5) allows for the rates set by this clause to be changed by regulation.

8. Subsection 6(a) provides that section 101 Finance Act 2009 applies interest on penalties for failure to make returns under Schedule 55 Finance Act 2009 for PAYE.

9. Subsection 6(b) provides that section 101 Finance Act 2009 applies interest on penalties for failure to make payments on time under Schedule 56 Finance Act 2009 for PAYE and Construction Industry Scheme amounts.

10. Subsection 6(c) provides that section 101 Finance Act 2009 applies interest on penalties when corrective action is not taken regarding Follower Notices under section 208 Finance Act 2014, and penalties for failure to pay accelerated payment notices and partner payment notices under section 226 Finance Act 2014, where the penalties relates to PAYE.

Background note

11. This clause ensures that certain interest rate provisions are implemented correctly. It allows HM Revenue & Customs to charge late payment interest and pay repayment interest and calculate Diverted Profits Tax correctly. The clause also ensures that interest provisions in relation to certain penalties regarding PAYE are implemented correctly. It has retrospective effect where necessary.

Part 5: Miscellaneous and final

Clause 88 and Schedule 19: Regulatory capital securities and hybrid capital instruments

Summary

1. Clause 88 introduces Schedule 19 which provides new tax rules for loan relationships that are hybrid capital instruments. It also revokes Regulations dealing with the taxation of regulatory capital.

2. The Schedule introduces three new sections into the Corporation Tax Act (CTA) 2009, and these section are explained in more detail further below.

Details of the Schedule

3. Paragraph 1 revokes the Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209) and the Taxation of Regulatory Capital Securities (Amendment) Regulations 2015 (S.I. 2015/2056).

4. Paragraph 2 introduces new section 420A into Chapter 12 of Part 5 of the CTA 2009. This provides that qualifying amounts payable in respect of hybrid capital instruments are not treated as distributions for the purposes of the Corporation Tax Acts.

5. Paragraph 3 introduces new section 475C into CTA 2009. This defines hybrid capital instrument.

6. Paragraph 4 amends section 1015 of CTA 2010, providing that hybrid capital instruments are not treated as "special securities" by reason of condition E of section 1015. This ensures that amounts payable on a hybrid capital instrument cannot be treated as distributions for the purposes of the Corporation Tax Acts by virtue of being "equity notes".

7. Paragraph 5 introduces new section 320B into CTA 2009 which sets out how to bring loan relationships amounts into account for hybrid capital instruments recognised in equity or shareholders' funds.

8. Paragraph 6 amends section 162 CTA 2010 by including hybrid capital instruments within the meaning of "normal commercial loan".

9. Paragraphs 7 to 9 make certain consequential amendments.

10. Paragraph 7 amends Part 5 CTA 2009 as a result of new section 420A.

11. Paragraph 8 amends Part 10 of Taxation (International and Other Provisions) Act 2010 (TIOPA). This substitutes a reference to new section 320B (dealing with hybrid capital instruments) at 413(6) TIOPA in place of the reference to regulation 3A of the

Taxation of Regulatory Capital Securities Regulations 2013 (dealing with regulatory capital securities). It also repeals the provision dealing with regulatory capital securities at section 415(8) TIOPA.

12. Paragraph 9 amends The Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256) regulations 2, 3 and 4, replacing references to regulatory capital security with a reference to hybrid capital instrument.

13. Paragraphs 10 to 15 provide the commencement rules for the purposes of corporation tax.

14. Paragraph 10 provides that the amendments and provisions made by paragraphs 1 to 9 of the Schedule have effect for accounting periods beginning on or after 1 January 2019.

15. Paragraph 11 provides that an accounting period straddling 1 January 2019 is treated as if it were split into two separate deemed accounting periods.

16. Paragraphs 12 to 15 provide transitional rules for instruments to which the Regulatory Capital Security Regulations 2013 applied on 31 December 2018 ("transitional qualifying instruments").

17. Paragraph 12 provides a specified period for continuity of tax treatment for transitional qualifying instruments that are accounted for at fair value or bifurcated. Until 31 December 2023 it requires them to continue to be taxed on an amortised cost basis and as if they had not been bifurcated.

18. Paragraph 13 applies where a transitional qualifying instrument continues to be held until 31 December 2023 (the point at which the extended treatment required by paragraph 12 ceases to apply). Where the tax-adjusted carrying value for the instrument on 31 December 2023 is different from the tax-adjusted carrying value on 1 January 2024 the difference is brought into account as a debit or credit amount in the same way (and subject to the same rules) as though in accordance with generally accepted accounting practice (GAAP).

19. Paragraph 14 provides for certain transitional qualifying instruments to which there is a write-down or conversion event before 1 July 2019, and ensures that any credits arising on a write-down or conversion of such instruments are not brought into account in line with regulation 3(2)(c)(i) of the Regulatory Capital Securities Regulations 2013.

20. Paragraph 15 provides that where a transitional qualifying instrument has previously been the subject of a write-down event to which regulation 3(2)(c)(i) applied, then no debit is to brought in account where the debt is subsequently written back up.

21. Paragraphs 16 to 18 provide the commencement rules for income tax and capital gains tax.

22. Paragraph 16(1) provides for the amendments and revocations in paragraphs 1 to 4 to commence on or after 1 January 2019 for the purposes of income tax.

23. Paragraph 16(2) ensures that the revocations made by paragraph 1 do not apply to the exception from the duty to deduct income tax on certain payments in respect of regulatory capital securities for payments made before Royal Assent. It also provides a specified period for continuity of treatment of transitional qualifying instruments that have previously been excepted from the duty to deduct income tax from yearly interest and payments, and from payments made on building society securities. This allows these instruments to retain the exception for payments made before 1 January 2024.

24. Paragraph 17 provides the revocations made by paragraph 1 apply to disposals on or after 1 January 2019 for the purposes of capital gains tax.

25. Paragraph 18 applies the amendment in paragraph 6 to the definition of normal commercial loan, so far as it relates to the definition of "corporate bonds" to disposals of such bonds on or after 1 January 2019.

26. Paragraph 19 provides a power exercisable by The Treasury under the negative resolution procedure to make regulations amending new section 475C CTA 2009. It may not be exercised after 31 December 2019.

27. Paragraphs 20 and 21 provide for amendments in respect stamp duty and stamp duty reserve tax.

28. Paragraph 20 provides that the transfer of a hybrid capital instrument is exempt from all stamp duties.

29. Paragraph 21 provides that the revocations made by paragraph 1 and the stamp duties exemption at paragraph 20 only apply for stamp taxes in relation to instruments executed or agreements made on or after Royal Assent.

New section 420A CTA 2009: Amounts payable in respect of hybrid capital instruments

30. Subsection (1) limits the application of the section to hybrid capital instruments (as defined in new section 475C).

31. Subsection (2) provides that qualifying amounts payable on a hybrid capital instrument are not treated as distributions for the purposes of the Corporation Tax Acts.

32. Subsection (3) defines "qualifying amount" as any amount payable under a hybrid capital instrument which would, apart from the new legislation, be a distribution by virtue of the ability to defer or cancel interest.

33. Subsection (4) provides a cross reference to the new rule which prevents a hybrid capital instrument being identified as an equity note for the purposes of section 1015 CTA 2010.

New section 475C CTA 2009: Meaning of “hybrid capital instrument”

34. Subsection (1) defines a loan relationship as a hybrid capital instrument if it entitles the debtor to cancel or defer a payment of interest so long as it has no other significant equity features and the debtor has made an election.

35. Subsection (2) explains the meaning of “has no other significant equity features”. Significant equity features are identified as voting rights in the debtor, “the right to exercise a dominant influence over the debtor”, the ability to alter the amount of the debt except for “write-down or conversion events” in qualifying cases, and the right of a creditor to receive more than principal plus interest, or shares upon conversion under the terms of the instrument, except in qualifying cases. The terms are explained in subsections (3) to (5).

36. Subsection (3) defines “the right to exercise a dominant influence over the debtor”.

37. Subsection (4) defines a “write-down event” as a permanent release or temporary write-down of all or part of the debt, whether this is exercisable by the debtor, arises from a condition within the instrument, or otherwise.

38. Subsection (5) limits a qualifying “conversion event” to conversion of the loan relationship into the debtor’s, or its quoted parent’s, ordinary share capital.

39. Subsection (6) defines qualifying case for the purposes of subsection (2) as one where the provision for write-down or conversion applies only when the debtor is approaching insolvency or where the provision is included solely because of a need to comply with a regulatory or other legal requirement.

40. Subsection (7) allows an instrument that contains a temporary write-down provision to be a qualifying case provided that when written back up the amount of the debt cannot be increased above its original amount.

41. Subsection (8) provides that any election for a loan relationship to be a hybrid capital instrument is irrevocable, must be made within six months of the instrument’s issue, and has effect for all subsequent accounting periods. The time limit is amended for loan relationships entered into before 1 January 2019, for these instruments the election must be made on or before 30 September 2019.

42. Subsection 9 is an anti-avoidance rule that nullifies the election if the company is party to the hybrid capital instrument as a result of an arrangement with a main purpose of securing a tax advantage.

New section 320B CTA 2009: Hybrid capital instruments: amounts recognised in equity

43. Subsection (1) provides that this section applies where an amount in respect of a hybrid capital instrument is recognised under generally accepted accounting practice in equity or shareholders’ funds and not as an item of profit or loss or as an item of other comprehensive income.

44. Subsection (2) provides that the amount identified in subsection (1) is to be brought into account in the same way (and subject to the same rules) as if it were an amount recognised as item of profit or loss for the period in accordance with GAAP.

45. Subsection (3) excludes from this section any exchange gains or losses on the hybrid capital instrument.

Background note

46. The clause and Schedule have been introduced to ensure that interest payments arising from certain debt instruments with some limited equity features are deductible from the issuer's taxable profits.

47. Certain instruments (known as hybrid capital) issued by companies to raise capital have some debt-like and some equity-like features. Instruments which provide an interest-like return with no possibility for the holder to share in the profits of the issuer are properly regarded as debt. Some such instruments, however, include equity-like features such as a right for the issuer to cancel or defer interest payments. And although they have a fixed capital value at the outset, the instrument may contain terms that allow this to be released, written down or converted into shares in certain circumstances. These features can lead to uncertainty as to whether the payments under the hybrid capital instrument are taxed as interest (which is typically deductible) or as distributions of profit (which are not).

48. Previously this uncertainty has only been addressed for companies in the financial sector, where banking companies, building societies and certain investment firms (under the Basel III international regulatory accord) and insurance companies (under the Solvency II regulatory directive) are required to hold a certain amount of capital. Such uncertainty was addressed through the Taxation of Regulatory Capital Securities Regulations 2013.

49. In June 2018 the Bank of England finalised its approach to setting a minimum requirement for own funds and eligible liabilities (MREL) that banks, building societies and investment firms need to maintain to ensure that these institutions' own financial resources can be used to absorb any losses and recapitalise the business. To meet these requirements banks are permitted to issue types of hybrid capital instruments that are not covered by the 2013 Regulations.

50. The government has taken this opportunity to review the treatment of hybrid capital instruments across all sectors to ensure that, for instruments which are in substance debt and subject to certain conditions, interest payments are deductible, thus removing tax uncertainty.

51. The Schedule revokes the Taxation of Regulatory Capital Securities Regulations 2013 and replaces them with new tax rules for hybrid capital instruments which are in substance debt. The new rules apply to all sectors of the economy.

Clause 89: Minor amendments in consequence of EU withdrawal

Summary

1. This clause allows the government to make minor amendments, for example to EU references, within tax law to keep tax law working in the same way as it does now if the UK leaves the EU without a deal. The clause provides for technical changes to an existing power which permits the government to bring international tax agreements into effect in UK law. The clause also removes references to EU legislation when HMRC are considering whether, and the extent to which, a taxpayer is unjustly enriched by repayment of Insurance Premium Tax, Landfill Tax or Excise Duty.

Details of the clause

2. Subsection 1, paragraphs (a), (b) and (c) allows the government to make minor amendments for the purpose of maintaining the effect of any tax legislation if the UK leaves the EU without a deal. For example, replacing references to "EU" with "EU and UK", making minor amendments consequential on other changes to the law and section 8 of the European Union (Withdrawal) Act 2018 and changing values in "euros" to values in "sterling".

3. Subsection 1, paragraph (d) enables the government to amend paragraph 2(4) (a) of Schedule 5 FA 1997 to remove the reference to EU legislation.

4. Subsection 1, paragraph (e) contains a power to allow amendment of section 173 of the Finance Act 2006 which is the provision that enables the government to give effect to tax treaties in UK law. This new power will enable the government to update section 173 to ensure that international exchanges of information may continue in the same way under new treaties once legislation which currently gives effect to EU law ceases to have effect. It also ensures that the government is able to place appropriate restrictions on the use of HMRC information.

5. Subsection 2 provides that regulations made under the clause may; amend any enactment; contain incidental, transitional or saving provision; or make different provision for different purposes.

6. Subsection 3 provides that where regulations are made after exit day and a provision of the regulation is made by virtue of subsection 1, paragraphs (a) to (d), the provision may apply from exit day.

7. Subsections 4 and 5 provide that regulations made under this clause must be made by statutory instrument subject to annulment in pursuance of a resolution of the House of

Commons.

8. Subsection 6 provides definitions.

Background note

9. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. The outcome of the negotiations will determine what future arrangements will apply once the UK leaves the EU.

10. However, a responsible government should prepare for all potential outcomes, including the scenario in which no mutually satisfactory agreement can be reached. This clause therefore provides a power under which the government can make minor consequential amendments to tax legislation to keep the tax system running as it does now in the event that the UK leaves the EU without a deal.

11. This clause will ensures that tax law can continue to have the effect intended by Parliament after the UK has exited the EU.

Clause 90: Emissions reduction trading scheme: preparatory expenditure

Summary

1. This clause authorises the Secretary of State to incur expenditure in the course of preparing for the introduction of an emissions reduction trading scheme whereby charges may be imposed for the allocation of emissions allowances.

Details of the clause

2. Subsection 1 authorises expenditure by the Secretary of State to prepare for the introduction of an emissions reduction trading scheme where charges are imposed for the allocation of emissions allowances.

3. Subsection 2 defines what is meant by "emissions allowance" under subsection 1. The term "emissions allowance" is defined by reference to the Climate Change Act 2008, under which regulations for an emissions trading scheme may be made.

Background note

4. In its White Paper on The Future Relationship between the United Kingdom and the European Union, the Government outlined the likely importance of carbon pricing for continued participation in the Internal Energy Market.

5. The Government also recognises the importance of carbon pricing in helping it to achieve the reductions in greenhouse gas emissions required by its five-yearly cycle of carbon budgets mandated pursuant to the Climate Change Act 2008.

6. The Government is continuing to develop options for a long-term approach to carbon pricing, including continuing to participate in the EU Emissions Trading Scheme, a UK Emissions Trading Scheme (linked or standalone) or a Carbon Emissions Tax. If the Government decides to proceed with a UK Emissions Trading Scheme, delivery would be achieved through regulations made pursuant to section 44(1) of the Climate Change Act 2008.

7. Paragraph 5 of Schedule 2 to the Climate Change Act 2008 does not permit regulations made under section 44(1) to provide for allowances to be allocated in return for consideration. If the Government decides to proceed with a UK Emissions Trading Scheme as its preferred method for carbon pricing in the long-term, a charging power will need to be incorporated into next year's Finance Bill to allow for the auctioning of allowances.

8. To ensure that a UK Emissions Trading Scheme remains a viable option in the meantime, the Secretary of State will need to begin making preparations for an emissions trading scheme where allowances may be allocated in return for consideration, in early 2019. This clause provides spending authority for the Secretary of State to make those preparations, in the absence of an authority to spend under the Climate Change Act 2008.

Clause 91: Interpretation

1. This clause provides for the use of abbreviations for a variety of Acts. For example, it provides for the use of “CAA 2001” as an abbreviation for the Capital Allowances Act 2001.

Clause 92: Short title

1. This clause provides for the bill to be known as "Finance Act 2019" upon Royal Assent.

Territorial extent and application in the United Kingdom

1. In the view of HM Government, Finance (No. 3) Bill 2018 has a differential extent and application in the United Kingdom as shown in the table below. All the provisions except those mentioned below apply to the whole United Kingdom.
2. The provisions where there is a differential extent and application appertain to income tax (clause 3), stamp duty land tax (SDLT) (clauses 41 to 45) and landfill tax (clause 64).
3. Clause 3 sets the main rates of income tax for the tax year 2019-20. Main rates apply to the non-savings, non-dividend income of taxpayers in England, Wales and Northern Ireland. From April 2017 the Scottish Parliament has had the power to set rates for this type of income for taxpayers in Scotland.
4. Clauses 41 to 45 appertain to SDLT. SDLT applies in England and Northern Ireland only. The National Assembly for Wales was given legislative competence to introduce its own equivalent to SDLT by the Wales Act 2014 and has enacted the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017. The Scottish Parliament was given legislative competence to introduce its own equivalent to SDLT by section 80I of the Scotland Act 1998 and has enacted the Land and Building Transaction Tax (Scotland) Act 2013.
5. Clause 64 deals with landfill tax. Landfill tax applies to disposals in England and Northern Ireland only. The National Assembly for Wales was given legislative competence to introduce its own equivalent to landfill tax by the Wales Act 2014 and has enacted the Landfill Disposals Tax (Wales) Act 2017. The Scottish Parliament was given legislative competence to introduce its own equivalent to landfill tax by section 80K of the Scotland Act 1998 and has enacted the Landfill Tax (Scotland) Act 2014.
6. Clause 60 deals with air passenger duty. Air passenger duty currently applies in the whole of the UK. The Scottish Parliament was given legislative competence to introduce its own equivalent to air passenger duty by section 17 of the Scotland Act 2016 and has enacted the Air Departure Tax (Scotland) Act 2017. But the Act cannot have effect until the date specified by Treasury order under section 17 of the Scotland Act 2016, and no such order has yet been made.

Clause or Schedule number	Extends to E&W and applies to **England**	Extends to E&W and applies to **Wales**	Extends and applies to **Scotland**	Extends and applies to **Northern Ireland**	Would corresponding provision be within the competence of the **National Assembly for Wales**?	Would corresponding provision be within the competence of the **Scottish Parliament**?	Would corresponding provision be within the competence of the **Northern Ireland Assembly**?	Legislative Consent Motion needed?
Clauses 1 and 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No	No
Clauses 4 to 40	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 41 to 45	Yes	No	No	Yes	Yes	Yes	No	No
Clauses 46 to 63	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 64	Yes	No	No	Yes	Yes	Yes	No	No
Clauses 65 to 92, and all Schedules	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Minor or consequential effects

7. None identified.

Any queries regarding this publication should be sent to us at: public.enquiries@hm-treasury.gov.uk.

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