HM Treasury

Finance Bill
Explanatory Notes

19 March 2020

Explanatory notes

Introduction

1. These explanatory notes relate to the Finance Bill as introduced into Parliament on 19 March 2020. 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: Income Tax, Corporation Tax and Capital Gains Tax

Clause 1: Income tax charge for tax year 2020 - 21

Summary

1. This clause imposes a charge to income tax for the year 2020-21.

Details of the clause

2. Clause 1 imposes a charge to income tax for the year 2020-21.

Background note

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

Clause 2: Main rates of income tax for tax year 2020- 21

Summary

1. This clause sets the main rates of income tax for the tax year 2020-21.

Details of the clause

2. Clause 2 sets the basic, higher and additional rates of income tax for 2020-21.

3. This clause provides that the main rates of income tax for 2020-21 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 and Northern Ireland. Income tax rates on non-savings, non-dividend income for Welsh taxpayers are set by the National Assembly for Wales. The UK the main rates of Income Tax are reduced for Welsh taxpayers by ten pence in the pound on this income and the National Assembly for Wales sets the Welsh Rates of Income Tax which are added to the reduced UK rates. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 3: Default and savings rates of income tax for tax year 2020- 21

Summary

1. This clause sets the default rates and savings rates of income tax for the tax year 2020-21.

Details of the clause

2. Subsection (1) provides the default rates of income tax for 2020-21: the 20% default basic rates, the 40% default higher rate and the 45% default additional rate.
3. Subsection (2) provides the savings rates of income tax for 2020-21: 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 will apply to savings income of all UK taxpayers and the “default rates” which apply to non-savings, non-dividend income of taxpayers who are not subject to the main rates of income tax, Welsh rates of income tax or the Scottish rates of income tax.
6. Income tax rates on non-savings, non-dividend income for Welsh taxpayers are set by the National Assembly for Wales.
7. Income tax rates and thresholds on non-savings, non-dividend income for Scottish taxpayers are set by the Scottish Parliament.

Clause 4: Starting rate limit for savings for tax year 2020-21

Summary

1. This clause sets the starting rate limit for savings for the 2020-21 tax year.

Details of the clause

2. Clause 4 provides that for the tax year 2020-21 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 2020-21 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). If an individual's non-savings income is more than their personal allowance and exceeds the starting rate limit for savings, the starting rate is not available for that tax year. 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 2020-21 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 for 2021-22 and subsequently.

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

Clause 5: Main rate of corporation tax for financial year 2020

Summary

1. This clause sets the main rate of corporation tax (CT) for the financial year beginning 1 April 2020 at 19%.

Details of the clause

2. Subsection 1 sets the CT main rate for the financial year beginning 1 April 2020.

Background note

3. The CT main rate for financial year commencing 1 April 2020 was set at 17% in Finance Act 2016. This clause replaces the reference to the rate of 17% with 19% for that financial year.

Clause 6: Corporation tax: charge and main rate for financial year 2021

Summary

1. This clause charges corporation tax (CT) for the financial year beginning 1 April 2021 and also sets the main rate of CT at 19% for that year.

Details of the clause

2. Subsection 1 charges CT for the financial year beginning 1 April 2021.
3. Subsection 2 sets the main rate of CT for the financial year beginning 1 April 2021.

Background note

4. Parliament charges CT for each financial year. This clause charges CT for the financial year beginning 1 April 2021 and sets the main rate of CT for that year at 19%.

Clause 7: Determining the appropriate percentage for a car: tax year 2020-21 onwards

Summary

1. The government announced at Budget 2017 it would introduce a new regime for calculating a car's CO_2 emissions, known as the Worldwide harmonised Light vehicles Test Procedure (WLTP). This will apply to all cars first registered from 6 April 2020 onwards and replaces emissions testing under the New European Driving Cycle (NEDC). NEDC emissions values will still apply to cars first registered between 1 October 1999 and 5 April 2020 inclusive.

Details of the clause

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

3. Subsection (2)(a) amends section 136 of ITEPA (car with a CO_2 emissions figure: post-September 1999 registration). Paragraphs (i) to (iii) amend Section 136(2A) so that: the provision only applies to cars first registered before 6 April 2020; to make a small amendment to the meaning of "WLTP" within the provision to align the description with the wording contained on documents issued by the Vehicle Certification Agency and other bodies; and to allow for the use of UK approval certificates, respectively.

4. Subsection (2)(b) inserts a new sub-section 136(2B) applying to cars first registered on or after 6 April 2020. Section 136(2B) provides that any emissions figures specified in the EC certificate of conformity or UK approval certificate which are not WLTP values must be ignored. Therefore, section 136(2A) ensures that NEDC values are used for cars first registered before 6 April 2020, and section 136(2B) provides that WLTP values are used for cars first registered thereafter.

5. Similarly, subsection (3)(a) amends section 137 ITEPA (car with a CO_2 emissions: bi-fuel cars). Paragraphs (i) to (iii) amend Section 137(2A) so that: its provisions only apply to cars first registered before 6 April 2020; to make a small amendment to the meaning of WLTP within the provision to align the description with the wording contained on documents issued by the Vehicle Certification Agency and other bodies; and to allow for the use of UK approval certificates as an alternative to an EC certificate of conformity, respectively.

6. Subsection (3)(b) inserts a new sub-section 137(2B) applying to cars first registered on or after 6 April 2020. Section 137(2B) provides that any emissions figures which are not WLTP values must be ignored. Therefore, section 137(2A) ensures that NEDC values are used for cars first registered before 6 April 2020, and section 137(2B) provides that WLTP values are used for cars first registered thereafter.

7. Subsection (4)(a) amends section 139 (car with a CO_2 emissions figure: the

appropriate percentage). It substitutes a new sub-section 139(2) to provide for the rounding rules for CO_2 emissions (down to the nearest whole number), and the electric range figure (up to the nearest whole number). These have the effect of ensuring that customers can apply the most beneficial treatment in both cases.

8. Subsection (4)(b) inserts two new subsections to section 139. New subsection 139(5A) applies to determining the electric range figure for cars first registered before 6 April 2020 as those provided under NEDC test procedures and specified in an EC certificate of conformity, EC type-approval certificate or UK approval certificate. New subsection 139(5B) applies to determining the electric range figure for cars first registered on or after 6 April 2020 as those provided under WLTP test procedures and specified in an EC certificate of conformity, EC type-approval certificate or UK approval certificate.

9. Subsection (5) provides that the amendments have effect for the tax year 2020-21 and subsequent tax years.

Background note

10. From 1 September 2017, a new emissions test procedure was introduced (WLTP). All EC certificates of conformity or UK approval certificates for new cars now show CO_2 emissions figures based upon the WLTP test procedure, in addition to those based upon the existing methodology (NEDC).

11. Chapter 6 of Part 3 ITEPA applies to a car or van in relation to a particular tax year if in that year the car or van is made available by reason of an employment for the employee's private use. Section 120 of ITEPA provides for the cash equivalent of the benefit of a car to be treated as earnings from the employment for that year. It is therefore necessary to calculate the cash equivalent of the benefit of the car for a tax year, using the calculation set out in Section 121 of ITEPA. Step 5 of the calculation refers to finding the "appropriate percentage" for the car for the tax year in accordance with Sections 133 to 142 of ITEPA.

12. This clause provides for the implementation of the WLTP regime by amending Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits), of ITEPA.

13. The legislation makes a number of consequential amendments to the existing definition of WLTP within ITEPA, and ensures that emissions values from either an EC certificate of conformity or UK approval certificate may be used.

14. These amendments seek to clarify that any WLTP value specified in a UK approval certificate should be ignored for bi-fuel cars falling within this category. It also brings the government's announcement concerning WLTP values into effect in relation to bi-fuel cars first registered on or after 6 April 2020.

Clause 8: Determining the appropriate percentage for a car: tax year 2020-21 only

Summary

1. The government announced at Budget 2017 it would introduce a new regime for calculating a car's CO_2 emissions, known as the Worldwide harmonised Light vehicles Test Procedure (WLTP). This will apply to all cars first registered from 6 April 2020 onwards and replaces emissions testing under the New European Driving Cycle (NEDC). NEDC emissions values will still apply to cars first registered between 1 October 1999 and 5 April 2020 inclusive. This clause provides for the implementation of the WLTP regime by amending Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits), of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) for the tax year 2020-21.

Details of the clause

2. Subsection (1) introduces the amendments to Chapter 6 of Part 3 of ITEPA 2003 which have effect for the tax year 2020-21.

3. Subsection (2) amends the table in section 139(1) by adjusting the value of the appropriate percentage for cars with a CO_2 emissions figure of 0. It substitutes 0% for 2%. It also introduces a cross-reference to new section 139A in section 139(7).

4. Subsection (3) inserts new section 139A (Section 139: recently registered car with CO_2 emissions figure), which provides for the appropriate percentages for cars first registered on or after 6 April 2020, where these differ from those for cars first registered before that date. Section 139A provides that, in relation to a car that is first registered on or after 6 April 2020, for the tax year 2020-21, section 139 has effect as if the table of appropriate percentages in subsection (1) was substituted for the new table. Finally, subsection (3) provides that, in relation to a car that is first registered on or after 6 April 2020, for the tax year 2020-21, in section 139(3)(a), 18% is substituted for 20%.

5. Subsection (4) amends section 140 (car without a CO_2 emissions figure) with effect that, in subsection (3)(a), 0% is substituted for 2%. This applies to cars which cannot in any circumstances emit CO_2 by being driven.

Background note

6. From 1 September 2017, a new emissions test procedure was introduced (WLTP). All EC certificates of conformity or UK approval certificates for new cars now show CO_2 emissions figures based upon the WLTP test procedure, in addition to those based upon the existing methodology (NEDC).

7. Chapter 6 of Part 3 ITEPA applies to a car or van in relation to a particular tax year if in that year the car or van is made available by reason of an employment for the employee's private use. Section 120 of ITEPA provides for the cash equivalent of the benefit of a car to be treated as earnings from the employment for that year. It is therefore necessary to calculate the cash equivalent of the benefit of the car for a tax year, using the calculation set out in Section 121 of ITEPA. Step 5 of the calculation refers to finding the "appropriate percentage" for the car for the tax year in accordance with Sections 133 to 142 of ITEPA.

8. Section 133 of ITEPA specifies how to determine the "appropriate percentage" for the car, depending on whether it is a car with or without a CO_2 emissions figure, or a diesel car. Section 134 of ITEPA provides a definition of a car with or without a CO_2 emissions figure.

9. Section 139 of ITEPA provides how the appropriate percentage is to be determined for cars with a CO_2 emissions figure. This will now apply only to those cars first registered before 6 April 2020. New section 139A will provide how the appropriate percentage is to be determined for cars first registered on or after 6 April 2020. This clause will apply for the tax year 2020-21.

10. Section 140 of ITEPA provides for the appropriate percentage for cars without a CO_2 emissions figure where a car cannot in any circumstances emit CO_2 by being driven.

11. Clause 9 reflects the same legislative provisions but for the year 2021-22.

Clause 9: Determining the appropriate percentage for a car: tax year 2021-22 only

Summary

1. The government announced at Budget 2017 it would introduce a new regime for calculating a car's CO_2 emissions, known as the Worldwide harmonised Light vehicles Test Procedure (WLTP). This will apply to all cars first registered from 6 April 2020 onwards and replaces emissions testing under the New European Driving Cycle (NEDC). NEDC emissions values will still apply to cars first registered between 1 October 1999 and 5 April 2020 inclusive. This clause provides for the implementation of the WLTP regime by amending Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits), of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

Details of the clause

2. Subsection (1) introduces the amendments to Chapter 6 of Part 3 of ITEPA 2003 with effect for the tax year 2021-22.

3. Subsection (2) amends section 139 by adjusting the value of the appropriate percentage for cars with a CO_2 emissions figure of 0 by substituting 1% for 2%. It also introduces a cross-reference to new section 139A in section 139(7).

4. Subsection (3) inserts new section 139A ITEPA (Section 139: recently registered car with CO_2 emissions figure), which provides for the appropriate percentages for the tax year 2021-22 for cars first registered on or after 6 April 2020, where these differ from those for cars first registered before that date. Section 139A provides that, in relation to a car that is first registered on or after 6 April 2020, for the tax year 2021-22, section 139 has effect as if the table of appropriate percentages in subsection (1) was substituted for a new table. Finally, subsection (3) provides that, in relation to a car that is first registered on or after 6 April 2020, for the tax year 2021-22, in section 139(3)(a), 19% is substituted for 20%.

5. Subsection (4) amends section 140 (car without a CO_2 emissions figure) with effect that, in subsection (3)(a), 1% is substituted for 2%. This applies to cars which cannot in any circumstances emit CO_2 by being driven.

Background note

6. From 1 September 2017, a new emissions test procedure was introduced (WLTP). All EC certificates of conformity or UK approval certificates for new cars now show CO_2 emissions figures based upon the WLTP test procedure, in addition to those based upon the existing methodology (NEDC).

7. Chapter 6 of Part 3 ITEPA applies to a car or van in relation to a particular tax year if in that year the car or van is made available by reason of an employment for the employee's private use. Section 120 of ITEPA provides for the cash equivalent of the benefit of a car to be treated as earnings from the employment for that year. It is therefore necessary to calculate the cash equivalent of the benefit of the car for a tax year, using the calculation set out in Section 121 of ITEPA. Step 5 of the calculation refers to finding the "appropriate percentage" for the car for the tax year in accordance with Sections 133 to 142 of ITEPA.

8. Section 133 of ITEPA specifies how to determine the "appropriate percentage" for the car, depending on whether it is a car with or without a CO_2 emissions figure, or a diesel car. Section 134 of ITEPA provides a definition of a car with or without a CO_2 emissions figure.

9. Section 139 of ITEPA provides how the appropriate percentage is to be determined for cars with a CO_2 emissions figure. This will now apply only to those cars first registered before 6 April 2020. New section 139A will provide how the appropriate percentage is to be determined for cars first registered on or after 6 April 2020. This clause will apply for the tax year 2021-22.

10. Section 140 of ITEPA provides for the appropriate percentage for cars without a CO_2 emissions figure where a car cannot in any circumstances emit CO_2 by being driven.

11. Clause 8 reflects the same legislative provisions but for the year 2020-21.

Clause 10: Apprenticeship bursaries paid to persons leaving local authority care

Summary

1. The government announced at Budget 20 that a one-off bursary (known as the care leaver's apprenticeship bursary payment) paid to individuals who are currently in or have left local authority care, and subsequently join an apprenticeship scheme will not be subject to income tax and National Insurance contributions (NICs). This clause introduces a new income tax exemption for the care leaver's apprenticeship bursary payment. The exemption will have effect in relation to bursary payments made on or after a date to be specified by the Treasury, once regulations have been made to specify details about how the exemption will apply

Details of the clause

2. Subsection 1 inserts new section 254A into Chapter 4 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (exemptions: education and training).
3. New section 254A provides an income tax exemption for a care leaver's apprenticeship bursary payment.
4. New subsection 254A(2) sets out the meaning of a care leaver's apprenticeship bursary payment as a payment payable out of public revenue, to a care leaver, and made in connection with the person's employment as an apprentice. It also allows the Treasury to prescribe additional conditions on this definition by regulations.
5. New subsection 254A (3) provides that a care leaver is a person who currently is, or has previously been, a child looked after by a local authority in the United Kingdom, by reference to existing definitions in primary legislation applicable to different areas. It also allows the Treasury to prescribe additional conditions on this definition by regulations.
6. New subsection 254A (4) allows the Treasury to prescribe in regulations for a definition of the word "apprentice" for the purposes of the care leaver's apprenticeship bursary payment.
7. New subsection 254A (5) provides that regulations made under section 254A to cross-reference third party schemes or documents. It also provides that such regulations may make different provision for different purposes or areas, and that such regulations may be retrospective.
8. Subsection 2 provides for the amendment made by subsection (1) to have effect in relation to the tax year 2020-21 and subsequent tax years.

Background note

9. From August 2018, the Education and Skills Funding Agency (ESFA), an agency sponsored by the DfE, has been making a one-off £1,000 bursary payment (known as the care leaver's apprenticeship bursary payment) to individuals starting an apprenticeship.

10. To be eligible for the bursary, the individual must be a person who currently is, or has previously been, a child looked after by a local authority in the United Kingdom, by reference to the conditions set out in the ESFA funding rules and the existing definitions in primary legislation applicable to different areas.

11. Currently, the care leaver's apprenticeship bursary payment falls within the general charge to tax on employment income set out in section 6 of ITEPA, and also constitutes earnings for the purposes of Part I of the Social Security Contributions and Benefits Act 1992. The effect of these provisions is that the care leaver's bursary payment is chargeable to tax and NICs.

12. This clause is intended to ensure that payments made to an apprentice under the ESFA Funding Rules, will be exempt if the apprentice has previously been in the care of a UK local authority.

13. This exemption will have effect after the date of Royal Assent to the Finance Bill 2020-21, once regulations have been made by the Treasury to prescribe additional conditions in connection with the bursary payment. Further regulations will be laid at a future date after Royal Assent to Finance Bill 2020-21 to provide a corresponding disregard from liability to pay Class 1 NICs on the bursary payment under the in the Social Security (Contributions) Regulations 2001.

14. For payments that have already been made by EFSA to care leavers, HMRC will use its collection and management discretion and will not collect tax and NICs due on any such payments.

Clause 11: Tax treatment of certain Scottish social security benefits

Summary

1. This clause confirms that three new social security benefits paid by the Scottish Government are exempt from income tax: Disability Assistance for Children and Young People; Job Start; and, the Scottish Child Payment.

Details of the Clause and schedule

2. Subsection (1) provides for amendments to be made to Table B, section 677(1) of ITEPA 2003, which lists social security benefits wholly exempt from income tax.
3. Subsection (2) inserts Disability Assistance for Children and Young People and Job Start into Part 1 of Table B, which are benefits payable under primary legislation.
4. Subsection (3) inserts the Scottish Child payment into Part 2 of Table B, which are benefits payable under regulations.
5. Subsection (4) provides for the changes to have effect from 6 April 2020 onwards.

Background note

6. The Scottish Government is introducing three new social security benefits: Disability Assistance for Children and Young People; Job Start; and, the Scottish Child Payment.
7. The Fiscal framework agreement between the Scottish and UK Governments 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".
8. Social security benefits are administered by a number of different UK government departments and devolved administrations. The tax treatment of social security benefits is provided for within income tax legislation.

Clause 12: Power to exempt social security benefits from income tax

Summary

1. This clause introduces a new power for the Treasury to exempt social security benefits from income tax by statutory instrument.

Details of the clause

2. Subsection 1 provides a new power for the Treasury to introduce secondary legislation to exempt certain social security benefits from income tax, by amending Chapters 4 or 5 of Part 10 of ITEPA 2003, which provide for the tax treatment of social security benefits,

3. Subsection 2 explains the circumstances in which the regulations can be used, including retrospectively and that consequential provisions can be made.

4. Subsection 3 explains that the power will be included in the list of provisions in the introductory Chapter on the taxation of social security benefits; section 655 of ITEPA 2003, Part 10 subsection (2).

Background note

5. The new power will be used by the Treasury to confirm the tax treatment of social security benefits introduced by the UK Government, or any devolved administration. Regulations made under this clause will be governed by the procedure in s1014 Income Tax Act and will be made by statutory instrument and subject to annulment by a resolution of the House of Commons as specified in that section.

6. Social security benefits are administered by a number of different UK government departments and devolved administrations. The tax treatment of social security benefits is provided for within income tax legislation.

Clause 13: Voluntary office-holders: payments in respect of expenses

Summary

1. This clause places an existing Extra-Statutory Concession on a statutory footing by introducing a new section into Chapter 8 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"). It prevents any liability to income tax arising in respect of a payment or reimbursement of reasonable private expenses to a voluntary office-holder.

Details of the clause

2. Subsection (1) introduces new section 299B "Voluntary office-holders: payments in respect of expenses" into ITEPA, following section 299A, an existing provision relating to voluntary office-holders.
3. New subsection 299B(1) provides that no liability to income tax arises in respect of a payment to a person who holds a voluntary office if the payment is in respect of reasonable private expenses incurred in carrying out the duties of that office.
4. New subsection 299B(2) provides that it does not matter whether the payment is an advance payment or a reimbursement, or whether the person who makes the payment is the person with whom the office is held.
5. New subsection 299B(3) provides that subsections (2) and (3) of section 299A apply for the purposes of subsection (1) of 299B as they apply for the purposes of subsection (1) of section 299A.
6. Subsection (2) amends section 299A (3) (a) ITEPA 2003 to clarify that payments falling within section 299A (1) may be made by way of an advance payment or a reimbursement.
7. Subsection (3) provides that the exemption has effect from the start of the 2020-21 tax year onwards.

Background note

8. Section 5, Chapter 1 of Part 2 ITEPA applies the charge to tax on employment income to volunteers who are also office holders. Where they are paid or reimbursed business expenses incurred in the performance of the duties of the office, then s289A ITEPA provides an exemption from liability to income tax for those expenses. However, this section only covers business expenses, and not the reimbursement of private expenses - such as travel from home to the place where the office is carried out - which would usually be chargeable to tax. Currently, HM Revenue and Customs guidance sets out that voluntary workers, including office holders, who are

otherwise unpaid are not liable to tax (or National Insurance contributions) on the reimbursement of extra costs incurred in undertaking the voluntary work, but this does not reflect the statutory position.

9. The government announced at Budget 2018 that they would replace the existing extra-statutory concessionary treatment with a statutory income tax exemption for payments made to voluntary office holders for private expenses. The new clause brings the government's announcement into effect.

10. The new clause will not affect how HMRC interpret or apply s299A of ITEPA.

Clause 14 and Schedule 1 (Part 1): Loan charge not to apply to loans or quasi-loans made before 9 December 2010

Summary

1. This clause and Schedule amend the date from which disguised remuneration loans will be taxed under the Loan Charge from 6 April 1999 to 9 December 2010. This change will also remove loans made before 9 December 2010 from taxation under the Loan Charge.

Details of the clause

2. Subsection 1 amends paragraph 1(1)(b) of Schedule 11to the Finance (No.2) Act 2017 (F(No.2)A 2017) to change the date from which disguised remuneration loans will be taxed for those in receipt of employment income under the Loan Charge. This clause amends the date from 6 April 1999 to 9 December 2010 for those in receipt of employment income. This amendment removes loans made before that date from taxation under the Loan Charge.

3. Subsection 2 amends paragraph 1(2)(a)(i) of Schedule 12 to F(No.2)A 2017 to change the date from which disguised remuneration loans will be taxed for those in receipt of trading income under the Loan Charge. This clause amends the date from 6 April 1999 to 9 December 2010 for those in receipt of trading income. This amendment removes loans made before that date from taxation under the Loan Charge.

4. Subsection 3 provides for consequential amendments in Part 1 of Schedule 1.

Details of the Schedule

5. Consequential amendments relating to this change are included in Part 1 of Schedule 1. These changes amend further references to the 6 April 1999 date in other areas of legislation and remove references to approved fixed term loans which only related to loans made before 9 December 2010 and so are no longer impacted by the Loan Charge.

6. Paragraphs 1 to 16 make consequential amendments to Schedule 11 to F(No.2)A 2017 to give effect to the legislative changes introduced following the recommendations by the independent review into the Loan Charge.

7. Paragraphs 17 to 22 make consequential amendments to Schedule 12 to F(No.2)A 2017 to give effect to the legislative changes introduced following the recommendations by the independent review into the Loan Charge.

Background note

8. This is the first of seven clauses which implement changes to the Loan Charge following Sir Amyas Morse's independent review of the policy.

9. At Budget 2016, the government announced a package of changes to tackle existing disguised remuneration avoidance schemes and prevent their future use. The Loan Charge was designed to tackle disguised remuneration avoidance schemes and introduced a new charge on disguised remuneration loan balances outstanding at 5 April 2019.

10. Disguised remuneration avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.

11. In September 2019 the government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the government had previously announced addressed any legitimate concerns raised.

12. The Review was published on 20 December 2019 alongside the government's response. The government welcomed Sir Amyas's recognition that disguised remuneration schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the Loan Charge and accepted all but one of the Review's recommendations.

13. Draft legislation was published on 20 January 2020 followed by a four-week consultation period. This legislation is now being introduced to give effect to these recommendations.

Clause 15 and Schedule 1 (Part 2): Election for loan charge to be split over three tax years

Summary

1. This clause and Schedule introduce new provisions to allow taxpayers subject to the Loan Charge to elect to spread their outstanding loan balance evenly across three tax years (2018 - 19, 2019 - 20 and 2020 - 21). This will give taxpayers greater flexibility on when the outstanding loan balance is subject to tax. In some circumstances this will mean that the loan balance is subject to lower rates of tax than if taxed only in the 2018 - 19 tax year. It further provides that an election must be made in an online form to report disguised remuneration loans. The election cannot be withdrawn. The clause also provides that in order to make an election a person must submit information in an online form reporting all disguised remuneration loans received from 9 December 2010 to 5 April 2019.

Details of the clause

2. Subsection 1 introduces the amendments to Schedule 11 to Finance (No.2) Act 2017 (F(No.2)A 2017).

3. Subsection 2(a) inserts new sub-paragraph (6A) into paragraph 1 of Schedule 11, which amends the value of the relevant step where an individual makes an election. New sub-paragraph (6A) provides for paragraph 1(4) to be subject to new paragraph 1A(5). New paragraph 1A(5) provides that where a person makes an election to spread their loan balance over three tax years, the value of the relevant step should be one third of the total loan balance for 2018 - 19 and for each of the subsequent two years following.

4. Subsection 2(b) amends paragraph 1(7)(a) to direct the taxpayer to the relevant paragraphs within Schedule 11 F(No.2)A 2017 for the purposes of determining whether a loan etc is outstanding for the purposes of the Loan Charge.

5. Subsection 3 inserts new paragraph 1A into Schedule 11 F(No.2)A 2017 which allows the customer to elect to spread their outstanding disguised remuneration loan balance over three tax years. New paragraph 1A sets out that a person with an outstanding loan balance on 5 April 2019 may be treated as having three equal portions of income which are taxed over three consecutive tax years, starting with tax year 2018 - 19.

6. Subsection 3 also sets out that, under new paragraph 1A of Schedule 11 F(No.2)A 2017, in order for a person to spread their loan balance over three years the person must make an election to do so any time before 1 October 2020. The person must also provide full information of their outstanding loans any time before 1 October 2020, as set out by paragraph 35C of Schedule 11, in order to allow them to make an election.

This election cannot be withdrawn, and an election made under Schedule 11 will cover all loans captured by that Schedule and by Schedule 12 F(No.2)A 2017.

7. Subsection 4 introduces amendments to Schedule 12 F(No.2)A 2017.

8. Subsection 2(5)(a) amends the existing paragraph 1(1) of Schedule 12 to F(No.2)A 2017 to confirm that a loan or quasi-loan to which sub-paragraph 2 applies is to be treated as a 'relevant benefit' arising immediately before the end of 5 April 2019. This is in response to the amendment made to paragraph 1(2)(a)(i) of Schedule 12 F(No.2)A 2017 which excludes from the Loan Charge loans made before 9 December 2010, and as a result removes from Schedule 12 the concept of an 'approved fixed term loan' (which had to have been made before 9 December 2010) that could be treated as a relevant benefit arising at a date other than 5 April 2019.

9. Subsection 2(5)(b) amends paragraph 1(3) of Schedule 12 F(No.2)A 2017 to confirm the treatment of loans and quasi-loans where the person does not choose to make an election to spread the relevant benefit under the new sub-paragraph (3A) introduced by subsection 5(c), and again reflects the removal of the concept of an approved fixed term loan with a relevant benefit arising at a date other than 5 April 2019.

10. Subsection 2(5)(c) inserts new sub-paragraphs (3A) to (3E) into Schedule 12 F(No.2)A 2017.

11. New sub-paragraph (3A) splits the value of the relevant benefit into three separate 'relevant benefit amounts' where an individual makes an election. The current legislation treats the relevant benefit amount as the total amount of outstanding loans or quasi-loans immediately before the end of 5 April 2019. The new sub-paragraph (3A) states that where a person makes an election to spread their loan balance over three tax years, the relevant benefit amount arising in 2018 - 19 and each the two subsequent tax years is one third of the relevant benefit (the outstanding loan balance) arising at 5 April 2019.

12. New sub-paragraph 3B provides that in order for a person to spread their loan balance over three years the person must make an election to do so at any time before 1 October 2020.

13. New sub-paragraph (3C) provides the person must also provide full information of their outstanding loans, as set out by paragraph 22 & 23 of Schedule 12 F(No.2)A 2017, at the same time or in advance of making an election.

14. New sub-paragraph (3D) provides that the election cannot be withdrawn once made.

15. New sub-paragraph (3E) stipulates that an election made under Schedule 12 will cover all loans covered by that Schedule and by Schedule 11 F(No.2)A 2017.

16. Subsection 2(6) introduces consequential amendments in Part 2 of Schedule 1.

Details of the Schedule

17. Paragraph 23 introduces amendments to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

18. Paragraph 24 introduces amendments to section 554A ITEPA 2003, which outlines the application of chapter 2 ITEPA 2003 (treatment of a relevant step for income tax purposes) where a person dies before 5 April 2019. The amendments ensure that where a person dies before 5 April 2019 the Schedule 11 Loan Charge will not apply.

19. Paragraph 25 inserts into section 554Z(10)(d) ITEPA 2003 a reference to the new paragraph 1A of Schedule 11.

20. Paragraphs 26 to 38 are consequential amendments clarifying where in Schedule 11 the new paragraph 1A is to be considered alongside the existing paragraph 1.

21. Paragraph 39 sets out consequential amendments clarifying where in Social Security (Contributions) Regulations 2001 (SI 2001/1004) the new paragraph 1A of Schedule 11 is to be considered alongside the existing paragraph 1.

Background note

22. This is the second of seven clauses which implement changes to the Loan Charge following Sir Amyas Morse's independent review of the policy.

23. At Budget 2016, the government announced a package of changes to tackle existing disguised remuneration avoidance schemes and prevent their future use. The Loan Charge was designed to tackle disguised remuneration avoidance schemes and introduced a new charge on disguised remuneration loan balances outstanding at 5 April 2019.

24. Disguised remuneration avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.

25. In September 2019 the government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the government had previously announced to the policy addressed any legitimate concerns raised.

26. The Review was published on 20 December 2019 alongside the government's response. The government welcomed Sir Amyas's recognition that disguised remuneration schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the Loan Charge and accepted all but one of the Review's recommendations.

27. Draft legislation was published on 20 January 2020 followed by a four-week

consultation period. This legislation is now being introduced to give effect to these recommendations.

Clause 16: Loan charge reduced where underlying liability disclosed but unenforceable

Summary

1. This clause inserts new paragraphs into Schedules 11 and 12 to the Finance (No.2) Act 2017 (F(No.2)A 2017) to provide for a reduction of the sums treated as chargeable to tax for years 2015/16 and earlier where a reasonable disclosure of the loan had been made and HMRC had not taken steps prior to 6 April 2019 to recover the tax. No reduction applies for years 2015/16 and earlier where a reasonable disclosure was not made, and for years 2016/17 onwards irrespective of whether there has been reasonable disclosure or HMRC had taken steps to recover the tax.

Details of the clause

2. Subsection (1) introduces new paragraph 1B into Schedule 11 to F(No.2)A 2017.

3. New paragraph 1B(1) provides that the reduction applies, subject to new paragraph 1B(2), where a person "A" (as defined in s.554A(1)(a) ITEPA 2003) who would be liable to the Loan Charge made a reasonable disclosure of the loan in a qualifying tax return, or two or more such tax returns of the same type, for a qualifying ("relevant") tax year (as defined in new paragraph 1B(7)). A reasonable case could have been made if "A" was chargeable to tax on the amount of the loan in a tax year before 2016/17 and HMRC had not taken steps to recover the income tax for the relevant year in respect of that amount before 6 April 2019.

4. New paragraph 1B(2) provides that new paragraph 1B(1) does not apply if a reasonable case could be made that "A" was liable to tax on all or part of the loan amount identified in new paragraph 1B(1), or an amount representing that loan amount, in an "alternative tax year" (an alternative year is not a qualifying tax year) and HMRC took steps to recover the income tax for the alternative year, from "A" or any other person, before 6 April 2019.

5. New paragraph 1B(3) defines "an amount" for the purposes of new paragraph 1B(2)

6. New paragraph 1B(4) provides that where the reduction applies, the amount of the outstanding balance taxable under paragraph 1 or 1A is reduced (although not below nil) by the amount of the loan identified in new paragraph 1B(1).

7. New paragraph 1B(5) defines reasonable disclosure for the purposes of new paragraph 1B(1). It provides that a person's qualifying tax return, or two of more tax returns of the same type, must have identified the loan and the person to whom it was made, the arrangements under which the loan was made, and such other information as necessary for it to be apparent that a reasonable case could have been made that the person was chargeable to income tax on the amount of the loan.

8. New paragraph 1B(6) provides that references to "A" being chargeable to income tax do not include that person being chargeable to income tax by reason of section 175 of the Income Tax (Earnings and Pensions) Act 2003 (benefit of taxable cheap loan treated as earnings).

9. New paragraph 1B(7) defines a "qualifying tax year" as the tax year 2015/16 and any earlier tax year, and "qualifying tax return" as an income tax return made by the taxable person ("A"), or an income tax or corporation tax return made by "B" (the employer, past employer or prospective employer of A as defined in s.554A(1)(a) ITEPA 2003). The term "tax return" includes any accompanying accounts, statements or documents.

10. Subsection (2) introduces new paragraph 1A into Schedule 12 of F(No.2)A 2017.

11. New paragraph 1A(1) provides that the reduction applies, subject to new paragraph 1A(2), where a person "T" (defined in section 23A(2) of ITTOIA 2005) who would be liable to the Loan Charge made a reasonable disclosure of the loan in a qualifying tax return, or two or more such returns taken together, for a qualifying ("relevant") tax year (as defined in new paragraph 1A(6)). A reasonable case could have been made if "T" was chargeable to tax on the amount of the loan in a tax year before 2016/17 and HMRC has not taken any steps to recover the income tax for the relevant year in respect of that amount before 6 April 2019.

12. New paragraph 1A(2) provides that new paragraph 1A(1) does not apply if a reasonable case could be made that "T" was liable to tax on all or part of the loan amount identified in new paragraph 1A(1),or an amount representing that loan amount, in an "alternative tax year" (an alternative year is not a qualifying tax year) and HMRC took steps to recover the income tax for the alternative year, from "T" or any other person, before 6 April 2019.

13. New paragraph 1A(3) defines "an amount" for the purposes of new paragraph 1A(2).

14. New paragraph 1A(4) provides that where the reduction applies, the amount of the outstanding balance taxable under paragraph 1 or 1A is reduced (although not below nil) by the amount of the loan identified in new paragraph 1A(1).

15. New paragraph 1A(5) defines reasonable disclosure for the purposes of new paragraph 1A(1). It provides that a person's tax return or accompanying documents must have identified the loan and the person to whom it was made, the arrangements under which the loan was made, and such other information as necessary for it to be apparent that a reasonable case could have been made that the person was chargeable to income tax on the amount of the loan.

16. New paragraph 1A(6) defines a "qualifying tax year" as the tax year 2015/16 and any earlier tax year, and "qualifying tax returns" as an income tax return made by the taxable person ("T"). The term "tax return" includes any accompanying accounts, statements or documents.

Background note

17. This is the third of seven clauses which implement changes to the Loan Charge following Sir Amyas Morse's independent review of the policy.

18. At Budget 2016, the government announced a package of changes to tackle existing disguised remuneration avoidance schemes and prevent their future use. The Loan Charge was designed to tackle disguised remuneration avoidance schemes and introduced a new charge on disguised remuneration loan balances outstanding at 5 April 2019.

19. Disguised remuneration avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.

20. In September 2019 the government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the government had previously announced to the policy addressed any legitimate concerns raised.

21. The Review was published on 20 December 2019 alongside the government's response. The government welcomed Sir Amyas's recognition that disguised remuneration schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the Loan Charge and accepted all but one of the Review's recommendations.

22. Draft legislation was published on 20 January 2020 followed by a four-week consultation period. This legislation is now being introduced to give effect to these recommendations.

Clause 17: Relief from interest on tax payable by a person subject to the loan charge

Summary

1. This clause provides for no interest to be charged on persons subject to the Loan Charge (including in accordance with the legislation which was in force prior to the amendments to be made in the Finance Act 2020) on any tax liabilities (income tax and capital gains tax) due in respect of the tax year 2018/19 and outstanding between 1 February 2020 and 30 September 2020, or in respect of the tax year 2019/20 and outstanding prior to 31 January 2021, provided that certain conditions are met.

Details of the clause

2. Subsection (1) sets out the criteria for the section applying.
3. Paragraph (1)(a) defines the group of people to whom the section applies.
4. Paragraph (1)(b) provides that a person with a Loan Charge liability must file a 2018/19 tax return under Section 8 of TMA 1970, by 30 September 2020.
5. Paragraph (1)(c) provides at the end of September 2020 the person`s self-assessment, included in the person's 2018/19 tax return must be accurate & complete.
6. Subsection (2) sets out the interest consequences if a person pays their 2018/19 tax liability by the end of September 2020.
7. Paragraph (2)(a) provides that no interest will be charged on any amount paid in discharging the person's 2018/19 liability, other than payments on account payable for that year.
8. Paragraph (2)(b) provides that no interest will be charged on any amounts paid (on account) in respect of a person's liability to tax for the tax year 2019/20.
9. Subsection (3) provides for where a person, before the end of September 2020, enters into an agreement with HMRC regarding payment of their 2018/19 tax liability.
10. Paragraph (3)(a) provides that an amount paid before the end of September 2020 in respect of the person's 2018/19 tax liability (other than payments on account previously payable), will not carry interest.
11. Paragraph (3)(b) provides that late payment interest for 2018/19 will be charged from 1 October 2020 on any amounts paid after 30 September 2020 other than by virtue of an agreement entered into with HMRC.
12. Paragraph (3)(c) provides that no interest will be charged on any payments on account of the person's 2019/20 liability, provided the full amount is paid by 31 January 2021.

13. Subsection (4) provides that if the person has not paid their 2019/20 liability by 31 January 2021, nor entered into any agreement with HMRC regarding paying their liability, then interest will be charged from the existing statutory payment dates.

Background note

14. This is the fourth of seven clauses which implement changes to the Loan Charge following Sir Amyas Morse's independent review of the policy.

15. At Budget 2016, the government announced a package of changes to tackle existing disguised remuneration avoidance schemes and prevent their future use. The Loan Charge was a new charge on disguised remuneration loan balances outstanding at 5 April 2019.

16. Disguised remuneration avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.

17. In September 2019 the government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the government had previously announced addressed any legitimate concerns raised.

18. The Review was published on 20 December 2019 alongside the government's response. The government welcomed Sir Amyas's recognition that disguised remuneration schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the Loan Charge and accepted all but one of the Review's recommendations.

19. Draft legislation was published on 20 January 2020 followed by a four-week consultation period. This legislation is now being introduced to give effect to these recommendations.

Clause 18: Minor amendments relating to the loan charge

Summary

1. This clause provides minor amendments to Schedule 11 and Schedule 12 to Finance (No. 2) Act 2017 (F(No.2)A 2017) to implement the changes to the Loan Charge.

Details of the clause

2. Subsection (1) introduces amendments to Schedule 11 F(No.2)A 2017.

3. Subsection (2) amends the date in paragraph 35C(2)(b) of Schedule 11 F(No.2)A 2017 on which taxpayers must provide information on their disguised remuneration loan to 1 October 2020.

4. Subsection (3) amends paragraph 45 of Schedule 11 F(No.2)A 2017 to include reference to section 554AA(1)(a).

5. Subsection (4) amends the date in paragraph 22(2)(b) of Schedule 12 F(No.2)A 2017 on which taxpayers must provide information on their disguised remuneration loan to 1 October 2020.

Background note

6. This is the fifth of seven clauses which implement changes to the Loan Charge following Sir Amyas Morse's independent review of the policy.

7. At Budget 2016, the government announced a package of changes to tackle existing disguised remuneration avoidance schemes and prevent their future use. The loan charge was a new charge on disguised remuneration loan balances outstanding at 5 April 2019.

8. Disguised remuneration avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.

9. In September 2019 the government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the government had previously announced to the policy addressed any legitimate concerns raised.

10. The Review was published on 20 December 2019 alongside the government's response. The government welcomed Sir Amyas's recognition that disguised remuneration schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the loan charge and accepted all but one of the Review's recommendations.

11. Draft legislation was published on 20 January 2020 followed by a four-week consultation period. This legislation is now being introduced to give effect to these recommendations.

Clause 19: Repaying sums paid to HMRC under agreements relating to certain loans etc

Summary

1. This clause requires the Commissioners for HM Revenue & Customs (”the Commissioners”) to establish a scheme under which they may repay or waive the payment of the whole, or part, of a qualifying amount paid, treated as paid or due to be paid under a qualifying agreement. Qualifying amount is defined in subsections (3) and (4) of this clause and qualifying agreement is defined in subsection (2) of this clause.

Details of the clause

2. Subsection (1) requires the Commissioners to establish a scheme under which they may, if an application is made before 1 October 2021, repay or waive all or part of a qualifying amount paid, treated as paid, or due to be paid under a qualifying agreement.

3. Subsection (2) defines a “qualifying agreement” as an agreement made with the Commissioners between the specified dates, that requires a party to the agreement to pay income tax that is directly, or indirectly, referable to a qualifying loan or quasi-loan.

4. Subsection (3) defines an amount paid, treated as paid or due to be paid under a qualifying agreement, as a “qualifying amount” if it is directly or indirectly referable to a qualifying loan or quasi-loan and, at the time the qualifying agreement was made, HMRC had no power to recover the amount.

5. Subsection (4) provides that where an amount is directly or indirectly referable to a loan or quasi-loan made after 9 December 2010 it is not a qualifying amount unless a reasonable disclosure of the loan or quasi-loan was made in a tax return, or two or more tax returns of the same type taken together, at a time when HMRC had power to recover the amount.

6. Subsection (5) defines “reasonable disclosure” for the purposes of subsection (4). It provides that for there to have been reasonable disclosure a tax return, or two or more tax returns taken together, must have identified the loan or quasi-loan, the person to whom it was made and the arrangements under which the loan or quasi-loan was made and provided such other information as was sufficient for it to be apparent that a reasonable case could have been made that the amount referable to the loan or quasi-loan was payable to the Commissioners.

7. Subsection (6) provides that a qualifying amount includes interest paid, treated as paid or due to be paid on any qualifying amount paid, treated as paid or due to be paid under the qualifying agreement.

8. Subsection (7) provides that a loan or quasi-loan is a qualifying loan or quasi-loan if it was made on or after 6 April 1999 and before 6 April 2016.

9. Subsection (8) provides definitions for the purposes of this section. Paragraphs 8(a) and (b) define "tax return" for the purposes of a reasonable disclosure under subsection (4).

10. Subsection (9) provides for further details of the scheme to be set out in clause 20.

Background note

11. This is the sixth of seven clauses which implement changes to the Loan Charge following Sir Amyas Morse's independent review of the policy.

12. At Budget 2016, the government announced a package of changes to tackle existing disguised remuneration avoidance schemes and prevent their future use. The Loan Charge was designed to tackle disguised remuneration avoidance schemes and introduced a new charge on disguised remuneration loan balances outstanding at 5 April 2019.

13. Disguised remuneration avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.

14. In September 2019 the government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the government had previously announced addressed any legitimate concerns raised.

15. The Review was published on 20 December 2019 alongside the government response. The government welcomed Sir Amyas' recognition that disguised remuneration schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the Loan Charge and accepted all but one of the Review's recommendations.

16. In its response to the Review, the government agreed that HMRC should repay voluntary restitution that has been paid by individuals and employers under settlement agreements entered into since the Loan Charge was announced in March 2016, for any unprotected tax years where:

    - the Loan Charge no longer applies (loans made before 9 December 2010); or

    - the loans were made in any tax years before 6 April 2016, a reasonable disclosure of the avoidance scheme use was made to HMRC and HMRC did not take action (for example, by opening an enquiry).

HMRC has published a draft scheme which sets out the process for applying for a repayment of certain payments made, or the waiver of certain payments due to be made, to the Commissioners under a settlement agreement and how such an application will be determined by the Commissioners.

Clause 20: Operation of the scheme

Summary

1. This clause makes further provision in connection with scheme to be established by the Commissioners for HM Revenue & Customs (“the Commissioners”) under clause 20. It sets out what the scheme may make provision in relation to and what the scheme may make provision for and about, in particular in respect to the making and determination of applications under the scheme.

Details of the clause

2. Subsection (1) provides that the scheme may make provision in relation to all qualifying agreements and qualifying amounts or to specified descriptions of such agreements and amounts only.

3. Subsection (2) provides for the scheme to set out when an amount that is not a qualifying amount under clause 19 by reason only of subsection (4) thereof may be treated as if it were such a qualifying amount.

4. Subsection (3) provides that the scheme may make provision about the making of applications under the scheme, including who is, or is not, eligible to apply, the conditions that must be met in order to apply, the form, manner and content of an application, and the information or evidence that must be provided in support of an application.

5. Subsection (4) provides that the scheme may make provision about how applications will be determined, including how the Commissioners must determine whether or not to repay or waive the payment of a qualifying amount, and how the amount they will repay or waive must be determined.

6. Subsection (5) provides that the scheme may authorise the Commissioners to make a repayment or waiver conditional on the applicant, or any other person, agreeing to the termination or variation of the qualifying agreement or to the making of a new agreement. Subsection (5)(c) authorises the Commissioners to also specify in the scheme other conditions that must be met before a refund or waiver is made.

7. Subsection (6) provides that the scheme may set out matters that the Commissioners may or must take account of in determining whether to make a repayment or grant a waiver under the scheme and the amounts, if any, to be repaid or waived. Subsection (6)(a) and (b) set out that this may include the effect the qualifying agreement, or a repayment or waiver, has had or may have, on the applicant or any other person, for example on any liability, relief or benefit. Subsection (6)(c) provides that it may also include any other matters specified in the scheme.

8. Subsection (7)(a) and (b) provide for the scheme to make provision as to the effect a

repayment or waiver under the scheme is to have on whether the applicant or any other person is entitled to a payment, benefit or relief and the effect of the repayment or waiver on the amount or value of that payment, benefit or relief. Subsection (7)(c) and (d) provide for the scheme to make provision as to the effect a repayment or waiver under the scheme is to have on whether the applicant or any other person is subject to a liability under an enactment and, if so, the extent of that liability.

9. Subsection (8) provides for the scheme to set out how the Commissioners may recover any amount repaid under the scheme where they consider that the amount should not have been repaid or to recover any amount that has been waived under the scheme where they consider that the waiver should not have been granted.

10. Subsection (9) details that the scheme may make different provision for different purposes or cases and provides for provisions made by the scheme to be general, specific, incidental, supplemental, consequential or transitional.

11. Subsection (10) provides for the scheme to be amended by the Commissioners.

12. Subsection (11) provides that an amendment to the scheme which is of a kind authorised by subsection (7) may have effect in relation to repayments made or waivers granted under the scheme before the amendment comes into force only where the principal effect of the amendment is to benefit persons other than the Commissioners.

13. Subsection (12) provides definitions for this purposes of this section.

Background note

14. This is the last of seven clauses which implement changes to the Loan Charge following that follow Sir Amyas Morse's independent review of the policy.

15. At Budget 2016, the government announced a package of changes to tackle existing disguised remuneration avoidance schemes and prevent their future use. The Loan Charge was designed to tackle disguised remuneration avoidance schemes and introduced a new charge on disguised remuneration loan balances outstanding at 5 April 2019.

16. Disguised remuneration avoidance schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance Contributions by paying scheme users their income in the form of loans, usually via an offshore trust, with no expectation that the loans would ever be repaid. The loans are no different to normal income and are taxable. The use of these schemes is unfair to the vast majority of the taxpaying population who do not engage in tax avoidance.

17. In September 2019 the government commissioned Sir Amyas Morse to lead an independent review into the design and implementation of the Loan Charge. Sir Amyas was asked to consider whether the policy was an appropriate response to the tax avoidance behaviour in question and whether changes the government had previously announced addressed any legitimate concerns raised.

18. The Review was published on 20 December 2019 alongside the government response.

The government welcomed Sir Amyas' recognition that disguised remuneration schemes are a form of tax avoidance, but recognised the concerns raised by the Review about the impact of some aspects of the Loan Charge and accepted all but one of the Review's recommendations.

19. In its response to the Review, the government agreed that HMRC should repay voluntary restitution that has been paid by individuals and employers under settlement agreements entered into since the Loan Charge was announced in March 2016, for any unprotected tax years where:

- the Loan Charge no longer applies (loans made before 9 December 2010); or
- the loans were made in any tax years before 6 April 2016, a reasonable disclosure of the avoidance scheme use was made to HMRC and HMRC did not take action (for example, by opening an enquiry).

20. HMRC has published a draft scheme which sets out the process for applying for a repayment of certain payments made, or the waiver of certain payments due to be made, to the Commissioners under a settlement agreement and how such an application will be determined by the Commissioners.

Clause 21: Annual allowance: tapered reduction

Summary

1. This clause amends the tapered annual allowance legislation in section 228ZA of the Finance Act 2004 (FA 2004). It increases the maximum threshold income and adjusted income which an individual can earn without their annual allowance being reduced (or 'tapered'). The clause also decreases the minimum tapered annual allowance from £10,000 to £4,000.

Details of the clause

2. Subsection 1 introduces an amendment to the tapered annual allowance legislation in section 228ZA of the Finance Act 2004.

3. Subsection 2 reduces the minimum tapered allowance from £10,000 to £4,000 and simplifies the formula used to calculate the reduced annual allowance.

4. Subsection 3 amends the definition of a "high-income individual" in section 228ZA so that the tapering of the annual allowance will only apply to individuals whose adjusted income is greater than £240,000 (previously £150,000) and whose threshold income is greater than £200,000 (previously £110,000).

5. Subsection 4 provides that the amendments to the Finance Act 2004 have effect for the tax year 2020-21 and subsequent tax years.

Background note

6. The pensions tax rules are set out in FA 2004 which came into force on 6 April 2006.

7. The tapered annual allowance was introduced in 2016 limiting pensions tax relief for those on the highest incomes.

8. The tapered annual allowance currently affects high-income individuals with a threshold income (broadly net income before tax, excluding pension accruals) above £110,000 and an adjusted income (broadly threshold income plus pension accrual) above £150,000. The high-income individual's annual allowance is reduced by £1 for every £2 their adjusted income is over £150,000. This means that their annual allowance will be reduced from the current standard £40,000, but the legislation provides that it cannot be reduced below £10,000.

9. In August 2019 the government announced a review of the tapered annual allowance and its effect on the delivery of public services. The Conservative Government further committed to an urgent review of the taper in their 2019 manifesto.

10. Following these reviews, the government has announced that it will amend the

legislation so that the tapering of the annual allowance will only apply to individuals whose adjusted income is greater than £240,000 (previously £150,000) and whose threshold income is greater than £200,000 (previously £110,000).

11. The amendments also decrease the minimum tapered annual allowance from £10,000 to £4,000.

Clause 22 and Schedule 2: Entrepreneurs' relief: reduction in lifetime limit

Summary

1. This clause and Schedule reduce the Capital Gains Tax (CGT) entrepreneurs' relief (ER) lifetime limit from £10,000,000 to £1,000,000 for qualifying disposals made on or after 11 March 2020 and renames the relief. There are special provisions for contracts for disposals entered into before 11 March 2020 that have not been completed and for certain reorganisations and exchanges of shares and securities made before 11 March 2020.

Details of the clause

2. Clause 22 introduces Schedule 2, which makes amendments about ER.

Details of the Schedule

Part 1: Reduction in lifetime limit

Reduction in lifetime limit

3. Paragraph 1 amends the lifetime limit on gains eligible for ER at section 169N of the Taxation of Chargeable Gains Act (TCGA) 1992 by substituting £1,000,000 for £10,000,000.

Commencement

4. Paragraph 2 provides that paragraph 1 has effect for disposals made on or after 11 March 2020.

Anti-forestalling: unconditional contracts

5. Paragraph 3 provides against forestalling arrangements that aim to lock-in to the lifetime limits that existed before 11 March 2020 by making use of subsection 28(1) (time of disposal and acquisition where asset disposed of under contract) of TCGA 1992. Section 28(1) provides that where an asset is disposed of under an unconditional contract the time of disposal is the time the contract is made (and not when the asset is conveyed or transferred).

6. Subparagraphs 3(1) and 3(2) provide that, for the purposes only of determining the lifetime limit that applies, where a contract for a disposal was made before 11 March 2020 and has not been completed before then, the disposal is treated as taking place when the asset is conveyed or transferred and not when the contract was made. The date of disposal for the purpose of determining when CGT becomes due remains as determined by section 28(1). Subparagraphs 3(1) and (2) are subject to two exclusions

set out in subparagraphs 3(3) and 3(4).

7. Subparagraph 3(3) applies when the parties to the contract are not connected. It applies where the person making the conveyance or transfer can show that the contract was not entered into with a purpose of obtaining an advantage by reason of section 28(1). In such a case, the lifetime limit is that at the time the disposal was made (as determined by section 28(1)), i.e. £10,000,000, otherwise it is £1,000,000. A claim including a statement to that effect must be submitted by the person making the disposal.

8. Subparagraph 3(4) applies when the parties to the contract are connected. Broadly, it applies where the person making the conveyance or transfer demonstrates that the contract was entered into (i) wholly for commercial reasons and (ii) was not entered into with a purpose of obtaining an advantage by reason of section 28(1). If these tests are met the lifetime limit is that at the time the disposal was made (as determined by section 28(1)), i.e. £10,000,000, otherwise it is £1,000,000. The person making the disposal should make a claim including a statement that these conditions are met.

9. Subparagraph 3(5) provides that the claims made under subparagraphs 3(3) and 3(4) should be made in accordance with the rules at section 169M (relief to be claimed) of TCGA 1992.

Anti-forestalling: reorganisations of share capital

10. Paragraph 4 provides against forestalling arrangements involving a reorganisation of shares in a company. Section 126 (reorganisation or reduction of share capital) of TCGA 1992 defines a share reorganisation and section 127 (equation of original shares and new holding) of TCGA 1992 then treats such transactions as involving neither a disposal of the original shares or securities nor an acquisition of any new shares or securities received.

11. In certain cases, it is possible that a disposal of the original shares at the time of the reorgnisation would result in a gain that could qualify for ER, but the gain on a later disposal of the new holding may not qualify (for example, because the shareholdings after the reorganisation means the company is no longer the individual's personal company). An election under section 169Q (reorganisations: disapplication of section 127) of TCGA 1992 disapplies the 'no disposal' rule in section 127 to recognise a gain, in respect of which ER can be claimed, accrues at the time of the share reorganisation. Where the rule in paragraph 4 applies, and a section 169Q election is made, ER will be calculated by reference to the new lifetime limit.

12. Subparagraph 4(1) explains that paragraph 4 applies where there has been a reorganisation of a company's shares on or after 6 April 2019, but before 11 March 2020, and on 11 March 2020:

    - the company is the relevant individual's personal company, and is either (i) a trading company or (ii) the holding company of a trading group, and
    - the relevant individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies

which are members of the trading group.

13. Subparagraph 4(2) defines the term "relevant individual" as used in subparagraph 4(1).

14. Subparagraph 4(3) provides that in such cases where an election has been made under section 169Q of TGCA 1992 on or after 11 March 2020 the disposal of the original shares is, for the purposes of paragraph 2, to be treated as taking place at the time of the election and not the reorganisation. The effect is that where a section 169Q election is made ER will be calculated by reference to the new lifetime limit.

15. Subparagraph 4(4) provides that where section 135 (exchange of securities for those in another company) or section 136 (scheme of reconstruction involving issue of securities) of TCGA 1992 treat an exchange in the same way as a reorganisation then paragraph 4 does not apply (but paragraph 5 of the Schedule may apply instead).

Anti-forestalling: exchange of securities etc

16. Paragraph 5 is aimed at forestalling arrangements where there has been an exchange of shares and securities. Generally, section 135 of TCGA 1992 treats a "paper for paper" exchange as a share reorganisation involving no disposal of the original shares or securities nor acquisition of the new shares or securities received, see section 127 of TCGA 1992.

17. As with a reorganisation within section 126 of TCGA 1992, it is possible that a disposal of the original shares at the time of the exchange would result in a gain that could qualify for ER, but the gain on a later disposal of the new holding may not qualify. An election under section 169Q of TCGA 1992 disapplies the rule in section 127 of TCGA to produce a gain, in respect of which ER can be claimed. Where the rules in paragraph 5 apply, the effect is that where a section 169Q election is made ER will be calculated by reference to the new lifetime limit.

18. Subparagraph 5(1) explains that paragraph 5 applies where there has been an exchange of shares or securities for the purposes of section 135 of TCGA 1992 (where securities in company A are being exchanged for those in company B) on or after 6 April 2019, but before 11 March 2020 and the conditions in subparagraphs 5(2) or (3) are met.

19. Subparagraph 5(2) applies where persons holding shares or securities in, or having control of, company A before the exchange, are substantially the same as those in company B, after the exchange has been made.

20. Subparagraph 5(3) broadly applies where:

- immediately after the exchange the relevant shareholders holding the shares or securities in company B hold a greater percentage of the ordinary share capital in B than they did in a company A, and on 11 March 2020–

- company B is the relevant individual's personal company, and is either (i) a trading company or (ii) the holding company of a trading group, and

- the relevant individual is an officer or employee of company B or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

This test is applied to each individual separately.

21. Subparagraph 5(4) defines the terms "relevant individual" and "relevant shareholders" as used in subparagraph 5(3).

22. Subparagraph 5(5) provides that connected persons are to be treated as the same person for the purposes of subparagraph 5(2)(a).

23. Subparagraph 5(6) provides that in such cases where an election has been made under section 169Q of TGCA 1992 on or after 11 March 2020 the disposal of the original shares is, for the purposes of paragraph 2, to be treated as taking place at the time of the election and not the exchange.

24. Subparagraph 5(7) provides that where before an exchange of shares or securities, an advance clearance notification was given by HMRC under section 138 (procedure for clearance in advance) of TGCA 1992, the companies involved in the exchange are treated as one company and the exchange is treated as a reorganisation (within the meaning of sections 126 to 131 of TCGA 1992).

25. The effect of this is that the exchange is treated as a simple share reorganisation, with the practical result that there are no circumstances in which section 137 (restriction on the application of sections 135 and 136) of TCGA 1992 can apply. Where a section 169Q election may be made, ER is only available up to the new lifetime limit of £1m.

26. Paragraph 6 explains how paragraphs 2 to 5 and various terms should be interpreted.

Part 2: Re-naming the relief

27. Paragraph 7 amends section 169H(1) of TCGA 1992 so that the relief is to be known as "business asset disposal relief" instead of "entrepreneurs' relief". It also makes consequential amendments to other references within TCGA 1992 to "entrepreneurs' relief" or "ER relief"; and provides that the change in name has no effect of the operation of the relief.

28. Paragraph 8 provides that Part 2 has effect for tax year 2020-21 onwards.

Background note

29. ER 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. It is subject to a lifetime limit.

30. The change in the lifetime limit from £10,000,000 to £1,000,000 improves the effectiveness and value for money of ER by reducing the lifetime limit on eligible gains. This change ensures the Government continues to encourage genuine risk takers and entrepreneurs' in a fair way, with over 80% of those using the relief unaffected. The change in name better reflects the purposes of the relief.

Clause 23: Relief on disposal of private residence

Summary

1. This clause makes a number of changes to the capital gains tax (CGT) relief on private residences (private residence relief). These changes include reducing the final period exemption from 18 months to 9 months (whilst retaining the existing the 36 months that are available to disabled persons or those in a care home), reforming lettings relief so that it only applies in those cases where the owner of the property shares-occupancy with a tenant and some minor technical changes to the PRR rules, including legislating two extra-statutory concessions (ESC).

Details of the clause

2. Subsection 1 provides that the Taxation of Chargeable Gains Act 1992 (TCGA) shall be amended in accordance with the clause.

3. Subsection 2 makes a number of changes to section 222 TCGA, which sets out the scope of private residence relief.

4. Subsection 2(a) legislates ESC D21. The new subsection (5A) applies where an individual has failed to make a nomination specifying which of two or more residences is their main residence within the statutory time limit of two years. It allows a late nomination, provided that the individual has not made a nomination previously and all but one of their residences has a negligible capital value (for example, a short term let flat).

5. Subsection 2(b) amends subsection 7(a). It provides that when a spouse or civil partner transfers an interest in a dwelling to their spouse or civil partner (whether or not the dwelling is their only or main residence), the receiving spouse or civil partner inherits the transferring spouse or civil partner's ownership history including their previous use of the property.

6. Subsections 2(c) and (d) amend subsections (8A) and (8D). These changes ensure that members of the armed forces who are required to work away from their main home to fulfill their duties, and receive an armed forces accommodation allowance instead of being required to live in service accommodation, are eligible for job-related accommodation relief in respect of their main home.

7. Subsection (3) amends section 223 TCGA. It reduces the length of the final period of ownership that is always eligible for relief from 18 months to 9 months, whilst retaining the existing the 36 months available to disabled persons or those in a care home. It also repeals section 223(4) lettings relief.

8. Subsection 4 adds a new section 223ZA which legislates ESC D49. Broadly this section applies where an individual acquires land on which they build a dwelling

and which they then occupy as a main residence, or purchases an existing dwelling and delays occupation until alterations or redecoration is completed, or until they complete the disposal of their previous residence. New section 223ZA allows the period of non-occupation between acquisition and the occupation of the dwelling to be treated as a period of occupation of the house as the individual's main residence, provided that the period between acquisition and occupation as main residence does not exceed two years and no other person has used the property as a residence during that time.

9. Subsection 5 adds a new section 223B. This replaces the repealed section 223(4) TCGA so that lettings relief only applies in those circumstances where the owner of the property shares occupancy with a tenant.

10. New subsections (1) to (4) of new subsection 223B apply where an individual has at some time in their period of ownership let out part of their main residence as residential accommodation and shared occupation of the main residence with another individual who has no interest in the residence. In such cases, where the gain would otherwise be chargeable to CGT because of that letting, that gain is a chargeable to CGT only to the extent that it exceeds the lowest of—

    - the amount of private residence relief due in respect of the disposal of the dwelling-house, and
    - £40,000.

11. New subsection (5) of new subsection 223B ensures that relief under new section 224A which would have been available to the transferring spouse or civil partner in the period prior to the transfer will be available to the recipient spouse or civil partner.

12. Subsection (6) ensures that section 224(1) applies to lettings made under new section 223B. This means that where a gain accrues on the disposal of a dwelling, or part of a dwelling, that has been used exclusively for the purposes of a trade or business new section 223B will not apply to that dwelling, or part of that dwelling, for those periods where it was used for such purposes. It also makes a number of consequential changes.

13. Subsections (7) to (8) make various consequential changes.

14. Subsection (9) provides that changes made to subsection 222 apply to nominations made on or after 6 April 2020. ESC D21 will be withdrawn from that date.

15. Subsection (10) provides that the change made by subsection (2)(b) takes effect where the transfer of the interest in the dwelling house between spouses or civil partners (whether by a lifetime disposal or passing on death) occurs on or after 6 April 2020. The existing rules continue to apply where the transfer between spouses or civil partners occurred prior to 6 April 2020, even where the disposal by the recipient spouse or civil partner is made after that date

16. Subsection (11) provides that the changes made by subsections (3) to (8) apply to disposals made on or after 6 April 2020. Extra statutory concession D49 (what is now section 223ZA) will be withdrawn from that date.

Background note

17. Private residence relief provides relief from CGT when a person sells or otherwise disposes of a dwelling that has been used as that person's only or main residence. This core relief is supplemented by ancillary reliefs that aim to deal with other situations where imposing a tax charge would lead to undesired outcomes.

18. The proposed changes set out in this clause make a number of changes to the private residence relief ancillary reliefs by:

    - Reducing final period exemption from 18 months to 9 months, although the special rules that give those with a disability, and those in care, an exemption of 36 months will not change.
    - Reforming lettings relief so that relief is only available in those cases where the owner remains in shared occupancy with the tenant.
    - Extending job related accommodation relief by extending it to those cases where a home owner who is a serving member of the armed forces is in receipt of payments from the MOD under its Future Accommodation Model (FAM).
    - Legislating extra-statutory concessions D21 and D49.
    - Amending the private residence relief rules where spouses and civil partners transfer interests in residential properties between them.

19. These changes are intended to make private residence relief fairer and, in the case of the final period exemption and lettings relief, better targets those reliefs at owner occupiers, in line with broader tax strategy to promote home ownership.

Clause 24 and Schedule 3: Corporate capital losses

Summary

1. This Clause and Schedule introduces a restriction on the amount of chargeable (capital) gains that a company can relieve with its carried-forward allowable (capital) losses from previous accounting periods. A company will only be able to offset up to 50 per cent of chargeable gains using carried-forward capital losses. Various other changes that are required to deliver or support this measure are also included as set out below. The measure has effect from 1 April 2020.

Details of the clause

2. This Clause introduces Schedule 3.

3. Part 1 of Schedule 3 (paragraphs 1 to 38) deals with the changes required to introduce the corporate capital loss restriction (CCLR).

4. Part 2 of Schedule 3 (paragraphs 39 to 41) introduces changes in the treatment of allowable losses for companies without a source of chargeable income and deals with other required minor amendments.

5. Part 3 of Schedule 3 (paragraphs 42 to 46) contains the commencement and anti-forestalling provisions for the CCLR.

Details of the Schedule

Part 1 - Corporate capital loss restriction

Restriction on deductions from chargeable gains: main provisions

6. Paragraph 1 introduces the amendments to Part 7ZA of Corporation Tax Act (CTA) 2010 (which applies a restriction on various carried-forward losses).

7. Paragraph 2 introduces a new Section 269ZBA which sets out how the capital loss restriction will apply.

8. Subsection 1 of new Section 269ZBA confirms that the new Section has effect for determining the taxable total profits of a company.

9. Subsection 2 of new Section 269ZBA introduces a restriction (the relevant maximum) on the amount of carried-forward allowable (capital) losses that a company can use to offset chargeable gains.

10. Subsection 3 of new Section 269ZBA defines the relevant maximum amount of carried-forward capital losses that can be offset against chargeable gains as the sum of:-

- 50 per cent of relevant chargeable gains; and
- A chosen amount of capital gains deductions allowance.

11. Subsection 4 of new Section 269ZBA confirms that relevant chargeable gains are as defined in Section 269ZF (see paragraphs 20 to 22 below).

12. Subsections 5 to 6 of new Section 269ZBA define and limit the chargeable gains deductions allowance. In particular they confirm that the maximum amount of deductions allowance for a company is shared between the trading profits deductions allowance, non-trading income profits deductions allowance, BLAGAB deductions allowance (see paragraph 49 onwards below) and chargeable gains deductions allowance.

13. Subsection 7 of new Section 269ZBA provides that no restriction is required where the company's qualifying chargeable gains (as set out in paragraph (1) of Step (1) in Section 269ZF(3)) are nil.

14. Paragraph 3 amends Section 269ZC (restriction of the use of carried-forward non-trading loan relationship deficits against non-trading profits). This Section is amended so that the restriction on use of carried-forward capital losses in Section 269ZBA is taken into account in the wider restriction on the use of carried-forward non-trading deficits.

15. Subsection 2 of Section 269ZC is amended so that the amount of carried-forward non-trading relationship deficits that can only be deducted from non-trading profits of later periods cannot exceed the difference between the relevant maximum and the amount of deductions made by the company (if any) for carried-forward capital losses for the accounting period. Previously the limit was just the relevant maximum.

16. Subsection 3 of Section 269ZC is amended to define the relevant maximum as the sum of:-

- 50 per cent of the total relevant non-trading profits (this is unchanged);
- The total non-trading profits deductions allowance (previously the non-trading profits deductions allowance).

17. New Subsection 3A of Section 269ZC is inserted to define the total non-trading profits deductions allowance as the sum of:-

- The non-trading income profits deductions allowance (previously the non-trading profits deductions allowance), and
- The chargeable gains deductions allowance.

18. Subsections 4, 5, 6 and 8 of Section 269ZC are amended to reflect the revised terminology. In the amended Subsection 6, the calculation of the company's non-

trading income profits deductions allowance cannot exceed the difference between the company's deductions allowance (as before) and the sum of any amounts specified as the trading profits deductions allowance, chargeable gains deductions allowance and BLAGAB deductions allowance (the latter two are added here).

19. Paragraph 4 amends Section 269ZD (restriction of the use of carried-forward losses against total profits). This Section is amended so that the restrictions on use of carried-forward capital losses in Section 269ZBA and Section 269ZC are taken into account in the wider restriction on the use of carried-forward losses.

20. Paragraph 5 amends Section 269ZF ("relevant trading profits" and "relevant non-trading profits").

21. Subsection 2A is inserted into Section 269ZF to define a company's relevant chargeable gains as its qualifying chargeable gains for the period less the chargeable gains deductions allowance (the result of this cannot be less than nil).

22. Subsection 2B is inserted into Section 269ZF to define a company's total relevant non-trading profits as the total of the company's qualifying non-trading income profits for the period and qualifying chargeable gains for the period less the total non-trading profits deductions allowance.

23. Paragraph 6 amends Section 269ZF(3) to replace Steps 3, 4 and 5 (determining company's qualifying trading profits and qualifying non-trading profits for an accounting period) to incorporate the need to separate chargeable gains from total profits to apply the CCLR.

24. Paragraph 7 makes a minor consequential amendment to Section 269ZF(4) to reflect the change in the calculation of modified total profits.

Insolvent companies

25. Paragraph 8 introduces new Section 269ZWA which entitles certain companies in insolvent liquidation to additional deductions allowance where the relevant conditions are met.

26. Subsection 1 of new Section 269ZWA sets out the scope of which companies are entitled to additional deductions allowance. These are companies in the United Kingdom which have gone into insolvent liquidation or those outside the United Kingdom which have gone into a corresponding form of insolvent liquidation.

27. Subsection 2 of new Section 269ZWA provides where this Section applies, the company's deductions allowance is increased by the lesser of:-

    - The net chargeable gains accruing to the company in the winding up accounting period, or
    - The amount of carried-forward allowable (capital) losses of the company.

28. Subsection 3 of new Section 269ZWA excludes from the net chargeable gains of a winding up accounting period, any chargeable gain (but not an allowable loss) accruing on an asset transferred into the company in respect of which Section 171 of

Taxation of Chargeable Gains Act 1992 (TCGA) (transfers of assets within a group) applies, and any chargeable gain (but not an allowable loss) transferred into the company in respect of which an election under Section 171A of TCGA (election to reallocate gains or losses to another member of the group) is made. The restriction applies when the transfer under Section 171 or Section 171A happens during a winding up accounting period unless the transfer is from a company also in insolvent liquidation. This prevents gains from companies not in insolvent liquidation benefiting from this provision.

29. Subsection 4 of new Section 269ZWA defines an insolvent liquidation. Liquidation is defined in accordance with the law on insolvency in the UK. The definition of insolvent is that the company has insufficient assets to pays its debts, liabilities and expenses of the winding up. The corresponding situation for companies not in the UK is that the company is in a situation equivalent to liquidation (according to the law of that country or territory) and is insolvent in the same way.

30. Subsection 5 of new Section 269ZWA defines a winding up accounting period.

31. Paragraph 9 amends Section 269ZZ (the requirement for a company to specify the amount of deductions allowance in their return) to require that where new Section 269ZWA increases the amount of deductions allowance due to a company, that company must also specify in its return the amount of deductions allowance that would have been due without that increase.

Companies without a source of chargeable income

32. Paragraph 10 introduces new Section 269ZYA which sets out specific provision for certain companies with one-day accounting periods to make claims for deductions allowances of up to £5 million each financial year.

33. Subsection 1 of new Section 269ZYA sets out that this Section applies to a company and to a relevant financial year (the financial year covering the period from 1 April to the following 31 March) if:-

- The company has no source of chargeable income at any time during the financial year; and
- If the company is in the group (as set out in Section 269ZZB) at any time during the relevant financial year, all companies which are members of any such group have no source of chargeable income at any time during the relevant financial year.

34. Subsection 2 of new Section 269ZYA defines a company as having no source of chargeable income if it is either:-

- Not within the charge to corporation tax, or;
- Only within the charge to corporation tax because a capital gain and/or loss has accrued.

35. Subsection 3 of new Section 269ZYA provides that a company can make a claim

under this Section if:-

- The accounting period falls wholly within the relevant financial year, and
- The company is only within the charge to corporation tax because a capital gain and/or loss has accrued.

36. Subsection 4 of new Section 269ZYA sets out the deductions allowance for the company making a claim (in a claim AP) as the lower of:-

    - The available deductions allowance amount for an accounting period;
    - The total carried-forward allowable (capital) losses of the company; or
    - The chargeable gains of the accounting period.

37. Subsection 5 of new Section 269ZYA sets out the time limits for making a claim. A claim can be made between the end of the relevant financial year and two years after the end of the accounting period.

38. Subsection 6 of new Section 269ZYA provides that the usual rules governing the deductions allowance do not apply to a claim AP. The deductions allowance due must therefore be computed in accordance with the rules in this Section.

39. Subsection 7 of new Section 269ZYA provides that Subsection 8 will apply if:-

    - There is at least one claim AP during a relevant financial year. This includes any claim made by the company or any claim made by any company (that is at any time during the relevant financial year, a member of the same group as the company) at any time during the relevant financial year, and
    - There is at least one other accounting period (an alternative AP) within the relevant financial year for which no claim is made under this Section.

40. Subsection 8 of new Section 269ZYA restricts the deductions allowance for an alternative AP to the lower of:-

    - The amount of deductions allowance that would otherwise, but for this Section, have been available; or
    - The available deductions allowance amount.

41. Subsection 9 of new Section 269ZYA defines the available deductions allowance amount as:-

    - £5,000,000, less,
    - The total of the deductions allowance amounts (if any) **already** claimed in a financial year by the company or by any group company (that is any other company with which the company is, at any time during the

relevant financial year, grouped).

A group is as set out in Section 269ZZB. The order in which claims are treated as being made is set out in Subsection 11.

42. Subsection 10 of new Section 269ZYA confirms that references, within this Section, to an amount of deductions allowance being claimed in an accounting period include:-

- Any amount of deductions allowance claimed in respect of a claim AP, and
- Any other amount of chargeable gains deductions allowance which has been specified in the company's tax return in respect of an alternative AP.

43. Subsection 11 of new Section 269ZYA sets out the order in which claims are treated as being made during a relevant financial year. This is for the purpose of establishing what amounts have **already** been claimed in computing the available deductions allowance amount in Subsection 9. The ordering is:-

- Where there are two or more claim APs, they are treated as being made in the order in which the claims are made (rather than in date or any other order);
- Where there are two or more alternative APs, they are treated as being made in calendar order according to the day on which the accounting periods start;
- Where there are two of more alternative APs starting on the same day, they are treated as made in the order in which the tax returns for the alternative APs are delivered;
- All claim APs are treated as being made before any alternative APs.

44. Paragraph 10 also introduces new Section 269ZYB which allows a company to make a provisional application of new Section 269ZYA where all the conditions for a claim have not yet been met.

45. Subsections 1 to 3 of new Section 269ZYB set out when a company can make a provisional declaration. Such a declaration can only be made where:-

- The company delivers a return before the end of the financial year,
- The company intends to make a claim under new Section 269ZYA, and
- The company is only prevented from making such a claim because the condition at Subsection (1)(b) of new Section 269ZYA cannot yet be shown to have been met.

46. Subsections 4 and 5 of new Section 269ZYB set out the when the declaration will cease to have effect either through an occurrence (such as a new source of chargeable

income) or through the passage of time.

47. Subsections 6 and 7 of new Section 269ZYB set out what happens when a declaration ceases to have effect.

Offshore collective investment vehicles

48. Paragraph 11 amends Section 269ZZB (meaning of "group"). Subsection 9 is inserted to confirm that the "relevant purposes", as set out within Paragraph 4 of Schedule 5AAA of TCGA, are extended so that this Section is within its scope.

Insurance companies: ring fence

49. Paragraphs 12 to 15 set out how the regime applies to insurers within the Basic Life Assurance and General Annuity Business (BLAGAB).

50. Paragraph 12 amends Section 210A of TCGA (ring fencing of losses for certain insurance companies) to allow the capital loss restriction to apply appropriately where non-BLAGAB allowable losses are offset against BLAGAB chargeable gains.

51. New Subsection 2A of Section 210A of TCGA separates out the available non-BLAGAB allowable losses into those of the accounting period and those previously accruing to the company.

52. New Subsection 2B of Section 210A of TCGA confirms that the minimum amount of the shareholders' share of BLAGAB chargeable gains is nil.

53. New Subsection 2C of Section 210A of TCGA defines the available non-BLAGAB allowable losses.

54. Consequential amendments are made to Subsections 6, 8 and 9 of Section 210A of TCGA.

55. Subsection 13 of Section 210A of TCGA is amended to modify the definition of BLAGAB allowable losses and BLAGAB chargeable gains. It clarifies that BLAGAB allowable losses do exclude those deducted from BLAGAB chargeable gains in the period. It also clarifies that BLAGAB chargeable gains are those adjusted by deducting BLAGAB allowable losses.

56. Paragraph 13 introduces new Section 269ZFC which sets out how the capital loss restriction will apply where non-BLAGAB allowable losses are offset against BLAGAB chargeable gains.

57. Subsection 1 of new Section 269ZFC confirms that this Section applies to insurance companies in computing their taxable total profits for an accounting period.

58. Subsections 2 and 3 of new Section 269ZFC provide the maximum amount of non-BLAGAB carried-forward allowable losses that can be offset against BLAGAB chargeable gains which comprises:-

- 50 per cent of the relevant BLAGAB chargeable gains, and
- A chosen amount of BLAGAB deductions allowance.

59. Subsection 4 of new Section 269ZFC defines the relevant BLAGAB chargeable gains.

60. Subsections 5 to 6 of new Section 269ZFC define the BLAGAB deductions allowance.

61. Subsection 7 of new Section 269ZFC confirms that certain specified terms take their meaning from definitions in Section 210A of TCGA.

62. Paragraph 14 amends Section 269ZD and Section 269ZFB. These sections are amended so that the restrictions on use of carried-forward non-BLAGAB allowable losses in Section 269ZFC are taken into account in the wider restriction on use of carried-forward losses.

63. Paragraph 15 amends Section 95 of Finance Act (FA) 2012 (use of non-BLAGAB allowable losses to reduce I-E profit) to take into account the changes to Section 210A of TCGA.

Oil activities: ring fence

64. Paragraph 16 amends Section 197 of TCGA (ring fence provisions for certain disposals of interests in oil fields) to confirm that certain ring-fence allowable losses are not to be restricted.

Clogged losses

65. Paragraph 17 amends Section 18 of TCGA (transactions between connected persons) to introduce a claim to allow a company to deduct carried-forward "clogged" losses (losses which arise on a disposal to a connected persons) in preference to losses that arise in a period. This provision applies where the carried-forward clogged losses could have been offset but for the CCLR.

Pre-entry losses

66. Paragraph 18 amends Schedule 7A of TCGA (restriction on set-off of pre-entry losses) to ensure that the CCLR applies to carried-forward pre-entry losses. Carried-forward pre-entry losses are defined in Schedule 7A of TCGA and do not form part of the carried-forward allowable losses under Section 2A(1)(b) of TCGA.

67. New Sub-paragraphs 1A, 1B and 1C are inserted into Paragraph 6 of Schedule 7A to ensure that where pre-entry losses are offset against appropriate gains, the CCLR has effect. The total amount of carried-forward losses is restricted as if the pre-entry carried-forward losses were carried-forward allowable losses under Section 2A(1)(b) of TCGA. Where carried-forward pre-entry losses have been used in preference to allowable losses in the period, the latter are restricted (similar to the treatment for clogged losses).

Real estate investment trusts (REITs)

68. Paragraph 19 introduces amendments to Part 12 of CTA 2010 (REITs).

69. Paragraph 20 amends Section 535B of CTA 2010 (use of pre-April 2019 residual business losses or deficits) to introduce new Subsection 4; this confirms that the capital loss restriction should not apply to the use of pre-April 2019 losses when determining the net gains that would have accrued to the residual business of the company under this Section.

70. Paragraph 21 amends Section 550 of CTA 2010 (attribution of distributions) to

introduce new Subsection 4; this confirms that in computing the relevant non-chargeable gains to be attributed to distributions, the loss restriction does not apply.

71. Paragraph 22 makes a consequential amendment to Section 556 of CTA 2010 (disposal of assets).

Counteraction of avoidance arrangements

72. Paragraph 23 amends Section 19 of F(No. 2)A 2017 (losses: counteraction of avoidance arrangements) to expand those rules to include capital losses within its scope.

Minor and consequential amendments to Part 7ZA of CTA 2010

73. Paragraphs 24 to 35 contain minor and consequential amendments to Part 7ZA of CTA 2010 that flow from this new legislation.

Minor and consequential amendments to Part 7A of CTA 2010

74. Paragraphs 36 to 38 contain minor and consequential amendments to Part 7A of CTA 2010 that flow from this new legislation.

Part 2 - Corporate capital loss deductions: miscellaneous provision

Companies without a source of chargeable income: carry back of losses

75. Paragraph 39 amends Section 2A of TCGA to provide that during a financial year, where a company has more than one very short accounting period where the company is only within the charge to CT because of chargeable gains, it is able to offset allowable losses against any chargeable gains accruing in the same financial year and without the CCLR applying.

Insurance companies: minor amendments

76. Paragraphs 40 to 41 clarify that for the purposes of Section 210A(10A) and (10B) of TCGA, and Section 93 of FA 2012, non-BLAGAB allowable losses are assumed not to have been deducted from BLAGAB chargeable gains.

Part 3 - Commencement and anti-forestalling provision

Commencement

77. Paragraph 42 confirms that this Schedule has effect for accounting periods beginning on or after 1 April 2020.

78. Paragraph 43 provides that where an accounting period straddles 1 April 2020 that straddling period will be split into a notional pre-commencement period and post-commencement period, and specific treatment, as set out in Paragraph 44 will apply.

79. Paragraph 44 provides that, for chargeable gains, the amount of chargeable gains should be separately computed for the pre-commencement period and post-commencement period. Capital losses accruing in the post-commencement period can be set-off against gains in the pre-commencement period and capital losses accruing in the pre-commencement period can be set-off against gains in the post-commencement period without restriction. The CCLR will only apply to capital losses carried-forward from accounting periods prior to the straddling period to the post-commencement period.

80. Paragraph 45 provides a specific treatment for certain non-resident companies carrying on a UK property business that are within the scope of income tax prior to 6 April 2020 and move into the scope of corporation tax on 6 April 2020.

81. Subsection 1 of Paragraph 45 provides that the treatment set out in this Paragraph will apply unless an election for the treatment not to apply is made.

82. Subsection 2 of Paragraph 45 sets out that the treatment applies where:-

- The company is within the charge to income tax for the tax year 2019-20;
- The company is within the charge to corporation tax for an accounting period commencing on 6 April 2020; and
- The company has an accounting period which is within the charge to corporation tax because of a chargeable gain within the period from 1 April 2020 to 5 April 2020.

83. Subsection 3 of Paragraph 45 provides that a capital loss which accrues in either an accounting period between 1 April 2020 and 5 April 2020 or an accounting period which commences on 6 April 2020 is treated as capital loss of the other accounting period (such that no loss restriction will apply to such losses).

84. Subsection 4 of Paragraph 45 provides that, where this Paragraph applies, a company is treated as if it had made a claim under Section 269ZYA of CTA 2010 (see paragraph 32 onwards above) in respect of each accounting period that occurs between 1 April 2020 and 5 April 2020. In the case of any deductions allowance claimed or declared in the accounting period commencing on 6 April 2020, any amount of deductions allowance due in that period is reduced by any amount of deductions allowance claimed or declared in any accounting period that occurs between 1 April 2020 and 5 April 2020.

Anti-forestalling provision

85. Paragraph 46 provides an anti-forestalling provision which applies to accounting periods ending on or after 29 October 2018 which end before 1 April 2020. It also applies to the pre-commencement period in any straddling period.

86. This provision applies where a company enters into arrangements with a main

purpose of securing a tax advantage in respect of the CCLR before it comes into force. Where this provision applies, the effect is to restrict the carried-forward allowable losses to no more than 50 per cent of the qualifying chargeable gains. No deductions allowance is available where this provision is applied.

Background note

87. This restriction has been introduced to ensure that large companies pay some corporation tax when making substantial chargeable gains. It was announced at Budget 2018 alongside a consultation on delivery. The following paragraphs provide the background to the measure as announced at Budget 2018 and included in Finance Bill 2020.

88. F(No 2)A 2017 introduced restrictions on the use of certain carried-forward losses by companies against profits in a later accounting period (the Corporate Income Loss Restriction or "CILR"). This restriction expands that previous restriction to include carried-forward capital losses. The CILR included a deductions allowance of £5 million for each corporate group which is shared with this capital loss restriction.

89. Individuals are not affected by this restriction. Individuals holding life assurance policies through a corporate wrapper or receiving dividends from a REIT are excluded from this measure so are not affected.

90. Ring fenced allowable (capital) losses arising in certain UK extraction activities of oil and gas companies are not subject to the restriction.

91. A Targeted Anti-Avoidance Rule counters arrangements which seek to exploit the deductions allowance. This expands the rule introduced in April 2017 for the CILR. An anti-forestalling rule, which applies from 29 October 2018, counters arrangements designed to frustrate the effect of this restriction.

92. Following the consultation on delivery, a number of changes were made to the rules. The following paragraphs provide the background to these changes (full details are in the consultation response document).

93. This restriction is being delivered, as set out above, by amendment of Part 7ZA of CTA 2010 rather than as a standalone provision.

94. This restriction will not apply to carried-forward BLAGAB losses where these are used to offset the shareholders' share of BLAGAB profits but will apply to those used to offset non-BLAGAB gains. Carried-forward non-BLAGAB losses are subject to the restriction however they are used. Certain parts of the BLAGAB regime are clarified as a result of these changes.

95. Specific rules were introduced to enable companies to prioritise the use of certain restricted (connected party and streamed) carried-forward allowable losses. Wider issues were identified in respect of one-day accounting periods. These rules address issues relating to the use of allowable losses within the same financial year and certain payment issues.

96. Draft legislation was published in July 2019 and there was a period of technical

consultation following which various minor changes have been made as set out above in the Details of the Clause and Schedule.

97. A provision was added for companies in insolvent liquation which can now offset carried-forward capital losses against gains without the restriction being applied.

98. The commencement provisions were amended to ensure that capital losses in the pre-commencement accounting period can be offset against chargeable gains in the post-commencement accounting period with the restriction applying.

99. Various other minor changes, as set out above, were made.

Clause 25: Quarterly instalment payments

Summary

1. This clause amends the quarterly instalment payments treatment for companies which are only chargeable to corporation tax on account of chargeable gains (and therefore have very short (often one-day) accounting periods) and are currently defined as 'very large' for payment purposes. Affected companies will be treated as 'large' for the purposes of quarterly instalment payments. The clause has effect from 11 March 2020.

Details of the clause

2. This clause amends The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) (CTIPR).
3. Subsection 1 confirms that the CTIPR will be amended as follows.
4. Subsection 2 amends Regulation 3 of CTIPR.
5. New Paragraph 11 of Regulation 3 treats a company as **large** for the purposes of Paragraph 1 of CTIPR if:-
    - The company is only chargeable to corporation tax because of a chargeable gain (or loss) accruing to the company, and
    - Apart from this Paragraph, the company would be a **very large** company.
6. Subsection 3 amends Paragraph 10 of Regulation 3 of CTIPR to confirm that Paragraph 11 takes priority to Paragraph 10 in confirming whether a company is **large** or **very large**.
7. Subsection 4 confirms that the changes arising from this Clause take effect for accounting periods commencing on or after 11 March 2020.

Background note

8. The normal corporation tax due date is nine months and one day, after the end of an AP, however the CTIPR requires 'large' companies (those with taxable profits over £1.5m with a liability of more than £10,000) to pay their corporation tax liability by instalments in advance of that date. These thresholds are proportionately reduced by the number of related 51% group companies and if the accounting period is less than 12 months.
9. The CTIPR was amended in November 2017 to introduce a 'very large' definition for accounting periods beginning on or after 1 April 2019. A company falls within this

definition if its profits exceed £20 million per year (and its tax liability is more than £10,000). 'Very large' companies are required to pay their corporation tax by instalments four months earlier than 'large' companies and must make all payments before the end of their accounting period.

10. Where a company is not chargeable to tax otherwise than because of a chargeable gain accruing, it will become chargeable to corporation tax on the day of the gain and immediately afterwards ceases to be within the charge to corporation tax. This results in a one-day accounting period for the company.

11. The CTIPR rules for short accounting periods apply so that a company with a one-day accounting period will be considered to be 'very large' if its profits (the chargeable gain) exceed £54,795 and its corporation tax liability is greater than £27.40. These companies would be required to pay their liability on the day of the one-day accounting period.

12. HM Revenue & Customs has applied a concessionary treatment since April 2019 to treat these companies as 'large' for the purposes of the application of the CTIPR, making their corporation tax due date 3 months and 14 days after the end of the accounting period.

13. The Corporate Capital Loss Restriction, see separate Explanatory Note, makes specific provision for companies with no source of chargeable income. This amendment is being made to formalise the informal treatment that has been applied.

Clause 26: Relief from CGT for loans to traders

Summary

1. This clause extends the existing Capital Gains Tax (CGT) relief for loans to traders, so that from 24 January 2019 relief will also apply to loans made to trading businesses resident outside the United Kingdom and which subsequently become irrecoverable.

Details of the clause

2. Clause 26 amends subsection 253(1)(b) of the Taxation of Chargeable Gains Act 1992. The effect is that from 24 January 2019 qualifying loans also include loans made to borrowers who are not resident in the United Kingdom.

Background note

3. Relief for loans to traders is a CGT relief. It gives relief where a loan is made to a UK company, sole trader or partnership for the purposes of an ongoing trade, profession or vocation, or the setting up of trade, and the loan subsequently becomes irrecoverable.

4. To qualify for relief the loan must be to a borrower:

   - Who is resident in the UK;
   - That uses the money wholly for the purposes of a trade, profession or vocation; or
   - To set up a trade as long as they start trading.

5. Relief is only due if there is no reasonable prospect of the loan ever being repaid.

6. Extending the relief to borrowers outside the UK ensures that the relief complies with Article 63 of the Treaty on the Functioning of the European Union and the Freedom of Movement of capital rules.

Clause 27: Research and development expenditure credit

Summary

1. This clause amends Part 6A of the Corporation Tax Act (CTA) 2009 to increase the rate of the Research and Development Expenditure Credit (RDEC) from 12% to 13%.

Details of the clause

2. Subsection 1 amends section 104M CTA 2009 to increase the rate of the RDEC from 12% to 13%.

3. Subsection 2 provides that the amendments in this clause have effect in relation to expenditure incurred on or after 1 April 2020.

Background note

4. The RDEC was introduced for companies undertaking qualifying activity and incurring qualifying expenditure on 1 April 2013. It was introduced as a standalone credit to be brought into account as a receipt in calculating profits. The current general rate is set as 12% of qualifying R&D expenditure.

5. For profit making companies the credit discharges a liability that the company would have to pay. Companies with no corporation tax liability will benefit from the RDEC either through a cash payment or a reduction of tax or other duties due. The rate of the R&D expenditure credit is to be increased from 12% to 13% for expenditure incurred on or after 1 April 2020.

6. The ring fence RDEC rate remains at 49%.

Clause 28: Structures and buildings allowances: rate of relief

Summary

1. This clause introduces an increase in the rate of relief for Structures and Buildings Allowances, from 2% per year to 3% per year, for qualifying expenditure incurred on or after 29 October 2018 on non-residential structures and buildings. From 1 April 2020 (corporation tax) and 6 April 2020 (income tax), the rate of relief goes up for all structures or buildings for which an entitlement to an allowance arises, including those that are brought into non-residential use before the increase. As a result, the period over which expenditure may be relieved is reduced from 50 years to 33 and one third years.

Details of the clause

2. Subsection 1 introduces amendments to Part 2A Capital Allowances Act 2001 (CAA 2001).

3. Subsection 2 amends subsections 270AA (2) and (5) of CAA 2001 to give effect to the increased annual relief at 3% and corresponding decreased allowance period in which allowances may be claimed from 50 years to 33 1/3 years.

4. Paragraph (a) enables an allowance period to include part of a day in circumstances where the annual rate of relief means that an allowance period will end part way through a day.

5. Paragraph (b) amends the allowance period to 33 1/3 years to reflect the new annual rate.

6. Paragraph (c) amends the annual rate from 2% to 3%.

7. Subsection 3 amends section 270EA so that the annual allowance is proportionately reduced when an allowance period ends part way through a chargeable period, including where it ends part way through a day in that chargeable period.

8. Subsection 4 amends section 270EB(2) to provide for the new rate of relief where a structure or building is put to multiple uses.

9. Subsection 5 inserts new Chapter 7A and section 270GD, which makes transitional provisions for persons who were entitled to an allowance on the relevant date. The relevant date is 31 March 2020 for the purposes of corporation tax and 5 April 2020 for the purposes of income tax. Section 270GD enables any shortfall in allowances to be claimed in the last chargeable period in which an allowance is available, provided that the person entitled to the allowance on the relevant date has not disposed of their relevant interest in the asset.

10. Subsection 6 provides for a commencement date of 1 April 2020 for corporation tax purposes and 6 April 2020 for income tax purposes.

11. Subsection 7 provides that a chargeable period, which spans the commencement date, is to be treated as two chargeable periods, the first ending on the relevant date and the second starting on the commencement date.

Background note

12. Structures and Buildings Allowances are a capital allowance available for the cost of constructing, renovating or converting structures or buildings for non-residential use. The allowances are only for non-residential structures and buildings where all the contracts for construction works were entered into on or after 29 October 2018.

13. When the allowances were first introduced, the allowances were given at 2% per year on qualifying expenditure on a straight line basis. This clause increases the rate of allowances to 3% per year from April 2020.

14. The rate of relief for structures and buildings allowances is increased to further support and incentivise business investment.

Clause 29 and Schedule 4: Structures and buildings allowances: miscellaneous amendments

Summary

1. This clause and Schedule make miscellaneous amendments to Part 2A, Capital Allowances Act 2001 (CAA 2001).

Details of the clause

2. Clause 29 introduces Schedule 4.

Details of the Schedule

3. Paragraph 1 introduces amendments to CAA 2001.
4. Paragraph 2 replaces section 270EC CAA 2001 with new section 270EC.
5. Subparagraph (1) provides that section 270EC applies when there is a sale of a relevant interest from one person to another.
6. Subparagraph (2) provides that structures and buildings allowances are reduced by the person's entitlement to research and development allowances under Part 6 CAA 2001, for the same structure or building.
7. Subparagraph (3) provides that a further restriction to structures and buildings allowances applies at any time after a person, who was entitled to research and development allowances, sells their relevant interest in the structure or building. The restriction applies when the purchaser pays an amount less than the total remaining structures and buildings allowances available at the time of sale.
8. Subparagraphs (4) and (5) provide that the total structures and buildings allowances available collectively to all purchasers following a sale within subparagraph (3) is restricted to the lowest amount paid on such a sale.
9. Subparagraph (6) explains the term "ordinary Part 2A amount", which is the total remaining structures and buildings allowances available. This is defined as the qualifying expenditure for which an entitlement arises less the total allowances that could have been claimed to the date the relevant interest was sold.
10. Subparagraph (7) explains the meaning of allowances arising under Part 2A.
11. Subparagraph (8) gives the meaning of a "Part 6 allowance".
12. Paragraph 3 amends section 538A CAA 2001 (contributions: buildings and structures).

13. Subparagraph (2) replaces section 538A(3)(b) with new subsection (3)(b), which enables a person to claim an allowance for a contribution to expenditure incurred by a public body. The contributor may claim an allowance when the public body brings the asset into qualifying use, or non-residential use if earlier.

14. Subparagraph (3) replaces subsection 538A(4) with new subsection (4). The new subsection (4) clarifies that it only applies to a person making a contribution towards qualifying expenditure for a structure or building in which they have no relevant interest. Subsection (4) treats that person as holding a relevant interest solely for the purposes of calculating any structures or buildings allowances which may be due to the contributor.

15. Subparagraph (4) inserts new subsection 538A(7), which provides that any insignificant use of the structure or building is ignored for the purposes of calculating allowances for the contributor.

16. Paragraph 4 amends section 270AA(2)(b)(i) CAA 2001 to ensure that an allowance is available for the day that a structure or building first comes into qualifying use. Before this amendment the first day of use was not included. This amendment prevents businesses from missing out on the allowance for that day.

17. Paragraph 5 amends section 270BB(2)(a) CAA 2001 so that expenditure incurred on different days after a building comes into non-residential use may be added together into a single claim for a specified date. This amendment reduces the number of separate calculations that need to be made for a given structure or building. Before this amendment the easement was only available where the building was in qualifying use and therefore was not available to civil society organisations or other bodies not chargeable to tax.

18. Paragraph 6 amends section 270BL(1) CAA 2001 to clarify that expenditure incurred for which an allowance can be made and other expenditure is to be apportioned on a just and reasonable basis.

19. Paragraph 7 amends section 270IA(4)(a) CAA 2001 so that the date of an oral contract can be included in an allowance statement. An allowance statement records the date of the first construction contract as well as identifies the building or structure to which it relates, the amount of qualifying expenditure and the date of the first use of the structure or building. This amendment enables persons with an oral contract to be able to comply with the allowance statement requirement, without which a claim cannot be made.

20. Paragraph 8 provides for the new section 270EC to have effect for any sale of the relevant interest that takes place on or after 11 March 2020.

21. Paragraph 9 provides for paragraph 3 to have effect in relation to contributions made on or after 11 March 2020.

22. Paragraph 10 provides that the amendments made in paragraphs 4 to 7 are deemed always to have had effect because they are wholly relieving or are minor amendments, which clarify the operation of the original provisions.

Background note

23. Structures and Buildings Allowances are a new capital allowance available for the cost of constructing, renovating or converting structures or buildings for non-residential use. The allowances are only for non-residential structures and buildings where all the contracts for construction works were entered into on or after 29 October 2018.

24. This clause and Schedule make miscellaneous amendments to ensure various rules operate as intended. The amendments ensure that Part 2A, CAA2001:

    a. prevents double relief when research and development allowances were available

    b. clarifies the rules for allowances on contributions to public bodies

    c. allows relief for the first day that a structure or building comes into use

    d. apportions expenditure for which an allowance can be made and other expenditure on a just and reasonable basis

    e. extends aggregation of expenditure to simplify allowance calculations for persons not within the charge to tax

    f. includes oral construction contracts within the allowance statement.

25. The amendments made by this clause and Schedule have effect as detailed in paragraphs 8 to 10 of the Schedule.

Clause 30: Intangible fixed assets: pre-FA 2002 assets etc

Summary

1. This clause amends the general rule in Part 8 of the Corporation Tax Act 2009 (CTA 2009) in relation to intangible fixed assets (IFAs) created before 1 April 2002 (pre-FA 2002 assets). The amendment allows pre-FA 2002 assets acquired from related parties on or after 1 July 2020 to come within Part 8. The clause also introduces transitional rules to preserve the existing rules for pre-FA 2002 IFAs held immediately before 1 July 2020 and to restrict debit relief in relation to transfers, licensing and other arrangements between related parties involving pre-FA 2002 IFAs.

Details of the clause

2. Subsection 1 amends Part 8 of the Corporation Tax Act 2009 (CTA 2009).
3. Subsection 2 inserts a reference to new Chapters 16A and 16B into section 711.
4. Subsections 3 and 4 make consequential amendments to the list of exceptions in section 845 and section 849AB.
5. Subsection 5 repeals section 858 and removes the italic heading before section 858.
6. Subsection 6 amends the general rule in subsection (1) of section 882.
7. New subsection (1) replaces the three existing conditions in old subsection (1) of section 882 with the conditions in new subsections (1A) to (1D). Subsection (1) provides that at least one of these four conditions must be met for an IFA to be within Part 8.
8. New subsections (1A) and (1B) broadly replicate old subsection (1)(a) – (c). This is to ensure that the existing tax treatment is preserved for companies holding pre-FA 2002 assets.
9. New subsection (1A) continues the exclusion from Part 8 of IFAs created by a company before 1 April 2002.
10. New Subsection (1B) applies to acquisitions made by a company between 1 April 2002 and 30 June 2020. It continues the exclusion from Part 8 of pre-FA2002 IFAs acquired from a related party except where the IFA was acquired in one of the circumstances described in subsections (3) – (5) of section 882 (case A, B or C).
11. New subsection (1C) is a new condition that brings into Part 8 all IFAs acquired by a company on or after 1 July 2020.
12. New subsection (1D) is a new condition that brings into Part 8 IFAs held by a company immediately before 1 July 2020 provided that the company was not within

the charge to corporation tax immediately before that date. The condition in new subsection (1D) is subject to the rule in new subsection (1E).

13. New subsection (1E) provides that new subsection (1D) will not apply in relation to a pre-FA 2002 asset held by any company at any time between 19 March 2020 and 30 June 2020 where at that time that company is within the charge to corporation tax. This rule is then disapplied where, later but during that period, another company acquires the IFA from a person who is not related to that other company.

14. Subsection 7 makes consequential amendments to section 883 (assets treated as created or acquired when expenditure incurred) to reflect the changes made to subsections (1) to (1E) of section 882.

15. Subsections 8 and 9 repeal the fungible assets rules at section 890 and section 891.

16. Subsection 10 provides that the no gain/no loss intra-group transfer rules for chargeable gains are preserved. This prevents pre-FA 2002 assets coming within Part 8 CTA09 when transferred within a qualifying capital gains group even if the transfer took place on or after 1 July 2020.

17. Subsections 11 and 12 make consequential amendments to sections 893 and 895.

18. Section 13 inserts new Chapters 16A and 16B into Part 8.

Chapter 16A

19. New Chapter 16A comprises new sections 900A to 900H, which contain special rules for "restricted assets". New Chapter 16A sets out when these special rules will apply and how to determine the debit restriction that arises.

20. The special rules applying to restricted assets counter tax avoidance. They are intended to prevent transactions between related parties being used to obtain a tax advantage by bringing assets into Part 8 at market value. They apply in the specified circumstances to a company that acquires a pre-FA 2002 asset or a restricted asset from a related party; either directly or indirectly such as through a licence arrangement. The special rules limit the amount of debit relief available to the acquiring company by restricting the costs that can be recognised for the purposes of the relevant Chapters within Part 8.

21. New section 900A(1) introduces the special rules. New subsections (2) to (4) outline the structure of Chapter 16A.

22. New sections 900B – 900D set out the three cases in which an IFA is a restricted asset.

23. New section 900B describes the first case. The IFA will be a restricted asset if the three conditions in subsection (1) are met. Broadly, the restriction will apply to company acquisitions made on or after 1 July 2020 where the IFA is acquired from a related party, and it meets the condition in either subsection (2) or (3).

24. Subsection (2). An asset is within subsection (2) if it is was a pre-FA 2002 asset held by any company on 1 July 2020 and has not been the subject of a relieving acquisition after that date. A "relieving acquisition" is defined in new section 900G.

25. Subsection (3) applies a similar rule to subsection (2) but in relation to assets held by a person other than a company. To come within subsection (3) the IFA must have been created before 1 April 2002, it must have been held by a person other than a company immediately before 1 July 2020, and the asset must not subsequently have been the subject of a relieving acquisition. This rule however is subject to subsection (4).

26. Subsection (4) is modelled on the intermediary rule (Case B) from section 882(4). It provides an exception to subsection (3). The broad intention is to consider the relationships that exist at the times of the intermediary's two transactions. It first considers the relationship of the intermediary and the first vendor ("the third party") at the time of the intermediary's acquisition. Note that there are a different rules depending on whether the intermediary acquired the asset from a company or a person other than a company. It then also considers the relationship of the company and the third party at the time of the company's acquisition from the intermediary.

27. New section 900C describes the second case. The second case deals with licences and similar arrangements where the asset derives its value from a pre-FA 2002 asset or a restricted asset. It is modelled on sections 893 and 894 of CTA 2009.

28. New section 900D describes the third case. The third case deals with assets acquired in connection with the disposal of pre-FA 2002 assets and restricted assets and it is modelled on section 895 CTA 2009.

29. New section 900E is the special rule which applies where the asset is a restricted asset by virtue of new section 900B.

30. Subsection (2) provides that where a company is the first to acquire the restricted asset on or after 1 July 2020, the asset is treated as being acquired at no cost for the purposes of "the relevant Chapters of this Part". The "relevant Chapters of this Part" are defined at subsection (6).

31. Subsection (3) provides that where the company is not the first acquirer, the cost for the purposes of the relevant Chapters of this Part is the "adjusted amount".

32. Subsections (4) and (5) explain how to calculate the adjusted amount. The intention behind subsections (3) to (5) is to preserve the restriction that existed on the first acquisition of an asset on or after 1 July 2020 until there is a 'relieving acquisition' as defined in new section 900G. The calculation limits subsequent acquisition costs for the relevant Chapter of this Part by reference to the market value of the asset on its first acquisition on or after 1 July 2020. If the asset has increased in value the debit relief is restricted to the amount of the increase. If the asset has decreased in value, the restriction will be preserved as the acquisition cost will remain as nil.

33. Subsection (6) defines "market value" and "the relevant Chapters of this Part".

34. New Section 900F is the special rule which applies where the asset is a restricted asset by virtue of either new section 900C or new section 900D.

35. Subsection (2) provides that the asset is acquired for the adjusted amount.

36. Subsection (3) explains how to calculate the adjusted amount by reference to the "relevant other asset". The steps described to determine the adjusted amount start

with the amount the company acquired the asset for, subject to any tax adjustments. That cost is then reduced by the "notional deduction amount" in relation to the relevant other asset. The notional deduction amount is defined in subsection (5).

37. Subsection (4) ensures that the adjusted amount cannot be a negative amount.

38. Subsection (5) defines "relevant other asset" and "the notional deduction amount". How the notional deduction amount is calculated depends on whether the other company was the first company to acquire the relevant other asset or not.

39. Subsection (a) applies if a company would have been the first company to acquire the relevant other asset had it done so instead of the restricted asset. The notional deduction amount is the market value of the relevant other asset at the time the restricted asset was acquired.

40. Subsection (b) applies where the company would not have been the first company to acquire the relevant other asset had it done so instead of the restricted asset. In those circumstances the notional deduction amount is the amount equal to the market value of the relevant other asset at the time it was first acquired by a company on or after 1 July 2020.

41. Subsection (c) applies where the relevant other asset would have come within new section 900F had it been acquired by the company instead of the restricted asset. The notional deduction amount is then equal to the amount that would have been deducted from the acquisition costs in those circumstances.

42. Subsection (6) defines "market value" and "the relevant Chapters of this Part".

43. New section 900G to 900I contain supplementary provisions to new Chapter 16A

44. New section 900G defines "relieving acquisition".

45. New Section 900H expands the definition of related persons for the purpose of new Chapter 16A.

46. Subsection (1) and (4) expand the definition of related party from section 835 CTA 2009 to include circumstances when the participation condition in Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) would be met.

47. Subsection (2) provides that for the purpose of new Chapter 16A the references to a person in subsection (1) includes a firm for the purposes of section 1259 CTA 2009.;

48. Subsection (3) defines "section 1259 purposes"; that is for the purposes of computing the profits or losses of a partnership or an LLP that has at least one partner or member that is a company.

49. New section 900I provides that, for the purposes of Chapter 16A, a company acquiring an asset under an unconditional contract is treated as making the acquisition when the contract is made (or, if later, when it becomes unconditional).

Chapter 16B

50. New Chapter 16B comprises new sections 900J to 900O and is a self-contained set of rules to deal with fungible assets. New Chapter 16B replaces the repealed provisions; sections 858, 890 and 891. It also makes new provision for fungible assets to be treated as restricted assets.

51. New section 900J replicates old section 858.

52. New section 900K in effect replaces old section 890 but now in relation to three kinds of fungible asset.

53. Subsection (1) broadly replicates old section 890(2), but now distinguishes three kinds of fungible asset; pre-FA 2002 assets, restricted assets and standard intangible fixed assets.

54. Subsection (2) broadly replicates old section 890(3) for the three kinds of fungible asset, providing that each kind is treated as a separate asset.

55. New sections 900L and 900M in effect replace old section 891 but in relation to the three kinds of fungible assets.

56. New section 900L broadly replicates old section 891(1) and (2) in respect of the realisation of fungible assets.

57. Subsection (2) updates the rule to include the three kinds of fungible assets and provides a priority rule that determines which kind of fungible asset would diminish first etc.

58. New section 900M broadly replicates old section 891 (3) to (7) in respect of the acquisition of fungible assets.

59. New subsections (1) and (2) introduce the identification rules.

60. New subsection (2) to (6) set out rules that identify acquisitions as pre-FA 2002 assets or restricted assets where a company has also realised assets of the same kind. These rules are based on those in old section 891(3) to (7).

61. New section 900N provides for how the cost of a single asset comprising restricted assets should be determined.

62. New section 900O provides the interpretation for new Chapter 16B. It defines "restricted asset" and "standard intangible fixed asset".

63. Sections (14) and (15) contain the commencement provisions for this clause.

Background note

64. The law in relation to the taxation of intangible fixed assets held by companies is contained in Part 8 of CTA 2009. In general terms, Part 8 follows amount recognised in a company's accounts in relation to these assets to calculate the taxable profit or allowable loss. Amounts recognised for accounting purposes are however subject to adjustment under Part 8.

65. These changes allow more IFAs to come within the IFA regime to support UK investment in intangible assets and improve the attractiveness of the UK as a place to do business. These changes also:

- preserve the existing tax treatment for companies in the UK that hold pre-FA 2002 assets which are dealt with under the capital gains or other rules, and
- introduce a targeted restriction on the amount of relief related parties can claim where related parties enter into transactions involving pre-FA 2002 assets.

Clause 31 and Schedule 5: Non-UK resident companies carrying on UK property businesses etc

Summary

1. This clause and Schedule make minor amendments which have arisen in consequence of the provision made by Schedule 1 or 5 to Finance Act 2019.

Details of the clause

2. This clause introduces Schedule 5 which makes minor amendments in cases where non-UK resident companies carry on UK property business or have other UK property income.

Details of the Schedule

3. Paragraph 1 replaces wording in section 301(1A) of Corporation Tax Act 2009 (CTA 2009) as inserted by paragraph 15 of Schedule 5 to Finance Act 2019. The old wording could have limited the taxation of income from non-trading loan relationships for all non-UK resident companies. The new wording ensures that this subsection does not limit the taxation of income from non-trading loan relationships held in respect of a UK permanent establishment of a non-UK resident company.

4. Paragraph 2 replaces wording in section 574(2A) CTA 2009 as inserted by paragraph 18 of Schedule 5 to Finance Act 2019 for the same reason with regard to the taxation of income from non-trading derivative contracts held in respect of a UK permanent establishment of a non-UK resident company.

5. Paragraph 3 inserts new section 330ZA CTA 2009. The new section will bring into account in the company's first Corporation Tax accounting period for its UK property business a net amount of financing costs incurred by a non-resident company related to the UK property before it starts to carry on its UK property business. The amount to be brought into account is limited to debits in respect of a loan relationship recognised within a period of seven years before the date on which the UK property business begins and will be net of any relevant credits that arise in that same pre-commencement period.

6. Paragraph 4 inserts new section 607ZA CTA2009 which makes similar provision for debits in respect of derivative contracts.

7. Paragraph 5 makes consequential provision to paragraph 40 of Schedule 5 to Finance Act 2019 as a result of the introduction of new section 607ZA CTA 2009.

8. Paragraph 6 amends paragraph 2(1A) of Schedule 18 to Finance Act 1998 as inserted

by paragraph 6 of Schedule 5 to Finance Act 2019 so that the exception from notifying chargeability is conditional on the tax deducted at source having met the company's tax liability for that accounting period.

9. Paragraph 7 amends Section 55A of Finance Act 2004 as inserted by paragraph 7 of Schedule 5 to Finance Act 2019 so that the exception from the duty to notify of coming within the charge to Corporation Tax within three months of the start of an accounting period is conditional on the company having a reasonable expectation that the tax deducted from its income will meet its potential tax liability on that income.

10. Paragraph 8 amends regulation 6A of the Loan Relationship and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004 (S.I. 2004/3256) (the Disregard Regulations) to provide that time limits for electing into the Disregard Regulations are not accelerated solely as a result of a non-UK resident company disposing of an asset where the gain is subject to Corporation Tax. This will be relevant where the disposal occurs prior to the company being within the charge to Corporation Tax in respect of its UK property income.

11. Paragraph 9 amends paragraph 44 of Schedule 5 to Finance Act 2019 by providing that no account is to be taken of a disposal by the company before the commencement date of Schedule 5 to Finance Act 2019 (6 April 2020) where any gain from that disposal is chargeable to Corporation Tax. Paragraph 44 of Schedule 5 to Finance Act 2019 permits the non-UK company to be treated for the purposes of regulation 6A of the Disregards Regulations as a new adopter subject to the conditions set out in that paragraph.

12. Paragraph 10 explains that the amendments in paragraphs 1 to 7 are to be treated as if they had been incorporated at all times within Schedule 5 to Finance Act 2019 which has a commencement date of 6 April 2020.

13. Paragraph 11 explains that the amendments made by paragraphs 8 and 9 have effect in relation to disposals made on or after 6 April 2019.

Background note

14. Finance Act 2019 enacted rules whereby non-UK resident companies that carry on a UK property business, or have other UK property income, will be charged to Corporation Tax on their property income from 6 April 2020, rather than being charged to Income Tax as at present.

15. The further changes introduced by this clause and Schedule are designed to ensure that the Finance Act 2019 rules work as intended to ensure a smooth transition of the taxation of UK property profits from Income Tax to Corporation Tax.

Clause 32: Surcharge on banking companies: transferred-in losses

Summary

1. This clause amends the surcharge on banking companies legislation to introduce a new adjustment to surcharge profits. The surcharge applies to banking companies, including building societies, within the charge to UK Corporation Tax. This adjustment denies relief against the surcharge for allowable losses transferred to a banking company from a non-banking company in the same group. The amendment has effect for allowable losses deducted from chargeable gains accruing on or after 11 March 2020.

Details of the clause

2. Subsection 1 introduces amendments to Part 7A of Corporation Tax Act (CTA) 2010.
3. Subsection 2 inserts subsection 4A into section 269D CTA 2010 ('Overview of Chapter'), which updates the overview to include the newly introduced section 269DCA.
4. Subsection 3 amends subsection 2 of section 269DA CTA 2010. The amendment inserts a new adjustment, 'non-banking transferred-in loss relief', to the formula for calculating 'surcharge profits'. It also introduces the definition of this amendment at the newly introduced section 269DCA CTA 2010.
5. Subsection 4 amends section 269DC CTA 2010 to remove references to non-banking loss transfers in subsection 13 and removing subsections 14 and 15. These provisions are effectively superseded by the new definition for 'non-banking transferred-in loss relief' inserted at section 269DCA CTA 2010. The amendment updates the reference to section 8 Taxation of Chargeable Gains Act (TCGA) 1992 to its replacement at section 2A TCGA 1992.
6. Subsection 5 inserts section 269DCA into CTA 2010. This section defines 'non-banking transferred-in loss relief' for the purposes of section 269DA CTA 2010, which is an allowable loss transferred to a banking company from a non-banking company via an election under section 171A TCGA 1992. The new section defines a 'non-banking company' as a company that is not a banking company at the time that the allowable loss arose.
7. Subsection 6 defines the commencement provisions for the changes. The changes will only apply to allowable losses deducted from chargeable gains arising on disposals made on or after 11 March 2020.

Background note

8. These minor amendments to the surcharge on banking companies legislation have been introduced to ensure that the relief against the surcharge for allowable losses transferred to banking companies from non-banking companies is denied in all cases.

9. The surcharge on banking companies rule was introduced by Finance (No. 2) Act 2015, and applies a surcharge of 8% on the taxable profits of banking companies.

Clause 33 and Schedule 6: CT payment plans for tax on certain transactions with EEA residents

Summary

1. This clause and Schedule introduce a new deferred payment option for corporation tax (CT) that is charged on profits or gains arising from certain transactions with a member of the same group of companies resident in another European Union or EEA state. A company can apply to defer payment of that tax over a period of up to five years. The change has effect from 11 July 2019 for transactions occurring in accounting periods ending on or after 10 October 2018.

Details of the clause

2. Clause 33 introduces Schedule 6.

Details of the Schedule

3. Paragraph 1 of Schedule 6 inserts new section 59FB to Taxes Management Act 1970 (TMA), which this in turn introduces new Schedule 3ZC to TMA.

4. Paragraph 2, inserts new Schedule 3ZCto TMA.

New Schedule 3ZC to TMA

5. New paragraph 1 of new Schedule 3ZC TMA provides for a company that is due to pay qualifying CT to defer payment of that tax by entering into a CT payment plan.

6. New paragraph 2 defines qualifying CT as the difference between the total CT the company is due to pay for the accounting period, and the amount that would have been due if qualifying transactions were ignored.

7. New paragraph 3 sets out the qualifying transactions. These are transactions involving the disposal or other realisation of taxable assets, loan relationships or derivative contracts by a UK company to another member of the group that is resident outside the UK in an EEA state and is outside the charge to UK CT in respect of that item following the transaction. In all cases the transaction would have been treated as a tax neutral transfer if the recipient company had been resident in the UK or otherwise within the charge to UK CT in respect of the item after the transaction.

8. A tax neutral transfer is one which means that the transferor company does not incur a tax charge on the disposal, any profit or gain that would otherwise have arisen will instead be taxable on the transferee company on a future disposal or realisation of the item that is not tax neutral. These rules only apply where the transferor and

transferee are members of the same group and both are within the charge to UK CT in relation to the item.

9. The tax neutral provisions to which the Schedule applies are:

    a. Section 171 or section 139 of the Taxation of Chargeable Gains Act 1992. These sections provide that for tax purposes the actual consideration for a capital asset is replaced by such amount as would result in neither a gain nor a loss arising to the transferor company.

    b. Section 340(3) of the Corporation Tax Act (CTA) 2009. This provides for the replacement of one group company by another as a party to a loan relationship to be treated as if the transfer occurred at the tax-adjusted carrying value that the loan relationship has at the time of the transfer.

    c. Section 625(3) of the CTA 2009. This provides for the replacement of one group company by another as a party to a derivative contract to be treated as if the transfer occurred at the tax-adjusted carrying value that the contract has at the time of the transfer.

    d. Section 775 of the CTA 2009. This provides for the transfer of the asset to be ignored for tax purposes, with the transferee treated as if it had held the asset instead of the transferor and done all actions of the transferor in relation to it.

10. New paragraph 4 provides for a company that is liable to pay an amount of qualifying CT to enter into a CT payment plan in respect of all or part of that CT. A company will enter into a single CT payment plan for an accounting period, irrespective of whether there are qualifying transactions with one or multiple transferee companies.

11. New paragraph 5 states that an application for a CT payment plan must be submitted within nine months of the end of an accounting period for which it is liable to pay qualifying CT, and that application shall include the details required by new paragraph 7. The nine-month period after the end of the accounting period means that the application can generally be made at any time before the normal due date for the payment of CT by company that is not a large or very large company that is required to pay its CT in quarterly instalments. This is subject to a transitional rule in section 4(2) of Schedule 6 described below.

12. New paragraph 6 sets out how a CT payment plan is entered into. This involves an undertaking by the company to pay the deferred tax, together with interest, in accordance with new paragraphs 9 to 12, and a corresponding acceptance by an officer of HMRC. Acceptance by HMRC may be subject to the provision of appropriate security from the company if there would otherwise be a serious risk to the collection of the deferred tax.

13. New paragraph 7 sets out the details that a company must supply in its application for a payment plan. It uses a formula to identify the amount of qualifying CT that is attributable to each qualifying transaction. This is needed if there are several qualifying transactions and the deferral period is brought to an end for part of the

qualifying CT attributed to particular transactions under the rules in new paragraphs 11 or 12.

14. New paragraph 8 sets out the consequences of entering into a CT payment plan on payment, interest on instalment payments, and penalties for failing to make payments in accordance with the plan. A company can make payments earlier than required by new paragraphs 9 to 12 with a consequent reduction in interest.

15. New paragraph 9 provides for the deferred tax to be payable in six annual instalments, commencing nine months after the end of the accounting period to which the CT payment plan relates. This is subject to rules making the balance of the tax immediately payable in whole or part which are set out in the subsequent paragraphs.

16. New paragraph 10 provides for the whole of the balance of the deferred tax to become payable on the occurrence of various events. This will happen if the company that has entered into the plan becomes insolvent, appoints an administrator or liquidator, if it fails to make the payments due under the plan for a period of twelve months after they become due or if it ceases to be within the charge UK CT.

17. New paragraph 11 sets out when a part of the outstanding deferred tax attributable to a particular qualifying transaction becomes due during the instalment period. This will happen if the transferee company:

    a. Ceases to be resident in an EEA state; or

    b. Is no longer a member of the same group as the transferor company; or

    c. Sells or otherwise disposes of the item that was the subject of the qualifying transaction.

    The amount of the outstanding deferred tax that becomes due is calculated using a formula.

18. New paragraph 12 provides a similar rule for part disposals of items that are the subject of a qualifying transaction. Companies may use any method that gives a just and reasonable result to determine the amount of tax attributable to such a part disposal.

19. Paragraph 3 of Schedule 6 amends the list of penalties in Schedule 56 to Finance Act 2009, providing for a penalty to be charged where a company that has entered into a CT payment plan fails to make payments in accordance with paragraphs [8-12] of Schedule 3ZC TMA.

20. Paragraph 4 contains the commencement rule. This clause and schedule came into force on 11 July 2019, and companies can apply for a CT payment plan if they are liable to pay qualifying CT for an accounting period ended on or after 10 October 2018. This is subject to a transitional rule that allows for an application to be made for any accounting period ending in the period 10 October 2018 to 30 September 2019 at any time until 30 June 2020.

21. Paragraph 5 creates a power to withdraw the facility to enter into CT payment plans by Statutory Instrument. The power is intended to be used if the Government

determines that CT payment plans are no longer required.

Background note

22. This clause and Schedule are being enacted to remove any doubts about the compatibility of the UK's tax neutral rules for group transfers with European Law governing rights to Freedom of Establishment under Article 49 of the Treat on the Functioning of the European Union, or Article 31 of the EEA Agreement. This follows a ruling of the First Tier Tax Tribunal in March 2019.

Clause 34: Changes to accounting standards affecting leases

Summary

1. This clause amends Schedule 14 to the Finance Act 2019 to clarify that the spreading rules in Schedule 14 apply to all lessees adopting International Financial Reporting Standard 16 (IFRS 16) for any period of account. The amendment is treated as always having had effect.

Details of the clause

2. Subsection (1) indicates that Schedule 14 to the Finance Act 2019 is amended as detailed below.
3. Subsection (2) amends subparagraph 13(1) to clarify that paragraph 13 applies when a lessee first recognises a right-of-use asset in a period of account beginning on or after 1 January 2019. The amendment clarifies in particular that the paragraph applies in circumstances where the lessee first recognises the right-of-use asset in any period of account beginning on or after 1 January 2019, even if that period is not the first period of account beginning on or after 1 January 2019.
4. Subsection (3) amends paragraph 14 to clarify that where a lessee has adopted IFRS 16 for a period of account beginning before 1 January 2019, the transitional provisions in paragraph 13 have effect as if IFRS 16 were adopted in the first period of account beginning on or after 1 January 2019.
5. Subsection (4) provides that the amendments to paragraphs 13 and 14 are treated as always having had effect.

Background note

6. Schedule 14 to the Finance Act 2019 made changes to income tax and corporation tax rules as a result of the introduction of IFRS 16. Paragraph 13 sets out the transitional adjustments required where a right-of-use asset is first recognised in a period of account beginning on or after 1 January 2019. Paragraph 14 provides for circumstances where a lessee has adopted IFRS 16 for a period of account beginning before 1 January 2019.
7. This amendment has been introduced to clarify paragraphs 13 and 14 of Schedule 14 and in particular to put it beyond doubt that the spreading rules in those paragraphs apply to all lessees adopting IFRS 16 for any period of account.

Clause 35: Enterprise investment scheme: approved investment fund as nominee

Summary

1. This clause amends the existing rules in Part 5 of the Income Tax Act 2007 (ITA 2007) for approved Enterprise Investment Scheme (EIS) funds in order to focus investments on knowledge-intensive companies. It also provides additional flexibility for fund managers to make subscriptions in shares and for investors over the years in which relief is given.

Details of the clause

2. Subsection (1) introduces amendments to section 251 of ITA 2007.
3. Subsection (2) amends subsection (1) of section 251. It changes "an approved fund" to an "approved knowledge-intensive fund" and sets out the requirements that must be met for investments to be considered as made via an approved knowledge-intensive fund:
    - That the amounts which the managers have subscribed for shares on behalf of the investor within 12 months after the closing of the fund represent at least 50% of the individual's investment in the fund.
    - That the amounts which the managers have subscribed for shares on behalf of the investor within 24 months after the closing of the fund represent at least 90% of the individual's investment in the fund,
    - That within that 24 month period at least 80% of an individual's investment in the fund is represented by shares in companies which are knowledge-intensive companies at the time the shares are issued,
    - That the managers of the fund have met the appropriate reporting conditions required by HMRC.
4. Subsection (3) inserts new subsection (1A) into section 251 ITA 2007.
5. New section 251(1A) defines "the managers of an approved knowledge-intensive fund".
6. Subsection (4) amends subsection (2) in consequence to the amendments made to section 251 (1) ITA 2007.
7. Subsection (5) inserts new subsection (2A) into section 251 ITA 2007.
8. New section 251(2A) sets out that where section 251 ITA 2007 applies, for the purposes of claiming relief in the year preceding that in which the relevant shares

were issued, the year in which the fund closes is treated as the year in which the shares were issued.

9. Subsections (6), (8), (9) and (11) replace references to an "approved fund" made in section 251 ITA 2007 with "approved knowledge-intensive fund" and "investment fund" with "knowledge-intensive fund".

10. Subsections (7) and (10) substitute "HMRC Commissioners" for a reference to "Commissioners for Her Majesty's Revenue and Customs" and inserts new subsection (8) that defines "HMRC Commissioners".

11. Subsection (12) provides for the amendments to apply to approved funds that close on or after 6 April 2020.

Background note

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

13. The intention to introduce a new knowledge-intensive fund structure was announced at Autumn Budget 2017 as part of the government's response to the Patient Capital Review to re-focus the venture capital schemes on higher risk, growing and innovative firms. The new rules were consulted on in 2018 with the stakeholder consensus that additional tax reliefs were not needed but that new flexibilities would be helpful.

Clause 36: Gains from contracts for life insurance etc: top slicing relief

Summary

1. This clause introduces amendments to Top Slicing Relief (TSR) rules on life insurance policy gains in sections 535 to 537 of ITTOIA 2005 to ensure they operate fairly and prevent excessive relief. The amendments will apply to all gains arising after Budget day.

Details of the clause

2. Subsection 1 sets out the legislation to be amended by this clause.
3. Subsection 2 inserts new subsection (8) in section 535 of ITTOIA 2005 to confirm that for the purposes of the TSR calculations:
    - the rules of reliefs and allowances at section 25(2) of ITA 2007, that require reliefs and allowances to set off income in a way that results in the greatest reduction in an individual's income tax liability, do not apply; and
    - an individual's reliefs and allowances must be deducted from other income before being deducted from the gain.
4. Subsections 3 and 4 confirms the calculation of the income tax liability on a proportion of the gain as required within the calculation of TSR in sections 536(1) and 537 of ITTOIA 2005. The clarifications allow the individual's personal allowance, but not any other relief or allowance, to be calculated as though the gain from the chargeable event is limited to the proportion of the gain.
5. Subsection 5 provides that the amendments made by this section have effect for the tax year 2019-20 and subsequent tax years.
6. Subsection 6 provides that the amendments made by this section do not have effect for the tax year 2019-20 or 2020-21 in the case of an individual who is only liable for tax under Chapter 9 of Part 4 of ITTOIA 2005 on gains from one or more chargeable events which occur before 11 March 2020.

Background note

7. Top Slicing Relief is designed to mitigate the impact of individuals being charged to tax at a higher rate due to the inclusion of a life insurance policy gain, or gains, in income for the year.

8. This clause will put beyond doubt the calculation of TSR by setting out the basis of the personal allowance available and specifying how allowances and reliefs can be set against life insurance policy gains. This ensures a fair outcome for those taxpayers eligible for TSR, in line with the original policy intent, and prevents excessive relief.

Clause 37: Losses on disposal of shares: abolition of requirement to be UK business

Summary

1. This clause extends share loss relief for Income Tax (IT) and Corporation Tax (CT) purposes so that from 24 January 2019 the relief will apply to disposals of shares in companies which have conducted their business wholly or mainly outside of the United Kingdom.

Details of the clause

2. Subsection (1) repeals section 134(5) Income Tax Act 2007 and section 78(5) Corporation Tax Act 2010.
3. Subsection (2) makes changes in consequence of the repeals made by subsection 1.
4. Subsection (3) introduces these changes for disposals of qualifying shares made on or after 24 January 2019.

Background note

5. Share loss relief is an IT relief for individuals and a CT relief for investment companies. It gives relief where an individual or investment company subscribes for qualifying shares and subsequently makes a disposal of those qualifying shares resulting in an allowable loss for the purposes of the Taxation of Chargeable Gains Act 1992.
6. Qualifying shares are:
    a. Shares to which Enterprise Investment Relief is attributable(this applies for individuals only), or
    b. Shares in a qualifying trading company.
7. A company will be a qualifying trading company if it meets four conditions at the relevant time. The relevant time varies depending on the condition. At a basic level a company will be a trading company if:
    a. It carried on a trading activity which wasn't an excluded activity, for which there is an exhaustive list of activities;
    b. Its gross assets didn't exceed a limit immediately before and immediately after the subscription;
    c. It was unlisted;
    d. It carried on its business wholly or mainly in the UK.

8. Extending the relief to companies with a business outside of the UK ensures that the relief complies with Article 63 of the Treaty on the Functioning of the European Union and the Freedom of Movement of capital rules.

Part 2: Digital Services Tax

Clause 38: Digital services tax: introduction

Summary

1. This clause establishes a new tax called Digital Services Tax (DST). It provides that HM Revenue & Customs (HMRC) will be responsible for its collection and management.

Details of the clause

2. Subsections 1 to 3 introduce and provide an overview of DST. They set out that the new tax will be charged on "UK digital services revenues". The meaning of this and other key expressions are defined and explained in the legislation. The legislation also sets out how DST is calculated and the reporting requirements for the new tax.

Background note

3. This clause introduces DST and provides that HMRC will be responsible for its collection and management.
4. DST will apply from 1 April 2020. Announced at Budget 2018 the tax will apply to groups providing a social media service, internet search engine or online marketplace. DST is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.
5. The tax will apply at the rate of 2% to the group revenues derived from UK users of the digital services activity. There will be an alternative calculation available which in limited circumstances will reduce the effective rate of taxation where the UK operating margin of the activity is very low.
6. The tax will only apply where the group receives £500m of revenue from the relevant digital services activity of which £25m is from UK users. It does not matter where companies receiving the revenue are located.
7. The government believes in international co-operation regarding the future of tax on large international businesses. DST, and progress made in international discussions on the future of corporation taxes, will be reviewed in 2025. The outcome of that review will be reported to Parliament.
8. HMRC will be responsible for administering the new tax.

Clause 39: Meaning of "digital services revenues"

Summary

1. This clause defines what is meant by "digital services revenues" for the purposes of the DST legislation.

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsection 2 defines "digital services revenues" and clarifies that "digital services revenues" are those that are arise from members of the whole group.
4. Subsection 3 clarifies that revenues should be apportioned on a just and reasonable basis when they are not wholly attributable to a digital services activity.

Background note

5. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 40: Meaning of "UK digital services revenues"

Summary

1. This clause defines the meaning of "UK digital services revenues" for the purposes of the DST legislation.

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsection 2 defines "UK digital services revenues" as digital services revenues that are attributable to UK users.
4. Subsection 3 sets out that there are five cases to consider when determining if revenues are attributable to UK users. Revenue will be attributable to UK users when they are within any of the five cases. If revenues are within Case 4 or 5 and received in connection with UK users and others then the revenues will be attributable to UK users to the extent determined by subsection (9).
5. Subsection 4 sets out Case 1, revenues from online marketplace transaction where a UK user is a party to the transaction.
6. Subsection 5 sets out Case 2, revenues from online marketplaces which arise in connection with accommodation or land in the UK.
7. Subsection 6 sets out Case 3, revenues from an online marketplace in connection with an advertisement for particular services, goods or other property, for example a listing, is paid for by a UK user.
8. Subsection 7 sets out Case 4, that online advertising revenues not in Cases 1 to 3 will be attributable to UK users when the advertising is viewed or otherwise consumed by UK users.
9. Subsection 8 sets out Case 5, that revenues not in Cases 1 to 4 will be attributable to UK users when the revenues arise in connection with UK users.
10. Subsection 9 sets out that revenues arising in connection with UK users and others should be allocated to UK users on a just and reasonable basis.
11. Subsection 10 sets out conditions where certain accommodation and land transactions through an online marketplace are not attributable to UK users.
12. Subsections 11 and 12 provide the definitions for "marketplace transaction", "online advertising revenue" and "online marketplace revenues", confirming that the resulting agreement does not necessarily have to take place on the marketplace itself.

Background note

13. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 41: UK digital services revenues: accommodation and land

Summary

1. This clause sets out certain conditions related to revenues from an online marketplace when they are related to accommodation or land transactions.

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsections 2 and 3 specify what revenues are treated as arising in connection with accommodation and land.
4. Subsection 4 clarifies that these transactions include providing the goods or property on a temporary basis as well as permanently. It also defines "online marketplace revenues".

Background note

5. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 42: Meaning of "digital services activity" etc.

Summary

1. This clause defines the meaning of "digital services activity" for the purposes of the DST legislation. The clause goes onto set out the conditions that define each of the "digital services activities".

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsection 2 sets out the three activities that are meant by "digital services activity".
4. Subsection 3 defines "social media service" by setting out the conditions for an online service to be considered a "social media service".
5. Subsection 4 clarifies that a facility that only searches the material on a single website or closely related websites is not within the scope of an "internet search engine" for the purposes of Digital Services Tax.
6. Subsection 5 defines "online marketplace" by setting out the conditions for an online service to be considered an "online marketplace".
7. Subsection 6 clarifies what is meant by "thing" and that the sale of a thing also includes hiring it.
8. Subsection 7 clarifies that the three types of digital services activity include any associated online advertising service as well as the defined activity.
9. Subsections 8 and 9 define "associated online advertising service" for the purpose of this legislation, also that just and reasonable apportionment must be used should associated online advertising revenues arise from more than one type of digital services activity.
10. Subsection 10 identifies where to find additional legislation regarding online financial marketplaces which are relevant to this section and the definition of online marketplace.

Background note

11. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 43: Meaning of "user" and "UK user"

Summary

1. This clause defines the meaning of a "user" and "UK user" for the purposes of the DST legislation.

Details of the clause

2. Subsection 1 introduces this clause.
3. Subsection 2 clarifies that a "user" does not include employees or a person who is a member of the same group as the provider.
4. Subsection 3 defines "UK user" as someone who it is reasonable to assume is normally in the UK or is established in the UK.

Background note

5. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 44: Exclusion for online financial marketplaces

Summary

1. This clause sets out the exemption for online financial marketplaces from the definition of an "online marketplace" as defined under clause 42.

Details of the clause

2. Subsection 1 introduces this clause.
3. Subsection 2 sets outs that an online marketplace does not include online marketplaces where more than half of the relevant revenues arise in connection with the facilitation of the trading of financial instruments, commodities or foreign exchange.
4. Subsection 3 clarifies that trading of financial instruments includes the creation of financial instruments and trading of commodities on a commodities exchange.
5. Subsection 4 defines what is meant by "financial instrument", "the provider" and "relevant revenues" for the purposes of this clause.

Background note

6. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 45: Meaning of “the threshold conditions”

Summary

1. This clause sets out the thresholds that must be met before a group is subject to DST. The thresholds are based on the group’s total revenues from their digital services activities and those revenues which are attributable to UK users.

Details of the clause

2. Subsection 1 defines the level of the two threshold conditions, one for the group worldwide revenues and the other for those related only to UK revenues. Both conditions must be met for DST to apply.
3. Subsection 2 confirms the duration over which the thresholds apply, and that apportionment of the thresholds will apply for periods of less than a year.

Background note

4. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 46: Charge to DST

Summary

1. This clause introduces the charge to DST. The clause sets out how to calculate the group's total liability to DST and how this should be allocated to individual entities in the group.

Details of the clause

2. Subsection 1 introduces the clause which applies where the threshold conditions for an accounting period are met.

3. Subsection 2 sets out that each member of the group for a period of account is liable to the DST liability for that period of account.

4. Subsection 3 sets out the steps to take in order to calculate the DST liability for each member of the group.

5. Subsection 4 clarifies that the amount of DST liability for each member of the group is based on the proportion of UK digital services revenue arising to that member as a portion of total UK digital services revenue.

6. Subsection 5 confirms that the £25 million allowance is apportioned proportionately for periods of less than a year.

7. Subsection 6 sets out that this clause is conditional on the "alternative basis of charge". This has also been known as the safe harbour and should be of value where a relevant activity has a low or negative operating margin.

Background note

8. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 47: Alternative basis of charge

Summary

1. This clause sets out how a group may elect to use the alternative basis of charge when calculating their DST liability.
2. The alternative basis of charge will be of value where a relevant activity has a very low or negative UK operating margin. Where an election is made to calculate the DST liability for a relevant activity under the alternative basis of charge, it will typically result in a lower rate of DST applying to the revenues attributable to that relevant activity, or where the relevant activity has a negative margin, there will be no liability at all.

Details of the clause

3. Subsections 1 and 2 set out the need for a group to make an election if they would like to use the alternative basis of charge and that an election must be made against a specific category of revenue. This means it is possible for a group to make up to 3 elections for the alternative basis of charge.
4. Subsection 3 confirms that those categories of revenue are those from social media, an internet search engine and online marketplaces.
5. Subsection 4 sets out the steps for calculating the DST charge for each member of the group using the alternative basis of charge. This includes identifying the amount of digital service revenue that has belongs to each of the three categories of revenue, splitting out the £25m allowance across those groups if necessary, calculating an operating margin for each category and using the operating margin to calculate the alternative charge to DST.
6. Subsection 5 sets out that the £25m allowance must be proportionately reduced for periods of account less than a year.
7. Subsection 6 defines what is meant by “the appropriate proportion”, “relevant expenditure”, “relevant person” and “specified” for the purposes of the clause.

Background note

8. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 48: Section 47: meaning of “relevant operating expenses”

Summary

1. This clause defines “relevant expenditure” for the purposes of section 47. The “relevant expenditure” is used in calculating the DST liability using the alternative basis of charge.

Details of the clause

2. Subsection 1 introduces the clause.

3. Subsection 2 defines “relevant operating expenses” as any expenditure attributable to the earning of UK digital services revenues, apart from excluded expenses.

4. Subsection 3 defines what is meant by “excluded expenses” which cannot be used in the calculation under the alternative basis of charge.

5. Subsection 4 explains that where an expense is attributable to a digital service activity and something else the expense can only be deducted to the extent that they are just and reasonably attributable to the digital services activity.

6. Subsection 5 confirms that “specified” means the same as in section 47 i.e. the category of revenue specified in the election.

Background note

7. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 49: Relief for certain cross-border transactions

Summary

1. This clause explains the treatment of cross border transactions in respect of the revenue and expenses that arise in connection with those transactions.

Details of the clause

2. Subsection 1 introduces the clause and that it only applies when a claim is included in the return for an accounting period.

3. Subsections 2 to 3 set out the amount of revenue and expenses that are to be disregarded in the event of a cross-border transaction.

4. Subsection 4 defines "relevant cross-border revenues" for the purposes of the legislation.

5. Subsection 5 defines "foreign user", "foreign DST charge", "marketplace transaction" and "relevant operating expenses".

Background note

6. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 50: When DST is due and payable

Summary

1. This clause sets out the date on which DST is due and payable.

Details of the clause

2. This clause sets out the date on which DST is due and payable, which is on the day following the end of 9 months from the end of the accounting period.

Background note

3. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 51: Meaning of “the responsible member”

Summary

1. This clause defines the meaning of “the responsible member” of a group for the purposes of the DST legislation and how a member of a group can become “the responsible member”. The responsible member will generally be the point of contact between HMRC and the group.
2. The responsible member will have various obligations regarding DST including submitting returns. These obligations are set out later in the legislation.

Details of the clause

3. Subsection 1 sets out that “the responsible member” of a group is either nominated or the parent of the group.
4. Subsection 2 sets out the conditions under which a person may be nominated as “the responsible member” including being a member of the group and doing so with the consent of the parent that the responsible member can act on behalf of the group.
5. Subsection 3 sets out when a nomination is no longer valid, either by an action of the group or HMRC.
6. Subsections 4 to 6 provide reasons why HMRC may revoke a nomination and sets out how HMRC may revoke a nomination.

Background note

7. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 52: Continuity of obligations etc where change in the responsible member

Summary

1. This clause sets out what happens regarding the obligations of the responsible member for a group should the responsible member change at any time. The clause ensures that there is a continuity of obligations for the group should a change in the responsible member occur.

Details of the clause

2. Subsection 1 introduces the clause and when a change in the responsible member may occur.

3. Subsections 2 to 7 set out that the new responsible member takes on the obligations and liabilities of the old responsible member. It clarifies any actions taken by the old responsible member will be treated as being done by the new responsible member.

4. Subsection 8 sets out the definitions of "relevant obligations and liabilities" and "relevant purposes".

5. Subsection 9 confirms to what extent HMRC can impose penalties on new and old responsible members following a change.

Background note

6. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 53: Duty to notify HMRC when threshold conditions are met

Summary

1. This clause sets out the duty for a group to notify HMRC when it has met the DST thresholds conditions and the time by which they need to make that notification.

Details of the clause

2. Subsection 1 sets out the time period in which this clause applies.
3. Subsection 2 sets out that notification is the responsibility of the responsible member of the group.
4. Subsections 3 to 5 set out how and when the notification is to be made and confirms further details will be specified in a notice published by HMRC.

Background note

5. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 54: Duty to notify HMRC of change in relevant information

Summary

1. This clause sets out the duty for a group to notify HMRC when there is a change in relevant information and how that notification is to be made.

Details of the clause

2. Subsection 1 sets out when this clause applies.
3. Subsections 2 to 4 set out how and when the notification must be given.
4. Subsection 5 gives the definition of "specified" as used in subsection 3.
5. Subsection 6 gives the definitions of "relevant information" and "relevant time".

Background note

6. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 55 and Schedule 7: Duty to file returns

Summary

1. This clause and Schedule set out when the responsible member of the group must file a DST return and what must be included in the return. These details are contained in Schedule 7.

Details of the clause

2. Subsection 1 introduces the clause and that it applies once the threshold conditions have been met by a group.
3. Subsection 2 sets out the obligations of the responsible member to file a DST return.
4. Subsections 3 to 5 allow for HMRC to suspend the duty to submit a return and sets out the conditions under which the duty may be suspended.
5. Subsection 6 identifies Schedule 7 as containing details about the DST return and administration of the returns.

Details of the Schedule

Part 1: Introduction

6. Paragraph 1 introduces the schedule including the date by which a return must be filed. It also defines what is meant by "relevant person", "tax" and "tribunal" for the purposes of the Schedule.

Part 2: DST Returns

7. Paragraphs 2 and 3 sets out when a DST return must be filed, what should be included within the return, as well as how a "responsible member" for the group may amend the return.

Part 3: Duty to keep and preserve records

8. Paragraphs 4 and 5 provide that the "responsible member" for the group has a duty to keep and preserve records regarding the DST. It includes in what form and for how long records must be preserved. Any additional requirements may be specified by the Commissioners in a published notice.

Part 4: Enquiry into Return

9. Paragraph 6 specifies the process and time limits by which HMRC may enquire into a DST return. The paragraph also specified that only one enquiry may be made into a DST return.

10. Paragraph 7 explains that an enquiry into a DST return can extend to anything made within a return including whether tax is chargeable as well as the amount of tax. Where an enquiry is made into an amendment to the return, the enquiry is limited to matters relating to that amendment.

11. Paragraph 8 sets out the circumstances where an Officer of HMRC may amend a DST return during an enquiry to prevent loss of tax.

12. Paragraph 9 sets out what happens when an amendment to a DST return is made by the "responsible member" during the progress of an enquiry.

13. Paragraphs 10 to 13 describe how questions can be referred to the tribunal for determination during an enquiry. Whilst a referral is under consideration by the tribunal an enquiry may not be closed. It is specified that the determination of a question by the tribunal is binding on all parties.

14. Paragraphs 14 and 15 set out how an enquiry into a DST return may be concluded; either by a closure notice issued by an Officer of HMRC or the "responsible member" can apply to the tribunal.

Part 5: HMRC Determinations

15. Paragraph 16 describes HMRC determinations of tax chargeable if no DST return is delivered and the time limits for these determinations.

16. Paragraph 17 notes that an HMRC determination has effect as if it was a self-assessment which includes provisions for penalties, collection and the interest on overdue tax.

17. Paragraph 18 stipulates when these determinations would be superseded by a self-assessment and the impact on the process for recovery of tax.

Part 6: HMRC Assessments

18. Paragraph 19 sets out the process for HMRC to make assessments where loss of tax has been discovered.

19. Paragraphs 20 to 22 set out the restrictions, time limits and procedures for making these discovery assessments.

20. Paragraph 23 sets out that the "responsible member" is liable to the tax due under a discovery assessment unless an Officer of HMRC agrees that liability can be transferred to another relevant person.

Part 7: Relief in the case of overpaid tax

21. Paragraphs 24 and 25 describe how a group can make a claim for overpaid tax and the time limits for doing so.

22. Paragraph 26 describes the cases in which HMRC are not liable to give effect to a claim for overpaid tax.

23. Paragraphs 27 and 28 describe the process and time limits for an Officer of HMRC to make an enquiry into such claims for relief for overpaid tax and how these enquiries are concluded.

24. Paragraphs 29 to 32 provide for supplementary assessments to be made where there has been an excessive repayment of tax. These paragraphs set out the time limits for doing so and how the tax is recovered.

Part 8: Appeals against HMRC decisions on Tax

25. Paragraphs 33 to 35 set out the appeals procedure and time limits for a group, should they wish to appeal against a HMRC decision on DST tax, including where a late appeal is permitted.

26. Paragraphs 36 to 39 set out how HMRC may, following a notice of appeal, review the matter in question.

27. Paragraphs 40 to 42 describe how HMRC provides conclusions of the review and how the appeal can be referred to tribunal.

28. Paragraph 43 provides interpretations for paragraphs 36 to 42.

29. Paragraph 44 contains the procedure for settlement of appeals by agreement between the group and HMRC.

30. Paragraphs 45 to 47 set out when and how payment of tax can be postponed.

31. Paragraphs 48 to 51 describe how the tribunal can, following an appeal, decide on the correct assessment of tax and directs when the tax due must be paid or the tax overpaid must be repaid. Paragraph 51 notes that tribunal determinations in relation to appeals in this part are final.

Part 9: Penalties

32. Paragraphs 52 to 54 set out the flat-rate and tax geared penalties that are applicable for failure to file a DST return noting that a penalty will not arise when a group can satisfy the tribunal that there was a reasonable excuse for the failure.

33. Paragraph 55 describes when a penalty arises for the failure to keep and preserve records.

34. Paragraphs 56 and 57 set out how HMRC will assess penalties in relation to the DST and that penalties may be mitigated in special circumstances.

35. Paragraphs 58 and 59 set out the right of appeal against a penalty and the tribunal procedure.

36. Paragraph 60 sets out that these penalty payments may not be taken into account in calculating profits for corporation tax.

Background note

37. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 56: Meaning of “group”, “parent” etc

Summary

1. This clause sets out the definitions of the terms “group”, “parent” and several others as they are used in the Digital Services Tax legislation. These terms help define what companies and revenues will be taxable for the purposes of DST.

Details of the clause

2. Subsection 1 defines the meaning of “group” for the purposes of Digital Services Tax. The “group” consists of the ultimate parent and all of its consolidated subsidiaries. This is based on the treatment under the applicable accounting standards.

3. Subsection 2 defines Condition A, which is used in subsection 1. This condition references being member of a GAAP group.

4. Subsection 3 defines Condition B, also used in subsection 1.

5. Subsection 4 defines the meaning of “parent” and “member” of a group. It also defines a “single-company group” and “multi-company” group. To be a “parent” the entity will need to be a relevant entity which is not a consolidated subsidiary of another entity that could be a “parent”.

6. Subsection 5 defines “GAAP group”.

7. Subsection 6 states in which section the meaning of “the applicable accounting standards” can be found in the legislation.

Background note

8. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 57: Section 56: meaning of "relevant entity"

Summary

1. This clause provides the definition of "relevant entity", which is used in the group definition, and it also sets out what is not a "relevant entity".

Details of the clause

2. Subsection 1 sets out the meaning of "relevant entity". This includes companies or other entities which have shares or other interests which are listed on a recognised stock exchange and are sufficiently widely held.
3. Subsection 2 defines what is meant by shares or other interests in an entity being "sufficiently widely held".
4. Subsection 3 sets out what is not a "relevant entity".
5. Subsection 4 identifies where the meanings of "participator" and "recognised stock exchange" can be found in legislation. Shares or other interests being listed on a recognised stock exchange is also given context.
6. Subsection 5 identifies where the meaning of "company" can be found in the legislation.

Background note

7. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 58: Continuity of a group over time

Summary

1. This clause sets out the conditions that determine if a group has remained the same in different time periods. This will be relevant when members of a group change, through acquisition, disposal or other method, over time.

Details of the clause

2. Subsection 1 introduces the clause which is to be used to determine if a group has remained the same in different time periods.

3. Subsection 2 provides the two conditions that must be met to conclude that a group is the same group over different time periods. It is conditional on the who the parent of the group is during the different time periods in question.

Background note

4. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 59: Treatment of stapled entities

Summary

1. This clause sets out the treatment of two or more entities who are treated as stapled to each other and subsidiaries of a "deemed parent".

Details of the clause

2. Subsection 1 introduces the clause and sets out when it applies.
3. Subsections 2 to 3 describe how the clause will apply and its effect on the entities involved.

Background note

4. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 60: Accounting periods and meaning of "a group's accounts"

Summary

1. This clause sets out the time period over which a group will account for revenues from relevant business activities for DST. This will usually be the period of account of the parent company with special rules for the first accounting period and for when DST is first introduced.

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsection 2 describes when a group's first accounting period for the DST will begin and ends.
4. Subsection 3 describes when any other accounting period for the group begins and ends.
5. Subsection 4 sets out when the first accounting period will begin and end for a group formed after 1 April 2020.
6. Subsection 5 defines the meaning of "accounting reference date".
7. Subsection 6 confirms that references to a group's accounts if to the consolidated group accounts or the parents accounts.

Background note

8. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 61: Apportionment of revenues or expenses to accounting period

Summary

1. This clause sets how revenues or expenditure are apportioned when a groups period of account does not coincide with an accounting period. For example, this may happen if a company or group change their accounting date.

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsections 2 to 3 set out the steps taken in apportioning revenue and expenditure to the appropriate accounting periods for DST.

Background note

4. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 62: Meaning of revenues arising, or expenses recognised, in a period

Summary

1. This clause sets out what is meant for a group by revenues arising or expenses recognised in a period for the purposes of the DST legislation.

Details of the clause

2. Subsection 1 introduces the section.
3. Subsection 2 explains that the revenues or expenses for any period of account for the group are produced in accordance with applicable accounting standard for that period.
4. Subsections 3 and 4 set out that if there are not accounts for a period that falls within subsection (2) or other accounting period, the revenues or expenses are recognised as if IAS accounts had been produced for that period.
5. Subsection 5 defines what is meant by "consolidation exemption".

Background note

6. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 63: Meaning of "the applicable accounting standards" etc

Summary

1. This clause sets out the definition on various terms related to accounting standards for the purposes of the DST legislation.

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsection 2 sets out the definition of "the applicable accounting standards".
4. Subsections 3 to 5 define what is meant by "UK GAAP", "Acceptable overseas GAAP" and "IAS".
5. Subsection 6 confirms that HMRC will publish any approvals relevant to subsection 2.

Background note

6. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 64: Anti-avoidance

Summary

1. This clause sets out anti-avoidance provisions for DST.

Details of the clause

2. Subsection 1 introduces the clause.
3. Subsections 2 to 4 set out the adjustments that must be taken should tax avoidance arrangements be deemed to have taken place and what arrangements are deemed to be "relevant avoidance arrangements".
4. Subsection 5 defines the meaning of "arrangements", "tax" and "tax advantage" for the purposes of the legislation.

Background note

5. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 65 and Schedule 8: Notice requiring payment from other group members

Summary

1. This clause and Schedule set out the process by which HMRC can give notice to group members when a DST liability relating to the group goes unpaid.

Details of the clause

2. Subsection 1 introduces the clause and the point from which it applies.
3. Subsections 2 to 4 give details of how a designated HMRC officer may give a payment notice and what must be included in the notice.
4. Subsections 5 to 8 define the meaning of "relevant date" for the purposes of the section.
5. Subsection 9 confirms that that notice may be given anywhere in the world.
6. Subsection 10 introduces Schedule 8.
7. Subsection 11 provides definitions for “designated officer”, “DST liability”, “filing date” and “relevant person”.
8. Subsection 12 provides the definition of “self-assessment” for the purposes of this section
9. Subsection 13 provides that references to “digital services tax” also include interest on digital services tax.

Details of the Schedule

10. Paragraph 1 introduces the Schedule and defines “the recipient”, “DST liability”, “payment notice”, “relevant person” and “relevant liability”.
11. Paragraph 2 sets out how the recipient will be treated for the purposes of recovery of unpaid DST liability, penalty or interest.
12. Paragraph 3 sets out the appeals process a recipient may use to appeal against a notice and the time frames for submitting an appeal.
13. Paragraph 4 sets out the effect of making a payment in respect of a payment notice and the impact on any outstanding payments or notices.

Background note

14. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 66: Interest on overdue DST

Summary

1. This clause sets out at which rate and when interest will be due on overdue DST payments.

Details of the clause

2. Subsection 1 sets out at which rate interest will become due.
3. Subsection 2 sets out when the interest will be due and payable.
4. Subsection 3 sets out where the meaning of "the applicable rate" can be found in legislation.

Background note

5. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 67: Interest on overpaid DST etc

Summary

1. This clause sets out at which rate and when interest will be due on overpaid DST payments.

Details of the clause

2. Subsection 1 introduces the clause and that interest will be payable on payments received before the liability due date.
3. Subsections 2 to 3 set out the dates when interest will become due and payable.
4. Subsections 4 to 5 set out circumstances where interest may be recovered.
5. Subsection 6 provides definitions for "the applicable rate", "the due date", "error" and "HMRC determination".

Background note

6. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 68: Recovery of DST liability

Summary

1. This clause sets out that any DST liability is recoverable as a debt.

Details of the clause

2. Subsection 1 makes it clear that a DST liability is recoverable as a debt to the Crown.

3. Subsections 2 confirms what is meant by "DST liability".

Background note

4. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 69 and Schedule 9: Minor and consequential amendments

Summary

1. This clause introduces Schedule 9 which sets out provisions for minor consequential amendments which are a result of the introduction of the DST. These relate to interest rates, penalties and other tax administration processes.

Details of the clause

2. This clause introduces Schedule 9 which covers minor and consequential amendments of other legislation in relation to the DST. It covers amendments to the Provisional Collection of Taxes Act 1968 as well as Finance Acts 1989, 2007 and 2008.

Details of the Schedule

3. Paragraph 1 sets out the amendments required to the Provisional Collection of Taxes Act 1968.

4. Paragraph 2 sets out the amendments required to Finance Act 1989.

5. Paragraph 3 sets out the amendments required to Finance Act 2007.

6. Paragraphs 4 to 6 set out the amendments required to Finance Act 2008.

Background note

7. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 70: Review of DST

Summary

1. This clause sets out that the Treasury must conduct a review of Digital Services Tax before the end of 2025.

Details of the clause

2. Subsections 1 to 2 set out the commitment to conduct a review of DST by the end of 2025 and a copy of the report must be laid before Parliament.

Background note

3. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Clause 71: Interpretation of Part

Summary

1. This clause sets out where the meaning of various terms used in the legislation can be found.

Details of the clause

2. This clause lists various terms used in the legislation and where their meanings can be found.

Background note

3. Digital Services Tax will apply from April 2020. Announced at Budget 2018 the tax will apply to groups providing social media platforms, internet search engines and online marketplaces. Digital Services Tax is a new tax on the revenues of large digital businesses to ensure that the amount of tax paid in the UK is reflective of the value derived from UK users.

Part 3: Other Taxes

Clause 72: Excluded property etc

Summary

1. This clause introduces legislation to provide that additions of assets by individuals domiciled in the United Kingdom to trusts made when they were non-domiciled cannot be excluded property and are therefore within the scope of Inheritance Tax.

Details of the clause

2. Subsection 1 introduces amendments to the Inheritance Tax Act (IHTA) 1984.

3. Subsection 2 amends section 48 IHTA 1984. In this section "property became comprised in the settlement" is substituted for "settlement was made". This amendment provides that, for the purposes of the excluded property provisions in sections 48(3)(a), 48(3A)(a) and 48(3E), the domicile of the settlor is tested when the property becomes comprised in the settlement rather than when the settlement was made. For the purposes of those sections, new section 48(3F) provides that accumulations of income are treated as having become comprised at the same time as the property (producing that income) became comprised in the settlement.

4. Subsection 3 inserts new section 48A into IHTA 1984. New section 48A provides that the commencement of a settlement is the time the property first becomes comprised in the settlement. This section replicates section 60 IHTA 1984 but extends its effect to the entirety of IHTA 1984.

5. Subsection 4 omits section 60 IHTA 1984 which provided for the meaning of the commencement of a settlement for the purposes of Chapter 3 of Part 3 IHTA 1984 only.

6. Subsection 5 amends section 64(1B) IHTA 1984 to reflect the changes made in Subsection 2. This amendment provides that income arising (directly or indirectly) from property that became comprised in the settlement when the settlor was not domiciled in the United Kingdom is not to be regarded as relevant property as a result of section 64(1B) so far the income is situated outside the United Kingdom or represented by a holding in an authorized unit trust or share in an open-ended investment company. New section 64(1BA) provides that for the purpose of section 64(1B), the income generated from property representing previous accumulations of income are treated as having become comprised at the same time as the capital (producing the earlier accumulation) became comprised in the settlement.

7. Subsection 6 amends section 65 IHTA 1984 to reflect the changes made in Subsection 2. This amendment provides that the exemptions from the charge to tax under subsections 65(7A) and (8) will depend on whether the settlor was domiciled in the United Kingdom when the property becomes comprised in the settlement rather than when the settlement was made. For the purposes of those subsections, new section

65(8A) provides that accumulations of income that are invested in property within subsections 65(7A) and (8) are treated as having become comprised at the same time as the capital (producing that income) became comprised in the settlement.

8. Subsection 7 amends section 74A IHTA 1984. The amendments provide that the domicile of the settlor is considered for the purposes of Condition A and B when the relevant property became comprised in the settlement rather than when the settlement was made.

9. Subsection 8 amends section 157(3) IHTA 1984 which relates to non-resident's bank accounts. The amendment provides that section 157(1)(b) IHTA 1984 will not apply in relation to settled property if the settlor was domiciled in the United Kingdom when the settled property became comprised in the settlement.

10. Subsection 9 amends section 237(1)(b) IHTA 1984 to provide that the "Inland Revenue charge" is imposed in a case where Inheritance Tax or interest remains unpaid on a chargeable transfer whereby property become comprised in a settlement whether or not that chargeable transfer occurs when the settlement is originally made.

11. Subsection 10 amends section 272 IHTA 1984 which relates to general interpretation for the purposes of the IHTA. The amendment provides for the meaning of the commencement of a settlement to be given by new section 48A. It also amends the definition of "foreign-owned" to reflect the change made to section 64(1B) so that, if accumulated income in a settlement is invested in works of art, then it is treated as having become comprised at the same time as the property (producing that income) became comprised in the settlement.

12. Subsection 11 provides that the amendments made by the clause are treated as always having been in force in relation to any charge under IHTA 1984 arising on or after the day this Act is passed.

Background note

13. These changes to legislation clarify that where offshore assets are held in trust, whether or not the property has excluded property status, the scope of Inheritance Tax is dependent on the domicile status of the person adding the assets to the trust rather than the domicile of the settlor at the time when the settlement was first created.

Clause 73: Transfers between settlements etc

Summary

1. This clause introduces legislation to provide that transfers between trusts are subject to additional excluded property tests.

Details of the clause

2. Subsection 1 introduces an amendment to the Inheritance Tax Act (IHTA) 1984 in relation to transfers between new settlements.

3. Subsection 2 inserts new section 81B (Excluded property: property to which section 80 applies) into IHTA 1984. New section 81B provides that, in relation to property to which section 80 IHTA 1984 applies, property which would otherwise be excluded property by virtue of section 48(3)(a) or (3A)(a) IHTA 1984 will only be regarded as excluded property if Condition A and B of the new provision are met. Conditions A and B relate to the domicile of the settlor of the first settlement when the property became comprised in that settlement.

4. Subsection 3 amends section 82 IHTA 1984. Its effect is to preserve the existing effect of section 82 in relation to property to which section 81(1) IHTA 1984 applies in cases where the property has ceased to be comprised in the first settlement before the date on which this Act is passed or in cases where, although the property ceases to be comprised in the first settlement after that date, the transfer results from the assignment by a beneficiary of an interest in the settlement or the exercise of a general power of appointment before the date on which this Act is passed.

5. Subsection 4 inserts new section 82A (Excluded property: property to which section 81 applies (new cases)) into IHTA 1984. New section 82A provides that where property moves between settlements and would otherwise be excluded property by virtue of section 48(3)(a) or (3A)(a) IHTA 1984 it will only be regarded as excluded property if the "non-domicile" condition of the new provision is met in relation to each qualifying transfer. The provision applies both in cases where property is treated as remaining in the first settlement by virtue of section 81 IHTA 1984 following one or more transfers and in cases where the property is actually transferred back to the first settlement.

6. New subsection 82A(4) explains that a qualifying transfer is an occasion on which section 81 IHTA 1984 applies or any later transfer of the same property between settlements to which Chapter 3 of Part 3 IHTA 1984 applies.

7. New subsection 82A(5) provides that a transfer which occurs as a result of an assignment or an exercise of a general power of appointment will not be a qualifying transfer unless the assignment or exercise is on or after the date this Act is passed.

8. New subsection 82A(6) sets out the non-domicile condition. The non-domicile

condition relates to the domicile and formerly domiciled resident status of the person who was the settlor of the property in relation to the first settlement (except in cases where the qualifying transfer results from an assignment by a beneficiary of an interest in a settlement or an exercise of a general power of appointment). In those cases, it relates to the domicile and formerly domiciled resident status of the beneficiary or the person who exercised the general power of appointment.

9. New subsection 82A(7) provides that the non-domicile condition is treated as met in cases where the qualifying transfer occurs after the death of the settlor (and does not occur as a result of an assignment or exercise of a general power of appointment).

10. New subsection 82A(8) provides that a reference to a qualifying transfer which occurs as a result of an assignment or an exercise of a general power of appointment includes a transfer occurring partly as a result of the assignment or exercise.

11. New subsection 82A(9) provides that a reference to an assignment includes an assignation, the corresponding term used in Scotland.

12. Subsection 5 provides that in relation to any Inheritance Tax charge on or after the commencement of the Act, the amendments made by subsections 2 and 3 are treated as always having been in force.

Background note

13. This change introduces revised tests to determine the excluded property status of property transferred between trusts. It will now depend on the current domicile of the settlor (or other person) that caused the property to move to the other trust

Clause 74: Relief for victims of persecution during Second World War era

Summary

1. This clause provides that one-off compensation payments of €2,500 made to eligible survivors under the Kindertransport Fund will not be subject to Inheritance Tax. The clause will include the Kindertransport Fund payments in the list of qualifying compensations payments for World War II era claims. The clause has effect in relation to deaths occurring on or after 1 January 2019.

Details of the clause

2. Paragraph 2 inserts the Kindertransport Fund into Part 1 of Schedule 5A to Inheritance Tax Act (IHTA) 1984. Schedule 5A lists the qualifying compensation payments that are not subject to Inheritance Tax under Section 153ZA IHTA 1984 applies.

3. Paragraph 3 provides that the clause will have effect in relation to deaths occurring on or after 1 January 2019. This is the date the scheme opened for claims and ensures that survivors who die before Royal Assent will still be entitled to the relief.

Background note

4. Under the existing IHT rules, compensation or ex-gratia payments, or the rights to those payments, increase the value of a person's chargeable estate at death and would form part of the claimant's estate for IHT purposes.

5. Section 153ZA provides that certain qualifying compensations payments in relation to compensation payments for personal hurt suffered during World War II era are not subject to Inheritance Tax.

Clause 75: Stamp duty: transfers of unlisted securities and connected persons

Summary

1. This clause extends the Stamp Duty market value rule to the transfer of unlisted securities to connected companies. The clause will apply only where there is an issue of shares by way of consideration. The clause will be introduced in the Finance Bill 2020 and will have effect for instruments executed on or after Royal Assent. Related changes are made by clauses 76 and 77.

Details of the clause

2. Clause 75 inserts a new section 47A into the Finance Act 2019.
3. New subsection 47A(1) sets out the three conditions which if met, will mean that new subsection 47A(3) will apply.
4. New subsection 47A(1)(a) sets out the first condition. This is that there is an instrument which transfers "unlisted securities" to a company or its nominee for consideration.
5. New subsection 47A(1)(b) contains the second condition. This is that the person transferring the securities is connected with the company or is the nominee of a person connected with that company.
6. New subsection 47A(1)(c) defines the third condition. This is that some or all of the consideration for the transfer consists of the issue of shares.
7. New subsection 47A(2) defines the term "unlisted securities" for this new section 47A. It means stock or marketable securities that are not listed securities within the meaning of section 47 of the Finance Act 2019.
8. New subsection 47A(3) provides that, where section 47A applies, the amount or value of the consideration for the transfer is the greater of the amount or value of the consideration for the transfer or the value of the unlisted securities. This applies for the purposes of the enactments relating to stamp duty.
9. New subsection 47A(4) defines enactments relating to stamp duty. This is the Stamp Act 1891 and any enactment amending that Act or that is to be construed as one with that Act.
10. New subsection 47A(5) defines value for the purpose of new section 47A. It means the market value of the securities at the date the instrument is executed. "Market value" has the same meaning as in Taxation of Chargeable Gains Act 1992 and is to be determined in accordance with sections 272 and 273 of that Act (valuation).
11. New subsection 47A(6) provides that the definition of connected person given by

section 1122 of the Corporation Tax Act 2010 applies for the purpose of new section 47A. Section 1122 sets out a number of circumstances in which two persons will be connected.

12. New subsection 47A(7) provides for new section 47A to compliment and supplement any other provisions governing Stamp Duty as may be necessary for the Stamp Duty provisions to work as a whole.

13. New subsection 47A(8) provides for new section 47A to have effect in relation to instruments executed on and after the date on which the Finance Act 2020 is passed.

Background note

14. Where UK securities 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 agreements to transfer where the transfer will take place electronically. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where UK securities are transferred to a person who provides a clearance service or issues depositary receipts.

15. Section 47 of the Finance Act 2019 introduced a new Stamp Duty market value rule for listed securities transferred to connected companies. In these circumstances 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.

16. At Budget 2018 the government also consulted on the impacts of introducing a wider rule to prevent contrived arrangements involving the transfer of unlisted securities to connected companies.

17. This clause addresses these contrived arrangements by extending the Stamp Duty market value rule for listed securities to the transfer of unlisted securities to a connected company but only where there is an issue of shares by way of consideration.

Clause 76: SDRT: unlisted securities and connected persons

Summary

1. This clause extends the Stamp Duty Reserve Tax (SDRT) market value rule to agreements to transfer unlisted securities to connected companies. The clause will apply only where there is an issue of shares by way of consideration. The clause will be introduced in the Finance Bill 2020 and will have effect for agreements to transfer made on or after Royal Assent. A related change is made by clause 75.

Details of the clause

2. Clause 76 inserts a new section 48A into the Finance Act 2019.

3. New subsection 48A(1) sets out the two conditions which, if met, will mean that new subsection 48A(3) will apply.

4. New subsection 48A(1)(a) sets out the first condition. This is that a person is connected with a company, and the person or the person's nominee (i) agrees to transfer unlisted securities to the company or the company's nominee for consideration in money or money's worth or (ii) transfers such securities to the company or the company's nominee for consideration in money or money's worth.

5. New subsection 48A(1)(b) contains the second condition, which is that some or all of the consideration consists of the issue of shares.

6. New subsection 48A(2) defines the term "unlisted securities" for new section 48A. It means chargeable securities that are not listed securities within the meaning of section 48 of the Finance Act 2019.

7. New subsection 48A(3) defines the amount or value of the consideration for the purpose of tax chargeable under section 87 of the Finance Act 1986 where new section 48A applies. It means the greater of the amount or value of the consideration for the transfer or the market value of the unlisted securities at the time the agreement is made.

8. New subsection 48A(4) provides for new subsection 48A(5) to have effect for the purposes of SDRT chargeable under section 93 of the Finance Act 1986 (depositary receipts) or section 96 of that Act (clearance services).

9. New subsection 48A(5) provides that if the amount or value of the consideration for any transfer of unlisted 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.

10. New subsection 48A(6) defines value for the purposes of new section 48A. It means

the market value of the securities. "Market value" has the same meaning as in the Taxation of Chargeable Gains Act 1992 and is to be determined in accordance with sections 272 and 273 of that Act (valuation).

11. New subsection 48A(7) provides that the definition of connected person given by section 1122 of the Corporation Tax Act 2010 applies for the purposes of new section 48A. Section 1122 sets out a number of circumstances in which two persons will be connected.

12. New subsection 48A(8) provides for new section 48A to be construed as one with Part 4 of the Finance Act 1986.

13. New subsection 48A(9) provides for commencement of the effect of new section 48A. New section 48A will have effect—

(a) in relation to the charge to tax under section 87 of the Finance Act 1986 where—

(i) the agreement to transfer securities is conditional and the condition is satisfied on or after the day on which the Finance Act 2020 is passed, or

(ii) in any other case, the agreement is made on or after the day on which the Finance Act 2020 is passed;

(b) in relation to the charge to tax under section 93 or 96 of that Act, where the transfer is on or after the day on which the Finance Act 2020 is passed (whenever the arrangement was made).

Background note

14. Where UK securities are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or SDRT on agreements to transfer where the transfer will take place electronically. The rate is 0.5% in both cases. A higher Stamp Duty or SDRT 1.5% rate applies where UK securities are transferred to a person who provides a clearance service or issues depositary receipts.

15. Section 48 of the Finance Act 2019 introduced a new SDRT market value rule for agreements to transfer listed securities to connected companies. In these circumstances 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.

16. At Budget 2018 the government also consulted on the impacts of introducing a wider rule to prevent contrived arrangements involving the transfer of unlisted securities to connected companies

17. This clause addresses these contrived arrangements by extending the SDRT market value rule for listed securities to agreements to transfer unlisted securities to a connected company but only where there is an issue of shares by way of consideration.

Clause 77: Stamp duty: acquisition of target company's share capital

Summary

1. This clause amends section 77A of the Finance Act 1986 so that an arrangement for a change of control of an acquiring company will not prevent a taxpayer obtaining relief under section 77 of the Finance Act 1986, provided certain conditions are met. The clause will be introduced in the Finance Bill 2020 and will have effect for instruments executed on or after Royal Assent. A related change is made by clause 75.

Detail of the clause

2. Subsection (1) amends section 77A of the Finance Act 1986 as follows.

3. Subsection (2) provides that a person who has held at least 25% of the issued share capital of the target company at all times during the relevant period is not within paragraph (a) or (b) of subsection 77A(2) of the Finance Act 1986. This means that relief under section 77 of the Finance Act 1986 will not be lost if they are to obtain control of the acquiring company.

4. Subsection (3) inserts new subsection 77A(2A) into section 77A of the Finance Act 1986. This provides that the "relevant period" is the period of 3 years ending immediately before the time at which the shares in the acquiring company are issued (or first issued) as consideration for the acquisition.

5. Subsection (4) consequentially amends subsection (3) of section 77A of the Finance Act 1986 by omitting the word `But` in subsection (3).

6. Subsection (5) inserts new subsections (5A) and (5B) into section 77A of the Finance Act 1986.

7. New subsection 77A(5A) enables the Treasury to use regulations to amend subsection (2) or new (2A) to alter the percentage or length of the period for the time being specified there.

8. New subsection 77A(5B) provides for the power to make regulations under new subsection (5A) to be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

9. Subsection (6) provides for amendments made by this section to have effect instruments executed on or after the day on which the Finance Act 2020 is passed.

Background note

10. Where UK securities are transferred by paper instruments or documents, the transaction is subject to Stamp Duty. The rate is 0.5%. A higher Stamp Duty rate applies where UK securities are transferred to a person who provides a clearance service or issues depositary receipts.

11. Section 77 of the Finance Act 1986 provides relief on instruments transferring shares in one company (the target company) to another company (the acquiring company) where the acquiring company issues shares as consideration for the transfer to all the shareholders of the target company.

12. Section 77A of the Finance Act 1986 ensures that no relief under section 77 will be available where arrangements are in existence at the time the instrument is executed for a change of control of the acquiring company.

13. A partition demerger is a type of reorganisation which can involve a change of control of the acquiring company. Where no section 77 relief is available a Stamp Duty double charge currently arises on these partition demergers. This clause prevents this from happening provided the conditions are met.

Clause 78: Call-off stock arrangements

Summary

1. This clause transposes into United Kingdom ("UK") law Article 1(1), 1(4) and 1(5) of Council Directive (EU) 2018/1910, which provides for a simplified VAT treatment of call-off stock, by amending the Value Added Tax Act 1994 (VATA) and the Value Added Tax Regulations 1995 (S.I. 1995/2518) (the VAT Regulations). The new rules apply to goods removed from the "origin State" to the "destination State", that is, from the UK to a Member State or vice-versa on or after 1 January 2020, so that the legislation has a retrospective element.

Details of the clause

2. Subsection 1 provides that amendments are made to VATA, as specified by subsections (2) to (6).

3. Subsection 2 inserts new section 14A to VATA which gives effect to new Schedule 4B.

4. Subsection 3 amends section 69 to VATA, to provide for a penalty under section 69(1) for breach by the customer of its obligations in respect of making records in a register under paragraph 9(1) or 2(a) of Schedule 4B, and a penalty under section 69(2) for the supplier's or customer's failure to preserve the register as required by paragraph 8 or 9(2)(b) of Schedule 4B.

5. Subsection 4 amends paragraph 6 of Schedule 4 to VATA to make it subject to new Schedule 4B

6. Subsection 5 inserts a new Schedule 4B to VATA which sets out the conditions under which the new rules for call-off stock will apply and the treatments which will apply under those rules.

7. Subsection 6 amends paragraph 6(1) of Schedule 6 to VATA to apply the valuation rules in that paragraph to deemed supplies made under paragraph 4(2)(a) or 5(2)(a) of Schedule 4B.

8. Subsection 7 provides for amendments to the VAT Regulations as specified by subsections (8) to (10).

9. Subsection 8 amends regulation 21 of the VAT Regulations, providing for the meaning of the removal of goods from the UK under call-off stock arrangements, the customer, the destination State and call-off stock goods.

10. Subsection 9 inserts new regulation 22ZA after regulation 22 of the VAT Regulations.

11. Subsection 10 makes amendments to regulation 22B of the VAT Regulations, so that the provisions of regulation 22B as to submission of EC Sales statements ("statements") also apply to statements submitted under regulation 22ZA.

Statements to be submitted in respect of periods ending on the same day under regulations 22 to 22ZA may be submitted on a single form, and may be submitted on paper or via an online portal. The time limit for statements submitted via an online portal is 21 days from the end of the period to which it relates, and in other cases, is 14 days from the end of the period to which it relates.

12. Subsection 11 provides that regulation 22ZA of the VAT Regulations is to be treated as having been made under paragraph 2(3) of Schedule 11 to VATA for the purposes of section 65 and 66 of VATA. This makes the provisions relating to inaccuracies in statements and the failure to submit statements apply to statements submitted under regulation 22ZA of the VAT Regulations.

New Schedule 4B to VATA

13. Paragraph 1 sets out in sub-paragraph (1) the conditions for the application of Schedule 4B and sub-paragraph 2 defines "destination State" and "origin State". In summary the Schedule applies where on or after 1 January 2020, the supplier removes goods from the origin State to the destination State, with a view to their later supply to the customer in the destination State. At the time of removal the conditions require that there is an agreement between the supplier and customer for the customer to take ownership of the goods, the supplier does not have a business establishment or other fixed establishment in the destination State, the customer is VAT registered in the destination State and the supplier knows the customer's VAT number. The conditions require that the removal is recorded in a call-off stock register kept by the supplier and additional information is reported by the supplier on its statement.

14. Paragraph 2 provides that the removal of call-off stock from the origin State is not to be treated by paragraph 6(1) of Schedule 4 to VATA as a supply of goods by the supplier.

15. Paragraph 3 sets out in sub-paragraph (1) the conditions for the application of the rules in sub-paragraph (2) about the treatment of the call-off of the goods by the customer. Those rules apply if the supplier transfers the goods to the customer within 12 months of arrival in the destination State and no relevant event (defined in paragraph (7)) has occurred to trigger an earlier deemed supply of the goods. The rules in sub-paragraph (2) are that the supplier is deemed to make a supply of the goods in the origin State which involves the removal of the goods from the origin State and for which the consideration for the transfer of the goods to the customer was given. The customer is deemed to make an acquisition of the goods in the destination State.

16. Paragraph 4 provides for the consequences of a relevant event (paragraph (7)) which occurs within 12 months of arrival of the goods in the destination State where the goods have not been previously transferred to the customer. If there is such a relevant event, the supplier is deemed to make a supply of the goods in the origin State which involves the removal of the goods from the origin State and to make an acquisition of the goods in the destination State.

17. Paragraph 5 provides for the consequences of the goods not being transferred to the customer within 12 months of arrival in the destination State where no relevant

event has occurred. The consequences are that the supplier is deemed to make a supply of the goods in the origin State which involves the removal of the goods from the origin State and to make an acquisition of the goods in the destination State.

18. Paragraph 6 permits the supplier to return the goods to the origin State within 12 months of first arriving in the destination State, without triggering a supply and acquisition of the goods by the supplier under paragraphs 4 or 5. This is conditional on the supplier updating its call-off stock register accordingly.

19. Paragraph 7 provides in sub-paragraph (1) that a relevant event occurs when:

a) the supplier intends to supply the goods to a person other than the customer (subject to sub-paragraph (2), concerning the substitute customer);
b) the supplier intends to supply the goods to the customer in a place other than the destination State;
c) the supplier establishes a business establishment or another fixed establishment in the destination State;
d) the customer ceases to be VAT registered in the destination State;
e) the supplier removes the goods from the destination State to take them to a country other than the origin State; or
f) the goods are destroyed, lost or stolen.
Paragraph 7(2) allows the supplier to decide to supply the goods to another person ("the substitute customer") instead of the customer without the substitution being a relevant event under paragraph 7(1)(a). This is conditional on the substitute customer being registered for VAT in the destination State at the time of the decision, on the supplier recording the substitution in its call-off stock register and on the supplier reporting the substitution in its statement. Paragraph 7(3) requires that Schedule 4B be read, in cases where paragraph 7(2) applies, as though references to the customer were to the substitute customer. Paragraph 7(4) contains rules which determine when the goods are deemed to be destroyed, lost or stolen if that date is unknown.

20. Paragraph 8 requires that where the origin State is the UK, the supplier preserve the call-off stock register for a period not exceeding 6 years specified by the Commissioners for HM Revenue and Customs ("Commissioners") in writing.

21. Paragraph 9 requires that where the destination State is the UK, the customer keep a call-off stock register containing the information specified in Article 54A(2) of Council Implementing Regulation (EU) No 282/2011 and preserve it for a period not exceeding 6 years specified by the Commissioners in writing.

New regulation 22ZA

22. Paragraph 1 requires that a statement must be submitted by a supplier in respect of the removal of call-off stock from the UK under call-off stock arrangements, the return of call-off stock to the UK within 12 months of arrival in the destination State, and the substitution of a customer.

23. Paragraph 2 provides that the statement must be made in the form specified in a notice published by the Commissioners and must contain the information about the events referred to in paragraph (1) specified in a notice published by the Commissioners. It also provides that the statement must contain a declaration that

the information provided is true and complete

24. Paragraph 3 provides for the period in respect of which a statement must be submitted, applying the provisions of paragraphs (3), (4) and (6) of regulation 22 of the VAT Regulations to determine the relevant period, with consequential modifications as to how those paragraphs should be applied.

25. Paragraph 4 requires that in determining the period in respect of which a statement must be submitted, the removal of goods from the UK under call-off stock arrangements is taken to occur when the goods are removed from the UK and not when the removal is recorded in the call-off stock register.

Background note

26. Call-off stock refers to goods removed by a supplier from an origin State to a destination State where, at the time of the removal of the goods, the supplier knows the identity of the customer to whom these goods will be supplied ("called-off") after they have arrived in the destination State.

27. Currently this gives rise to a deemed supply and acquisition of the of the goods by the supplier (in the destination State), followed by a 'domestic' supply to the customer which requires the supplier to register for VAT purposes in the destination State. To avoid this, the new rules implemented by this clause provide that, subject to conditions, the supply and acquisition is delayed till the goods are called-off.

28. The new arrangements are simplifications that businesses may use provided they fulfill the conditions. Where the conditions are not met the existing rules will apply.

29. The new rules should not ordinarily alter the total amount of VAT that is collected between compared to the existing rules. Rather they delay the time when the VAT must be brought into account on the transaction and remove any necessity for the supplier to become VAT registered and charge VAT in the destination State.

30. However, the new rules do require additional records to be kept and for additional reporting requirements on the part of the supplier. It is for that reason that the Government was keen to ensure that businesses could structure transactions to remain outside the scope of the new rules if businesses found them onerous.

Clause 79: Post-duty point dilution of wine or made-wine

Summary

1. This clause amends the Alcoholic Liquor Duties Act 1979 (ALDA) to introduce sanctions for post duty point dilution of wine or made-wine which, if carried out before the duty point, would have resulted in a higher amount of duty being payable. This change will come into force on 1st April 2020.

Details of the clause

2. Subsection (1) inserts a new section 55ZA into the Alcoholic Liquor Duties Act 1979 (ALDA). This section provides for penalty and forfeiture provisions to apply, when water or any other substance is mixed with or added to wine or made-wine after the excise duty point, where the amount of excise duty payable would have been greater if the addition had taken place before the duty point.

3. Subsection (2) provides for the change to be introduced with effect from 1 April 2020.

Background note

4. Budget 2018 announced that the government would legislate in Finance Bill 2020 to prevent the practice of diluting wine and made-wine products after the excise duty point, i.e. when the excise duty due has been calculated.

5. Wine and made-wine are taxed in broad strength bands. Calculating the duty and then increasing volume and reducing strength by dilution after the duty point, means that the amount of duty payable on the undiluted wine or made-wine can be less than that which would be calculated on the larger volume of the diluted final product.

6. There is currently no legislation to prevent the practice. Introducing new sanctions for anyone carrying out post duty point dilution will have a prohibitive effect. These will come into force from 1 April 2020.

Clause 80: Rates of tobacco products duty

Summary

1. Clause 80 provides for changes to the rates of excise duty on tobacco products (cigarettes; cigars; hand-rolling tobacco; other smoking tobacco and chewing tobacco; and tobacco for heating) and to the Minimum Excise Tax (MET) on cigarettes. These changes are to have effect from 6pm on 11 March 2020.

Details of the clause

2. Subsection (1) amends Tobacco Products Duty Act 1979

3. 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 £228.29 per thousand cigarettes to £237.34 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 £293.95 to £305.23per 1000 cigarettes.
   - Cigars – The duty rate on cigars is increased from £284.76 to £296.04 per kilogram;
   - Hand rolling tobacco – The duty rate on hand-rolling tobacco is increased from £234.65 to £253.33 per kilogram;
   - Other smoking tobacco and chewing tobacco – The duty rate on other smoking tobacco and chewing tobacco is increased from £125.20 to £130.16 per kilogram;
   - Tobacco for heating – The duty rate on tobacco for heating is increased from £234.65 to £243.95 per kilogram.

4. Subsection (3) provides for a new table containing duty rates and the MET to have effect from 6pm on 11 March 2020.

Background note

5. 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.

6. 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 2020. The excise duty rate for hand-rolling tobacco is increased by an additional 4%. The clause also increases the MET on cigarettes from £293.95 to £305.23 per 1000 cigarettes.

7. These duty increases, together with consequential VAT, will on average increase the price of a packet of 20 cigarettes by 27p, a 30 gram pack of hand-rolling tobacco by 67p, 10 grams of cigars by 14p and a 30 gram pack of pipe tobacco by 18p.

8. 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 81: Rates for light passenger or 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 2020.

Details of the clause

2. Subsection (2) amends paragraph 1(2) of Schedule 1 to VERA to change rates of vehicles first registered before March 2001 with an engine capacity exceeding 1,549cc to increase the duty rate by £5. 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. This reduced rate applies to alternatively fueled light passenger vehicles, including those powered by bioethanol and liquid petroleum gas and hybrids.

4. Subsection (4) amends paragraph 1B of Schedule 1 to VERA in the sentence immediately following the table, to substitute for paragraphs (a) and (b), "(a) in column (3), in the last rows, "320" were substituted for "555" and "570", and (b) in column (4), in the last two rows, "330" were substituted for "565" and "580".

5. Subsection (5) amends paragraphs 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.

6. Subsection (6) amends paragraph 1GC of Schedule 1 to VERA to change rates on the first licence for higher rate diesel light passenger vehicles first registered on or after 1 April 2017.

7. Subsection (7) amends paragraph 1GD(1) 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 increases by £5 to £140 per annum. The standard rate of duty increases by £5 to £150 per annum.

8. Subsection (8) amends paragraph 1GE(2) of Schedule 1 to VERA to change the rates for light passenger vehicles with a list price exceeding £40,000 registered on of after 1 April 2017. In paragraph (a) the rate increases by £25 to £465 and in paragraph (b) the rate increases by £25 to £475.

9. Subsection (9) amends paragraph 1(J) 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 £260 to £265. The rate of duty for light goods vehicles first increased between 1 January 2009 and 31 December 2010 is unchanged at £140.

10. Subsection (10) amends paragraph 2(1) of Schedule 1 to VERA to change rates for motorcycles weighing no more than 450 kilograms unladen. The range of duty increased by £1 to £44 for motorcycles with an engine size of over 150cc but not more than 400cc; by £1 to £67 for motorcycles with an engine size of over 400cc but not more than 600cc; and by £2 to £93 for motorcycles with an engine size of over 600cc, motor tricycles with an engine size over 150cc and trade licences for motorcycles.

Background note

11. 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, fuel type and CO_2 emissions data. In general:

    a. cars and vans first registered prior to March 20001, 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 and fuel type

    d. cars registered on or after 1 April 2017 pay VED based on CO_2 emissions and fuel type when first licensed, followed by a standard rate for subsequent licenses.

Clause 82: Applicable CO_2 emissions figure determined using WLTP values

Summary

1. The government announced at Budget 2017 it would introduce a new regime for calculating a car's CO_2 emissions, known as the Worldwide Harmonised Light vehicles Test Procedure (WLTP). This will apply to all cars first registered from 6 April 2020 onwards and replaces emissions testing under the New European Driving Cycle (NEDC). This clause provides for a number of amendments to Schedule 1 to the Vehicle Excise and Registration Act (VERA) 1994 in order to facilitate implementation of the new regime.

Details of the clause

2. Subsection (1) provides amendments to various paragraphs of Schedule 1 to VERA 1994 (annual rates of duty), for example, the meaning of "the applicable CO_2 emissions figure. In paragraph 1GA(5), paragraph (a) makes a minor amendment to subparagraph (a).

3. Paragraph (b) amends subparagraph (b), which relates to ignoring WLTP values, in (i) to refer to vehicles first registered before 1 April 2020; in (ii) to amend the definition of WLTP to align with that used by various regulatory bodies in the UK; and in (iii) to allow figures from a UK approval certificate to be used.

4. Paragraph (c) introduces new paragraph (c) which provides that for vehicles first registered on or after 6 April 2020, WLTP values may not be ignored.

5. Subsection (2) provides that these changes have effect in relation to licences taken out on or after 6 April 2020.

Background note

6. From 1 September 2017, a new emissions test procedure was introduced (WLTP). All EC certificates of conformity or UK approval certificates for new cars now show CO_2 emissions figures based upon the WLTP test procedure, in addition to those based upon the existing methodology (NEDC).

7. Schedule 1 to VERA 1994 provides the legislation for annual rates of duty. This clause makes a number of amendments to facilitate the implementation of the WLTP regime.

Clause 83: Light passenger vehicles with low CO2 emissions – extension of exemption

Summary

1. This clause will amend the Vehicle Excise and Registration Act 1994 (VERA) to exempt all registered zero-emission light passenger vehicles registered from 1 April 2017 from the Vehicle Excise Duty (VED) supplement for light passenger vehicles with a list price exceeding £40,000, when their licence is renewed on or after 1 April 2020.

Details of the clause

2. Subsection (2) amends paragraph 25 of Schedule 2 to VERA to omit sub-paragraphs (5) and (6) so that light passenger vehicles with zero CO_2 emissions are exempt from the VED supplement for vehicles with a list price exceeding £40,000.
3. Subsection (3) amends Part 1AA of Schedule 1, the annual rates of duty for light passenger vehicles registered from 1 April 2017.
4. Subsection (4) amends paragraph 1GB of Part 1AA of Schedule 1 of VERA, on rates of duty at first vehicle license, by omitting "(2) or" in sub-paragraph (1) and sub-paragraph (2).
5. Subsection (5) amends paragraph 1GD, on rates of duty payable after first licensing, in sub-paragraph (2) to omit "or (4)".
6. Subsection (6) amends paragraph 1GE, on the VED supplement for vehicles with a list price exceeding £40,000, to omit sub-paragraphs (3) and (4) and replace "sub-paragraphs (2) and (4) do" with "sub-paragraph (2) does" in sub-paragraph (5).
7. Subsection (7) amends paragraph 1GF, on calculating the list price of the vehicle to omit "and (3)(a)".
8. Subsection (8) provides that the amendments made by this section come into force on 1 April 2020 but do not apply in relation to licenses in force immediately before that date.

Background note

9. Since 1 April 2017, the VED system for new cars bases first licences on carbon dioxide (CO_2) bands and fuel type. 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.
10. As announced at Budget 2020, to incentivize the uptake of zero-emission light

passenger vehicles by reducing their VED liabilities, from 1 April 2020 the Government will exempt all zero-emission vehicles registered until 31 March 2025 from the VED expensive car supplement for vehicles with a list price exceeding £40,000.

Clause 84: Motor caravans

Summary

1. This clause provides for new motor caravans which are M1SA type-approved to be taxed in the Private/Light Goods or Private HGV VED class from 12 March 2020. Motor caravans first registered on or after 12th March 2020 will no longer need to provide their CO_2 emissions figure when they register the vehicle.

Details of the clause

2. This clause amends Part 1AA of Schedule 1 of the Vehicle Excise and Registration Act 1994 (VERA 1994) to ensure new motor caravans are included in the Private/Light Goods or Private HGV VED class from 12 March 2020, by amending paragraph 1GA which relates to vehicles which Part 1AA applies to.

3. M1SA vehicles are defined as motor caravans in Part A of Annex II to Directive 2007/46/EC. The minimum requirement is that a motor caravan includes seats and a table; sleeping accommodation; and cooking and storage facilities.

4. Subsection (2) inserts after sub-paragraph (1) of 1GA a clause which states ' (1A) But this Part of this Schedule does not apply to a motor caravan which is first registered, under this Act or under the law of a country or territory outside the United Kingdom on or after 12 March 2020'.

5. Subsection (3) inserts after sub-paragraph (2) of 1GA a clause which states '(2A) For the purposes of sub-paragraph (1A) a vehicle is a "motor caravan" is the certificate mentioned in sub-paragraph (1)(b) identifies the vehicle as a motor caravan within the meaning of Annex II to Directive 2007 / 46/ EC".

Background note

6. As announced at Budget 2020, the Government will change to VED treatment of new motor caravans to ensure that those with the latest engine technology do not attract significant VED increases as a result of Commission Regulation (EU) 2018/1832. This requires any multi-stage build, including those type approved M1SA, to record the carbon dioxide (CO_2) emissions and fuel consumption on their certificate of conformity.

7. Then, from 1st April 2021, VED for new motor caravans will be aligned with the Light Goods Vehicle VED class, which will be based on CO_2 emissions from 1st April 2021, to incentivize the uptake of lower-emission motor caravans.

Clause 85: Exemption in respect of medical courier vehicles

Summary

1. This clause exempts purpose-built vehicles used by medical courier charities, commonly referred to as Blood Bikes, from Vehicle Excise Duty (VED).

Details of the clause

2. Subsection (1) and (2) state that Schedule 2 to the Vehicle Excise and Registration Act (1994) VED will be amended. Schedule 2 specifies those vehicles which are exempt from VED.

3. Subsection (3) sets out the criteria for the VED exemption. Vehicles must meet all the following criteria:

   a. Is primary used to transport medical products

   b. Is readily identifiable as a vehicle used to transport medical products by being marked with the word 'Blood' on both sides

   c. The vehicle is registered to a charity whose main purpose is to provide transportation for medical items

   Subsection (3) also specifies that a 'charity' is defined by paragraph 1 of Schedule 6 to the Finance Act 2010. Medical items are defined as: blood, medicines and other medical supplies, or items relating to people undergoing medical treatment.

4. Subsection (4) specifies that the VED exemption will enter into effect from 1 April 2020.

Background note

5. It was announced at Budget 2018 that, from 1 April 2020, vehicles used by medical courier charities, would become exempt from VED. Medical courier charities own purpose-built vehicles used by volunteers to transport medical items, predominantly between hospitals. Around 40 charities will benefit from this exemption.

6. This clause aligns the VED treatment of eligible vehicles with emergency vehicles such as police vehicles, fire engines and ambulances.

Clause 86 and Schedule 10: Rebated fuel: private pleasure craft

Summary

1. This clause and Schedule provide the means to disallow the use of rebated fuel (red diesel) to propel private pleasure craft using secondary legislation. It follows a Court of Justice of the European Union (CJEU) judgment in 2018 that it is contrary to the Fuel Marker Directive for the UK to allow red diesel to propel private pleasure craft, even though the user of the fuel pays their supplier the duty differential between the rates for red diesel and white diesel on the amount used to propel their craft.

Details of the Clause

2. This clause introduces Schedule 10.

Details of the Schedule

3. Paragraph 1 provides for the Hydrocarbon Oil Duties Act 1979 (HODA) to be amended in paragraphs 2 to 14 of this schedule.

4. Paragraph 2 amends the reference to section 14B contained within section 6AB(4A) of HODA to reflect its amended heading.

5. Paragraph 3 amends section 12 of HODA to disallow the rebate on fuel for propelling private pleasure craft and to make provisions relating to the use of fuel in, or taking in of fuel to, a private pleasure craft, and defining “private pleasure craft” by reference to section 14E.

6. Paragraph 4 amends the definition of “prohibited use” in section 13ZB(5) of HODA to include fuel for propelling private pleasure craft.

7. Paragraph 5 defines “private pleasure craft” in section 14A of HODA by reference to the definition in section 14E.

8. Paragraph 6 amends section 14B of HODA to disallow the rebate on bioblend fuel used for propelling a private pleasure craft.

9. Paragraph 7 amends section 14C of HODA to exclude private pleasure craft from the ability to use rebated biodiesel and bioblend upon payment of the rebate.

10. Paragraph 8 replaces section 14E of HODA with a new section 14E ‘Restrictions on use of certain fuel for private pleasure craft’. This defines “restricted fuel” as being rebated fuel, or marked oil which is not rebated fuel, and provides that restricted fuel must not be used as fuel for propelling a private pleasure craft. It also defines the term “private pleasure craft” and provides the Treasury with a power to make

regulations to provide for cases in which a vessel is treated as not being a private pleasure craft.

11. Paragraph 9 replaces section 14F of HODA with a new section 14F ‘Penalties for contravention of section 14E’. This provides for assessment of duty, penalties, offences, and forfeiture of fuel where the conditions imposed by section 14E are contravened.

12. Paragraph 10 amends section 20AAA(4)(a) of HODA to ensure that mixtures of fuel used for propelling private pleasure craft are charged at the correct rate.

13. Paragraph 11 inserts a new subsection (3A) into section 24 of HODA to disapply the presumption that marked oil found in the propulsion system of a private pleasure craft has been irregularly obtained where the Commissioners are satisfied that marked fuel has been legitimately taken on-board in other jurisdictions.

14. Paragraph 12 amends section 27(1) of HODA to define “private pleasure craft” by reference to section 14E.

15. Paragraph 13 amends Schedule 4 to HODA to extend the regulation-making provisions currently applying to “vehicles” to “vessels” and adds floating structures to the definition of “premises”.

16. Paragraph 14 amends Schedule 5 to HODA to extend the ability to sample fuel in “vehicles” to include the fuel in “vessels” and adds floating structures to the definition of “land”.

17. Paragraph 15 amends Schedule 7A to the Value Added Tax Act 1994 to remove a redundant reference in Note 1(3)(b) to oil in which a relevant declaration has been made under the previous version of section 14E(3) of HODA (use of rebated heavy oil for private pleasure craft).

18. Paragraph 16 amends Schedule 41 to Finance Act 2008 (FA 2008) to reflect the substitution of new section 14F of HODA.

19. Paragraph 17 amends paragraph 6 of Schedule 9 to the Taxation (Cross Border Trade) Act 2018 to preserve the current definition of “private pleasure craft”.

20. Paragraph 18 provides for the Treasury to set a commencement date, or dates, for paragraphs 1-17 by regulations.

21. Paragraph 19 provides that different days may be appointed for different purposes or areas.

22. Paragraph 20 covers transitional, transitory or saving provisions.

23. Paragraph 21 allows the Treasury to make regulations to amend any enactment that they consider appropriate as a result of any of paragraphs 1 to 17 coming into force.

24. Paragraph 22 deals with the procedure for making regulations under paragraph 21.

25. Paragraph 23 provides that any power to make regulations under this Schedule is exercisable by statutory instrument.

Background note

26. This measure is designed to provide the means to implement the 2018 judgment of the Court of Justice of the European Union (CJEU) in case C-503/17 in order to meet our international obligations.

27. Historically, the UK has charged two rates of duty on diesel fuel and biofuel: the full rate (currently 57.95 pence per litre (ppl)) on road fuel, and the rebated rate (currently 11.14 ppl) for other uses. The rebated fuel (commonly referred to as "red diesel") is marked with various chemicals, including a red dye to enable misuse to be detected. Red diesel is currently used in commercial craft and in private pleasure craft. EU Member States also charge two (or more) rates of duty on diesel depending on use.

28. Until 2007, the UK benefited from a derogation to the EU's Energy Taxation Directive which allowed private pleasure craft to use fuel at the rebated rate. Upon expiry of the derogation in 2007, in order to comply with the Directive and mindful of difficulties expressed at that time over the ability of fuel suppliers to supply both red diesel for commercial craft and unmarked (white) diesel for private pleasure craft, the UK allowed private pleasure craft to continue to use red diesel upon payment of the duty differential between the rebated and full rate for diesel used to propel them.

29. In 2018, the CJEU ruled that the use of red diesel in this way to propel private pleasure craft breached the Fuel Marker Directive [95/60], a directive that is designed to ensure that any misuse of diesel crossing EU internal borders, or within member states, can be detected given the variation in duty treatment between member states.

30. Over summer 2019, the Government published a consultation, outlining how it intended to implement the CJEU judgment. The government will publish a response to the consultation later this year.

31. HODA 1979 has been amended many times since its introduction 40 years ago, including the introduction of new fuel definitions such as "biodiesel" made from crops, and "bioblend", a mixture of biodiesel with regular diesel. In putting private pleasure craft on a similar legislative footing to road vehicles, it has been necessary to amend many sections to ensure consistent treatment of these different fuel types.

32. Unlike road vehicles, it was also identified that some other jurisdictions (notably the Channel Islands which are not subject to the marking directive) continue to supply marked fuel to all vessels in accordance with their laws. Provisions have been made to allow for marked fuel obtained legitimately in this way to be present within the fuelling systems of private pleasure craft.

Clause 87: Rates of air passenger duty from 1 April 2021

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 £ 80 to £ 82)
    - Standard rates will rise by £ 4 (from £ 176 to £ 180)
    - Higher rates will rise by £ 13 (from £ 528 to £ 541)

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 2021.

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 2021.

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 2020 that APD rates for 2021 – 2022 would increase in line with inflation (based on the retail price index RPI)).

Clause 88: Amounts of gross gaming yield charged to gaming duty

Summary

1. This clause increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2020.

Details of the clause

2. Subsection 1 substitutes a new table for the existing table in section 11 (2) of the Finance Act 1997 which has the effect of increasing the gross gaming yield bands for gaming duty.

3. Subsection 2 provides for this change to have effect for accounting periods beginning on or after 1 April 2020

Background note

4. Gaming Duty is charged on any premises in the UK where dutiable gaming takes place. Dutiable gaming includes the playing of casino games such as roulette, baccarat, and blackjack. The amount of duty is calculated by reference to bands of GGY (i.e. gross profits) for that accounting period. For example, duty will be paid at a rate of 15 per cent on the first £2,471,000 of GGY, then 20 per cent for the next £1,703,500 of GGY, and so on. Gaming Duty is charged on premises in respect of accounting periods of six months, normally beginning on 1 April and 1 October.

5. The change made by this clause increases the GGY bands but makes no changes to the rates. This ensures that casino operators' profits are not subject to the higher gaming duty bands simply as a result of inflation. There is therefore no duty increase in real terms. The basis of revalorisation of the bands is the Retail Price Index (RPI). In this case the RPI was calculated at 1.96 per cent.

Clause 89: Rates of climate change levy until 1 April 2021

Summary

1. This clause amends the main rates of Climate Change Levy (CCL) with effect from 1 April 2020. It also amends the reduced rate percentages that apply to the main rates of CCL payable by participants in the Climate Change Agreement (CCA) scheme, also with effect from 1 April 2020.

Details of the clause

2. This clause amends paragraph 42 of Schedule 6 to the Finance Act 2000, which provides for the amount payable by way of CCL.

3. Subsection 2 substitutes a new table in paragraph 42(1) which sets out the rate at which the levy is payable for each taxable commodity if the supply is not a reduced-rate supply.

4. Subsection 3 amends paragraph 42(1)(ba) to set the rate of CCL for reduced-rate supplies of electricity. It inserts new sub-paragraph (bb) into paragraph 42(1) to set the rate of CCL for reduced-rate supplies of petroleum gas, or other gaseous hydrocarbon, in a liquid state. It amends paragraph 42(1)(c) to set the rate of CCL for other reduced-rate supplies.

5. Subsection 4 amends the Notes to paragraph 2 of Schedule 1 to the Climate Change Levy (General) Regulations 2001 to change the value of "r" in the formula that is used to calculate the reduced rate of CCL paid by businesses that participate in the CCA scheme.

6. Subsection 5 provides that the changes have effect in relation to supplies treated as taking place on or after 1 April 2020.

Background note

7. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use of energy in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases. Businesses that participate in the CCA scheme run by the Department for Business, Energy and Industrial Strategy pay reduced rates, expressed as a percentage of the full main rates of CCL, on the taxable commodities supplied to them.

8. Budget 2016 announced that, from 1 April 2019, rates would become subject to 'rebalancing' to reflect changes in the fuel mix used in electricity generation. The

increase in rates, from 1 April 2019, also sought to recover the tax revenues lost by closing the Carbon Reduction Commitment Energy Efficiency Scheme. Budget 2016 also announced that, alongside the rates increase from 1 April 2019, the reduced rates of CCL for qualifying businesses in the CCA scheme would be amended so that participants did not pay more in CCL than they would have if the rates were increased in line with the Retail Prices Index (RPI) as in previous years.

9. Budget 2017 announced that in order to ensure a better consistency between portable fuels in the off-gas grid market, the CCL rate for liquefied petroleum gas (LPG) would be frozen at the 2019-20 level in the years 2020-21 and 2021-22. For this reason, the reduced rate for LPG will remain set at 23 percent for the years 2020-21 and 2021-22.

10. Budget 2018 reaffirmed the government's commitment to continue with the rebalancing and the CCL rates with effect from 1 April 2020 reflect this. Budget 2018 also announced the amended reduced rates for 2020-21 would limit the impact on CCA scheme participants to an RPI increase similar to that in the year 2019-20.

Clause 90: Rates of climate change levy from 1 April 2021

Summary

1. This clause amends the main rates of Climate Change Levy (CCL) with effect from 1 April 2021. it also amends the reduced rate percentages that apply to the Climate Change Levy (CCL) main rates payable by participants in the Climate Change Agreement (CCA) scheme, also with effect from 1 April 2021.

Details of the clause

2. This clause amends paragraph 42(1) of Schedule 6 to Finance Act 2000, which provides for the amount payable by way of CCL.
3. Subsection 2 substitutes a new table in paragraph 42(1), which sets out the rate at which the levy is payable for each taxable commodity if the supply is not a reduced-rate supply.
4. Subsection 3 amends paragraph 42(1)(c) to set the rate of CCL for other reduced-rate supplies.
5. Subsection 4 amends the Notes to paragraph 2 to Schedule 1 of the Climate Change Levy (General) Regulations 2001 to change the value of "r" in the formula that is used to calculate the reduced rate of CCL paid by businesses that participate in the CCA scheme.
6. Subsection 5 provides that the changes have effect in relation to supplies treated as taking place on or after 1 April 2021.

Background note

7. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels). It promotes the efficient use of energy in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases. Businesses that participate in the CCA scheme run by the Department for Business, Energy and Industrial Strategy pay reduced rates, expressed as a percentage of the full main rates of CCL, on the taxable commodities supplied to them.
8. Budget 2018 announced the amended reduced rates for 2021 to 2022 would limit the impact on CCA scheme participants to an RPI increase.

Clause 91: Rates of landfill tax

Summary

1. This clause 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 2020. 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 £94.15 per tonne and the lower rate to £3.00 per tonne.

Details of the clause

2. Subsection (2) substitute "£91.35" to "£94.15" in sections 42(1)(a) of FA96.

3. Subsection (3) substitutes "£91.35" to "£94.15" and "£2.90" to "£3.00" in sections 42(2) of FA96.

4. Subsection (4) provides the commencement date for the change to the standard and lower rate of tax.

Background note

5. 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.

6. 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.

7. New legislation contained in the 2017 Finance Bill meant that, from 1 April 2018, the scope of Landfill Tax was extended to sites operating without the appropriate environmental disposal permit. Operators of such sites became liable for Landfill Tax at the standard rate for all disposals.

Clause 92 and Schedule 11: Carbon emissions tax

Summary

1. This clause introduces Schedule 11 which makes amendments to Part 3 of the Finance Act 2019 (FA2019) which established the Carbon Emissions Tax. If the Government decides to use the tax as its carbon pricing policy after the Transition Period (see paragraph 14 below), the tax would be commenced on 1 January 2021. The amendments in the Schedule include updating references to other legislation that has been amended since FA2019 received Royal Assent and adding provisions relating to penalties.

Details of the Clause

2. Clause 92 introduces Schedule 11.

Details of the Schedule

3. Paragraph 1 provides for Part 3 of FA2019 (Carbon Emissions Tax) to be amended.

4. Paragraph 2 amends section 73 FA2019, which deals with powers to set an emissions allowance, to clarify that these regulations may be made within the same year to which the emissions allowance will relate and can refer to data relating to times before the regulations are made.

5. Paragraph 3 amends section 70 FA2019 to allow the Treasury by regulations to exclude regulated installations of a specified description from the charge to tax.

6. Paragraph 4 amends section 75 FA2019 to clarify and expand the regulation making-power in that section. It allows for provisions to be made for: the imposition of civil penalties for failure to comply with a requirement of the regulations under Part 3 of FA2019; the review of, and a right of appeal against, a specified decision relating to Carbon Emissions Tax, not just decisions of a regulator; and the modification of domestic and EU regulations relating to the monitoring and regulation of emissions.

7. Paragraph 5 amends section 76(5) FA2019 to clarify that the consequential provision power in section 76(4) FA2019 may be used to modify the domesticised versions of certain EU legislation relating to the monitoring, reporting and verification of emissions, in addition to any enactment. This addresses the fact that the amendment to the definition of "enactment" in the Interpretation Act 1978 made by paragraph 22(d) of Schedule 8 to the European Union (Withdrawal) Act 2018 will have only been partially commenced at the time of introduction of the Bill,

8. Paragraph 6 amends the provisions of section 78 FA2019, which relate to regulations under Part 3 of FA2019. These changes clarify that functions or discretions may be

conferred on the Secretary of State or HM Revenue and Customs and ensure that regulators will be able to recover costs incurred in doing work connected with Carbon Emissions Tax, even if that work is done before the regulations are made. It also changes the procedure for consequential amendments to primary legislation from draft affirmative to made affirmative.

9. Paragraph 7 amends definitions in section 77 FA2019 (interpretation) to reflect changes in other legislation since FA2019 received Royal Assent and to include a definition of "modify" that supports the amendments to sections 75(3)(b) and 76(5) of FA2019.

10. Paragraph 8 amends section 79 FA2019 dealing with commencement and transitional provisions to ensure that supporting regulations may be made before the commencement of the tax and to remove provisions that are no longer required due to the changes to plans for when the tax would come into effect.

11. Paragraph 9 introduces a penalty for failure to make payment of tax to HMRC on time. This will be achieved by adopting the existing provisions on late payment penalties in Schedule 56 to the Finance Act 2009.

12. Paragraph 10 provides that the penalty for failure to make payments on time will be commenced by appointed day regulations if the tax were introduced.

Background note

13. A Carbon Emissions Tax was announced at Budget 2018, with legislation establishing it (but not commencing it) included in Finance Act 2019.

14. In line with the Withdrawal Agreement, the UK will remain in the EU Emissions Trading System (ETS) until 31 December 2020. As set out in the UK's Approach to Negotiations, the UK would be open to considering a link between any future UK Emissions Trading System (ETS) and the EU ETS, if it suited both sides' interests. In the event that there is no link agreed between a UK ETS and the EU ETS the UK would introduce an alternative carbon pricing policy. The Government is therefore preparing both a standalone emissions trading system and a Carbon Emissions Tax. Budget 2020 announced that legislation would be included in Finance Bill 2020 to: provide a charging power to establish a UK ETS linked to the EU ETS or a standalone UK ETS; and update the existing legislation relating to Carbon Emissions Tax. This Schedule amends Finance Act 2019 to ensure that the tax would be ready to be operational from at the end of the Transition Period, if needed.

15. UK permit holders operating stationary installations would be set a tax emission allowance and be taxed on all emissions that exceeded this allowance on a carbon equivalent basis. The first emissions reports would cover 1 January to 31 December 2021 and the tax would be collected by HMRC annually. It is intended that the bills relating to the first reports would be issued in summer 2022. The tax would rely on data supplied by taxable installations under existing (and continuing) emissions reporting arrangements.

16. The EU ETS, which was introduced in 2005, is a 'cap and trade' scheme designed to

set a price for carbon emissions to encourage their reduction. It applies to large emitters of greenhouse gases in the EU and includes rules determining how many free EU Allowances participants are allocated each year. Currently the EU ETS is in phase III which ends in 2020.

17. The EU ETS requires participants to obtain permits to emit and then to submit a report annually providing details of their activities across the previous calendar year, from which their emissions across the period are calculated. All greenhouse gas emissions are calculated on a carbon equivalent basis. The data on emissions will continue to be collected following the UK's departure from the EU.

18. Much of the existing legislation supporting the EU ETS would, under a Carbon Emissions Tax, continue to provide the legal basis for the monitoring, reporting and verification of emissions, and the permitting of installations. FA2019, as amended by this clause and Schedule, includes consequential amendment powers that may be used to make any necessary adjustments to this legislative base if Carbon Emissions Tax is needed as a carbon pricing policy at the end of the Transition Period.

19. The Government is considering long term options for carbon pricing following exit and undertook a 10-week consultation which closed on 12 July 2019. A consultation response will be published in due course.

20. A consultation on the more detailed arrangements for the tax will also take place in spring 2020 to inform statutory instruments that would be laid in late 2020 if the tax were to be introduced from 1 January 2021.

Clause 93: Charge for allocating allowances under emissions reduction trading scheme

Summary

1. This clause allows HM Treasury to make regulations which provide for the allocation of emissions allowances in return for payment under any future UK Emissions Trading System (UK ETS).

Details of the clause

2. Subsection 1 authorises HM Treasury to make regulations which provide for the allocation of emissions allowances in return for payment under an emissions reduction trading scheme.

3. Subsection 2 gives examples of matters that HM Treasury may make provision for in regulations made under subsection 1.

4. Subsections 3 & 4 authorise HM Treasury to make schemes which set out the detail of the conduct and terms of allocations in return for payment, in particular setting out who may participate, the allowances that may be allocated and when and where allocations are to take place.

5. Subsections 5-7 set out the procedure for making regulations under this clause.

6. Subsection 8 defines what is meant by "emissions allowance" and "trading scheme". Both terms are defined by reference to the Climate Change Act 2008, under which regulations for an emissions trading scheme may be made.

Background note

7. This clause provides the powers for HM Treasury to establish a UK Emissions Trading System (ETS). This means that emissions allowances can be auctioned in any future UK ETS, as defined in regulations.

8. In line with the Withdrawal Agreement, the UK will remain in the EU ETS until 31 December 2020. As set out in the UK's Approach to Negotiations, the UK would be open to considering a link between any future UK ETS and the EU ETS, if it suited both sides' interests.

9. As set out in a consultation on the Future of UK Carbon Pricing last summer, in the event that there is no link agreed between a UK ETS and the EU ETS then the UK would introduce an alternative carbon pricing mechanism. The Government is preparing both a standalone emissions trading system or a Carbon Emissions Tax, as possible alternatives.

10. At Budget 2020, it was announced that legislation would be included in Finance Bill 2020 both to provide a charging power to establish a UK ETS, which could be linked to the EU ETS, and to update the existing provisions relating to Carbon Emissions Tax.

11. This clause allows HM Treasury to make regulations which provide for the allocation of emissions allowances in return for payment in any future UK ETS.

12. 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. This charging clause is the power that allows for auctions to be conducted in any future UK ETS.

13. The clause also allows for the potential implementation of additional market stability mechanisms in a standalone UK ETS. As set out in the consultation, this could include a Cost Containment Mechanism (CCM) to respond to any significant short-term price spikes and an Auction Reserve Price (ARP). If implemented, the ARP would set a minimum price for which allowances can be sold at auction to provide a minimum carbon price signal.

14. A response to last summer's consultation on the Future of UK Carbon Pricing will be published over the coming months.

Clause 94: International trade disputes

Summary

1. This clause amends section 15 of the Taxation (Cross-border Trade) Act 2018. The amendment to Section 15 will enable the Secretary of State to vary the rate of import duty when a dispute or other issue has arisen between the UK Government and the government of another country after the UK Government has had regard to its international arrangements and considers it appropriate to do so.

Details of the clause

2. This clause amends section 15 of the Taxation (Cross-border Trade) Act (TCBTA) 2018. It does this by removing the requirement for 'authorisation' and replacing it with a requirement for HMG to consider it appropriate, after having regard to the requirements of s28 of the TCBTA 2018. The amendment will enable the UK to take any necessary action in the face of growing trade protectionism and challenges in the World Trade Organisation's dispute settlement system, whilst having regard to its international obligations in exercising this power.

Background note

3. Section 15 of the Taxation (Cross-border Trade) Act 2018 currently enables the Secretary of State to vary the rate of import duty when a dispute or other issue has arisen between the UK Government and the government of another country or territory, and the UK is authorised to do so under international law. This replaces the requirement for "authorisation" with a requirement to have regard to international obligations.

4. One of the circumstances in which this power may be exercised is in the context of international trade disputes, where the UK may impose retaliatory trade measures, including higher import duties, against the imports of goods of a respondent territory which fails to bring itself into compliance.

5. The amendment to this section will allow the Secretary of State to make regulations varying the amount of import duty on goods originating from the other country or territory to the dispute, where the Secretary of State considers it is appropriate, having regard to international arrangements to which the UK is a party that are relevant to the exercise of this power. Whilst this removes the requirement for "authorisation", it is replaced with a requirement to have regard to international obligations.

Part 4: Miscellaneous and Final

Clause 95: HMRC debts: priority on insolvency

Summary

1. This clause amends the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and the Bankruptcy (Scotland) Act 2016 giving HM Revenue and Customs (HMRC) priority in the recovery of Value Added Tax (VAT) and certain other debts owed to HMRC in insolvency proceedings by making HMRC a secondary preferential creditor. The changes come into effect on 1 December 2020. Clauses 95 and 96 are interlinked and intended to operate together.

Details of the clause

2. Subsection (1) amends section 386 of the Insolvency Act 1986 to include certain HMRC debts as a new category of secondary preferential debt.

3. Subsection (2) defines which HMRC debts have secondary preferential debt status. These are VAT and other amounts owed to HMRC that qualify as a relevant deduction being a deduction of a kind specified in regulations made by HMRC. It also provides that the amount owed is subject to any regulations under the Finance Act 2020.

4. Subsection (3) amends section 129(2) of Bankruptcy (Scotland) Act 2016 to include certain HMRC debts as a new category of secondary preferred debt.

5. Subsection (4) defines which HMRC debts have secondary preferred debt status in personal insolvency in Scotland. These are VAT and other amounts owed to HMRC that qualify as a relevant deduction being a deduction of a kind specified in regulations made by HMRC. It also provides that the amount owed is subject to any regulations under the Finance Act 2020.

6. Subsection (5) amends Article 346 of the Insolvency (Northern Ireland) Order 1989 to include certain HMRC debts as a new category of secondary preferential debt.

7. Subsection (6) defines which HMRC debts have secondary preferential debt status in Northern Ireland. These are VAT and other amounts owed to HMRC that qualify as a relevant deduction being a deduction of a kind specified in regulations made by HMRC. It also provides that the amount owed is subject to any regulations under the Finance Act 2020.

8. Subsection (7) ensures that HMRC do not obtain preferential status for debts where the relevant date of the insolvency proceedings is before 1 December 2020.

Background note

9. When a business enters a formal insolvency process, the order of distribution of assets to creditors is set by law.

10. Preferential debts (or, in Scotland, preferred debts) are paid after fixed charges and the expenses of the insolvency but before the holders of floating charges and all other unsecured creditors. The current categories of preferential debts for personal and corporate insolvency in England and Wales are defined in Section 386 and Schedule 6 of the Insolvency Act 1986.

11. In Scotland, Section 129 and Sch 3 of the Bankruptcy (Scotland) Act 2016 are the relevant provisions for personal insolvency (i.e. where sequestration is applicable). For corporate insolvency, the provisions in Section 386 and Schedule 6 of the Insolvency Act 1986 apply.

12. In Northern Ireland, Article 346 of the Insolvency (Northern Ireland) Order (SI.1989/2405 (N.I .19), contains the relevant categories for preferential debts.

13. The government will change the rules so that when a business enters insolvency, more of the taxes paid in good faith by its employees and customers and temporarily held by the business go to fund public services rather than being distributed to other creditors. This reform will only apply to taxes collected and held by businesses in relation to other taxpayers (for example, VAT, PAYE Income Tax, employee National Insurance contributions, Construction Industry Scheme deductions and student loan deductions).

14. This clause achieves this by amending insolvency legislation to make HMRC a secondary preferential (or preferred) creditor in respect of certain debts due to HMRC. The debts included are VAT and through the making of regulations by HMRC, other taxes or amounts due to HMRC from employees or customers where a deduction is made on account of the tax or amount due by the business for example from wages or prices charged such as PAYE (including student loan repayments), Employee NICs and Construction Industry Scheme deductions. HMRC will remain an unsecured non-preferential creditor for taxes levied directly on businesses, such as Corporation Tax and Employer NICs.

Clause 96: HMRC debts: regulations

Summary

1. This clause provides the Treasury with the power to specify a relevant deduction for the purposes of insolvency provisions. It also provides the Treasury the power to specify a period in relation to which value added tax must be referable or the relevant deduction owed. This clause is linked to clause 95 and intended to operate together.

Details of the clause

2. Subsection (1) confers a power on Treasury to set out when an amount is a secondary preferential debt (or, in Scotland, a secondary preferred debt) by reference to such periods as may be specified in the regulations.

3. Subsection (2) defines relevant provisions for the purpose of this regulation.

4. Subsection (3) gives the Treasury the power to specify kinds of deductions that may be secondary preferential debts (or in relation to Scotland secondary preferred debts).

5. Subsection (4) specifies that the regulations may contain transitional and supplementary provisions.

6. Subsection (5) specifies that the regulations are made by statutory instrument subject to annulment in the House of Commons.

Background note

7. When a business enters a formal insolvency process, the order of distribution of assets to creditors is set by law.

8. This clause provides the Treasury with the power to specify a relevant deduction under the Finance Act 2020.

9. A relevant deduction being a deduction of a kind specified in regulations made by HMRC.

10. The clause also provides the Treasury the power to specify the period that the relevant deduction relates to.

Clause 97 and Schedule 12: Joint and several liability of company directors etc

Summary

1. This clause and Schedule introduce a new regime giving HM Revenue & Customs (HMRC) a power to issue notices to make directors of companies, together with shadow directors and certain others connected to a company, jointly and severally liable for the company's tax liabilities. HMRC can issue such notices only when the liability arises or is expected to arise from tax avoidance, tax evasion, repeated insolvency or a penalty for facilitating avoidance or evasion; and where the company begins insolvency proceedings, or is expected to do so, so that some or all of the tax liability will be lost to HMRC.

Details of the clause

2. Subsection (1) introduces Schedule 12.

3. Subsection (2) provides that any tax liability which relates to a period ending before the Act is passed, or otherwise relating to an act or failure occurring before that date is excluded from the scope of the new regime.

4. Subsection (3) defines how a tax liability relates to a period.

5. Subsection (4) provides that a penalty to which Paragraph 4 of Schedule 12 refers does not include any such penalty where the determination to impose it was made, or proceedings were begun in the Tribunal to charge it were begun, before the day the Act was passed.

Details of the Schedule

6. Paragraph 1 outlines the scope and purpose of the Schedule and provides some definitions.

7. Paragraphs 2(1) to 2(7) detail the conditions which must apply, in the opinion of an officer authorised for that task, before HMRC may issue a joint and several liability notice in cases of tax avoidance or evasion. They are:

- That the company has engaged in tax avoidance or evasion (Condition A);
- The company has entered into an insolvency procedure as defined in Paragraph 8, or there is a serious risk it is going to do so (Condition B);
- That the person to whom the notice is issued was responsible for, or

helped plan or implement, the avoidance or evasion, or received a benefit knowing it came from the avoidance or evasion (Condition C);

- That there is or is likely to be a liability due to HMRC as a result of the avoidance or evasion (Condition D); and
- That it is a serious possibility some or all of that liability will not be paid (Condition E).

8. Paragraphs 2(8) and 2(9) detail the information a notice must contain.
9. Paragraph 2(10) provides that, when HMRC has issued a notice to a person before the amount of a liability is established, it must issue a further notice showing the amount of the liability once it is known.
10. Paragraph 2(11) details information which a notice under paragraph 2(10) must contain.
11. Paragraphs 2(12) and 2(13) provide that the recipient of a notice is jointly and severally liable for the company's liabilities to HMRC arising from the tax avoidance or evasion and detail how the amount of that liability is to be determined.
12. Paragraphs 3(1) to 3(6) detail the conditions which must apply in the opinion of an authorised officer, before HMRC may issue a joint and several liability notice in a case of repeated insolvency. The conditions are:

- That during the five years prior to the notice, the person to whom the notice is issued has had a relevant connection to at least two companies which have become subject to an insolvency procedure as defined in Paragraph 8 and which had outstanding amounts due to HMRC when they did so. These are the 'old companies' (Condition A);
- That another company (the 'new company') is or has been carrying on a trade similar to that of at least two of the old companies (Condition B);
- That the person has had a 'relevant connection' to the new company within the five-year period (Condition C); and
- At least one of the old companies has a tax liability outstanding to HMRC when the notice is issued, and the total amount of the outstanding tax liabilities of the old companies is over £10,000 and more than 50% of the total amount due from those companies to their unsecured creditors (Condition D).

13. Paragraph 3(2) provides that HMRC may only issue a notice under Paragraph 3 within two years of the day it had sufficient facts to conclude the relevant conditions for issuing such a notice were met.
14. Paragraph 3(7) provides that the person receiving the notice is jointly and severally liable for any amounts due to HMRC from the new company when the notice is issued or which arise during a period of five years from the issue of the notice and

while the notice remains in effect.

15. Paragraph 3(8) provides that the person is also jointly and severally liable for any amounts to still due to HMRC from the old companies which are referred to in paragraph 3(4).

16. Paragraph 3(9) ensures that Paragraph 9 applies to sub-paragraphs (7) and (8) so that they interact appropriately with the penalties detailed in that paragraph.

17. Paragraph 3(10) defines 'relevant connection'. In respect of the old companies, a person has a relevant connection if he is a director, shadow director or participator in the company. In respect of the new company, the person also has a relevant connection if he has any role in running the company and its affairs, directly or indirectly.

18. Paragraphs 3(11) and 3(12) detail the information a notice must contain and how the amount of any joint and several liability is to be determined.

19. Paragraph 4 provides for the Treasury to vary the Condition D limits of £10,000 and 50% in paragraph 3 by means of a statutory instrument. The instrument is subject to the negative resolution procedure if the amount is being changed only to reflect changes in the value of money; otherwise it is subject to the draft affirmative procedure.

20. Paragraphs 5(1) to 5(6) detail the conditions which must apply in the opinion of an authorised officer, before HMRC can issue a joint and several liability notice when a company has been involved in promoting or facilitating tax avoidance or evasion. They are:

- That a penalty has been charged (or proceedings have been commenced before the Tribunal to charge a penalty) to the company under the rules for: disclosing tax avoidance schemes (Disclosure of Tax Avoidance Schemes and Disclosure of Avoidance Schemes, VAT and Other Indirect Taxes); promoters of tax avoidance (POTAS); enablers of tax avoidance; and enablers of offshore tax evasion (Condition A);

- That the company has entered into an insolvency procedure as defined in Paragraph 8, or there is a serious risk it is going to do so (Condition B);

- That the person to whom the notice is issued was a director or shadow director of, or participator in, the company when the act or omission occurred which gave rise to the penalty or to the penalty proceedings before the Tribunal (Condition C); and

- There is a serious possibility the penalty will be wholly or partly unpaid (Condition D).

21. Paragraph 5(7) and Paragraph 5(8) detail what information a notice under Paragraph 5(1) must contain.

22. Paragraph 5(9) provides that, when HMRC has issued a notice to a person before the amount of the penalty is established, it must issue a further notice showing the amount of the penalty once it is known.

23. Paragraph 5(10) details further information required in a notice under Paragraph 5(9).

24. Paragraphs 5(11) and 5(12) provide that the recipient of a notice is jointly and severally liable with the company for the specified penalty and detail how the amount of that liability is to be determined.

25. Paragraphs 6, 7 & 8 provide definitions of 'tax avoidance arrangements', 'tax evasive conduct' and 'insolvency procedure' respectively.

26. Paragraph 9 ensures that where the liability for certain penalties charged on the company has been transferred to a company officer, any payment of the penalty the officer has made pursuant to any other relevant provision is excluded from any joint and several liability notice. This paragraph does not apply to notices issued under Paragraph 5 because the relevant penalties mentioned in that paragraph when charged to a company cannot be transferred to directors or office holders.

27. Paragraphs 10(1) and (2) provide that if HMRC concludes a notice is no longer needed to protect the revenue, for example because it no longer believes there is a risk of insolvency, or that a notice was not validly issued, it must withdraw it and notify the individual accordingly.

28. Paragraph 10(3) provides that HMRC may withdraw a notice, by notifying the individual accordingly, where it concludes this is appropriate in a case falling outside of Paragraph 10(1).

29. Paragraph 10(4) allows HMRC to vary the amount shown in a notice up or down where it considers that that amount is now insufficient or excessive.

30. Paragraphs 10(5) and 10(6) provide that when HMRC withdraws a notice under 10(1) or 10(3), the notice has no effect. The withdrawal of a notice because it is no longer considered necessary for the protection of the revenue does not give the person who received it the right to recover from HMRC any amount already paid under the notice.

31. Paragraph 11 provides for a person receiving a joint and several liability notice which shows an amount due to HMRC on its face to request HMRC to review the decision to issue it. The request must be made to HMRC within 30 days of the issue of the notice, unless HMRC agrees a longer period or is satisfied the person had a reasonable excuse for making their request for a review late. A review is not required if the recipient appeals against the notice under Paragraph 13.

32. Paragraph 12 provides details of the review process and requires HMRC to provide its conclusion of the review within 45 days, unless the parties agree to a longer period.

33. Paragraph 13 provides a right of appeal against a joint and several liability notice. Unless HMRC agrees a longer period or the Tribunal gives permission, the appeal must be made within 30 days of when the notice was issued or, if HMRC has carried

out a review under Paragraph 11, within 30 days of the date on which HMRC issued the notice communicating its conclusions.

34. Paragraph 14(1) sets out how the Tribunal should dispose of an appeal made to it.

35. Paragraph 14(2) provides that a person making an appeal under Paragraph 13 cannot appeal against the existence or amount of a liability shown in a joint and several liability notice issued to him. It is open to the company to make such appeals, subject to the rules pertaining to such appeals, and the individual may join or (in certain circumstances) make such an appeal under Paragraph 15.

36. Paragraph 14(3) provides that where an appeal is successful on the basis that a notice is no longer necessary for protection of the revenue (for example, because there is no longer a serious possibility that the company will commence an insolvency procedure), the success of the appeal does not give the individual a right to recover any amount paid to HMRC under the notice.

37. Paragraph 15 allows an individual who receives such a notice to join himself to any appeal made by a company which is in an insolvency procedure against a tax liability which is the subject of the notice, or to make such an appeal if the company does not make one or makes one and then withdraws before it is complete. If the company has not made an appeal but the individual wishes to, the individual's appeal in respect of the liability must be made during the 30-day period starting on the date on which the notice is given.

38. Paragraph 16 allows a recipient of a joint and several liability notice under Paragraph 5, in a case where penalty proceedings have been commenced before the Tribunal, to be a party to those proceedings.

39. Paragraph 17 provides that when a joint and several liability notice is given to a person at a time when the company with which he is connected no longer exists, the joint and several liability is only with those individuals who receive such notices, and not with the company.

40. Paragraph 17(2) provides that references to the tax liability of a company which has ceased to exist are to the liability of the company immediately before it ceased to exist.

41. Paragraph 18 explains how the Schedule is to be interpreted when it is applied to Limited Liability partnerships. When the relevant conditions apply, HMRC may issue joint and several liability notices to members or shadow members of such partnerships.

42. Paragraph 19 defines terms used in the Schedule.

Background note

43. This clause and Schedule have been introduced to allow HMRC to recover tax and other liabilities generated through tax avoidance or evasion, or through repeated insolvencies where there are outstanding tax liabilities in certain cases involving insolvency or likely insolvency. It is designed to change the behaviour of those who

misuse company insolvency to retain the proceeds of their tax avoidance or evasion, or from the facilitation of avoidance or evasion by other persons. The new regime allows HMRC to issue notices to directors and others connected to a company, making them jointly and severally liable for any amounts that become due to HMRC as a result of the avoidance, evasion, facilitation of avoidance or evasion or repeated insolvencies. Safeguards are provided in the form of a right of appeal against a notice and notices can only be issued by an officer authorised for the purpose.

44. The power under paragraph 3 will not be used in respect of those such as ‘turnaround specialists’ whose relevant connection with companies is part of a genuine attempt to save the company from failing. When a person falls within paragraph 3 solely by virtue of being a ‘participator’ in the company, HMRC will not issue a notice to that person under that paragraph where it is satisfied the person acted in good faith and had no material influence over the company’s affairs.

45. A members’ voluntary liquidation will only be regarded as an insolvency procedure for the purposes of these provisions if the period of 12 months from the commencement of the winding up (being the maximum amount of time set by insolvency legislation for the company to pay its debts) is passed, or the company is wound up, without the company’s debts being paid in full, together with interest.

46. The regime will be effective from Royal Assent of Finance Bill 2020.

Clause 98 and Schedule 13: Amendments relating to the operation of the GAAR

Summary

1. This clause introduces Schedule 13 which makes procedural changes to the General Anti Abuse Rule (GAAR). The schedule repeals sections 209A to 209F of part 5 of FA 2013 concerning provisional counteraction notices and replaces them with a procedurally simpler protective GAAR notice. It also introduces some minor procedural and technical amendments to the legislation to remove ambiguity and to ensure that where HMRC decides not to pursue the GAAR, enquiries can still be pursued using technical non-GAAR arguments. These procedural changes will apply from Royal Assent. Provisional counteraction notices issued before the date of Royal Assent will not be affected.

Details of the clause

2. Clause 98 introduces Schedule 13 which makes changes in relation to the operation of the GAAR.

Details of the Schedule

3. Paragraph 1 introduces the amendments to Part 5 of FA 2013 (the GAAR).

4. Paragraph 2 amends section 209(6)(a) to ensure that where HMRC needs to make an adjustment before the GAAR procedural requirements have been satisfied, in order to meet statutory time limits, for example, it is able to do so. The effect of any adjustment is suspended until after the GAAR procedural requirements are complete. It also amends sections 209(6)(a) and 209(6)(b) of FA2013 to ensure that adjustments made under the GAAR following the new protective GAAR notice procedure satisfy procedural and timing requirements.

5. Paragraph 3 inserts new section 209AA into FA 2013.

6. Subsection 1 of new section 209AA provides for the issue of a new protective GAAR notice to replace the provisional counteraction notice in section 209A of FA 2013.

7. Subsection 2 of new section 209AA provides that the protective GAAR notice must be issued within the normal statutory time limits for making the adjustments included in the proposed counteraction.

8. Subsection 3 of new section 209AA covers the situation where a tax enquiry is already in progress and as a result there is no statutory time limit for making an adjustment in respect of the relevant tax year. In these circumstances, the protective GAAR notice is to be given any time before the enquiry is completed.

9. Subsection 4 of new section 209AA sets out the information that must be specified in the protective GAAR notice.

10. Subsection 5 of new section 209AA provides that the adjustments specified in the protective GAAR notice are treated as if they are made under s209 of FA 2013.

11. Subsection 6 of new section 209AA provides that adjustments included in a protective GAAR notice (whether or not they are made by virtue of section 209 of FA 2013) can be appealed when they are made.

12. Subsection 7 of new section 209AA provides that any such appeal will be "stayed" or put on hold for a period of 12 months from the date the protective GAAR notice is given or, if earlier, up to the date the final GAAR counteraction notice is given.

13. Subsection 8 of new section 209AA provides that where no appeal is made or the appeal is subsequently withdrawn or determined by agreement and no final GAAR counteraction notice is given, the protective GAAR notice will be treated as if it were a final GAAR counteraction notice for all purposes other than the purposes of section 212A (the GAAR penalty) and as if the GAAR procedural requirements had been met.

14. Subsection 9 of new section 209AA provides that in any other case, the adjustments specified in the protective GAAR notice (or lesser adjustments following enquiries) have no effect unless they are specified in a final GAAR counteraction notice. The time limit for making the adjustments in the final GAAR counteraction notice is met by giving the protective GAAR notice.

15. Paragraph 4 inserts new section 209AB into FA 2013.

16. Subsection 1 of new section 209AB sets out the circumstances in which new section 209AB applies. It applies in relation to particular adjustments in respect of a particular period or type of tax if:

    - a person is given a notice of proposed counteraction under Schedule 43 or a pooling notice or notice of binding under Schedule 43A ("the Schedule 43A notice") specifying those adjustments (with or without specifying any other adjustments) ;
    - the Schedule 43 or 43A notice is given within the ordinary assessing time limits for making those adjustments; and
    - the adjustments concerned have not already been specified in a provisional counteraction notice or a protective GAAR notice given before the Schedule 43 or 43A notice is given.

17. Subsection 2 of new section 209AB states that a Schedule 43 or 43A notice is given within the relevant time limit if:

    - the notice is given within the ordinary assessing time limits for making the adjustments concerned; or
    - where a tax enquiry is already in progress and as a result there is no statutory

time limit for making an adjustment in respect of the relevant tax year, the notice is given any time before the enquiry is completed.

18. Subsection 3 of new section 209AB provides that the adjustments concerned are treated as if they are made under s209 of FA 2013.

19. Subsection 4 of new section 209AB provides that where no appeal is made or the appeal is subsequently withdrawn or determined by agreement and no final GAAR counteraction notice is given, the Schedule 43 or 43A notice will be treated as if it were a final GAAR counteraction notice for all purposes other than the purposes of section 212A (the GAAR penalty) and as if the GAAR procedural requirements had been met.

20. Subsection 5 of new section 209AB provides that in any other case, the adjustments specified in the protective GAAR notice (or lesser adjustments following enquiries) have no effect unless they are specified in a final GAAR counteraction notice. The time limit for making the adjustments in the final GAAR counteraction notice is met by giving the Schedule 43 or 43A notice.

21. Paragraph 5 inserts new section 209AC into FA 2013.

22. Subsections 1 and 2 of new section 209AC contain definitions for the purposes of section 209AA and section 209AB.

23. Paragraph 6 repeals sections 209A to 209F in Part 5 of FA2013.

24. Paragraph 7 contains consequential amendments removing definitions contained in section 209A from section 214(1) of Part 5 of FA2103.

25. Paragraph 8 amends paragraph 11 of Schedule 43A to make it clear that the definition of “equivalent arrangements” applies not just for pooling purposes but also to binding and generic referrals.

26. Paragraph 9 replaces sub paragraphs (5) and (6) of paragraph 5 of Schedule 43C (relating to the GAAR penalty charged under section 212A), with a new sub paragraph (5). This provides that an assessment of a penalty under section 212A must be made within 12 months of the adjustments made under section 209 becoming final, i.e. when the amounts arising as a result of those adjustments can no longer be varied on appeal or otherwise.

27. Paragraph 10 provides that the amendment to section 209(6) FA2013 suspending the effect of adjustments made under section 209 until the GAAR procedural requirements have been satisfied will have effect in relation to adjustments made on or after the date of Royal Assent (the commencement date).

28. Paragraph 11 provides that the new protective GAAR notice provisions in section 209AA will have effect in relation to notices issued on or after the date of Royal Assent regardless of when the arrangements were entered into. A protective GAAR notice cannot be issued if a provisional counteraction notice has already been issued in respect of those arrangements.

29. Paragraph 12 provides that new section 209AB will have effect in relation to notices issued on or after the commencement date (regardless of when the arrangements

were entered into).

30. Paragraph 13 provides that the repeal of sections 209A to 209F of FA 2013 will not affect the operation of these provisions in relation to provisional counteraction notices issued before the commencement date.

31. Paragraph 14 provides that the changes to the administrative provisions for the GAAR penalty will apply to cases where a person becomes liable to a penalty on or after the commencement date.

32. Paragraph 15 provides that the "commencement date" is the date of Royal Assent.

Background note

33. The GAAR was introduced in 2013. It provides HMRC with the ability to challenge "abusive" tax arrangements where those arrangements are designed to achieve a tax outcome clearly outside the intention of the legislation.

34. At the Budget on 29 October 2018, the government announced that legislation will be introduced in Finance Bill 2019-20 to make minor procedural and technical changes to the GAAR.

35. These changes will remove the incentive for taxpayers not to co-operate with requests for information whilst ensuring appropriate safeguards remain in place. These changes do not alter the fundamental GAAR test, safeguards or policy aims.

Clause 99 and Schedule 14: Tax exemptions for Windrush Compensation Scheme payments etc

Summary

1. This clause and Schedule introduce an exemption for income tax and capital gains tax and a relief from inheritance tax for payments made under or in connection to the Windrush Compensation Scheme and payments made under the Troubles Permanent Disablement Payment Scheme. The Schedule also introduces a power, having retrospective effect, for the Treasury to provide similar exemptions and reliefs for payments made under other compensation schemes and qualifying scheme payments, administered by or on behalf of the Government or other foreign governments, by statutory instrument.

Details of the clause

2. Clause 99 introduces Schedule 14 which provides for tax exemptions for Windrush Compensation Scheme payments, payments under the Troubles Permanent Disablement Payment Scheme and other qualifying payments.

Details of the Schedule

3. Paragraph 1 (1) sets out that qualifying payments will be exempt from income tax and capital gains tax.

4. Paragraph 1 (2) introduces a relief from inheritance tax in respect of qualifying payments but with the exception detailed in paragraph 5(4).

5. Paragraph 2 defines a qualifying payment and the scope of the power to provide similar exemptions by statutory instrument.

6. Sub-paragraph 2(1) sets out where the qualifying payments are defined in legislation.

7. Sub-paragraph 2(2) confirms that payments under the Windrush Compensation Scheme are qualifying compensation payments.

8. Sub-paragraph 2(3)(a) to (d) sets out that a payment will be within this sub-paragraph if it is made by or on behalf of the UK government to or in respect of a person who makes a claim under the Windrush Compensation Scheme, but otherwise than under the Scheme.

9. Sub-paragraph 2(4) confirms that payments under the Troubles Permanent Disablement Payment Scheme are qualifying payments.

10. Sub-paragraph 2(5) (a) introduces a power to extend the definition of "qualifying compensation payment" to payments made under other government compensation

schemes which the Treasury can exercise by making regulations in a statutory instrument.

11. Sub-paragraph 2(5) (b) explains that the power extends to compensation payments made by the UK government, the devolved administrations, other countries' or territories' governments and local or public authorities in the UK or abroad.

12. Sub-paragraph 2(6) provides that where the Treasury makes regulations under the power in paragraph 2 they can specify that qualifying compensation payments will only be eligible for some of the exemptions and reliefs, for example income and capital gains tax exemptions only.

13. Sub-paragraph 2(7) sets out that a statutory instrument which extends the definition of qualifying compensation payments will be subject to negative procedure.

14. Sub-paragraph 2(8) explains the meaning of the Windrush Compensation Scheme is the scheme published by the Home Office on 3 April 2019.

15. Sub-paragraphs 3(1) and (2) explains that there is no liability to income tax in relation to qualifying compensation payments and that they are to be ignored for all income tax purposes, including the need to file a Self-Assessment return to declare the payments.

16. Sub-paragraph 3(3) sets out that the exemption to income tax for payments made under the Windrush Compensation Scheme takes effect from 3 April 2019.

17. Sub-paragraph 3(4) sets out that the exemption to income tax for payments made under the Troubles Permanent Disablement Payment Scheme takes effect from 29 May 2020.

18. Sub-paragraph 3(5) explains that in respect of any other qualifying payments this paragraph applies from a date specified in regulations made under paragraph 2(5), which can be a date before the regulations are made.

19. Sub-paragraphs 4(1) and (2) broadly have the effect of exempting from capital gains tax the disposal of the right, or of an interest in the right, to receive a payment in respect of a qualifying payment scheme.

20. Sub-paragraph 4(3) explains that this paragraph applies to qualifying Windrush Compensation Scheme payments made on or after 3 April 2019; the Troubles Permanent Disablement Payment Scheme on or after 29 May 2020 and any other qualifying payment from a date specified in regulations.

21. Sub-paragraph 5(1) explains there will be relief from inheritance tax where a qualifying payment, other than one within paragraph 5(4), has at any time been received by a person or the personal representatives of a person.

22. Sub-paragraphs 5(2) and (3) explains how much tax relief will be available.

23. Sub-paragraph 5(4) explains that relief is not available for payments made or in connection with the Windrush Compensation Scheme after the death of the primary recipient to anyone other than the recipient's personal representative.

24. Sub-paragraph 5(5) explains that relief is available for payments under or in

connection with the Windrush Compensation Scheme in relation to deaths occurring on or after 3 April 2019.

25. Sub-paragraph 5(6) explains that relief is available for payments made under the Troubles Permanent Disablement Payment Scheme payments in relation to deaths occurring on or after 29 May 2020.

26. Sub-paragraph 5(7) explains that in respect of qualifying payments within paragraph 2(5), this paragraph applies from the date specified in regulations made under paragraph 2(6) which can be a date before the regulations are made.

Background note

27. The Windrush Compensation Scheme has been set up by Home Office following consultation and was launched on 3 April 2019.

28. The Windrush Compensation Scheme compensates individuals who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom.

29. The Windrush compensation scheme payments covers fees for unsuccessful immigration applications, loss of income from and denial of access to the labour market (including self-employment). It also covers denial of access to social security benefits, denial of access to services, impact on daily life, and incorrect detention, removal and ability to return to the UK.

30. This schedule takes effect in relation to income tax and capital gains tax to payments made under the Windrush Compensation Scheme on or after 3 April 2019, which is the date that the scheme was launched. In relation to inheritance tax it takes effect in respect of someone who dies on or after that date.

31. The Troubles Permanent Disablement Payment Scheme will be introduced by the UK Government on 29 May 2020 following consultation to support victims injured in the Northern Ireland Troubles.

32. The payments will provide a form of recognition of the significant and particular harm caused to individuals by the Troubles, provide a degree of financial certainty and support an improved quality of life for those seriously injured in the Troubles.

33. The payments are not intended to put individuals back into the financial position they might otherwise have been without the disability. Payments will be backdated to December 2014.

34. This schedule takes effect in relation to income tax and capital gains tax to payments made under the Troubles Permanent Disablement Payment Scheme on or after 29 May 2020, which is the date that the scheme was launched. In relation to inheritance tax it takes effect in respect of someone who dies on or after that date.

Clause 100: HMRC: exercise of officer functions

Summary

1. This clause puts beyond doubt that functions given to an officer may be carried out by HM Revenue & Customs (HMRC)using automated processes or other means. It affirms long standing and widely accepted operational practice.

Details of the clause

2. Subsection 1 confirms that any functions assigned to an 'officer' may be carried out by HMRC using a computer or other means.
3. Subsection 2 lists some examples of functions to which the legislation applies.
4. Subsection 3 clarifies that anything done by HMRC, either automatically by a computer or by other means, has the same legal effect as it would have done had that function been carried out by an officer.
5. Subsection 4 explains some of the terms used in the legislation.
6. Subsection 5 confirms the retrospective effect of the legislation.
7. Subsection 6 provides an exception to the retrospective effect in cases where there is a settled judgement from a court or tribunal in respect of the relevant functions.

Background note

8. HMRC has historically used automated processes to carry out repetitive, labour intensive administrative tasks, including issuing certain statutory notices. This reduces costs and creates efficiencies.
9. To avoid any doubt, this clause confirms that the rules already in place work as they are widely understood to work and as they have been applied historically over many years.
10. It makes clear that any function capable of being done by an individual officer may be done by HMRC, using a computer or other means, with the same legal effect.
11. Action resulting from, and as a consequence of, automated notices can therefore take place without ambiguity.
12. The clause will help to ensure that the tax system applies fairly to all and that tax payers will have certainty over their tax affairs.

Clause 101: Returns relating to LLP not carrying on business etc with view to profit

Summary

1. This clause amends the Taxes Management Act 1970 (TMA 1970). It introduces a new provision treating a purported partnership return made by a limited liability partnership (LLP) which is not carrying on business etc with a view to profit as a partnership return. This ensures that HMRC may treat such a purported partnership return in the same way as it would treat a partnership return. The clause will come into effect at Royal Assent of the Finance Bill. It will apply retrospectively but will not apply in relation to any return where, before 11 March 2020, a court or tribunal has determined that the return was not a return under section 12AA of TMA 1970.

Details of the clause

2. Subsection 1 inserts new section 12ABZAA into Part 2 of TMA 1970. This new section provides for a partnership return made by an LLP which has operated without a view to profit to be treated in the same way as it would be if it was made by an LLP operating with a view to profit.

3. New subsection 12ABZAA(1) sets out three conditions which must be satisfied before the new section applies. Firstly, a person has delivered a purported partnership return ("the relevant return") in respect of a period ("the relevant period"). Secondly, the relevant return is made on the basis that that activities of the LLP are treated as carried on in partnership by its members ("the purported partnership"). Thirdly, the LLP does not carry on a business with a view to profit in the relevant period.

4. New subsection 12ABZAA(2) provides that, for the purposes of the relevant enactments, the relevant return is treated as a partnership return and anything done in connection with that return is treated as having the same effect as it would have done in respect of any corresponding partnership case, i.e. where an LLP carries on a business with a view to profit in the relevant period.

5. New subsection 12ABZAA(3) defines "relevant enactment" as meaning sections 12AC and 28B of TMA 1970 (which relate to enquiries into partnership returns) and Part 4 of the Finance Act 2014 (which relates to follower notices and accelerated payment notices), together with any other enactment relating to, or applying for the purposes of, those enactments.

6. New subsection 12ABZAA(4) explains that the relevant enactments apply to the relevant return subject to necessary modifications including that "partner" includes "purported partner" and "partnership" includes the purported partnership.

7. New subsection 12ABZAA(5) defines "business", "corresponding partnership case", "purported partner" and "purported partnership return".

8. Subsection (2) provides that the amendment made by subsection (1) of the clause will have retrospective effect.

9. Subsection (3) provides for an exception to the retrospective effect. Where two conditions are satisfied, the amendment made by subsection (1) of the clause does not apply in relation to a purported partnership return. The first condition is that a court or tribunal has determined before 11 March 2020 that the purported partnership return was not a return under section 12AA of TMA 1970. The second condition is that the determination has not been set aside or overturned on appeal before 11 March 2020.

10. Subsection (4) inserts new paragraph 10BA into Part 1 of Schedule 14 to the Finance (No. 2) Act 2017 (F(No.2)A 2017). The new paragraph amends new section 12ABZAA so that it extends to returns purportedly made under Schedule A1 to TMA 1970.

11. Subsection (5) provides that the amendment made by subsection (4) of the clause will have effect from the date of commencement of Schedule 14 to F(No.2)A 2017 (see section 61(6) of that Act).

Background note

12. Limited Liability Partnerships (LLPs) are a legitimate way of structuring business activity and are used successfully by the vast majority of LLPs that operate for profit. For tax purposes, such LLPs are treated on the same basis as partnerships (and their LLP members are taxed as partners on their individual share of the LLP's profits).

13. A small minority of LLPs however are used as tax avoidance vehicles to share certain losses among the members who seek to offset them against their personal income in their own tax returns. HMRC does not accept that such losses can be used in this way and will continue to challenge robustly such circumstances including in litigation through the courts.

14. This measure puts beyond doubt that the legislation works as designed and intended, in circumstances where an LLP has delivered a return on the basis of operating "with a view to profit" and is subsequently found to be operating "without a view to profit". Where this is the case HMRC can amend the LLP's return (and the LLP members' returns) to give effect to the conclusions reached when the enquiry into the purported partnership tax return has been completed.

15. It is introduced with retrospective and prospective effect but does not introduce any new obligations or liabilities for taxpayers.

Clause 102: Preparing for a new tax in respect of certain plastic packaging

Summary

1. This clause enables HM Revenue and Customs (HMRC) to prepare for the introduction of a tax on plastic packaging before it is formally provided for in law.

Details of the clause

2. Clause 102 allows HMRC to prepare for the introduction of a new tax to be charged in respect of certain plastic packaging.

Background note

3. At Budget 2018, the Government announced the introduction of a new tax on plastic packaging which has less than 30% recycled plastic.

4. A consultation on the detail of the tax will take place after the Budget following which the Government aims to introduce the main provisions for the tax on plastic packaging in Finance Bill 2020-21.

Clause 103: Limits on local loans

Summary

1. This clause introduces the power to increase the statutory lending limit on the issuance of local loans through the Public Work Loans Board (PWLB). This would allow the limit to raised in future through an SI.

Details of the clause

2. Clause 103 amends section 4(1) of the National Loans Act 1968 to set new, higher lending limits on the PWLB in future. The limit is currently £95 billion. The new limits to be introduced through this clause are £115 billion and £135 billion. These powers may be exercised by:

   - Bringing a commencement Order to increase the lending limit to £115bn
   - Bringing a statutory instrument to increase the lending limit to £135bn

3. It does not constitute new spending. The new lending limits would only come into force following the introduction of the secondary legislation described above.

Background note

4. The PWLB offers affordable, long-term loans to local authorities by on-lending government borrowing to local authorities. Local authorities use these loans to finance capital projects – construction and maintenance of schools, roads etc.
5. There is a statutory limit on the total amount of loans that the PWLB may have outstanding at any one time. This limit is set in nominal terms and is not automatically uprated in line with inflation.
6. The government raises the limit from time to time. It is currently £95bn. This was increased from £85bn on 9th October 2019 by way of a previous SI.
7. To obtain the powers to raise the lending limit in the future requires primary legislation to amend the National Loans Act 1968. These powers were most recently legislated for in the Finance Act 2014.
8. There is no direct impact on the public sector from introducing these powers. The wider effect is to give the government the power to increase the lending capacity of the PWLB in future if the total amount of PWLB lending reaches the lending limit that applies at that time.
9. There was no consultation on this legislation because it is routine. The government's policy is that PWLB loans should be available to support local projects that offer good value for money. Raising the lending limit is therefore a routine part of that policy

Clause 104: 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 105: Short title

1. This clause provides for the bill to be known as “Finance Act 2020” upon Royal Assent.

Territorial extent and application in the United Kingdom

1. In the view of HM Government, there are only four of the Finance Bill 2020 clauses that do not extend and apply to the whole of the United Kingdom. The provisions that do not extend and apply to the whole of the United Kingdom relate to:

    a. the main rates of income tax (clause 2),

    b. income tax chargeable on certain Scottish social security benefits (clause 11),

    c. the rates of landfill tax (clause 91), and

    d. the limits on local loans (clause 103).

2. Clause 2 sets the main rates of income tax for the tax year 2020-21. The non-savings, non-dividend income of a UK resident individual who is not a Scottish taxpayer or Welsh taxpayer is charged at these main rates. Furthermore, although the non-savings, non-dividend income of a Welsh taxpayer is charged at the Welsh basic, higher and additional rates those Welsh rates are determined in part by reference to the main rates of income tax. But the non-savings, non-dividend income of a Scottish taxpayer is charged at Scottish rates which are set by the Scottish Parliament alone.

3. Clause 11 exempts certain social security benefits that are payable to persons in Scotland from income tax.

4. Clause 91 increases the rates of landfill tax. Landfill tax is charged on taxable disposals made in England or Northern Ireland (see section 40(1) of the Finance Act 1996). Legislative competence to introduce a corresponding tax in relation to disposals to landfill made in Wales was conferred on the National Assembly for Wales by section 116N of the Government of Wales Act 2006 (inserted by section 18 of the Wales Act 2014) and that competence has been exercised with the enactment of the Landfill Disposals Tax (Wales) Act 2017. Legislative competence to introduce a corresponding tax in relation to disposal to landfill made in Scotland was conferred on the Scottish Parliament by section 80K of the Scotland Act 1998 (inserted by section 30 of the Scotland Act 2012) and that competence has been exercised with the enactment of the Landfill Tax (Scotland) Act 2014.

5. Clause 103 increases the limits imposed by section 4 of the National Loans Act 1968 in relation to loans made in pursuance of section 3 of that Act. The loans in question are loans made to local or port authorities in England, Wales or Scotland.

6. Clause 95 is not listed in paragraph 1 above but is noted in the table below as extending and applying in part to England, in part to Wales, in part to Scotland and in part to Northern Ireland. Taken as a whole the provisions in the clause change the law for the whole of the United Kingdom in relation to the priority on insolvency of debts owed to the Commissioners for Her Majesty's Revenue and Customs. They do this by making three sets of amendments, one set that extends and applies only to

England and Wales and Scotland (amendments of Part 12 of the Insolvency Act 1986 – see subsections (1) and (2)), one set that extends and applies only to Scotland (amendments of the Bankruptcy (Scotland) Act 2016 - see subsections (3) and (4)) and one set that extends and applies only to Northern Ireland (amendments of the Insolvency (Northern Ireland) Order 1989 – see subsections (5) and (6)).

Clause or Schedule number	Extends to England and Wales and applies to **England**	Extends to England and Wales 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 sought?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No	No
Clauses 3 to 10	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 11	No	No	Yes	No	N/A	N/A	N/A	No
Clauses 12 to 90	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 91	Yes	No	No	Yes	N/A	N/A	N/A	No
Clauses 92 to 94	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 95	In part	In part	In part	In part	N/A	N/A	N/A	No
Clauses 96 to 102	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 103	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clauses 104 and 105 and Schedules 1 to 14	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@hmtreasury.gov.uk.

ISBN 9780215572257