



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Dame Angela Eagle MP and Sir Christopher Chope MP
Chairs of the Finance Bill Public Bill Committee
House of Commons
London
SW1A 0AA

13 December 2021

Dear Dame Angela and Sir Christopher,

POWERS CONTAINED IN FINANCE BILL 2021-22

This letter provides information on secondary legislation under this year's Bill and sets out detail on each power being taken.

A summary is provided on the powers contained in clauses 10, 11, 14, 29, 30, 31, 34, 43, 44, 57, 58, 63, 64, 67, 68, 69, 70, 71, 73, 74, 75, 83, 91, 92, 93, 94, 98, 99.

I am copying this letter to the other members of the Public Bill Committee and depositing a copy of this letter in the Library of the House.

Yours sincerely,

A handwritten signature in black ink that reads "Lucy Frazer".

THE RT HON LUCY FRAZER QC MP

Annex

Finance (No. 2) Bill: Clauses with powers to make secondary legislation

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Glossary of statutory references and other terms:

Statutory references

CAA 2001	Capital Allowances Act 2001
CTA 2010	Corporation Tax Act 2010
FA, followed by a year	Finance Act of that year
HODA 1979	Hydrocarbon Oil Duties Act 1979
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
PSPJOA	Public Service Pensions and Judicial Offices Act
TCGA 1992	Taxation of Chargeable Gains Act 1992
TCTA 2018	Taxation (Cross-border Trade) Act 2018
TPDA 1979	Tobacco Products Duty Act 1979
VATA 1994	Value Added Tax Act 1994
VERA 1994	Vehicle Excise and Registration Act 1994

Other terms

HMRC	Her Majesty's Revenue and Customs
IFRS	International Financial Reporting Standard
QAHC	Qualifying Asset Holding Company
RPDT	Residential Property Developers Tax
SDRT	Stamp Duty Reserve Tax
UK	United Kingdom
VAT	Value Added Tax

PART 1: INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Clause 10: Increase of normal minimum pension age

Clause 10 introduces an increase in the normal minimum pension age from age 55 to 57 from 6 April 2028. Members of certain uniformed services pension schemes established under an enactment or Royal Warrant are excluded from this increase.

Clause 10(3) inserts new subsections (4) to (7) into section 279 of FA 2004. New subsection (4) defines what is meant by a uniformed services pension scheme. New subsection (6) allows the Treasury by regulations to amend the description of those pension schemes that will be excluded from the increase in 2028. New subsection (7) allows the regulations to make transitional provisions and savings. There are no plans to use the power until such time an amendment to the uniformed services pension schemes is required. Any regulations would be subject to negative procedure.

Clause 11: Public service pension schemes: rectification of unlawful discrimination

Clause 11(1) allows the Treasury by regulations to make provision in connection with how taxes apply to the remedy that will be set out in Public Service Pensions and Judicial Offices Act 2021 (PSPJOA).

Clause 11(4) provides that the regulations may have retrospective effect; make different provision for different cases, and make consequential, incidental or supplemental provision.

The Treasury intends to exercise the power to make consequential detailed changes to tax legislation to, as far as possible, put the individual in the tax position they would have been in if the discrimination had never happened.

The power will be used, including but not limited to, making provision for:

- an exemption to a tax charge on compensation payable under PSPJOA;
- lifetime allowance protection to be calculated on the higher of the two pension choices available under PSPJOA;
- additional annual allowance, where the remedy in PSPJOA means individuals accrue their chosen benefits in a single year and not in the relevant tax years;
- deeming the tax charges paid on an individual's behalf by one scheme to have been paid by the other scheme, where PSPJOA provides that they were never a member of the first-mentioned scheme;
- ensuring that pensions and lump sums paid under PSPJOA are treated as payments that registered pension schemes are authorised to make.

The Treasury intends to exercise the power once PSPJOA has Royal Assent and, where necessary, the schemes have made their own regulations. Regulations made under clause 11 are subject to negative procedure.

Clause 14 and Schedule 2: Qualifying asset holding companies

Clause 14 introduces Schedule 2 which provides for a regime for the taxation of Qualifying Asset Holding Companies (QAHCs).

Paragraph 8(3) of Schedule 2 allows the Treasury by regulations to provide that a specified public authority is a category A investor. There are no plans to use this power, but it is envisaged that the power will be used where there is a newly formed public authority that, in accordance with the policy intention of the regime, should be considered as a category A investor. Any regulations would be subject to negative procedure.

Paragraph 24(3) of Schedule 2 allows the Treasury by regulations to add to, vary or omit items in the list of information to be contained in an annual return to be made by QAHCs. There are no plans to use this power. The Treasury intends to exercise this power if certain information is no longer required, or if further specific information is required for compliance or policy purposes. Any regulations would be subject to negative procedure.

Clause 29 and Schedule 5: Insurance contracts: change in accounting standards

Clause 29 introduces Schedule 5 which makes provision in connection with International Financial Reporting Standards (IFRS) 17, the new international accounting standard for insurance contracts issued by the International Accounting Standards Board.

Paragraph 1(1) of the Schedule allows the Treasury by regulations to make corporation tax provision in response to the introduction of IFRS 17.

Paragraph 1(2) allows the regulations to make different provision for different purposes; incidental, supplementary, transitional, transitory and saving provision; provision subject to an election or other specified circumstances.

Part 2 of Schedule 5 will revoke the requirement for all life companies to spread their acquisition expenses over seven years for tax purposes. Paragraph 4 of the Schedule allows the Treasury by regulations to appoint the day on which Part 2 comes into force. Paragraph 5 allows the Treasury by regulations to make transitional, transitory or saving provision in connection with the coming into force of Part 2. Paragraph 6 allows the regulations to make different provision for different purposes.

The Treasury intends to exercise the powers during 2022 to make regulations which are expected to apply to accounting periods beginning on or after 1 January 2023. The regulations are subject to negative procedure.

Clause 30: Deductions allowance in connection with onerous or impaired leases

Clause 30 amends Part 7ZA of Corporation Tax Act (CTA) 2010 to ensure that the legislation continues to operate as intended by providing an exemption from the loss restriction rules in certain circumstances where there has been a change in accounting standards.

The clause inserts new section 269ZYZA which ensures that different accounting treatments of lease impairments are covered by the exemption. New section 269ZYZA(4) deals with an administrative easement in terms of accounting for rent concessions provided for payments due between 1 June 2020 and 30 June 2022 arising specifically as a result of the COVID-19 pandemic.

New section 269ZYZA(7) allows the Treasury by regulations to amend the date in new section 269ZYZA(4)(c) (30 June 2022). There are no plans to use the power. Any regulations would be subject to negative procedure.

Clause 31: Provision in connection with the Dormant Assets Act 2022 and Schedule 6: Dormant assets

Clause 31 introduces Schedule 6. The Schedule makes various changes, primarily to Capital Gains Tax legislation, to reflect the expansion of the Dormant Assets Scheme to a wider range of assets. The Schedule contains a number of regulation making powers.

Paragraph 2 substitutes a new section 39 of FA 2008 for the existing section 39 to reflect the introduction of the Dormant Assets Bill. The new section retains existing powers to allow the Commissioners for HMRC by regulations to make provision concerning the reporting of payments of interest by financial institutions to HMRC and to modify the rules relating to deduction of tax from payments of interest. There are no plans to use the powers. Any regulations would be subject to negative procedure

Paragraph 5 allows the Treasury by regulations to make further changes to Taxation of Chargeable Gains Act (TCGA) 1992 and the Income Tax Acts in respect of the Dormant Assets Scheme. There are currently no plans to use these powers, but it may become necessary to do so if changes are made to the Dormant Assets Bill which affect tax legislation. That Bill is still proceeding through parliament and is unlikely to be given Royal Assent until late Spring 2022. To ensure a smooth introduction of the expanded Dormant Asset Scheme any changes to tax legislation would need to be made as soon as possible. Any regulations made under this power must be made before 1 January 2024 when the power ends. The regulations would be subject to negative procedure.

Paragraph 6 allows the Treasury by regulations to appoint a day for the legislation to come into force. It is anticipated the legislation will be brought into force at the same time as the Dormant Assets Act 2022. The regulations are not subject to parliamentary procedure.

PART 2: RESIDENTIAL PROPERTY DEVELOPER TAX (RPDT)

Clause 34: Meaning of “residential property developer”

Clause 34 provides the meaning of residential property developer.

Clause 34(5) allows the Treasury by regulations to amend the definition of a non-profit housing company and make any consequential changes to Residential Property Developer Tax (RPDT) legislation. This allows the definition to be updated in line with any changes to the regulatory frameworks for registered social housing providers. There are no plans to use the power. Any regulations would be subject to negative procedure.

Clause 43: Allowance

Clause 43(8) allows the Commissioners for HMRC by regulations to make provision about the nomination of a company to be the allocating member in a group of its £25 million allowance; the process for changing the allocating member of a group, and the submission of an allowance allocation statement. Clause 43(9) sets out the matters that may be included in the relevant regulations. The Commissioners for HMRC intend to exercise the power before 1 April 2022 to ensure that the process for allocating the allowance is clear on the commencement of RPDT. The regulations are subject to negative procedure.

Clause 44: Allowance: joint venture companies

Clause 44(5) allows the Commissioners for HMRC by regulations to make provision about the details of how a notional allowance statement operates for joint ventures. This includes details about the allocation of a company's notional allowance where it has interests in several joint venture companies. The regulations will also state the circumstances in which such a statement is not required from a joint venture member. Clause 44(6) sets out matters that may be included in the regulations. The Commissioners for HMRC intend to exercise the power before 1 April 2022 to ensure that the process for allocating the notional allowance between joint venture members is clear on the commencement of RPDT. The regulations are subject to negative procedure.

PART 3: ECONOMIC CRIME (ANTI-MONEY LAUNDERING) LEVY

Clause 57: UK revenue: determination

Clause 57 sets out how a person's UK revenue for the Economic Crime (anti-money laundering) Levy is determined in a relevant accounting period.

Clause 57(9)(b) allows the Treasury by regulations to make specific determinations of revenue to be ignored when calculating UK revenue for the purposes of the levy. There are no plans to use the power. Any regulations would be subject to negative procedure.

Clause 58: Assessment, payment, collection and recovery

Clause 58(2)(a) allows the Treasury by regulations to make provision about the assessment, payment and collection of the levy. The Treasury intends to exercise the power before September 2022. The regulations, excepting those on enforcement, are subject to negative procedure.

Clause 58(2)(b) allows the Treasury by regulations to make further provision about the recovery of the levy. The Treasury intends to exercise the power before September 2022. The regulations are subject to negative procedure, save where they make provision under clause 58(3)(k) about the enforcement of the levy, in which case they are subject to affirmative procedure.

Clause 58(3) sets out matters about which the regulations may make provision:

- the times at which payments are to be made and the methods of payment;
- requiring entities that are liable to pay the levy to notify the appropriate collection authority of that liability and to make returns;
- determining, in relation to persons for whom there is more than one appropriate collection authority with power to exercise functions under Part 3, the authority that is to exercise those functions;
- in relation to a business which is carried on by a partnership or by another unincorporated body specifying by what person anything required to be done in connection with the levy is to be done;
- for interest (at a rate specified in, or determined under the regulations) to be charged in respect of unpaid amounts of the levy;
- permitting or requiring entities liable to pay the levy to supply the appropriate collection authority such information or documents as the authority may request in connection with the levy;
- requiring bodies (other than appropriate collection authorities) that are supervisory authorities to co-operate with appropriate collection authorities in the collection of the levy or otherwise in matters relating to the levy;
- for the making of decisions by appropriate collection authorities as to any matter required to be decided for the purposes of the regulations;
- about the form, manner and content of notifications or any other notices or communications with appropriate collection authorities in connection with the levy;

- for the review of, and a right of appeal to the tribunal against, specified decisions of appropriate collection authorities in connection with the levy;
- about the enforcement of the levy (including provision for the imposition of civil penalties or other sanctions for a failure to comply with a requirement imposed by or under Part 3);
- about the recovery of overpayments of the levy;
- in relation to cases where an individual liable to pay the levy dies or becomes incapacitated, or where a person (whether or not an individual) is subject to an insolvency procedure.

Clause 58(4) allows provision relating to notification of liability and the making of returns to include provision about: the periods by reference to which returns are to be made; the information to be included in returns; the timing for making returns, and the form of, and the method of making, returns.

Clause 58(6) allows the regulations to confer functions on the Commissioners for HMRC, another appropriate collection authority or anyone acting on their behalf.

Clause 58(7) allows regulations made by virtue of clause 58(6) to confer functions on the Commissioners for HMRC to enforce, collect and manage the levy in place of another appropriate collection authority.

Clause 63: Power to make consequential provision

Clause 63(2) allows the Treasury by regulations to make consequential provision. In the event that consequential provisions are required as a result of other regulations made under Part 3, the Treasury intends to exercise the power before September 2022. The regulations are subject to negative procedure, other than when a consequential provision amends primary legislation, in which case it is subject to affirmative procedure.

Clause 64: Regulations

Clause 64 makes provision about regulations under Part 3. This includes:

- that the regulations can make different provision for different purposes; and incidental, consequential, supplementary, transitional or transitory provision;
- that the regulations may have effect in relation to the financial year in which they are made;
- that the regulations may make provision by reference to things specified in a notice;
- that the Commissioners for HMRC can exercise the power to make regulations instead of the Treasury;
- that before making regulations the Treasury must consult each appropriate collection authority;
- that before making regulations the Commissioners for HMRC must consult the Treasury and each of the other appropriate collection authorities;
- which regulations are subject to negative or affirmative procedure.

PART 4: OTHER TAXES

Clause 67: Securitisation companies and qualifying transformer vehicles

Clause 67 confers power on the Treasury to provide that Stamp Duty or Stamp Duty Reserve Tax (SDRT) is not chargeable on transfers of securities issued or raised by a securitisation company or a qualifying transformer vehicle, and transfers of securities to or by a securitisation company.

Clause 67(1) allows the Treasury by regulations to provide that no Stamp Duty or SDRT charge will arise in relation to:

- transfers of relevant securities issued or raised by a securitisation company or a qualifying transformer vehicle;
- transfers of relevant securities to or by a securitisation company.

Clause 67(2) defines “relevant securities”. These are the securities which ordinarily would be chargeable to Stamp Duty (stock or marketable securities) or SDRT (chargeable securities) on transfer.

Clauses 67(3) and (4) provide examples of provisions which can be made under the regulations. Clause 67(8) is a technical point that ensures that further amendments in relation to chargeable securities can be made under the power if required.

The Treasury intends to exercise the power to specify that no Stamp Duty or SDRT charge will arise on certain transfers in relation to securitisation and insurance-linked securities arrangements. However, the regulations will be subject to consultation and are not expected to come into force before Spring 2022. The regulations are subject to negative procedure.

Clause 68: Interim operation of margin schemes for used cars etc: Northern Ireland

Clause 68 introduces an interim scheme that permits second-hand motor dealers in Northern Ireland to sell certain vehicles sourced in Great Britain or the Isle of Man (and removed to Northern Ireland) under the VAT second-hand margin schemes. This will permit motor dealers in Northern Ireland to continue to use the margin schemes they operated prior to the end of the transition period without interruption.

Clause 68(3) allows the Treasury by regulations to set a date after which vehicles that are then removed to Northern Ireland will cease to be eligible for the margin scheme when sold. The Treasury intends to exercise this power when a permanent scheme is introduced; this is expected to be in 2022. The regulations are subject to negative procedure.

Clause 68(5) allows the Treasury to specify in regulations made under clause 68(3) different dates in relation to different cases.

Clause 68(9) allows the Treasury by regulations to appoint a day for the commencement of the scheme. The Treasury intends to exercise this power once agreement with the EU Commission for the necessary derogation from the Northern Ireland Protocol has been reached. The regulations are not subject to parliamentary procedure.

Clause 68(10) provides that where regulations are made under clause 68(9) the Treasury may

- specify different dates in relation to different cases,
- specify that the scheme is treated as coming into force on 11pm on 31 December 2020.

Clause 68(11) allows the Treasury by regulations to make transitional, transitory or savings provision. There are no plans to use the power. Any regulations would be subject to negative procedure.

Clause 69: Margin schemes and removal or export of goods

The Treasury intends to introduce a permanent scheme for motor vehicles (Second-Hand Motor Vehicle Export Refund Scheme) to replace the Interim operation of margin schemes for used cars etc: Northern Ireland (clause 68).

Clause 69 inserts a new section 50B into Value Added Tax Act (VATA) 1994. Section 50B provides that the Treasury may by order introduce legislation that entitles a person, on making a claim, to a VAT-related payment.

The VAT-related payment may be claimed on goods exported from Great Britain in circumstances where, if the goods had remained in Great Britain, the onward supply could have been subject to the VAT second-hand margin scheme.

Section 50B(1) allows the Treasury by order to enable VAT-related payments to be made in relation to relevant supplies and to specify a description of relevant supply. The Treasury intends to exercise this power in 2022. The order is subject to negative procedure.

Section 50B(5) allows the order under subsection (1) to provide for the VAT-related payment to be less than that which Section 50B(4) provides for. The Treasury intends to exercise this power to counter potential unintended effects including abuse.

Section 50B(6) sets out a non-exhaustive list of matters that the order under subsection (1) may include, such as:

- setting the conditions for the scheme
- making and timing of claims
- calculation and payment of claims
- requirement to appoint, and liabilities of, a Great Britain agent
- administrative requirements

The Treasury intends to exercise this power to lay down conditions for the scheme (including its application to motor vehicles) and how it will operate in practice. There are no plans to make provisions in relation to agents.

Section 50B(7) sets out a non-exhaustive list of further matters the order under subsection (1) may provide for. This includes making provision:

- for HMRC to make directions in a notice
- for other enactments to apply to the scheme (including in relation to penalties and offences)
- making provision for different purposes including in relation to businesses carried on in different places.

The Treasury intends to exercise the power to determine how the scheme will operate (and the scope of its application).

Section 50B(8) provides that the powers under section 50B(7)(e) (which refers to making consequential, incidental, supplementary, transitional, transitory or savings provisions) include amending primary or subordinate legislation.

Clause 70: Margin schemes and removal or export of goods: zero-rating

Clause 70 amends VATA 1994 to disapply the zero-rate for the export of goods and for the removal of goods to Northern Ireland, if the supplier has opted to sell the goods in Great Britain under a second-hand margin scheme. The amendments are consequential to the introduction of the Interim operation of margin schemes for used cars etc: Northern Ireland (clause 68) and the Margin schemes and removal or export of goods: VAT-related payments (clause 69). The amendments do not affect the normal application of the zero-rate to exports in any other circumstances.

Clause 70(4) allows the Treasury by regulations to set the dates on which the amendments come into force. The Treasury intends to exercise the powers in conjunction with the commencement of the schemes. The regulations are not subject to parliamentary procedure.

Clause 70(5) allows the Treasury to specify in regulations made under clause 70(4) different dates in relation to different cases. The Treasury intends to exercise the powers in conjunction with the commencement of the schemes.

Clause 70(6) allows the Treasury by regulations to make transitional, transitory or savings provision. There are no plans to use the power. Any regulations would not be subject to parliamentary procedure.

Clause 71: Relief on the importation of dental prostheses

Clause 71(1) inserts Item 11 into Group 5 of Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984 (SI 1984/746) which provides that the import of dental prostheses by or on behalf of dental professionals is relieved from VAT.

Clause 71(2)(b) provides that the amendment is treated as made under section 37(1) of VATA 1994. It may, therefore, be amended or revoked under that power.

Section 37(1) allows the Treasury by order to make provision for the relief of the VAT chargeable on the importation of goods. There are no plans to use the power. Any order would be subject to negative procedure.

Clause 73: Transitioned trade remedies: decisions by Secretary of State

Clause 73 enables the Secretary of State to call in reviews and reconsiderations of reviews in respect of transitioned trade remedy measures that have been initiated by the Trade Remedies Authority but which have not been concluded. Where the power under clause 73(2) is exercised, the Secretary of State is to decide whether to vary, maintain, revoke or in some cases replace the tariff rate quota, countervailing amount or anti-dumping amount applicable to the goods to which the review or reconsideration relates.

Clause 73(5) allows the Secretary of State by regulations to make provision for the purposes of subsection (2). A non-exhaustive list of the types of provision that may be made is given in clause 73(6). Among other things, it is intended that the regulations will include provision pertaining to how the Secretary of State will reach a decision on a transitioned trade remedy measure under subsection (2). This may include specifying factors which should, or should not, be taken into account. Provision may also be made requiring the Trade Remedies Authority to do specified things for the purpose of assisting the Secretary of State in making the decision. It is intended that regulations under the power will be made in early 2022. The regulations are subject to negative procedure.

Clause 74: Reference documents: amount of import duty

Clause 74 inserts new section 32A into Taxation Cross-Border Trade Act (TCTA) 2018. The new section provides that where regulations made under sections 8 to 19 of TCTA 2018 refer to a document known as a “reference document” – a document that typically contains figures setting out the rates of payable import duty on specified goods, the description of those goods, and codes used to classify those goods – then these documents can be modified or replaced by notice.

There are limits on, and qualifications in relation to, the use of the power. Specifically, the power may only be exercisable where the change in question leaves the payable duty the same: for example, where an existing customs classification of a good is split into sub-categories to provide more precision without the tariff payable changing. Section 32A(3) provides that this power will not be exercisable where the effect of such a change to the relevant reference document is to either increase or decrease the sum of duty payable (for example, if a policy decision is taken to change a ‘Most Favoured Nation’ tariff rate).

Section 32A(2) allows the “appropriate authority” - in most cases the Treasury but also other departments where TCTA 2018 specifies - to use a public notice to modify or publish a new version of the reference document that is referred to in regulations. If, for example, the regulations refer to a reference document “version 1.5, dated 19th July 2021”, a notice can update this, so that the reference document is replaced by another document, and the reference in regulations is treated as if it said, “version 1.6, dated 25th October 2021”. The Treasury intends to exercise this power following Royal Assent. The notices are not subject to parliamentary procedure.

Clause 75: Restriction of use of rebated diesel and biofuel

Clause 75 introduces Schedule 10 which makes technical amendments to Hydrocarbon Oil Duties Act (HODA) 1979 to adjust restrictions on entitlement to use red diesel and rebated biofuels to a number of qualifying uses. The changes will largely take effect from 1 April 2022.

Clause 75(3) allows the Treasury by regulations to make consequential, supplementary, incidental, transitional, transitory or saving provisions in connection with the coming into force of the Schedule. Clause 75(4) allows the regulations to amend, repeal or revoke provision made by or under an Act passed before the Finance Act, and for different provision to be made for different purposes or areas. The power will be used in advance of the changes to entitlement to use red diesel from 1 April 2022. The regulations are subject to negative procedure.

Clause 75(7) amends paragraph 21 of Schedule 11 to FA 2020 to provide that the power to make amendments consequential to that Schedule also includes the power to amend Schedule 10.

PART 5: MISCELLANEOUS AND FINAL

Clause 83 and Schedule 11: Plastic packaging tax

Clause 83 introduces Schedule 11 which makes amendments to FA 2021 regarding Plastic Packaging Tax.

Paragraph 3(1)(b) of the Schedule inserts new subsections (3) and (4) into section 50 of FA 2021. New subsection (3) allows the Commissioners for HMRC by regulations to make provisions about the time of importation of chargeable plastic packaging components for the purposes of Plastic Packaging Tax. This allows changes to be made to the time of importation in the event that other legislation about imports (such as customs or freeports legislation) changes. This will ensure the tax continues to be chargeable on imports and avoid any uncertainty for businesses. New subsection (4) allows the regulations to amend Part 2 of FA 2021. There are no plans to use the power. Any regulations would be subject to affirmative procedure.

Paragraph 4(3) of the Schedule inserts new subsections (5) and (6) into section 55 of FA 2021. New subsection (5) disapplies section 55(1) for persons enjoying certain immunities and privileges. New subsection (6) allows the Commissioners for HMRC by regulations to make provision regarding the administration of the disapplication including making it subject to conditions or requirements. There are no plans to use the power. Any regulations would be subject to negative procedure.

Paragraph 6(4) of the Schedule inserts new subsection (3A) into section 71 of FA 2021. New subsection (3A) allows the Commissioners for HMRC by regulations to make further provision about the obligations and entitlements a representative member of a group assumes on behalf of the individual members, where these have been transferred to the representative member under section 71. There are no plans to use the power. Any regulations would be subject to negative procedure.

Clause 91: Electronic sales suppression penalties and Schedule 13: Electronic sales suppression

Clause 91 introduces Schedule 13 which makes provision for new powers and penalties to tackle the form of tax evasion known as electronic sales suppression.

Paragraph 15 of Schedule 13 allows the Treasury by regulations to change the amount of the penalties in paragraphs 5(1), 6(1), 7(2) or 7(3), where it appears to the Treasury that there has been a change in the value of money since the last relevant date. The relevant date is the date on which Finance Act 2022 is passed; and each date on which the Treasury has exercised the power to change the amount of the penalties in paragraphs 5(1), 6(1), 7(2) or 7(3). There are no plans to use the power. Any regulations would be subject to negative procedure.

Clause 92: Tobacco products: tracing and security

Clause 92 inserts new sections 8JA to 8JC into Tobacco Products Duty Act (TPDA) 1979. The sections allow the Commissioners for HMRC by regulations, to make provision for the operation of the UK's tobacco Track and Trace system and for the introduction of new sanctions for any contravention of those regulations.

Section 8JA(1) allows the Commissioners for HMRC by regulations to establish and make provision for the operation of a traceability system for tobacco products and require security features to be applied to tobacco products.

Section 8JA(3) sets out examples of what the regulations can cover including, the ability to extend the functions to be introduced to 'other persons' (for example, local Trading Standards Authorities). Section 8JA(4) sets out in particular what regulations under section 8JA(3)(f) (relating to the imposition of restrictions or requirements) may cover. Section 8JA(5) provides that the Commissioners for HMRC can only exercise the power where they consider that doing so will facilitate the administration, collection or enforcement of duty. Section 8JB(2) provides that the regulations can make provision for: a monetary penalty of up to £10,000 for contravening the traceability regulations; the power to seize products that are involved in a contravention; and the ability to restrict or withdraw a person's participation in the tobacco Track and Trace system.

The Commissioners for HMRC intend to use the powers to introduce new enforcement sanctions in 2022. The regulations are subject to negative procedure.

Clause 93 and Schedule 14: Treatment of goods in free zones

Clause 93 introduces Schedule 14 which makes amendments to VATA 1994 to provide for the VAT treatment of certain supplies of goods and services in free zones.

Schedule 14 inserts a new section 57A into VATA 1994 and provides for a deemed taxable supply of goods or services to have been made by, and to, a person in certain circumstances following receipt of zero-rated supplies in a free zone.

New section 57A(6) allows the Commissioners for HMRC by regulations to modify the application or effect of section 57A in relation to cases set out in the regulations. Such regulations may also apply the section, with or without modification, to cases set out in the regulations.

Where appropriate the power will be exercised to ensure the deemed supply operates to collect VAT as intended where non-business use of assets occurs after goods leave the free zone. Any regulations would be subject to negative procedure.

Clause 94 and Schedule 15: Large businesses: notification of uncertain tax treatment

Clause 94 introduces Schedule 15 which creates a new obligation on large businesses to notify HMRC when a tax return includes an uncertain tax treatment. All paragraph references are to the Schedule.

Paragraph 2 defines what is a 'company' and a 'qualifying company' for the purposes of the Schedule. Sub-paragraph (6) allows the Treasury by regulations to amend what are qualifying companies and therefore within scope of the regime. There are no plans to use the power. Any regulations would be subject to negative procedure.

Paragraph 4 defines what is a 'partnership' and a 'qualifying partnership' for the purposes of the Schedule. Sub-paragraph (4) allows the Treasury by regulations to amend what are qualifying partnerships and therefore within scope of the regime. There are no plans to use the power. Any regulations would be subject to negative procedure.

Paragraph 11 sets out how to calculate the tax advantage for the purposes of the £5 million threshold test. Sub-paragraph (5) allows the Treasury by regulations to change the £5 million amount in sub-paragraph (2)(b). There are no plans to use the power. If the amount is changed to reflect changes in the value of money, the regulations would be subject to negative procedure. If the amount is changed by more than is necessary to reflect changes in the value of money, the regulations would be subject to affirmative procedure.

Paragraph 18 provides an exemption for businesses within scope of this new obligation to notify HMRC where it is reasonable for that business to conclude that HMRC has all, or substantially all, of the information that would otherwise be included in a formal notification. Sub-paragraph (2)(a) lists other provisions that require information to be disclosed to HMRC and therefore exempt from being notified under the new obligation. Sub-paragraph (3) allows the Treasury by regulations to add to, remove or amend the provisions listed in sub-paragraph (2)(a). There are no plans to use the power. Any regulations would be subject to negative procedure.

Paragraph 26 allows the Treasury by regulations to change the value of penalties chargeable under paragraph 20. There are no plans to use the power. Any regulations would be subject to negative procedure.

Paragraph 28 provides supplementary provisions for making regulations under the Schedule. Regulations must be made by statutory instrument. Sub-paragraph (2) provides that all regulations are subject to negative procedure, except where sub-paragraph (3) applies. Sub-paragraph (3) provides that regulations to change the amount in paragraph 11(2)(b) by more than is

necessary to reflect changes in the value of money, are subject to affirmative procedure.

Clause 98: Power to make temporary modifications of taxation of employment income

Clause 98 will allow the Treasury to support taxpayers in the event of a national disaster or emergency.

Clause 98(1) allows the Treasury by regulations to modify Parts 3, 4 or 5 of ITEPA 2003. Parts 3 to 5 of Income, Tax, Earnings and Pensions Act (ITEPA) 2003 cover employment income. Under clause 98(2) the Treasury can only exercise the power if it considers it necessary or desirable to address circumstances arising from a disaster or emergency. Under clause 98(3) the Treasury has to consider the disaster or emergency to be of national significance. Under clause 98(4) the modifications cannot be in place for longer than the Treasury considers necessary and in any event for longer than two complete tax years. Clause 98(6) provides that the regulations may make different provision for different cases; retrospective provision; incidental or supplementary provision, and consequential provision. Any regulations would be subject to negative procedure.

Clause 99 and Schedule 16: Vehicle CO₂ emissions certificates

Clause 99 and Schedule 16 make provision for recognising vehicle CO₂ emission certificates for the purposes of Part 2 of Capital Allowance Act (CAA) 2001, Chapter 6 of Part 3 of ITEPA 2003 and Schedule 1 to VERA 1994.

Paragraph 9(1) of Schedule 16 allows the Treasury by regulations to make such consequential provisions as it considers appropriate in connection with the Schedule. Paragraph 9(2) allows the regulations to make different provision for different purposes and to amend, repeal or revoke provision made by or under any enactment. There are no plans to use the power. Any regulations would be subject to negative procedure.