# FINANCE BILL

## EXPLANATORY NOTES

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# Explanatory notes

# Introduction

1. These explanatory notes relate to the Finance Bill as introduced into Parliament on 27 November 2023. They have been prepared jointly by HM Revenue and 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.
3. Government amendments were made to Finance Bill at Report Stage affecting clauses (or the Schedules introduced by clauses) 2, 7 and 21. Further details of the amendments made can be found in the relevant explanatory notes for those clauses.
4. Baroness Vere is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

# Part 1: Income tax and corporation tax

# Clause 1: Permanent full expensing etc for expenditure on plant or machinery

## Summary

1. This clause amends first-year allowances introduced in Finance (No.2) Act (F(No.2)A) 2023. These allowances are 100% first-year allowances for main rate expenditure (known as full expensing) and 50% first-year allowances for special rate expenditure, which are available subject to certain exclusions. This clause removes the requirement that expenditure must be incurred before 1 April 2026 to qualify for full expensing and the 50% first-year allowance.

## Details of the clause

2. Subsection (1) omits "but before 1 April 2026" from section 45S(a) Capital Allowances Act (CAA) 2001.
3. Subsection (2)(a) provides that the amendments made by subsections (2) to (6) of section 7 F(No.2)A 2023 are instead to operate as textual amendments of Part 2 of CAA 2001.
4. Subsection (2)(b) provides that:
   a. in section 7(1) F(No.2)A 2023 the words from "has effect" to the end are replaced with "is amended as follows", and
   b. in the italic heading inserted by section 7(6) F(No.2)A 2023 the word "temporary" is omitted.

## Background note

5. At Spring Budget 2023, temporary full expensing and a 50% first-year allowance were introduced to stimulate investment in the economy. These measures followed the end of the super-deduction for which expenditure had to have been incurred before 1 April 2023 to qualify. Removing the requirement that expenditure must be incurred before 1 April 2026, full expensing and the 50% first-year allowance means these capital allowances are now permanently available.

# Clause 2 and Schedule 1: New regime for research and development carried out by companies

## Summary

1. This measure provides a new merged research and development (R&D) scheme ("the Merged Scheme"), replacing both the current R&D tax relief for small or medium-sized companies (SMEs) (the "SME Scheme") and the R&D Expenditure Credit (RDEC), mainly claimed by larger companies. The Merged Scheme will apply to accounting periods beginning on or after 1 April 2024.
2. The measure also provides additional relief for lossmaking R&D intensive SMEs through a higher rate of payable tax credit from April 2023, as a feature of the existing SME Scheme. Those entitled to this higher rate would, from April 2024, continue to claim under rules similar to the current SME Scheme rather than under the Merged Scheme.

## Details of the clause

3. Clause 2 introduces Schedule 1.

## Details of the Schedule

### Part 1: Amendments of CTA 2009

4. Paragraph 2 removes Chapter 6A of CTA 2009, the existing legislation covering RDEC.
5. Paragraph 3 amends the heading of Part 13 CTA 2009, the existing legislation for the SME Scheme, to remove the words 'Additional relief for'. This is because Part 13 will contain rules for both the new Merged Scheme and the support for R&D intensive SMEs.
6. Paragraph 4 amends chapter 1 of Part 13. It replaces existing section 1039 with an updated section 1039 – the updated section gives an overview of Part 13, being the Merged Scheme rules and the support for R&D intensive SMEs.
7. Paragraph 4 also substitutes a new section 1040 to CTA 2009, preventing a company from claiming relief under Chapter 2 (the support for R&D intensive SMEs) if it is entitled to and claims relief under Chapter 1A (the Merged Scheme) on the same expenditure.
8. Paragraph 5 inserts the new Chapter 1A into Part 13 of CTA 2009, providing the rules

for the new Merged Scheme.

9. New section 1042A gives an overview of Chapter 1A.

10. New section 1042B provides that companies, unless ineligible, (defined in s1142) carrying on a trade and incurring qualifying expenditure can claim R&D expenditure credit on that expenditure.

11. New section 1042C provides that to obtain the credit, the company must make a claim, and restates the requirement to make a claim notification, currently at s104AA.

12. New section 1042D sets out what is qualifying expenditure on in-house R&D. Expenditure that is attributable to relevant R&D undertaken by the company itself is eligible for relief so long as it falls under one of the specified categories of qualifying expenditure, is not contracted out to the company and is not attributable to an exempt foreign permanent establishment.

13. New section 1042E makes equivalent provision for R&D contracted out by the company.

14. New section 1042F defines a third category of qualifying expenditure, that which is attributable to relevant R&D contracted to the company (defined in s1133) by an ineligible company or a person not within the charge to tax. The expenditure must be incurred on the same classes of expenditure as in s1042C or s1042D.

15. New section 1042G provides the rate of credit available for trades subject to the main rate of CT (20%), and for ring-fenced trades (49%). It also provides a power for the Treasury to make regulations to vary these percentages.

16. New section 1042H provides that a claimant company must bring the amount of credit claimed into account as a receipt in calculating its trading profits.

17. New section 1042I sets out how the credit is to be applied. These are the same 7 steps as the current Chapter 6A RDEC provisions. It has the same effect as these provisions.

18. New section 1042J provides for any excess at Step 3 to be treated as an amount of tax credit to which the company is entitled for the next accounting period. It has the same effect as the provision which is contained within Step 3 of the current section 104N.

19. New section 1042K provides the method used to calculate the amount of notional tax deduction for the purposes of Step 2 in section 1042H. It has the same effect as Step 2 in section 104N(2), except that the standard small profits rate is used where the company is not profit-making. The new section replaces s104N(3).

20. New section 1042L permits the company to surrender all or part of an amount deducted at Step 2 in section 1042H to another group company. Any excess that is not surrendered will be used to discharge the company's own CT liability in any later accounting period.

21. New section 1042M provides that the notional tax deduction from Step 2 in section 1042H must be applied as far as possible under section 1042K before any excess expenditure credit can be used at Step 4 or Step 5 in section 1042H. It has the same

effect as the current provisions.

22. New section 1042N provides the method used to surrender amounts of expenditure credit to other group companies.
23. New section 1042O makes specific provision for insurance companies, maintaining the current treatment set out at s104V,
24. Paragraph 6 of the Schedule amends Chapter 2 of Part 13 CTA 2009 to provide the new additional support for loss-making, R&D intensive SMEs.
25. Paragraph 6(2) amends the heading of Chapter 2, replacing 'relief for SMEs on the Cost of R&D incurred with SME' with 'Relief for loss-making, R&D-intensive SMEs'.
26. Paragraph 6(3) substitutes a new section 1043 (overview of Chapter) in line with the amended Chapter 2, in particular including the R&D intensity threshold and providing that Chapter 2 should be read with Chapter 8.
27. Paragraph 6(4) amends section 1044 to require that a company claiming the additional deduction is loss-making and meets the intensity threshold in the period or received relief in its most recent 12-month period because it met the threshold (the 'grace' period) in its most recent 12-month period.
28. Paragraph 6(5) makes similar changes to section 1045 in respect of a deemed trading loss for a company that is pre-trading.
29. Paragraph 6(6) inserts new section 1045ZA which sets out the new R&D intensity condition. Subsections (1) to (8) of the new section 1045ZA set out the conditions which determine whether a company and, if there are any, its connected companies meet the 30% total relevant expenditure rule, and what constitutes relevant expenditure in an accounting period. (The commencement provisions in Part 3 of the schedule mean that the threshold is 40% from 1 April 2023, reducing to 30% for accounting periods beginning on or after an appointed day, expected to be 1 April 2024).
30. Paragraph 6(7) omits section 1046, and paragraph 6(11) omits section 1057. These sections limit relief to companies that are going concerns. This limitation is now provided elsewhere in the legislation.
31. Paragraph 6(8) amends the definition of "qualifying Chapter 2 expenditure" in section 1051 to refer to the substituted sections 1052, 1053 and the added section 1053A.
32. Paragraph 6(9) substitutes the new sections 1052, 1053 and adds a new section 1053A. These provide definitions similar to those for the Merged Scheme in sections 1042D, 1042E and 1042F so that the same rules will apply in Chapter 2.
33. Paragraph 6(10) amends references to sections 1057 and 1060 to refer instead to new sections 1112F and 1112H.
34. Paragraph 6(12) amends section 1058 to provide the higher rate of payable credit for R&D intensive companies (14.5%, rather than 10%) and, with paragraph 6(13), removes the PAYE/NIC cap which is, again, provided elsewhere in the legislation.

35. Paragraph 6(14) makes consequential amendments to section 1060.
36. Paragraph 6(15) inserts new section 1062A which excludes insurance companies carrying on life assurance business from the scope of the relief, as is currently the case in the SME Scheme.
37. Paragraph 7 omits Chapter 6 of Part 13.
38. Paragraph 8 substitutes a new Chapter 8 of Part 13, "Restrictions on credits and relief under this Part". It includes provisions that introduce limits and restrictions on the availability and amount of relief available under certain conditions. Some of these restate rules in the current RDEC and SME Schemes.
39. New section 1112A provides an overview of Chapter 8.
40. New sections 1112B to E provide a cap on the amount of R&D expenditure credit or payable tax credit based on the company's PAYE and NIC liabilities (a "PAYE/ NIC cap") similar to that which currently exists in the R&D tax relief for SMEs. There is provision at new 1112B(4) addressing the situation where the company claims relief under both Chapter 1A and Chapter 2, based upon the same PAYE and NIC, to ensure no double use.
41. New section 1112F provides that a company which is not a going concern cannot claim relief. Subsection (3) disapplies this rule if the company becomes a going concern by the last date for amending the claim. Subsections (5) and (6) provide that a company which ceases to be a going concern after claiming relief will not receive any amount that has not yet been paid or applied.
42. New section 1112G defines the meaning of "going concern" as relating to a company's latest accounts, and excludes companies either in administration or in liquidation. Subsection (5) treats a company as a going concern if its trade and research and development was transferred to another group company.
43. New section 1112H provides that HMRC does not have to pay any payable R&D credit while the company's tax return for the claim period is under enquiry. Subsections (3) and (4) extend this rule if the company has any outstanding PAYE or Class 1 NICs for the same accounting period.
44. New section 1112I is an anti-avoidance provision that prevents relief being given where it would arise from transactions that have a "disqualifying purpose", being one where a main purpose was to obtain relief to which the company was not otherwise entitled or was of a greater amount than that to which it was otherwise entitled.
45. New section 1112J allows the Treasury by regulations to limit relief under Chapter 2 for companies, groups and R&D projects or expenditure of a particular description.
46. Paragraph 9 amends Chapter 9 of Part 13.
47. Paragraph 9(2) omits s1126B(3).
48. Paragraph 9(3) substitutes "1132A" for "1131" in s1128(9), applying the definition of "staff controller" to additional sections.

49. Paragraph 9(4) amends section 1129(3), adding a condition (d) that qualifying expenditure on connected externally provided workers (EPWs) must be attributable to "qualifying earnings".

50. Paragraph 9(5)(a) amends section 1131(2), restricting qualifying expenditure to 65% of the amount of the staff provision payment on an unconnected EPW payment attributable to "qualifying earnings". This means that, for example, if 60% of the earnings are qualifying, the 65% factor will be applied to 60% of the staff provision payment.

51. Paragraph 9(5)(b) amends section 1131, adding a requirement that any apportionment necessitated by this section should be made on a just and reasonable basis.

52. Paragraph 9(6) inserts a new section 1132A after section 1132, which defines the term "qualifying earnings" for an externally provided worker. These are earnings in respect of which PAYE and NIC are required to be accounted for, or earnings of an EPW attributable to relevant R&D undertaken abroad where one of the overseas exceptions applies.

53. Paragraph 9(7) substitutes a new section 1133 for the current section, defining "contracted out research and development".

54. New section 1133 ensures that the costs of contracting research and development are relievable in the hands of the customer, but that where the customer is not contracting out research and development the contractor can claim relief on their relevant research and development.

55. Subsection (2) of section 1133 defines where a person contracts out research and development. Subsection (2) set out that there needs to be a contract for activities (this would include contracts for specific products and services, as these are made up from a collection of activities). It requires the activities being contacted to include research and development. If therefore the activities do not include research and development the contract is not for contracted out research and development.

56. Subparagraph 9(2)(c) provides that while the wording in the contract would evidence that the contract is for research and development, the surrounding circumstances are also relevant – this includes, for example, the decision-making process of both companies and the information and advice on which they acted. The key question is, was it reasonable to assume that the person for whom the activities were to be carried on intended or contemplated (at the time they entered into the contract) that that sort of research and development would be done to fulfil the requirements of the contract? In this context, 'contemplated' does not indicate a minor or fleeting consideration but a more substantial intention. Intended or contemplated goes beyond mere awareness that R&D will take place and requires a specific appreciation of what R&D will be done.

57. The drafting of subparagraph 9(2)(c) ensures that it is the position at the time that the contract was entered into which is key – not assessing the work done with the clarity of hindsight. It also ensures that double claims are not possible, just because contracts are not explicit that research and development is needed, does not mean it's not

reasonable to assume that it was intended or contemplated. If contractors are unsure, they should ask as part of the negotiation process.

58. New section 1133 works with the presumption that the costs of contracting research and development are relievable in the hands of the customer, and it is only where the customer is not contracting out research and development that the contractor can claim relief on their relevant research and development.

59. Subsection (3) makes it clear that it is only the contracted out research and development which is claimable in the hands of the customer. If a company is contracted to do work which is not research and development, and they decide to carry on some related R&D, they are entitled to claim relief for it, subject to meeting the normal eligibility requirements.

60. Subsections (4) and (5) set out that research and development remains contracted out (and claimable by the customer, not the contractor) if it meets the conditions of subsection (2) even if it is subcontracted out to another company by the contractor (ad infinitem).

61. Subsection (6) sets out the definition of a 'contractor payment'.

62. Subsection (7) sets out that contractor payments that only partly relate to contracted out research and development should be apportioned accordingly.

63. Subsection (8) sets out that new sections 1134 to 1136 define the qualifying element of a contractor payment.

64. Paragraph 9(8) amends section 1134, aligning language with that used elsewhere adding a condition (e) that the qualifying element of the connected subcontractor payment must constitute UK expenditure or overseas expenditure that satisfies s1138A.

65. Paragraph 9(9) amends section 1135 to align language with that used elsewhere

66. Paragraph 9(10) substitutes a new section 1136, restricting the qualifying element of an unconnected subcontractor payment to 65% of the amount that is undertaken in the UK or to which section 1138A applies and adding a condition that any apportionment needed should be made on a just and reasonable basis.

67. Paragraph 9(11) omits the current section 1138, defining "subsidised expenditure".

68. Paragraph 9(12) inserts two new sections.

69. Section 1138A defines when R&D undertaken outside the United Kingdom may qualify for relief. The conditions are at section 1138A(2)(a)-(c), as qualified by (3), or by any regulations issued by the Treasury under (4).

70. Section 1138B defines "expenditure attributable to an exempt foreign permanent establishment" for the purpose of condition D at section 1042C(5) and condition D at section 1042D(5)

71. Paragraph 9(13) inserts a new section 1140A which defines when two companies are members of the same group.

72. Paragraph 9(14) amends section 1142 which will in future provide the definition of an "ineligible company".

73. New subsection (5)(a) allows two companies in the same group to jointly elect that where one contracts any R&D to the other, the first company will be treated as an ineligible company in respect of that expenditure, potentially allowing the second company to claim relief for its expenditure on the contracted out work.

74. New subsection (5)(b) provides that in these circumstances, in determining whether one company's activity is R&D, it is regarded as if done by the other, to the extent that this results in the activity being regarded as R&D where it would otherwise not be.

75. Paragraph 9(15) updates the reference at section 1142B to point to section 1042B.

76. Paragraph 9(16) inserts a new section 1142C, which provides that no amount of an R&D expenditure credit or R&D tax credit may be assigned. This is subject to the transitional provision at Paragraph 17.

77. Paragraph 9(17) inserts a new section 1142D, which provides that no amount of an R&D expenditure credit or R&D tax credit may be paid to a nominee. This is subject to the exceptions given in new section 1142D(2), and to the transitional provision at Paragraph 18(2).

78. Paragraph 9(18) inserts a new section 1142E which makes general provision for orders and regulations.

## Part 2: Consequential Amendments

79. Paragraph 10 substitutes references in Schedule 18 to FA 1998 with references to Chapter 1A of Part 13 and to Chapter 2 of Part 13 so that it continues to refer to the correct part of the CTA 2009.

80. Paragraph 10(2) substitutes the reference in paragraph 52(2A)((b) which refers to the application of discovery assessments to amounts paid by way of R&D expenditure credit.

81. Paragraph 10(3) substitutes the reference in paragraph 83A(a), which refers to the application of Part 9A of the Schedule to claims for R&D expenditure credit.

82. Paragraph 10(4) substitutes the reference in paragraph 83E, which refers to the ability to claim R&D expenditure credit out of time where the claim for credit was rejected.

83. Paragraph 11 substitutes reference in Schedule 24 to FA 2007 to Chapter 6A of Part 3 with reference to Chapter 1A of Part 13 so that paragraph 28(fa)(ia) continues to refer to the correct part of the CTA 2009.

84. Paragraph 12 amends Corporation Tax Act 2009.

85. Paragraphs 12(2) to 12(7) substitute references to Chapter 6A of Part 3 and to Part 13 with references to Chapter 1A and to Chapter 2 of Part 13 in various creatives reliefs and expenditure credits – the audiovisual expenditure credit, video game expenditure credit, film tax relief, television relief, video game relief, theatre relief, orchestra relief and museums and galleries exhibition relief - to which eligibility to

R&D relief renders expenditure ineligible

86. Paragraph 12(9) amends section 1310(4).
87. Paragraph 12(9)(a) omits paragraph (zzza), which refers to companies ineligible for R&D expenditure credit.
88. Paragraph 12(9)(b) inserts paragraph (zc), which refers to the order making power at section 1142(1)(e), concerning companies ineligible for R&D expenditure relief.
89. Paragraph 12(10) amends Schedule 4 to CTA 2009, the index of defined expressions, omitting certain entries that are no longer needed and adding others that are now required.
90. Paragraph 13 amends Corporation Tax Act 2010.
91. Paragraph 13(2) substitutes reference to Chapter 6A of Part 3 CTA 2009 with reference to Chapter 1A of Part 13 CTA 2009 so that section 269DA(2) continues to refer to the correct part of the CTA 2009.
92. Paragraph 13(3)(a) substitutes reference to Chapter 6A of Part 3 CTA 2009 with reference to Chapter 1A of Part 13 CTA 2009 so that section 357BJB(3) continues to refer to the correct part of the CTA 2009.
93. Paragraph 13(3)(b) amends section 357BLB(7)(e) (application of sections 1127 to 1131 of CTA 2009 for purpose of determining in-house R&D expenditure under Part 8A) to ensure that the provisions used are those in force before the amendments made by paragraph 9.
94. Paragraph 13(3)(c) substitutes reference to Chapter 6A of Part 3 CTA 2009 with reference to Chapter 1A of Part 13 CTA 2009 so that section 357CG(4)(a) continues to refer to the correct part of the CTA 2009.
95. Paragraph 13(4) amends Chapter 9 of Part 8B.
96. Paragraph 13(4)(a) substitutes references in section 357P(1) so that it continues to refer to the correct part of CTA 2009.
97. Paragraph 13(4)(b) substitutes reference to Chapter 6A of Part 3 CTA 2009 with reference to Chapter 1A of Part 13 in the italic heading before section 357PA.
98. Paragraph 13(4)(c) substitutes reference to Chapter 6A of Part 3 CTA 2009 with reference to Chapter 1A of Part 13 CTA 2009 so that section 357PA continues to refer to the correct part of the CTA 2009.
99. Paragraph 13(4)(d)(i) substitutes references to section 1058(1A) CTA 2009 with references to the cap by reference to the company's employment tax liabilities for the accounting period in subsections (2)(b), (3)(b) and (4)(b) of section 357PD.
100. Paragraph 13(4)(d)(ii) omits subsections (2A), (3A) and (4A) of section 357PD.
101. Paragraph 13(4)(d)(iii) inserts a new provision that sections 1112B to 1112E of CTA 2009 apply for the purposes of subsections (2)(b), (3)(b) and (4)(b) of section 357PD.
102. Paragraph 14 substitutes provisions in the Taxation (International and Other

Provisions) Act 2010 so that it continues to refer to the correct part of the CTA 2009.

103. Paragraph 14(a) substitutes the reference in s407(3)(a) (which refers to EBITDA).

104. Paragraph 14(b) substitutes the reference in s416(2A) (which refers to worldwide profits).

105. Paragraph 15 substitutes the reference in the Schedule 43C Finance Act 2013 so that it continues to refer to the Part of CTA 2009 which provides for R&D expenditure credit.

## Part 3: Commencement and transitory provisions

106. Paragraph 16 provides the general commencement rules which apply to this Schedule. These general rules are that the amendments made in the Schedule apply to accounting periods beginning on or after a day to be appointed by the Treasury

107. Paragraph 17(1) provides that the voiding of assignments of R&D expenditure credits or R&D tax credits in new section 1142C does not apply to an assignment made before 22 November 2023, or an agreement made before that date, or an assignment made on or after that date to carry out an agreement made before that date.

108. Paragraph 17(2) provides that the rule on payments of R&D expenditure credits or R&D tax credits to nominees in new section 1142D only applies in relation to claims made on or after 1 April 2024.

109. Paragraph 18 provides transitional provisions to prevent double claims and to ensure availability of relief in certain situations where qualifying R&D work is done under a contract between a customer and a contractor, and relief would otherwise not be available to either party. These are transitional provisions which will apply where one party has moved to the new rules and the other is within the old rules due to overlapping accounting periods.

110. Paragraph 18(1) applies paragraphs 18(2) and (3) in a case where two claims, one by a company (A) for old R&D relief, and one by another company (B) for new R&D relief, would otherwise be possible in respect of expenditure attributable to the same research and development.

111. Paragraph 18(2) provides that, where a company (B) is eligible for new R&D relief, and would have been entitled to old R&D relief for the same expenditure had the changes made by Schedule 1 not been made, it and only it can claim.

112. Paragraph 18(3) provides that in any other case, only the company that is eligible for old R&D relief (A) can claim.

113. Paragraphs 18(4) and (5) ensure that, where R&D work is done under a contract between a customer and a contractor, and the customer incurs pre-commencement expenditure in respect of which it is not entitled to old R&D relief, but in respect of which it would have been entitled to new R&D relief had the expenditure been incurred in an accounting period beginning on or after 1 April 2024, the contractor is not prevented from claiming new R&D relief on the R&D contracted out to it by the customer.

114. Paragraphs 18(6) and (7) apply where, in respect of research and development, a company (C) has pre-commencement expenditure that would have been eligible for old R&D relief but for the fact that the research and development was contracted to it by a person who was not a large company or a person otherwise than in the course of carrying on a chargeable trade, and another company (D) has post-commencement expenditure in respect of the same research and development that would have been eligible for old R&D relief had it been pre-commencement expenditure. In such a case, D's expenditure is treated as expenditure on R&D contracted out by it within the meaning of new s1133, eligible for new R&D relief.

115. Paragraph 19 is a transitional rule clarifying that claims made under section 104A CTA09 before its repeal by this Act still count as R&D claims for the purpose of satisfying the claim notification requirements.

116. Paragraph 20 provides that a company may meet condition B in sections 1044 and 1045 to qualify for relief for a period because it did so for a prior period, if the prior period was one to which paragraph 19 applies, but not any other accounting period beginning before the appointed day.

117. Paragraph 21 provides for the conditions which must be met for the higher rate of payable tax credit for R&D intensive SMEs to apply from April 2023

118. Paragraph 21(1) provides that the higher rate of relief for R&D intensive lossmaking companies applies to accounting periods beginning before the appointed day but ending on or after 1 April 2023. The conditions which must be met for it to be available and that the company has both a 'Chapter 2 surrenderable loss' and meets the 'R&D intensity' condition.

119. Paragraph 21(2) provides for a higher rate of payable tax credit (14.5% as opposed to 10%) if the required conditions are met.

120. Paragraph 21(3) provides the method for establishing whether the R&D intensity condition is met.

121. Paragraph 21(4) provides the 40% intensity threshold.

122. Paragraph 21(5) applies the legislation which defines the terms 'Chapter 2 surrenderable loss' and 'R&D tax credit' for the purposes of this subparagraph.

# Background note

123. At Autumn Statement 2022 the Chancellor announced that, as part of the ongoing review of the R&D reliefs, the government would reform the reliefs to ensure taxpayers' money is spent as effectively as possible. A consultation on the design of a potential merged R&D tax relief scheme ran from 13 January 2023 to 13 March 2023.

124. The Chancellor also committed to considering the case for further support for R&D intensive SMEs. At Spring Budget 2023 the Chancellor announced enhanced support for R&D intensive SMEs, applying from 1 April 2023 and worth around £500 million per year. This is targeted specifically at loss-making R&D intensive SMEs, those whose R&D spend is 40% or more of their total expenditure, focusing support on

those most impacted by the rate changes introduced at Autumn Statement 2022.

125. The Chancellor announced at Autumn Statement 2023 that the government would proceed with the proposed merger of the SME and RDEC schemes. The Chancellor also announced that the R&D intensity threshold would be reduced from 40% to 30% from April 2024.

126. In addition, it was announced at Autumn Statement 2023 that the government would legislate to remove the use of nominations for R&D expenditure credits or R&D tax credit payments (subject to limited exceptions), and to render void assignments of R&D tax credits. This will stop payments being made to third parties, with payments now going directly to claimants. This measure is designed primarily to prevent fraud enabled or facilitated by nominations. A further effect of the measure will be to remove a competitive cashflow advantage from certain R&D agents acting on a no-win, no-fee basis, who currently receive payment of the tax credit direct from HMRC. This business model is associated with inflated claims to relief in the R&D space.

127. Schedule 1 as introduced was amended at Report Stage on 5 February 2024 to clarify the calculation of the R&D intensity ratio and to provide transitional rules where a customer and a contractor might be covered by different ('old' and 'new') R&D rules.

# Clause 3 and Schedule 2: Films, television programmes and video games produced by companies

## Summary

1. This Schedule introduces the following Parts to include a new tax relief regime for films, television programmes and video games:

- Part 1: A new tax relief for films, television programmes and video games;
- Part 2: Amendments consequential on Part 1;
- Part 3: Repeal of existing regimes for films, television programmes and video games;
- Part 4: Amendments consequential on Part 3;
- Part 5: Commencement and transitional provisions relating to Parts 1-4.

## Details of the Schedule

### Part 1: New Regime for Films, Television Programmes and Video Games

2. Paragraph (1) introduces new Part 14A to the Corporation Tax Act (CTA) 2009. It also explains that there are 5 chapters in Part 1 covering how activities are taxed and specific provisions applying to films, television programmes and video games.

### Chapter 1 – Introduction and Interpretation

3. Chapter 1 contains new sections 1179A to 1179AE, which set out the overview of new Part 14A and interpretation.

4. New section 1179AA sets out the conditions for qualifying companies and productions and where the terms are further defined.

5. New section 1179AA(8) provides that once a qualifying company has made an election to treat a qualifying production as a separate trade no other company can subsequently be the qualifying company for that production.

6. New section 1179AB explains that 'UK expenditure' means expenditure on goods or services that are used or consumed in the UK. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies. The 'used or consumed' rule does not focus on the supplier of the goods or services but instead

concentrates on the location of the recipient or customer as the means of determining UK qualifying expenditure. For example, expenditure on costumes bought and shipped from Germany and used in a qualifying high-end television production filmed in the UK, would be considered UK expenditure. Any apportionment between non-UK expenditure and UK expenditure must made on a just and reasonable basis.

7. New section 1179AC sets out that any amendment to a company tax return may be made for the purposes of this Part despite any limitation on the time within which an amendment or assessment may normally be made. For example, see new section 1179CI(3) on the requirement to amend a return if a company is party to disqualifying arrangements.

## Chapter 2 – Special rules about taxation

8. Chapter 2 contains new sections 1179B to 1179BG which set out the rules regarding the production trade and taxation.

9. New section 1179B explains that activities for each qualifying production are treated as a separate trade from the other activities of the production company. A company must have a separate trade for each of its productions. The income and costs of each separate trade are calculated separately for corporation tax purposes. It is up to companies to elect to implement the separate trade rules in relation to a production, but they must do so to be eligible for relief.

10. New section 1179BA contains the rules concerning the duration of the separate trade for a production.

11. If a company first elects to implement the separate trade in a period after it is deemed to have begun to carry on that trade, new section 1179BA(2) requires the company to amend its tax returns for earlier periods to retrospectively implement the separate trade rules.

12. New sections 1179BA(3) and 1179BA(4) ensure that, once a company has elected to implement the separate trade rules in relation to a production, it must continue to do so even if the production ceases to qualify for relief or the company ceases to be the production company. This applies even if, as a result of later events, the production ceases to qualify for the period in which the company elected to implement the separate trade rules.

13. New section 1179BB(2) sets out that during the first period of account for a trade the costs of the qualifying production must be brought in as a debit. The proportion of the income as calculated by the formula set out in new section 1179BB(4) is brought in as a credit.

14. New section 1179BB(3) explains how the calculation of profits and losses works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and, as a credit, the difference between the proportion of total estimated income treated as earned at the end of that period and the corresponding amount for the previous period.

15. New section 1179BB(4) sets out the formula for calculating the proportion of the estimated total income that is treated as earned at the end of the period of account.
16. New section 1179BB(5) sets out what counts as costs of, and income from, the qualifying production company. This points to new section 1179DX for television programmes and, new section 1179FP for video games (see those references below for more detail).
17. New sections 1179BB(6) to (9) provide the basic rules for when estimates may be made, and any apportionments between accounting periods.
18. New sections 1179BC(1) to (2) provides the rules that costs are incurred when they are represented in the state of completion of the work in progress. Payments in advance are ignored until the work is done and deferred payments are only to be recognised to the extent that the work is represented in the state of completion.
19. New section 1179BC(3) makes it clear that if an amount has not been paid then it is not an incurred cost until there is an unconditional obligation to pay it.
20. New section 1179BC(4) ensures that where this obligation in 1179BC(3) is linked to income being earned, then the cost can only be included when an appropriate amount of income is or has been brought into account.
21. New section 1179BD addresses the situation where a company incurs expenditure on the development of a qualifying production and this expenditure predates the separate production trade. In this circumstance development expenditure is treated as if it were expenditure incurred immediately after the company began to carry on the trade.
22. New section 1179BD(3) requires that if the expenditure has been previously taken into account for other tax purposes then the company must amend any relevant company tax return accordingly.
23. New section 1179BE addresses the situation where expenditure is incurred on making a qualifying production which would be treated as a capital asset then that expenditure is treated as being of a revenue nature. This also applies to receipts which count as income and would be regarded as of a capital nature, these are to be treated as receipts of a revenue nature. However, this treatment only applies in the specific circumstances of section 1179BE and does not apply to all other capital expenditure and expenditure which would not generally be allowed as a deduction in calculating the profits of a trade for corporation tax purposes (see sections 53 and section 1179BB(6)).
24. New section 1179BF explains the treatment of losses arising in the separate production trade for pre-completion periods (periods before the production is ready for public release). New sections 1179BF(2) and 1179BF(3) make it so that losses may only be carried forward in pre-completion periods. They are not available for other kinds of loss relief.
25. New section 1179BF(5) explains that losses carried forward from pre-completion periods can, in the completion period and any later periods, be treated as losses made

in that period. They can be used to relieve total profits of the company, or for surrender to other group companies.

26. New section 1179BG explains the treatment of losses carried forward from pre-completion periods when the separate production trade ceases. A loss of this kind is the 'terminal loss'. Terminal losses may be transferred to another separate trade of the same company, or to a separate trade of a company in the same group.

27. New section 1179BG(1) sets out the conditions under which a company may transfer a terminal loss. The company must cease the separate trade and be carrying a loss in that trade that would, if not for cessation, be carried forward to later periods. The company itself, or another company in the same group, must be carrying on a separate trade in relation to another production for the loss to be transferred to (the 'other trade').

28. The other trade must relate to a production which qualifies under the same Chapter as the production with a surrenderable loss. This means that a terminal loss from a film's separate trade may be transferred to the separate trade for a TV programme, and vice versa. A terminal loss arising in the separate trade for a video game may only be transferred to the separate trade for another video game.

29. New section 1179BG(2) allows for the transfer of a terminal loss to another separate trade of the same company. New section 1179BG(3) allows for the transfer of a terminal loss to the separate trade of a fellow group company. In both cases, new section 1179BG(4) requires that the loss is transferred to the first accounting period of the recipient trade after cessation occurs.

30. New section 1179BG(5) sets out cases in which the transfer is treated as not having been made. Those are: if the other trade receiving the loss is no longer carried on; if the company carrying on the other trade is not entitled to an expenditure credit; or if the fellow group company does not elect to receive the loss.

## Chapter 3 – Expenditure credit

31. Chapter 3 contains new sections 1179C to 1179CI which set out the rules for the expenditure credit.

32. New section 1179C sets out the basic rules covering a company's entitlement to an expenditure credit for a production.

33. New section 1179C(1) states that, provided the production meets the qualifying criteria, and the company is the qualifying company in relation to the production, the company is entitled to a credit. If those conditions are not met in an accounting period, the company is not entitled to a credit for that period, but it may be entitled to a credit in later periods if the conditions are met again. That is set out in new sections 1179C(2) and 1179C(3).

34. New section 1179C(4) explains what happens if a company is initially entitled to a credit for an accounting period, but later loses that entitlement as a result of events after the end of the period. In these cases, any tax return affected by the loss of entitlement must be amended to give effect to the change. The company must repay any overpaid credit to HM Revenue and Customs.

35. New section 1179CA explains how a qualifying company calculates the amount of expenditure credit to which it is entitled. If a company has more than one separate production trade, the calculation applies to each trade separately.

36. New section 1179CA(1) sets out the 5 steps of the calculation.

    - Step 1 is to add together the company's 'relevant global expenditure' (defined in section 1179CA(2)) for the separate trade for the current accounting period and all prior periods.

    - Step 2 is to deduct from the Step 1 total any expenditure that is not UK expenditure, from both the current period and all prior periods.

    - Step 3 is to compare the Step 1 and Step 2 amounts. If the Step 2 amount is more than 80% of the Step 1 amount, the company must deduct the excess to reach its 'qualifying expenditure to date'. In other words, the company's qualifying expenditure to date will be the Step 2 amount or 80% of the Step 1 amount, whichever is less.

    - Step 4 is to deduct the company's qualifying expenditure to date from the last period in which the company was entitled to and claimed an expenditure credit (if applicable) from the qualifying expenditure to date for the current period. This gives the company's 'qualifying expenditure for the year'. Step 4 ensures that relief is given on a cumulative basis.

    - Step 5 is to apply the relevant percentage rate of relief for the production to the qualifying expenditure for the year. For example, a video game will get relief on 34% of its qualifying expenditure for the year.

37. New section 1179CA(2) defines relevant global expenditure as expenditure brought into account as part of the separate trade for an accounting period, which meets the criteria set out in section 1179DR (for films and TV programmes) or section 1179FJ (for video games).

38. New section 1179CB requires qualifying companies to include the amount of credit to which they are entitled for a separate production trade as a receipt in calculating the profits of that trade. This is to make sure that the credit itself counts as taxable income. The amount of credit is to be added to the company's profit or loss after it is calculated in accordance with new section 1179BB. It does not form part of expected income in section 1179BB.

39. New section 1179CC explains how qualifying companies redeem the tax credit to which they are entitled under sections 1179C and 1179CA. The credit is dealt with in 6 steps, to be followed in order.

    - Step 1 is to apply the credit to discharge any liability of the qualifying company to corporation tax in the current accounting period. This covers the liability of the company as a whole, not the liability of the separate production trade alone.

    - Step 2 is to apply a notional tax charge to the full amount of the tax credit before any Step 1 offset. This notional tax charge is charged at the main rate of

corporation tax (25% as of 22 November 2023). The amount to be carried forward to Step 3 is

  - the remaining amount of credit after applying the notional tax charge in Step 2, or
  - the remaining amount of credit after applying the discharge at Step 1, whichever is less. Any amount withheld at this Step can be relieved under section 1179CD.

- Step 3 is to apply the amount brought forward from Step 2 to discharge any outstanding liability of the qualifying company to corporation tax for any other accounting period. Again, this covers the liability of the company as a whole as opposed to the liability of the separate trade alone.
- Step 4 is to surrender some or all of the amount brought forward from Step 3 to a fellow group company. This step is optional. Companies may choose how much credit to surrender, if any.
- Step 5 is to apply the amount brought forward from Step 4 to discharge any outstanding liability of the qualifying company as a whole to HM Revenue and Customs.
- At Step 6, any amount remaining after Step 5 is to be paid to the qualifying company by HM Revenue and Customs.

40. New section 1179CD explains how to treat amounts of credit withheld at Step 2 of section 1179CC. Such an amount arises where the amount of credit after Step 1 exceeds the amount of credit given by Step 2, and is equal to the difference between the two.
41. New section 1179CD(2) allows the qualifying company to surrender some or all of the amount to a fellow group company in the current period (P). New section 1179CD(3) explains that if the company chooses not to do this, the amount is carried forward to the next accounting period (P+1).
42. New sections 1179CD(4) and 1179CD(5) explain how to treat amounts withheld at Step 2 in the next accounting period (P+1). The carried-forward amount is to be used to discharge any liability of the company as a whole to corporation tax. If there is any amount remaining after this step, the company may choose to surrender some or all of that amount to a fellow group company.
43. New section 1179CD(6) allows for sections 1179CD(4)-(5) to apply in the following accounting periods (P+2 onwards) if there is any amount remaining after those sections were applied in P+1. Amounts withheld at Step 2 are to be carried forward indefinitely until they have been used to discharge the qualifying company's liability to corporation tax or surrendered to a group member. Amounts not used up when the company winds down are lost.
44. New section 1179CE explains how to treat amounts surrendered to other group companies under sections 1179CC and 1179CD.

45. New section 1179CE(3) sets out the process by which amounts are surrendered, over 6 Steps. A worked example follows:

- Company 1 has £100 of credit to surrender to Company 2, which is in the same group. Company 1's 'surrender AP' is the 12-month period from 1 January 2025 to 31 December 2025.
- Company 2 has two 'overlapping APs': 1 April 2024 to 31 March 2025 (OAP 1), and 1 April 2025 to 31 March 2026 (OAP 2). Company 2's corporation tax liability in OAP 1 is £200, and £80 in OAP 2.
- Step 1: Company 1 chooses OAP 1 as the first overlapping AP.
- Step 2: For OAP 1, the proportion that overlaps with the surrender AP is ¼ (3 months of a 12-month AP). Apply this proportion to the corporation tax liability for OAP 1: ¼ of £200 = £50.
- Step 3: The proportion of the surrender AP that overlaps with OAP 1 is also ¼. Apply this proportion to the surrendered credit amount: ¼ of £100 = £25.
- Step 4: The £25 from Step 3 is used to discharge the £50 from Step 2. There is £75 of Company 1's credit left to surrender.
- Step 5: Company 1 chooses OAP 2 as the next overlapping AP.
- The proportion that overlaps with the surrender AP is ¾ (9 months of a 12-month AP). Apply this proportion to the corporation tax liability of OAP 2: ¾ of £80 = £60.
- The proportion of the surrender AP that overlaps with OAP 2 is also ¾. Apply this proportion to the surrendered credit amount: ¾ of £100 = £75.
- The £75 is used to discharge the £60. Company 1 still has £15 credit left.
- Step 6: There are no more overlapping APs. The unused £15 is treated as if it were not surrendered, and the company should carry it forward to the later steps in section 1179CC or section 1179CD (depending on how it was originally surrendered).

46. New section 1179CF establishes the order of priority when there are multiple amounts that can be used to discharge the liability of a company to corporation tax (be that the qualifying company or a group company). The general rule is that amounts withheld at Step 2 are to be used to discharge corporation tax liabilities ahead of amounts arising from the other Steps in section 1179CC.

47. New section 1179CG introduces a new criterion for companies claiming relief: a company that is in administration or liquidation when it makes a claim cannot receive an amount of credit otherwise payable at Step 6 of new section 1179CC.

48. New section 1179CH covers certain situations in which no credit is payable under Step 6 of section 1179CC.

49. New sections 1179CH(1) and 1179CH(2) explain that, if HM Revenue and Customs opens an enquiry into a company's tax return, HM Revenue and Customs does not

automatically have to pay the company any amount due under Step 6. HM Revenue and Customs may make a payment of some or all of the amount on a provisional basis, if appropriate.

50. New sections 1179CH(3)-(5) explain that HM Revenue and Customs does not automatically have to pay the company any amount due under Step 6 for an accounting period if the company has unpaid PAYE, visiting performers withholding tax or NIC bills for any payment periods falling in that accounting period. HM Revenue and Customs may make a payment of some or all of the amount, if appropriate.

51. New section 1179CI is an anti-abuse rule that restricts relief for companies which enter into tax avoidance arrangements or transactions which are not made for genuine commercial reasons.

52. New sections 1179CI(1) to (3) explain that a company which is party to disqualifying arrangements in relation to a production is not able to claim relief for the accounting period in which the arrangements fall, or any subsequent period. If applicable, the company's tax returns for previous periods in which relief was claimed on the production are amended to withdraw eligibility for relief, and the company must repay any resulting overpaid credits to HM Revenue and Customs.

53. Disqualifying arrangements are defined in new section 1179CI(7) to (9). They include any arrangements the main purpose or one of the main purposes of which is to obtain a relevant advantage. A relevant advantage occurs where a company obtains relief to which it would not otherwise be entitled, or a greater amount of relief than to which it would otherwise be entitled. New section 1179CI(8) clarifies that disqualifying arrangements do not include arrangements which obtain a relevant advantage which is in keeping with the principles and policy objectives of the relief.

54. Any transaction which is attributable to arrangements that are not made for genuine commercial reasons (but not disqualifying arrangements) is to be ignored in determining a company's entitlement to relief. This is done by counteracting the effect of the transaction on the company's entitlement to relief, by making just and reasonable adjustments. This is set out in new sections 1179CI(4) to (6). The company will still be able to claim relief on its other eligible expenditure in relation to a production.

## Chapter 4 – Films and television programmes

55. Chapter 4 contains new sections 1179D to 1179EB which set out the applications of Chapters 2 and 3 specifically to television programmes, certification, and other definitions. An expenditure credit which arises under this Chapter is called an 'audiovisual expenditure credit' (AVEC).

56. New section 1179DA sets out the meaning of 'film', being a record, however made, of a sequence of moving images that is capable of being used as a means of showing that sequence as a moving picture. Each part of a series of films is treated as a separate film unless it forms part of a series with not more than 26 parts, the combined playing time is not more than 26 hours, and the series constitutes a self-contained work or is a series of documentaries with a common theme.

57. New section 1179DB sets out the conditions for a film qualifying for the tax relief. The film must meet the following criteria: the theatrical condition at new section 1179DC, the British certification condition at new section 1179DJ and, the UK expenditure condition at new section 1179DO.

58. New section 1179DC provides that a film cannot qualify for the tax relief unless it is intended, at the end of each accounting period, for theatrical release by exhibition to the paying public at the commercial cinema and a significant proportion of the earnings from the film is intended to be obtained by such exhibition. If the film does not meet the theatrical release condition in an accounting period it cannot qualify for the tax relief in that or any subsequent accounting period.

59. New section 1179DD defines the meaning of 'television programme' which is any programme (with or without sounds) which is produced to be seen on the television or the internet. Two or more television programmes that are commissioned together under the same agreement (such as a television series or serial) are treated as a single television programme. A single commisioned programme (for example a pilot programme) is treated as a single programme.

60. New section 1179DE sets out the criteria which a programme must meet to be a qualifying television programme. Each criterion is further defined in later sections. New section 1179DF(1) lists the eligible categories of television programme.

61. New section 1179DF(2) states that a programme can only be a drama if it has the following properties:

    - It must consist wholly or mainly of a depiction of events
    - The events are depicted (wholly or mainly) by one or more persons performing
    - The whole or major proportion of what is done by the person or persons performing, whether by way of speech, acting, singing or dancing, involves the playing of a role.

    For the purposes of section 1179DF(1), 'drama' may include a comedy.

62. New section 1179DF(3) states that a programme can only be a documentary if the following conditions apply:

    - It depicts real events, places or circumstances,
    - It is primarily intended to record or inform the viewer about those events, places or circumstances.

    Programmes which meet the definition of a drama are not documentaries.

63. New section 1179DF(4) states that a programme can only be a children's programme if, when production activities begin, it is reasonable to expect that the persons who will make up the programme's primary audience will be under the age of 15. A programme can still be a children's programme if it is watched by predominantly older viewers, provided it is aimed at audiences under 15.

64. New section 1179DG(1) sets out those programmes that are excluded television programmes. These are:

    - Any advertisement or other promotional programme,
    - News or current affairs programmes or discussion programmes,
    - Quiz shows, game shows, panel shows, variety shows, chat shows or similar entertainment,
    - It consists of or includes a competition or contest, or the results of a competition or contest,
    - It is a broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purposes of being filmed, or
    - It is produced for training purposes.

65. New section 1179DG(2) allows a children's programme to be a qualifying programme even if it is a children's quiz or game show provided the prize total does not exceed £1000 per programme. Where a number of programmes are commissioned together (see new section 1179DD(2)) and treated as a single programme then the prize total remains £1000 regardless of the number of programmes or episodes commissioned because they are treated as one programme.

66. New section 1179DG(3) defines the term 'prize total' for a children's programme. This is the total of the amount of each relevant prize that is a money prize, and the amount spent on each other relevant prize by, or on behalf of, its provider. 'Relevant prize' means a prize offered in connection with participation in a quiz, game, competition or contest in, or promoted by, the programme.

67. New section 1179DH sets out the condition that a television programme can only meet the broadcast condition if it is intended for broadcast to the general public, and it is not a film that meets the theatrical release condition at section 1179DC. Whether this condition is met is determined at the end of each accounting period and if the programme does not meet the condition in an accounting period it cannot meet it in any subsequent accounting periods.

68. New section 1179DI provides for slot length and hourly cost conditions. A single television programme must exceed a slot length of 20 minutes. Where a programme consists of a number of episodes then the slot length of each episode must exceed 20 minutes.

69. New section 1179DI(3) sets out the condition that a television programme must meet the hourly cost condition of average core expenditure of at least £1 million (one million pounds sterling) per hour of slot length. Slot length' means the period of time which the episode or (as the case may be) programme is commisisoned to fill.

70. New section 1179DJ explains the conditions for certification. Any references to a 'certificate' in the section are to be read as:

    - For film a certificate under Schedule 1 to the Films Act 1985, and

- In relation to a television programme, as references to a certificate under new section 1179DM.

71. New sections 1179DJ(2)and (3) sets out the conditions where a production company has either an interim or final certificate. For pre-completion periods a film or television programme is to be provisionally treated as meeting the British certification condition in that period if it has a valid interim certificate at the end of the period, and the production company's tax return for that period is accompanied by the certificate. At the end of the completion period (see section 1179DY) a film or television programme will meet the British certification condition if at the end of the completion period either a final certificate has effect in relation to the film or programme, or the production company has abandoned production activities in relation to the film or programme and the interim certificate has effect in relation to it. In all cases the production company's tax return for that period must be accompanied by the appropriate certificate.

72. New sections 1179DJ(4) to (8) cover the situations where a film or television programme does not meet the certification conditions, or where the certificate ceases to have effect. In such cases the film or television programme are treated as not having met the certification condition so are not a qualifying film or programme, lose all eligibility for the tax relief, and any relevant company tax return drawn up in reliance of the certificate must be amended accordingly. In the case of a certificate ceasing to have effect subsection (6) will not apply where the interim certificate is superseded by the final certificate.

73. New section 1179DK sets out the functions of the Secretary of State (with the approval of the Treasury) where the regulation for television programme certification may be amended, or the certificate revoked.

74. New section 1179DL sets out the conditions for applying to the Secretary of State for a television certificate (interim or final). The Secretary of State may also ask for information relating to the certification.

75. New section 1179DM sets out when a television programme may be certified or a certificate revoked. Any certificate revoked by the Secretary of State is treated as never having had effect and a programme loses eligibility for the tax relief.

76. New section 1179DN allows for HM Revenue and Customs to disclose information to the Secretary of State for the purpose of the Secretary of State's functions and also allows the same information to be disclosed to the British Film Institute.

77. New section 1179DO sets out the conditions relating to UK expenditure in both the pre-completion period and the completion period.

78. New section 1179DO(1) provides for pre-completion periods. The UK expenditure condition shall be provisionally treated as being met if the production company's accounts for the period state the total amount of core expenditure that is expected to be incurred in relation to the film or programme, and the amount of expected UK expenditure. The amount of UK expenditure must be at least 10% of the total amount of expenditure.

79. New section 1179DO(2) states that a film or television programme meets the UK expenditure condition for the completion period and any subsequent period if the production company's accounts for the completion period state the total amount of core expenditure that has been incurred and the total amount of UK expenditure. The amount of UK expenditure must be more than 10% of the total core expenditure for the UK expenditure condition to be met.

80. New section 1179DO(3) sets out that if a film or television programme does not meet the UK expenditure condition in relation to an accounting period then it will not be a qualifying film or television programme. Relief given in pre-completion periods is rescinded, and the relevant company tax return(s) must be amended to give effect to this.

81. New section 1179DP sets out the general rules that govern whether a company is a 'production company' for a film or television programme.

82. New section 1179DP(1) includes the criteria a company must meet to be a production company for a film or TV programme that is not a qualifying co-production. The company must be responsible for pre-production, principal photography and post-production of the film or programme, as well as the delivery of the completed film or programme. The company must be actively engaged in production planning and decision-making during pre-production, principal photography and post-production, and directly negotiates, contracts pays for rights, goods and services in relation to the film or programme. The company must also be the company most directly engaged in the activities described above.

83. New section 1179DP(2) includes the criteria that a company must meet to be the production company for a film or TV programme that is a qualifying co-production. The company must be a co-producer and make an effective creative, technical and artistic contribution to the film or programme. The company must not do this in partnership and co-producers who only provide finance are excluded. The company must also make a greater creative, technical and artistic contribution than any other co-producer which is within the charge to UK Corporation Tax.

84. New section 1179DP(3) excludes activities carried on in partnership in relation to a film or programme when determining whether a company is the production company.

85. New section 1179DQ provides for when a film or television programme may be a 'qualifying co production' which is when certified under an international agreement between His Majesty's Government in the United Kingdom and any other government, international organisation or authority. A company is a 'co-producer' if it is regarded as such under the international agreement by which the film or programme is a qualifying co-production.

86. New section 1179DR sets out that expenditure incurred by the production company for a film or television programme counts as 'relevant production expenditure' if it is core expenditure and it is not excluded expenditure. The terms core expenditure and excluded expenditure are further defined in later new sections.

87. New section 1179DS defines what is meant by 'core expenditure' in relation to a film or television programme. Core expenditure is expenditure on the pre-production, principal photography or post production of the film or programme. Expenditure on development, distribution and other non-production activities is excluded as it is non-core expenditure.

88. New section 1179DT sets out specifically excluded expenditure in relation to relief for research and development costs (R&D relief). Expenditure is not eligible for AVEC if a company would be ableto claim relief on it under any of the R&D schemes.

89. New section 1179DU sets out specifically excluded expenditure in relation to connected parties. Expenditure is not eligible for AVEC to the extent that it represents connected party profit. New section 1179DU(2) defines connected party profit as the excess of the payment made to a connected party for supplying something over the cost incurred by the connected party in supplying that thing. For example, if company 1 pays connected company 2 £100 for a service, and providing that service costs company 2 only £75, company 1's qualifying expenditure will be £75. The remaining £25 is the connected party profit.

90. New section 1179DU(3) includes an exemption to the connected party profit rule. Connected party profit is not excluded from being eligible expenditure for relief if the price charged between the parties is no more than would have been charged if the transaction occurred between wholly independent parties. This is also known as an arm's length price. For sequences of transactions, each transaction must be charged at an arm's length price.

91. New section 1179DU(4) makes provision to exclude connected party profit where payments flow through a chain of connected parties. For example, if company 1 sells a product worth £50 to connected company 2 for £100, and company 2 sells it on to company 3 for £100, company 3's qualifying expenditure will still be only £50. The provision applies no matter how long the chain is.

92. Legislation will also be introduced to require companies to provide information on connected party transactions under the additional information requirement in new Paragraph 83WA of Schedule 18 to the Finance Act 1998.

93. New section 1179DV sets out the percentage rate of relief which is to be applied to the qualifying expenditure on a production at Step 5 in section 1179CA to reach the amount of expenditure credit to which the production is entitled.

94. New section 1179DV(2) sets the relevant percentage at 34% for

    - qualifying films, excluding animated films, and
    - qualifying television programmes that are a drama or documentary, but not an animated programme or children's programme.

95. New section 1179DV(3) sets the relevant percentage at 39% for

    - qualifying animated films, and
    - qualifying television programmes that are an animated programme or children's programme.

96. New sections 1179DV(4) and 1179DV(5) amend the relevant percentage for animated films, animated programmes and children's programmes in certain circumstances. If the production company claims an expenditure credit on the production in any period on the basis that it is a production of a type listed in section 1179DV(2), the relevant percentage is set at 34% for all subsequent periods. This means that if the company later claims for the production on the basis that it is of a type listed in section 1179DV(3), the relevant percentage will be 34% instead of 39%.

97. New section 1179DW sets out when the separate trade is deemed to begin for a production. It is from this point that the separate trade rules must be followed (see section 1179B). The separate trade begins when pre-production begins on the film or programme or, if earlier, when the company first receives income from the film or programme.

98. New section 1179DX(2) explains that expenditure only counts towards the costs of the film or programme if it is expenditure on production activities in connection with the film or programme, or activities with a view to exploiting the film or programme.

99. New section 1179DX(3) provides that no amount is to be included in costs incurred for a period if those costs are still unpaid 4 months after the period ends.

100. New section 1179DX(4) sets out that income from a film or programme constitutes any receipts in connection with the making or exploitation of the film or programme. This includes:

- Receipts from the sale of the film or programme or rights in it,
- Royalties or other payments for use of the film or programme or aspects of it (for example characters or music),
- Payments for rights to produce games or other merchandise, and
- Receipts by way of a profit share agreement.

101. New section 1179DY defines what is meant by 'accounting period', 'completion period' and 'pre-completion period'.

102. New section 1179DZ explains the effect on a production's entitlement to relief if it moves out of one of the categories with the higher rate of relief into a lower one. The production company cannot claim relief on the production in a lower rate category after claiming in a higher rate category in an earlier period/periods, unless it amends its previous returns so that it claims at the lower rate in all periods to date.

103. New section 1179E allows for productions to qualify as a film and a television programme in different periods. As long as the production meets either the theatrical release condition or the broadcast condition in each period, subsection (2) of sections 1179DC and 1179DH does not apply. Productions which switch may continue to claim under their original BFI certificate type.

104. New section 1179EA provides what is meant by 'production activities' which are, in relation to a film or television programme, activities involved in the development, pre-production, principal photography and post production. 'Principal photography'

includes the generation of images by a computer for inclusion in the film or programme.

105. New section 1179EA(3) sets out that a film or television programme is only treated as an animation where the imagery of the completed film or programme includes animation, and the core expenditure on animation is at least 51% of the total core expenditure .

106. New section 1179EB sets out when a film or television programme is 'completed'. For a film it is when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public (for example by a distributer). For a television programme it is when it is first in a form in which it can be reasonably regarded as ready for broadcast to the general public.

## Chapter 5 – Video games

107. Chapter 5 contains new sections 1179F to 1179FS which set out the applications of Chapters 2 and 3 specifically to video games, certification, and other definitions. An expenditure credit which arises under this Chapter is called a 'video game expenditure credit' (VGEC).

108. New section 1179FA sets out the criteria for a video game to qualify for relief. The game must meet the following conditions: the intended supply condition (section 1179FB), the British certification condition (section 1179FC) and the UK expenditure condition (section 1179FH). The game must also not be an excluded game, as described in new section 1179FA(2). That includes games produced for advertising, promotional or gambling purposes.

109. New section 1179FB contains the intended supply condition. In order to qualify for relief, the video game must be intended for release to the general public. The condition must be met at the end of every accounting period. If the game fails the condition at the end of an accounting period, it will not be eligible for relief in that period or any subsequent period, but relief given in earlier periods does not need to be repaid to HM Revenue and Customs.

110. New section 1179FC contains the British certification condition.

111. New sections 1179FC(1) to (3) set out the conditions where a development company has either an interim or final certificate. For pre-completion periods a video game is to be provisionally treated as meeting the British certification condition in that period if it has a valid interim certificate at the end of the period, and the development company's tax return for that period is accompanied by the certificate. At the end of the completion period (see section 1179FQ) a video game will meet the British certification condition if at the end of the completion period either a final certificate has effect in relation to the video game, or the development company has abandoned production activities in relation to the video game and the interim certificate has effect in relation to it. In all cases the development company's tax return for that period must be accompanied by the appropriate certificate.

112. New sections 1179FC(4) to (8) cover the situations where a video game does not meet the certification conditions, or where the certificate ceases to have effect. In such cases the video game is treated as not having met the certification condition so is not a qualifying video game, loses all eligibility for the tax relief, and any relevant company tax return drawn up in reliance of the certificate must be amended accordingly. In the case of a certificate ceasing to have effect, subsection (6) will not apply where the interim certificate is superseded by the final certificate.

113. New section 1179FD sets out the functions of the Secretary of State (with the approval of the Treasury) where the regulations for video game certification may be amended, or the certificate revoked.

114. New section 1179FE sets out the conditions for applying to the Secretary of State for a video game certificate (interim or final). The Secretary of State may also ask for information relating to the certification.

115. New section 1179FF sets out when a video game may be certified or a certificate revoked. Any certificate revoked by the Secretary of State is treated as never having had effect and the game loses eligibility for tax relief.

116. New section 1179FG allows for HM Revenue and Customs to disclose information to the Secretary of State for the purpose of the Secretary of State's functions and also allows the same information to be disclosed to the British Film Institute.

117. New section 1179FH sets out the conditions relating to UK expenditure in both the pre-completion period and the completion period.

118. New section 1179FH(1) provides for pre-completion periods. The UK expenditure condition shall be provisionally treated as being met if the development company's accounts for the period state the total amount of core expenditure that is expected to be incurred in relation to the video game, and the amount of expected UK expenditure. The amount of UK expenditure must be at least 10% of the total amount of expenditure.

119. New section 1179FH(2) states that a video game meets the UK expenditure condition for the completion period and any subsequent period if the development company's accounts for the completion period state the total amount of core expenditure that has been incurred and the total amount of UK expenditure. The amount of UK expenditure must be more than 10% of the total core expenditure for the UK expenditure condition to be met.

120. New section 1179FH(3) sets out that if a video game does not meet the UK expenditure condition in relation to an accounting period then it will not be a qualifying video game. Relief given in pre-completion periods is rescinded, and the relevant company tax return(s) must be amended to give effect to this.

121. New section 1179FI sets out the general rule that governs whether a company is a 'development company' for a video game. The company must be responsible for designing, producing and testing the video game. The company must be actively engaged in production planning and decision-making during design, production and testing, and must directly negotiate, contract and pay for rights, goods and services in relation to the video game.

122. New section 1179FI(1)(d) recognises that in some cases there may be more than one company meeting the definition of a development company for a video game and provides that, where this is the case, the company most directly engaged in the activities referred to in sections 179FI(1)(a) to (1)(c) is the development company for the video game.

123. New section 1179FI(2) excludes activities carried on in partnership in relation to a video game when determining whether a company is the development company.

124. New section 1179FJ sets out that expenditure incurred by the development company for a video game counts as 'relevant production expenditure' if it is core expenditure and it is not excluded expenditure. The terms core expenditure and excluded expenditure are further defined in later new sections.

125. New section 1179FK defines what is meant by 'core expenditure' in relation to a video game. Core expenditure is expenditure on designing, producing or testing the video game. Expenditure on designing the initial concept, or debugging and maintenance work on a completed game, is excluded as it is non-core expenditure.

126. New section 1179FL sets out specifically excluded expenditure in relation to relief for research and development costs (R&D relief). Expenditure is not eligible for VGEC if a company is entitled to claim relief on it under any of the R&D schemes .

127. New section 1179FM sets out specifically excluded expenditure in relation to connected parties. Expenditure is not eligible for VGEC to the extent that it represents connected party profit. New section 1179FM(2) defines connected party profit as the excess of the payment made to a connected party for supplying something over the cost incurred by the connected party in supplying that thing. For example, if company 1 pays connected company 2 £100 for a service, and providing that service costs company 2 only £75, company 1's qualifying expenditure will be £75. The remaining £25 is the connected party profit.

128. New section 1179FM(4) makes provision to exclude connected party profit where payments flow through a chain of connected parties. For example, if company 1 sells a product worth £50 to connected company 2 for £100, and company 2 sells it on to company 3 for £100, company 3's qualifying expenditure will still be only £50. The provision applies no matter how long the chain is.

129. New section 1179FM(3) includes an exemption to the connected party profit rule. Connected party profit is not excluded from being eligible expenditure for relief if the price charged between the parties is no more than would have been charged if the transaction occurred between wholly independent parties. This is also known as an arm's length price. For sequences of transactions, each transaction must be charged at an arm's length price.

130. Legislation will also be introduced to require companies to provide information on connected party transactions under the additional information requirement in new Paragraph 83WA of Schedule 18 to the Finance Act 1998.

131. New section 1179FN sets out the percentage rate of relief which is to be applied to the qualifying expenditure on a production at Step 5 in section 1179C to reach the

amount of expenditure credit to which the production is entitled. The relevant percentage for video games is set at 34%.

132.New section 1179FO sets out when the separate trade is deemed to begin for a production. It is from this point that the separate trade rules must be followed (see section 1179B). The separate trade begins when the design of the game begins or, if earlier, when the company first receives income from the game.

133.New section 1179FP(2) explains that expenditure only counts towards the costs of the video game if it is expenditure on development activities in connection with the video game, or activities with a view to exploiting the video game.

134.New section 1179FP(3) provides that no amount is to be included in costs incurred for a period if those costs are still unpaid 4 months after the period ends.

135.New section 1179FP(4) sets out that income from a video game constitutes any receipts in connection with the making or exploitation of the video game. This includes:

- Receipts from the sale of the video game or rights in it,
- Royalties or other payments for use of the video game or aspects of it (for example characters or music),
- Payments for rights to produce games or other merchandise, and
- Receipts by way of a profit share agreement.

136.New section 1179FQ defines what is meant by 'accounting period', 'completion period' and 'pre-completion period'.

137.New section 1179FR provides what is meant by 'development activities' which are, in relation to a video game, activities involved in designing, producing and testing the game.

138.New section 1179FS sets out when a video game is 'completed'. A video game is completed when it is first in a form in which it could reasonably be regarded as being ready for copies to be made and made available to the general public.

## Schedule 2: Part 2: Consequential amendments on Part 1

139.Paragraph 2 amends section 6 and Schedule 1 of the Films Act 1985.

140.Paragraph 3 amends Schedule 18 to the Finance Act 1998.

141.Paragraph 4 amends Schedule 24 to the Finance Act 2007.

142.Paragraph 5 substitutes sections 808 to 808E of the Corporation Tax Act 2009 with new section 807A. It also amends section 1040ZA and Schedule 4.

143. Paragraph 6 amends section 45A, Part 8A and Schedule 4 of the Corporation Tax Act 2010. It also inserts new Chapter 10A into the same Act.

## Schedule 2: Part 3: Repeal of existing regimes for films, television and video games.

144. Paragraph 7 removes Parts 15 to 15B of the Corporation Tax Act 2009, with effect from 1 April 2027.

## Schedule 2: Part 4: Amendments consequential on Part 3

145. Paragraph 8 amends section 6 and Schedule 1 of the Films Act 1985.

146. Paragraph 9 amends section 826 of the Income and Corporation Taxes Act 1988.

147. Paragraph 10 amends Schedule 18 to the Finance Act 1998.

148. Paragraph 11 amends Schedule 24 to the Finance Act 2007.

149. Paragraph 12 amends section 1040ZA, section 1310 and Schedule 4 of the Corporation Tax Act 2009.

150. Paragraph 13 amends Schedule 54A to the Finance Act 2009.

151. Paragraph 14 amends section 45A, section 45B, Part 8A and Part 8B of the Corporation Tax Act 2010.

152. Paragraph 15 amends Schedule 24 to the Finance Act 2016.

## Schedule 2: Part 5: Commencement and transitional provisions

153. Paragraph 16 states that a company cannot make an election under section 1179B(1) to elect into the new regimes for any accounting periods ended before 1 January 2024. Amendments made by Parts 3 and 4 of Schedule 2, for example the repeal of existing reliefs, have effect in relation to accounting periods beginning on or after 1 April 2027.

154. Paragraph 17 sets out the closure of the existing reliefs to new productions. Companies may only claim AVEC or VGEC on productions in respect of which the separate trade begins on or after 1 April 2025. For the rules around when the separate trade begins for a production, see section 1179DW for films and television programmes, and section 1179FO for video games.

155. Paragraph 18 explains how productions may enter the new reliefs during the transition period.

156. Sub-paragraph (1) allows companies which elect to transition a production into the new regime in an accounting period that straddles the 1 January 2024 commencement date to apportion their expenditure for that accounting period. Expenditure up to 31

December 2023 is eligible under the relevant existing relief; expenditure from 1 January 2024 is eligible for AVEC/VGEC.

157. Sub-paragraph (2) ensures that once a company has switched a production into the new regime, it must remain in that regime in subsequent periods.

158. Sub-paragraphs (3) and (4) allow companies which elect to transition a production into the new regime in an accounting period that straddles the relevant closure date for the old reliefs to apportion their expenditure for that accounting period. Expenditure up to the relevant closure date is eligible under the relevant existing relief; expenditure from the relevant closure date onwards is only eligible under AVEC/VGEC.

159. Sub-paragraph (5) sets out how apportionment of expenditure is to apply. Companies should treat the accounting period as if it were two separate accounting periods, but only for the purposes of the relevant reliefs and Paragraphs 19 to 24 of this Schedule

160. Sub-paragraph (6)(c) explains which date should be used as the relevant closure date for a production. Films and TV programmes which have not commenced principal photography by 1 April 2025, and video games which have not commenced development by the same date, must use 1 April 2025 as their relevant closure date. Productions which have already commenced principal photography/production by 1 April 2025 should use 1 April 2027 as their relevant closure date.

161. Paragraph 19 sets out the rules for productions in which do not switch into the new regime at their relevant closure date. The separate trade for these productions is deemed to have ceased on the day before the relevant closure date, and the production is treated as being abandoned. This means relief is not available under FTR, HETV, ATR, CTR or VGTR from that date, and the company cannot claim AVEC/VGEC in relation to the production in later periods.

162. Paragraph 20 allows for the separate trade treatment to continue without interruption for productions which switch between regimes. No adjustment of amounts brought into account to date for the separate trade is required; they are to be carried over from the old regime into the new.

163. Paragraph 21 links the cumulative calculation of qualifying expenditure between the existing reliefs and AVEC/VGEC for companies which switch partway through production. For the calculation of entitlement to AVEC/VGEC in section 1179CA(1), 'qualifying expenditure incurred to date' under the existing reliefs counts towards 'relevant global expenditure' in Step 1. 'E' under the existing reliefs is to be used as 'qualifying expenditure to date' in Step 4.

164. Paragraph 22 allows for certificates issued by the BFI for productions under the existing reliefs to continue to have effect for the new reliefs. Companies will not have to re-certify. References to revocation, ceasing to be in force and final certificates in the new reliefs have effect for the existing regimes so far as they affect accounting periods beginning before 1 April 2027.

165. Sub-paragraph (3) explains that the cessation of the existing reliefs from 1 April 2027 does not remove the certification requirement from being in force for claims under those reliefs up to the cessation date.

166. Paragraph 23 explains that the cessation of FTR, HETV, ATR and CTR from 1 April 2027 does not remove the UK expenditure condition from being in force for claims under those reliefs up to the cessation date.

167. Paragraph 24 sets out the transition rules for the move from the European expenditure condition to the UK expenditure condition for video games. The European expenditure condition applies to claims to VGTR, while the UK expenditure condition replaces it in VGEC.

168. Sub-paragraphs (1) to (3) explain that when a production switches into the new relief, provided it is not already completed, the accounting period immediately before the period in which VGEC is first claimed is treated as the completion period for the purposes of the European expenditure condition of VGTR.

169. Sub-paragraph (4) explains that, under the same conditions, core expenditure for the purposes of determining whether the UK expenditure condition is met under VGEC includes only core expenditure incurred after the switch to VGEC.

170. Paragraph 25 allows for the transfer of terminal losses between productions claiming under the old reliefs and the new reliefs. The terminal loss rules of the relief which applies to the trade receiving the loss take priority over the rules of the relief which applies to the trade surrendering the loss. This means that the transfer of a terminal loss from a film production trade to a TV programme production trade, and vice versa, is only possible where the recipient trade is subject to the new scheme.

# Background note

171. As announced at Spring Budget 2023, the audio-visual creative tax reliefs are being reformed to expenditure credits. These changes will modernise the creatives tax relief system and ensure they continue to work as intended in the current global tax environment.

172. The Audio-Visual Expenditure Credit (AVEC) will cover the current Film Tax Relief (FTR), High End Television tax relief (HETV tax relief), Animation Tax Relief (ATR) and Children's TV Tax relief (CTR). The Video Games Expenditure Credit (VGEC) will cover the existing Video Games Tax Relief (VGTR). Currently, relief is given by way of an additional deduction from profits or surrendering a loss for a tax credit. Under the new expenditure credit schemes, companies will instead receive a taxable above-the-line tax credit based on qualifying expenditure. The qualifying criteria and other rules of the current reliefs will mostly be carried across to the new AVEC and VGEC schemes.

173. The new expenditure credits will be available to claim from 1 January 2024. There will be a transition period which will conclude with the existing tax reliefs being sunset from 1 April 2027.

# Clause 4 and Schedule 3: Theatrical production made by companies

## Summary

1. Schedule 3 introduces changes to Theatre Tax Relief (TTR). These changes are intended to make the policy intent of the relief clearer, bring greater certainty to industry and streamline the administration of the relief. The change from European to UK expenditure will ensure that the cultural reliefs continue to meet our international obligations. The changes will have effect from 1 April 2024. These changes are intended to streamline the administration of the reliefs.

## Details of the clause

2. Clause 4 introduces Schedule 3.

## Details of the Schedule

### Part 1: Amendments of Part 15C of CTA 2009

3. Paragraph 2 amends section 1217FA of Corporation Tax Act 2009 (CTA 2009). This amendment alters the meaning of a theatrical production so that the primary focus of the play, opera, musical or dramatic piece must be the depiction of a story or stories. The story or stories must be depicted through performers playing roles. The main purpose of audience members must be to observe a performance rather than participate in it.

4. Paragraph 3 specifies that the provision of incidental goods or services to the audience will not qualify as core expenditure. An example of expenditure on incidental goods or services is where a production serves food or drink to the audience while they watch the show. These types of costs may still be included as part of the company's separate theatrical trade where they meet the criteria set out in section 1217IC, but they will not be eligible for relief.

5. Paragraph 4 amends section 1217IC of CTA 2009 ('costs of theatrical production') to insert a reference to the general rule in CTA 2009 that prohibits capital expenditure as a deduction when calculating the profits of a trade. This is intended to emphasise that in most cases, capital expenditure is not allowed in a company's TTR claim.

6. Section 1217IC(3) is only intended to permit capital expenditure if it is capital in nature solely because it is incurred on the creation of the production itself (e.g. the play, ballet etc.). Examples of permitted expenditure may include costs incurred on developing intangible assets for the production, such as a score. Expenditure that would be capital expenditure regardless of whether it was incurred on the creation of

another asset does not fall within section 1217IC(3) e.g. costs incurred on purchasing or permanently modifying land or a building. This same rule applies for capital income deemed as revenue income.

7. Paragraph 5 replaces the European expenditure condition in Part 15C of the Corporation Tax Act (CTA) 2009 with the UK expenditure condition. For a production to qualify for relief, at least 10% of core expenditure incurred on it must be expenditure on goods or services used or consumed in the UK. This rule has effect from 1 April 2024. The 'used or consumed' rule considers the location of the recipient or customer; the nationality or location of the provider is unimportant. For example, costumes bought from the USA may be considered items of UK expenditure if used in productions or rehearsals taking place in the UK.

8. Paragraph 6 replaces European expenditure in section 1217J of CTA 2009 ('amount of relief for theatrical production') with UK expenditure.

9. Paragraph 7 sets out specifically excluded expenditure in relation to connected parties. Expenditure is not eligible for TTR to the extent that it represents connected party profit. Sub-paragraph (3) defines connected party profit as the excess of the payment made to a connected party for supplying, transferring or doing something over the cost incurred by the connected party in supplying, transferring or doing that thing. For example, if company 1 pays connected company 2 £100 for a service, and providing that service costs company 2 only £75, company 1's qualifying expenditure will be £75. The remaining £25 is the connected party profit.

10. Sub-paragraph (3) also makes provision to exclude connected party profit where payments flow through a chain of connected parties (see new subparagraph 1217JA(4)). For example, if company 1 sells a product worth £50 to connected company 2 for £100, and company 2 sells it on to company 3 for £100, company 3's qualifying expenditure will still be only £50. The provision applies no matter how long the chain is.

11. Sub-paragraph (3) also includes an exemption to the connected party profit rule. Connected party profit is not excluded from being eligible expenditure for relief if the price charged between the parties is no more than would have been charged if the transaction occurred between wholly independent parties. This is also known as an arm's length price. For sequences of transactions, each transaction must be charged at an arm's length price.

12. Legislation will also be introduced to require companies to provide information on connected party transactions under the additional information requirement in new Paragraph 83WA of Schedule 18 to the Finance Act 1998.

13. Paragraph 8 excludes expenditure eligible for R&D relief from theatre tax relief.

14. Paragraph 9 adds a definition of payment periods for PAYE, NICs and withholding tax for visiting performers to s1217KB.

15. Paragraph 10 inserts new section 1217KC ('no claim if company in administration or liquidation'). A company cannot make a claim to TTR if it is in administration or liquidation at the time.

## Part 2: Changes from European to UK expenditure: Transitional Provision

16. Paragraph 11 sets out transitional provisions for the changes made by Paragraph 5. Sub-paragraph (2) exempts productions from the new UK expenditure rule if they enter production before 1 April 2024 and the separate trade relating to the production ceases before 1 April 2025.

17. Sub-paragraphs (3) and (4) explain the transitional provision for productions that enter production before 1 April 2024 and for which the separate trade continues after 1 April 2025. If these productions meet the European expenditure condition at 1 April 2025, they will be entitled to relief on expenditure incurred before that date even if they later do not meet the UK expenditure condition.

18. Sub-paragraph (5) explains that entitlement to a tax credit under sub-paragraph (4) is based on the amount of the surrenderable loss that arises only from income received and costs incurred before 1 April 2025. Income received and costs incurred after that date are not taken into account for the purposes of sub-paragraph (4).

19. Sub-paragraphs (6) and (7) make a general provision for all productions for which the separate trade continues after 1 April 2025. The references to a statement made by the production company in section 1217NA(1) and (2) (statements of UK expenditure incurred) are to include statements made before that section was amended by Paragraph 5 (statements of European expenditure incurred).

20. Sub-paragraph (8) explains that the application of section 1217NA(1) is subject to the provision in sub-paragraph (4).

21. Sub-paragraph (10) explains that a production 'enters production' when core expenditure is first incurred on it. Core expenditure is expenditure incurred on producing and closing the production, but not development or running costs. Core expenditure will first be incurred when the production enters the production phase.

22. Paragraph 12 sets out transitional provisions for the change made by Paragraph 6. Sub-paragraph (4) allows for European expenditure incurred before 1 April 2024 to count as UK expenditure for the purposes of section 1217J as amended by Paragraph 6.

23. Sub-paragraph (5) explains that production companies with productions that enter production before 1 April 2024 may elect for European expenditure to count as UK expenditure for those productions up to 1 April 2025.

# Background note

24. At Spring Budget 2023, the government extended the temporary higher rates of relief for two further years for the three cultural reliefs: Theatre Tax Relief, Orchestra Tax Relief and Museums and Galleries Exhibition Tax Relief. The changes make the legislation clearer and reinforce the original policy intent whilst ensuring the fairness and success of the cultural tax reliefs.

# Clause 5 and Schedule 4: Orchestral concerts produced by companies

## Summary

1. Schedule 4 introduces changes to Orchestra Tax Relief (OTR). These changes are intended to make the policy intent of the relief clearer, bring greater certainty to industry and streamline the administration of the relief. The change from European to UK expenditure will ensure that the cultural reliefs continue to meet our international obligations. The changes will have effect from 1 April 2024. These changes are intended to streamline the administration of the reliefs.

## Details of the clause

2. Clause 5 introduces Schedule 4.

## Details of the Schedule

### Part 1: Amendments of Part 15D of CTA 2009

3. Paragraph 2 amends the time limit in section 1217QA of CTA 2009 for making an election to treat orchestral concerts as a series. From 1 April 2024, the time limit is whichever is the later date of:

   - The date of the first concert in the series, or
   - The date of submission of the first company tax return for a period in which a concert in the series is accounted for as a separate trade.

4. Paragraph 3 specifies that the provision of incidental goods or services to the audience will not qualify as core expenditure. An example of expenditure on incidental goods or services is where a production serves food or drink to the audience while they watch the concert. These types of costs may still be included as part of the company's separate orchestral trade where they meet the criteria set out in section 1217QD, but they will not be eligible for relief.

5. Paragraph 4 amends section 1217QD of CTA 2009 ('costs of orchestral concert') to insert a reference to the general rule in CTA 2009 that prohibits capital expenditure as a deduction when calculating the profits of a trade. This is intended to emphasise that in most cases, capital expenditure is not allowed in a company's OTR claim.

6. Section 1217QD(3) is only intended to permit capital expenditure if it is capital in nature solely because it is incurred on the creation of the concert itself. Examples of permitted expenditure may include costs incurred on developing intangible assets for the production, such as a score. Expenditure that would be capital expenditure

regardless of whether it was incurred on the creation of another asset does not fall within subsection 1217QD(3) e.g. costs incurred on purchasing or permanently modifying land or a building. This same rule applies for capital income deemed as revenue income.

7. Paragraph 5 replaces the European expenditure condition in Part 15D of CTA 2009 with the UK expenditure condition. For a concert to qualify for relief, at least 10% of core expenditure incurred on it must be expenditure on goods or services used or consumed in the UK. This rule has effect from 1 April 2024. The 'used or consumed' rule considers the location of the recipient or customer; the nationality or location of the provider is unimportant. For example, payments to a conductor resident in Japan, who conducts the rehearsals for a qualifying orchestral concert in the UK would be considered UK expenditure. For transitional arrangements see paragraph 10.
8. Paragraph 6 replaces European expenditure in section 1217RE of CTA 2009 ('amount of relief for orchestral concert') with UK expenditure.
9. Paragraph 7 amends section 1217RF of CTA 2009 ('expenditure that qualifies for orchestra tax relief') to exclude connected party profit from qualifying expenditure.
10. Sub-paragraph (3) defines connected party profit as the excess of the payment made to a connected party for supplying, transferring or doing something over the cost incurred by the connected party in supplying, transferring or doing that thing. For example, if company 1 pays connected company 2 £100 for a service, and providing that service costs company 2 only £75, company 1's qualifying expenditure will be £75. The remaining £25 is the connected party profit.
11. Sub-paragraph (3) also makes provision to exclude connected party profit where payments flow through a chain of connected parties. For example, if company 1 sells a product worth £50 to connected company 2 for £100, and company 2 sells it on to company 3 for £100, company 3's qualifying expenditure will still be only £50. The provision applies no matter how long the chain is.
12. Sub-paragraph (3) also includes an exemption to the connected party profit rule. Connected party profit is not excluded from being eligible expenditure for relief if the price charged between the parties is no more than would have been charged if the transaction occurred between wholly independent parties. This is also known as an arm's length price. For sequences of transactions, each transaction must be charged at an arm's length price.
13. Legislation will be introduced to require companies to provide details of their connected party transactions under the additional information requirement in new Paragraph 83WA of Schedule 18 to the Finance Act 1998.
14. Paragraph 8 excludes expenditure eligible for R&D relief from orchestra tax relief.
15. Paragraph 9 adds a definition of payment periods for PAYE, NICs and withholding tax for visiting performers to s1217RI.
16. Paragraph 10 inserts new section 1217RKA ('no claim if company in administration or liquidation'). A company cannot make a claim to OTR if it is in administration or

liquidation at the time.

## Part 2: Changes from European to UK Expenditure: Transitional Provision

17. Paragraph 11 sets out transitional provisions for the changes made by Paragraph 5. Sub-paragraph (2) exempts concerts from the new UK expenditure rule if they enter production before 1 April 2024 and the separate trade relating to the concert ceases before 1 April 2025.

18. Sub-paragraphs (3) and (4) explain the transitional provision for concerts which enter production before 1 April 2024 and for which the separate trade continues after 1 April 2025. If these concerts meet the European expenditure condition at 1 April 2025, they will be entitled to relief on expenditure incurred before that date even if they later do not meet the UK expenditure condition.

19. Sub-paragraph (5) explains that entitlement to a tax credit under sub-paragraph (4) is based on the amount of the surrenderable loss that arises only from income received and costs incurred before 1 April 2025. Income received and costs incurred after that date are not taken into account for the purposes of sub-paragraph (4).

20. Sub-paragraphs (6) and (7) make a general provision for all concerts for which the separate trade continues after 1 April 2025. The references to a statement made by the production company in section 1217TA(1) and (2) (statements of UK expenditure incurred) are to include statements made before that section was amended by Paragraph 5 (statements of European expenditure incurred).

21. Sub-paragraph (8) explains that the application of section 1217TA(1) is subject to the provision in sub-paragraph (4).

22. Sub-paragraph (10) explains that a concert 'enters production' when core expenditure is first incurred on it. Core expenditure is expenditure on producing and closing the concert, but not development or running costs. Core expenditure will first be incurred when the concert enters the production phase.

23. Paragraph 12 sets out transitional provisions for the change made by Paragraph 6. Sub-paragraph (4) allows for European expenditure incurred before 1 April 2024 to count as UK expenditure for the purposes of section 1217RE as amended by Paragraph 6.

24. Sub-paragraph (5) explains that production companies with concerts which enter production before 1 April 2024 may elect for European expenditure to count as UK expenditure for those concerts up to 1 April 2025.

# Background note

25. At Spring Budget 2023, the government extended the temporary higher rates of relief for two further years for the three cultural reliefs: Theatre Tax Relief, Orchestra Tax Relief and Museums and Galleries Exhibition Tax Relief. The changes make the

legislation clearer and reinforce the original policy intent whilst ensuring the fairness and success of the cultural tax reliefs.

# Clause 6 and Schedule 5: Museum and gallery exhibitions produced by companies

## Summary

1. Schedule 5 introduces changes to Museums and Galleries Exhibition Tax Relief (MGETR). These changes are intended to make the policy intent of the relief clearer, bring greater certainty to industry and streamline the administration of the relief. The change from European to UK expenditure will ensure that the cultural reliefs continue to meet our international obligations. The changes will have effect from 1 April 2024. These changes are intended to streamline the administration of the reliefs.

## Details of the clause

2. Clause 6 introduces Schedule 5.

## Details of the Schedule

### Part 1: Amendments of Part 15E of CTA 2009

3. Paragraph 2 amends section 1218ZAA of CTA 2009 to provide that admittance to an exhibition must be in person to a physical venue where objects or works are displayed.

4. Paragraph 3 specifies that the provision of incidental goods or services to exhibition attendees will not qualify as core expenditure. An example of expenditure on incidental goods or services is where customers are served food or drink as part of the exhibition. These types of costs may still be included as part of the company's separate exhibition trade where they meet the criteria set out in section 1218ZCD, but they will not be eligible for relief.

5. Paragraph 4 replaces the European expenditure condition in Part 15E of CTA 2009 with the UK expenditure condition. For an exhibition to qualify for relief, at least 10% of core expenditure incurred on it must be expenditure on goods or services used or consumed in the UK. This rule has effect from 1 April 2024. The 'used or consumed' rule considers the location of the recipient or customer; the nationality or location of the provider is unimportant. For example, specialist descriptive printed vinyls required as part of the curated design of the exhibition, bought and shipped from Australia for use in a qualifying exhibition held in the UK, may be considered items of UK expenditure. This rule has effect from 1 April 2024.

6. Paragraph 5 replaces European expenditure in section 1218ZCF of CTA 2009 ('amount of relief for museum or gallery exhibition') with UK expenditure.

7. Paragraph 6 amends section 1218ZCG of CTA 2009 ('expenditure that qualifies for museums and galleries exhibition tax relief') to exclude connected party profit from qualifying expenditure.

8. Sub-paragraph (3) defines connected party profit as the excess of the payment made to a connected party for supplying, transferring or doing something over the cost incurred by the connected party in supplying, transferring or doing that thing. For example, if company 1 pays connected company 2 £100 for a service, and providing that service costs company 2 only £75, company 1's qualifying expenditure will be £75. The remaining £25 is the connected party profit.

9. Sub-paragraph (3) also makes provision to exclude connected party profit where payments flow through a chain of connected parties. For example, if company 1 sells a product worth £50 to connected company 2 for £100, and company 2 sells it on to company 3 for £100, company 3's qualifying expenditure will still be only £50. The provision applies no matter how long the chain is.

10. Sub-paragraph (3) also includes an exemption to the connected party profit rule. Connected party profit is not excluded from being eligible expenditure for relief if the price charged between the parties is no more than would have been charged if the transaction occurred between wholly independent parties. This is also known as an arm's length price. For sequences of transactions, each transaction must be charged at an arm's length price.

11. Legislation will be introduced to require companies to provide details of their connected party transactions under the additional information requirement in new Paragraph 83WA of Schedule 18 to the Finance Act 1998.

12. Paragraph 7 excludes expenditure eligible for R&D relief from museum and gallery tax relief.

13. Paragraph 8 adds a definition of payment periods for PAYE, NICs and withholding tax for visiting performers to s1218ZCJ.

14. Paragraph 9 inserts new section 1218ZCLA ('no claim if company in administration or liquidation'). A company cannot make a claim to MGETR if it is in administration or liquidation at the time.

## Part 2: Changes from European to UK Expenditure: Transitional Provision

15. Paragraph 10 sets out transitional provisions for the changes made by Paragraph 4. Sub-paragraph (2) exempts exhibitions from the new UK expenditure rule if they enter production before 1 April 2024 and the separate trade relating to the exhibition ceases before 1 April 2025.

16. Sub-paragraphs (3) and (4) explain the transitional provision for exhibitions which enter production before 1 April 2024 and for which the separate trade continues after 1 April 2025. If these exhibitions meet the European expenditure condition at 1 April

2025, they will be entitled to relief on expenditure incurred before that date even if they later do not meet the UK expenditure condition.

17. Sub-paragraph (5) explains that entitlement to a tax credit under sub-paragraph (4) is based on the amount of the surrenderable loss that arises only from income received and costs incurred before 1 April 2025. Income received and costs incurred after that date are not taken into account for the purposes of sub-paragraph (4).

18. Sub-paragraphs (6) and (7) make a general provision for all exhibitions for which the separate trade continues after 1 April 2025. The references to a statement made by the production company in section 1218ZEA(1) and (2) (statements of UK expenditure incurred) are to include statements made before that section was amended by Paragraph 4 (statements of European expenditure incurred).

19. Sub-paragraph (8) explains that the application of section 1218ZEA(1) is subject to the provision in sub-paragraph (4).

20. Sub-paragraph (10) explains that an exhibition 'enters production' when core expenditure is first incurred on it. Core expenditure is expenditure on producing and closing the exhibition, but not development or running costs. Core expenditure will first be incurred when the exhibition enters the production phase.

21. Paragraph 11 sets out transitional provisions for the change made by Paragraph 5. Sub-paragraph (4) allows for European expenditure incurred before 1 April 2024 to count as UK expenditure for the purposes of section 1218ZCF as amended by Paragraph 5.

22. Sub-paragraph (5) explains that production companies with exhibitions which enter production before 1 April 2024 may elect for European expenditure to count as UK expenditure for those exhibitions up to 1 April 2025.

# Background note

23. At Spring Budget 2023, the government extended the temporary higher rates of relief for two further years for the three cultural reliefs: Theatre Tax Relief, Orchestra Tax Relief and Museums and Galleries Exhibition Tax Relief. The changes make the legislation clearer and reinforce the original policy intent whilst ensuring the fairness and success of the cultural tax reliefs.

# Clause 7 and Schedule 6: Sections 3 to 6: administration of reliefs

## Summary

1. Schedule 6 introduces changes to Schedule 18 to the Finance Act 1998. These changes are intended to streamline the administration of the reliefs.

## Details of the Schedule

2. Paragraph 1 amends paragraph 52 of Schedule 18 to FA 1998 to expand the circumstances in which HM Revenue and Customs can issue discovery assessments to recover overpaid creatives reliefs tax credits. Discovery assessments for creatives reliefs will no longer be subject to the restrictions set by paragraphs 43 and 44 of Schedule 1 to FA 1998, which only allow discovery assessments where the customer has made a careless or deliberate error or HM Revenue and Customs could not reasonably have known an overpayment had been made.

3. Paragraph 2 amends the time limit for making a claim under Parts 14A to 15E of CTA 2009, which is set out in paragraph 83W of Schedule 1 to FA 1998. For periods of account of 18 months or less, the time limit is two years from the last day of the period. For longer periods of account, the time limit is 42 months from the first day of the period.

4. Paragraph 3 introduces new paragraph 83WA to Schedule 18 of FA 1998, for additional information to be provided in relation to a claim. The claimant company must provide the information set out by regulations, within the time limit and in the form specified by the Commissioners for Revenue and Customs. This information will include disclosure of connected party transactions. The regulations will specify the consequences of failure to provide the required information. Depending on the information omitted, the claim will be partially or completely invalidated.

5. Amendments in paragraphs 1 and 2 of this Schedule have effect for accounting periods beginning on or after 1 April 2024. The amendment in paragraph 3 has effect for claims made on or after 1 April 2024.

## Background note

6. Administrative changes are being made to all the creative industry tax reliefs. These changes will streamline the process of making a claim and reduce the administrative burden on HM Revenue and Customs, as well as making it easier to tackle abuse. Additional changes are being made to the reliefs to correct anomalies and prevent abuse.

7. The audio-visual creative tax reliefs are being reformed to expenditure credits from 1 January 2024. The Audio-Visual Expenditure Credit (AVEC) will cover the current Film Tax Relief (FTR), High End Television tax relief (HETV tax relief), Animation Tax Relief (ATR) and Children's TV Tax relief (CTR). The Video Games Expenditure Credit (VGEC) will cover the existing Video Games Tax Relief (VGTR). The administrative changes for the audiovisual reliefs will come into force from 1 April 2024.

8. The cultural reliefs include Theatre Tax Relief (TTR), Orchestra Tax Relief (OTR), and Museums and Galleries Exhibition Tax Relief (MGETR). For these reliefs, eligible expenditure will also change from European to UK to ensure the reliefs meet our international obligations. The changes to the cultural reliefs, including the administrative changes and mandatory use of the online information form, will come into force from 1 April 2024.

9. Paragraph 3 of Schedule 6 was amended at Report Stage on 5 February 2024 to allow regulations to specify the time by which additional information in support of a claim must be provided to HMRC, and the consequences of failure to provide the mandated information.

# Clause 8 and Schedule 7: Miscellaneous amendments relating to REITs

## Summary

1. This clause and Schedule make amendments to the Real Estate Investment Trust (REIT) rules. The changes amend condition D (broadly, the non-close condition), allow insurance companies to hold group REITs, make technical changes to the profit: financing cost ratio and the interaction with the corporate interest restriction, amend the rule relating to holding a single property, extend the exemption for gains on disposal of UK property rich entities, and amend the definition of a holder of excessive rights.

## Details of the clause

2. Clause 8 introduces Schedule 7.

## Details of the Schedule

3. Paragraph 1 states that the Corporation Tax Act (CTA) 2010 is to be amended.
4. Paragraph 2 amends section 528, introducing a new category of institutional investor.
5. Paragraph 3 amends section 528.
6. Subparagraph (2) of paragraph 3 inserts the non-close condition into subsection 528(4). This amendment is treated as having always had effect.
7. Subparagraph (3) of paragraph 3 introduces new subsection 528(4C) which defines the non-close condition. This amendment is treated as having always had effect.
8. Subparagraph (5) of paragraph 3 introduces new subsections 528(5B) and (5C) which define a direct and indirect participator for the purposes of the non-close condition. This amendment is treated as having always had effect.
9. Paragraph 4 further amends section 528, introducing a requirement that certain specified institutional investors meet the non-close condition or, in specified cases, alternatively the genuine diversity of ownership condition.
10. Subparagraph (3) of paragraph 4 introduces new subsection 528(4D) which provides that when applying the non-close condition to certain institutional investors, the test is not met where it is a close company only because it has an institutional investor as a direct or indirect participator.
11. Subparagraph (4) of paragraph 4 amends subsection 528(5), modifying the close company test in Part 10 of CTA 2010 in specified ways for the purposes of

determining whether the non-close condition is met.

12. Subparagraph (5) of paragraph 4 introduces new subsection 528(5A), which disapplies new subsection 528(5)(a) in the case of a person acting in the course of a long-term insurance business.

13. Subparagraph (6) of paragraph 4 introduces new subsection 528(5D) which sets out the rule for attribution of rights where a partnership is involved, and makes provision regarding voting power in specified cases.

14. Subparagraph (7) and subparagraph (8) of paragraph 4 make corresponding changes to sections 528ZA and 528ZB to reflect the requirement to meet the genuine diversity of ownership condition or non-close condition now contained within subsection 528(4A)(c).

15. Subparagraph (9) of paragraph 4 makes a consequential change to subparagraph 46(3)(a) of Schedule 5AAA to TCGA 1992.

16. Paragraph 5 makes transitional provisions.

17. Subparagraphs (1) and (2) of paragraph 5 provide a saving provision to address existing investors who will no longer meet the revised definition of an institutional investor.

18. Subparagraphs (3) and (4) of paragraph 5 extend this saving provision for the purposes of Schedule 5AAA to TCGA 1992.

19. Subparagraphs (5) and (6) of paragraph 5 modify the application of the genuine diversity of ownership test for certain collective investment schemes.

20. Paragraph 6 amends section 606 to provide that an insurance company can hold an interest of any size in a group UK REIT. This amendment has effect from the date of Royal Assent of the Finance Bill.

21. Paragraph 7 amends section 544 so that the property financing costs for the purpose of the profit: financing-cost ratio are calculated as intended for the property rental business in the United Kingdom. The amendments made by subparagraphs (2) and (3) are to be treated as having always had effect.

22. Subparagraph (5) of paragraph 7 introduces new subsection 544(4A), which removes potential double taxation by excluding from the calculation of property finance costs amounts that would not be allowed in calculating profits in accordance with section 599, except for amounts disallowed under the corporate interest restriction rules. The amendments have effect for accounting periods ending on or after 1 April 2023.

23. Paragraph 8 amends sections 529(2A) and (2B) so that where a REIT meets the property rental business condition by relying on condition C, a property that has been worth at least £20m at any time from the later of acquisition and entry to the REIT regime will meet that condition. These amendments have effect from the date of Royal Assent of the Finance Bill.

24. Paragraph 9 amends section 535A so that a reference to the disposal of a right or interest in a company that is UK property rich includes disposal of a right or interest in a co-ownership authorised contractual scheme that is UK property rich. This

amendment has effect from the date of Royal Assent of the Finance Bill.

25. Paragraph 10 introduces the concept of an "excluded holder" for the purposes of the holders of excessive rights rules. Subparagraph (2) introduces new subsection 553(4A) which defines an excluded holder. This introduces a new category of excluded holders (certain persons who are entitled to benefits under a double taxation agreement), in addition to persons who were previously excluded from the definition of "holder of excessive rights" in section 553(1).

26. Paragraph 11 amends section 452 of TIOPA 2010 to ensure the corporate interest restriction calculation correctly takes into account the exempt gains on disposals of rights or interests in companies that are UK property rich by deeming the exemption in section 535A(2) to not apply. These amendments have effect from the date of Royal Assent of the Finance Bill.

# Background note

27. A REIT is a company through which investors can invest in real estate indirectly. Specific tax rules for UK REITs were introduced in Finance Act 2006. The number of UK REITs currently stands at over 130.

28. Subject to meeting the relevant conditions, a company may notify HM Revenue & Customs (HMRC) that it is to be treated as a UK REIT. Its property rental profits and gains are then, in broad terms, treated as exempt from corporation tax, subject to ongoing conditions such as a requirement to distribute 90% of its exempt profits as property income distributions, which are in turn treated as property rental income in investors' hands.

29. A 'Review of the UK funds regime: a call for input' was published on 26 January 2021 with a summary of responses issued on 10 February 2022. As part of this wider review of the UK funds regime, the government considered proposals for further changes to the REIT rules to reduce unnecessary burdens and make the regime more attractive for investment in the UK. Some of these changes were made in Finance Act 2022 and Finance (No. 2) Act 2023. This Schedule makes further changes.

# Clause 9 and Schedule 8: Managers of ships

## Summary

1. This clause and Schedule make provision to enable companies, and groups of companies, that manage qualifying ships to make a tonnage tax election (so that their profits for the purposes of corporation tax are calculated in accordance with the tonnage tax regime). The provision has effect in relation to tonnage tax elections made on or after 1 April 2024.

## Details of the clause

2. Clause 9 provides for Schedule 8 to amend Schedule 22 to Finance Act (FA) 2000, the tonnage tax regime.

## Details of the Schedule

3. Paragraph 2 provides that tonnage tax qualifying companies include companies that manage ships, in addition to those that operate them. Operate here means owning or leasing ships.

4. Sub-paragraph (2) of paragraph 2 inserts new paragraph 18A into Schedule 22 FA 2000 (Schedule 22). This provides a definition of managing a qualifying ship. The ship must be a qualifying ship (as defined at paragraphs 19 and 20 Schedule 22). The manager company must carry on activities in relation to the ship that would be tonnage tax activities (as defined at paragraph 45 Schedule 22) if they were carried on by the operator. Those activities must represent a significant contribution to the operation of the ship.

5. Paragraph 3 amends paragraph 4 Schedule 22, which sets out the method of calculating profits for companies elected into the tonnage tax regime. The table which determines the daily profit for each qualifying ship operated by a company is amended to include ships managed by a company as follows:

| Net tonnage | Daily profit | |
|---|---|---|
| | *Operated ship* | *Managed ship* |
| For each 100 tons up to 1,000 tons | £0.60 | £0.12 |
| For each 100 tons between 1,000 and 10,000 tons | £0.45 | £0.09 |
| For each 100 tons between 10.000 and 25,000 tons | £0.30 | £0.06 |
| For each 100 tons above 25,000 tons | £0.15 | £0.03 |

6. Paragraph 4 amends paragraph 46 Schedule 22 (which defines core qualifying activities) to include managing qualifying ships. It defines a company's activities in

managing qualifying ships as participation in the core qualifying activities mentioned at paragraph 46 by virtue of which the ship is a qualifying ship.

7. Paragraph 5 amends paragraph 17 of Schedule 22 (which deals with the effect of temporarily ceasing to operate qualifying ships), extending the scope to management of ships.

8. Paragraph 6 disapplies the training requirement provided by Part 4 Schedule 22 for a company that does not operate any qualifying ships, and for a group that has no members operating qualifying ships.

9. Paragraph 7 disapplies the 75% charter limit provided by paragraph 37 Schedule 22 in relation to a company that that does not operate any qualifying ships and a group none of whose members operate any qualifying ships. The 75% limit is on the proportion of net tonnage of qualifying ships that may be chartered in otherwise than on bareboat charter. If not on bareboat charter the shipowner rather than charterer may be undertaking significant activity.

# Background note

10. The ability for ship managers who are not operators of ships to make a tonnage tax election will extend the scope of this beneficial tax regime in support of government policy aimed at increasing the international competitiveness of the United Kingdom shipping industry. It will increase certainty, smoothing and simplifying the tax base over the business cycle. The lower tonnage tax daily profit for ship managers reflects the different nature of ship management compared with ownership and charter operation.

11. The measure is part of a package following discussions with the shipping industry beginning in 2018, some of which were enacted in FA 2022. Additional measures, including this one, were announced at Spring Budget 2023.

# Clause 10: Increase in capital allowances limit for ship leasing

## Summary

1. This clause increases the limits which apply to claims for capital allowances that may be made by lessors on the provision of ships leased to operators in the tonnage tax regime. The increased limits have effect in relation to leases entered into on or after 1 April 2024.

## Details of the clause

2. Subsection (1) introduces amendments to paragraph 94 of Schedule 22 to the Finance Act 2000 (the tonnage tax regime).

3. Subsection (2) increases the lower limit or "quantitative restriction" from £40 million to £100 million. This raises the limit on the cost of providing a ship which attracts capital allowances at the rate the provider would otherwise be entitled to (that is, if a long-life asset, at the long-life asset rate, and if not at the full rate).

4. Subsection (3) increases the higher limit from £80 million to £200 million. This means that the cost of providing a ship between £100 million and £200 million will attract capital allowances at the rate applicable to special rate expenditure. Cost of provision above £200 million will attract no capital allowances.

## Background note

5. The limits on capital allowances that may be claimed by lessors on the provision of ships leased to operators of qualifying ships in the tonnage tax regime have not been raised since the regime was introduced in 2000. The amendments are aimed at maintaining the attractiveness of the United Kingdom tonnage tax regime and recognising the changing nature, with increased complexity and cost, of the qualifying ships.

6. The measure is part of a package following discussions with the shipping industry beginning in 2018, some of which were enacted in the Finance Act 2022. Additional measures, including this one, were announced at Spring Budget 2023.

# Clause 11: Extension of EIS relief and VCT relief to shares issued before 6 April 2035

## Summary

1. This clause extends the availability of Enterprise Investment Scheme (EIS) and Venture Capital Trust (VCT) tax reliefs to investments in shares issued by qualifying companies and VCTs on or before 5 April 2035.

## Details of the clause

2. Subsection (1) substitutes the dates of 6 April 2025 within Sections 157(1)(aa) and 261(3)(za) of Income Tax Act 2007 with dates of 6 April 2035. This extends the eligibility for individuals to EIS and VCT income tax relief to shares issued by qualifying companies, under the EIS, and in authorised VCTs, under the VCT scheme, to 6 April 2035.

3. Subsection (2) provides that this clause be commenced by regulations made by HM Treasury.

## Background note

4. The Enterprise Investment Scheme and Venture Capital Trust scheme are two of the government's tax-advantaged venture capital schemes. The schemes are intended to encourage individuals to invest in certain early-stage trading companies to support their growth and development. The schemes do so by offering investors a range of tax reliefs, including income tax relief on investments in qualifying shares and, by extension, exemption from CGT on any gains arising on eventual disposal of these shares. In 2015 sunset provisions were introduced to the schemes to restrict these reliefs to shares issued before 6 April 2025.

5. This clause will, once commenced by regulations made by the Treasury, extend the availability of these reliefs and continue the support for these early-stage growth companies for a further 10 years.

# Clause 12: Relief for payments of compensation by government etc to companies

## Summary

1. This clause amends Schedule 15 of Finance Act 2020 to introduce a corporation tax exemption for specified compensation payments and an income tax and capital gains tax exemption for specific relevant onward payments of compensation.

2. The clause is specifically drafted to ensure that sub-postmasters who were structured through a corporate entity, and who are either due to receive or are already in receipt of compensation payments under either the Group Litigation Order scheme (GLO), Horizon Shortfall Scheme (HSS), Suspension Remuneration Review (SRR) or Post Office Process Review Scheme (PPR) should not be subject to corporation tax. Furthermore, the clause exempts relevant onward payments of the compensation to shareholders, directors or employees of that corporate entity from income tax or capital gains tax.

## Details of the clause

3. Subsections (1) and (2) amend Schedule 15 of Finance Act 2020 to include "Part 2 – Corporation Tax and Other Related Relief".

4. New paragraph 6 provides the effect of the clause, which is to exempt relevant compensation payments from corporation tax, income tax and capital gains tax.

5. Subparagraph (1) of new paragraph 7 defines relevant compensation payment for the purposes of this Part.

6. Subparagraph (2) of new paragraph 7 introduces a regulatory making power to define future compensation schemes.

7. Subparagraph (3), (4) and (5) of new paragraph 7 outline the criteria under which the regulatory making powers can be enacted.

8. Subparagraph (1) of new paragraph 8 defines a 'relevant onward payment' for the purposes of this Part.

9. Subparagraph (3) of new paragraph 8 provides additional requirements that must be met for compensation payments made to a company under the Horizon Shortfall Scheme or Suspension Remuneration Review in order to be considered a relevant onward payment.

10. The effect of these subparagraphs for Group Litigation Order or the Post Office Process Review compensation recipients are that compensation payments made to a corporate and then any onward payment are exempt of tax.

11. The effect of these subparagraphs for the Horizon Shortfall Scheme is that a relevant onward payment is only exempt to the extent the original component of compensation was exempt. Furthermore, any additional sum which is being paid to

provide recompense to a potential tax liability, will be exempt.

12. The effect of these subparagraphs for the Suspension Remuneration Review is a payment of compensation, which is intended to top up a tax liability which may arise for payment made under the scheme in advance of 1 January 2024, will be exempt.
13. Subparagraph (1) of new paragraph 9 provides that no liability to corporation tax shall arise in respect of the receipt of the relevant compensation payment.
14. Subparagraph (2) of new paragraph 9provides that income from the relevant compensation payment should be ignored for corporation tax purposes. Furthermore, no deduction should be taken in respect of making the onward payment of relevant compensation.
15. Subparagraphs (3) and (4) of new paragraph 9 set out the timings of the receipt of compensation payments that must be satisfied to fall within this Part.
16. New paragraph 10 modifies existing provisions in Schedule 15 of Finance Act 2020 to bring within an exemption of income tax and capital gains tax charges arising on individual recipients of relevant onward payment of compensation.
17. New paragraph 11 provides a power to make regulations that are supplementary or incidental to the provision made in this Part.

## Background note

18. The clause has the effect of ensuring sub-postmasters in receipt of compensation under the Group Litigation Order, Horizon Shortfall Scheme, Suspension Remuneration Review or Post Office Process Review Scheme are not unduly penalised due to the legal form through which they chose to structure their business. It seeks to ensure that there is broad parity in respect of the taxation of the ultimate recipient of the compensation payment.

# Clause 13: Enterprise management incentives: time limits

## Summary

1. This clause extends the time limit for an employer company to notify HM Revenue and Customs (HMRC) of a grant of Enterprise Management Incentives (EMI) options from 92 days after the date of the grant of the option to 6 July following the end of the tax year in which the option was granted. The amendments will have effect in relation to share options granted on or after 6 April 2024.

## Details of the clause

2. Subsection (1) introduces the amendments to Part 7 of Schedule 5 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

3. Subsection (2) amends paragraph 44(1) (time within which notice of options must be given to HMRC) by replacing "within 92 days after the date of the grant of the option" with "on or before 6 July following the end of the tax year in which the option was granted" to amend the time within which the notice must be given.

4. Subsection (3) makes a consequential amendment to paragraph 46(5) (time for giving of notices of enquiry) to provide that (except where paragraph 46(6) applies), a notice of enquiry may not be given by HMRC more than 12 months after the 6 July following the end of the tax year in which the option was granted.

5. Subsection (4) provides that the amendments in subsections (2) and (3) have effect in relation to EMI share options that are granted on or after 6 April 2024.

## Background note

6. EMI is a tax advantaged share scheme introduced in 2000 which is targeted at small and medium sized companies to help them recruit and retain key employees.

7. Following representations made in response to the call for evidence into EMI launched in 2021, the government announced at Spring Budget 2023 three changes to simplify the process to grant share options and reduce administrative burdens. Two of these changes, the removal of the requirement to set out details of share restrictions in option agreements and the removal of the requirement to sign a working time declaration were included in the Finance (No. 2) Act 2023 and take effect from 6 April 2023.

8. This clause, which introduces the other change that was announced at Spring Budget 2023, extends the time limit for an employer company to notify HMRC of a grant of options. It takes effect from 6 April 2024.

# Clause 14 and Schedule 9: Provision in connection with abolition of the lifetime allowance charge

## Summary

9. This measure abolishes the Lifetime Allowance (LTA) and sets out the new tax treatment of lump sums and lump sum death benefits paid from registered pension schemes. The changes have effect on or after 6 April 2024.

## Details of the clause

1. Clause 14 introduces Schedule 9.

## Details of the Schedule

### Part 1: Abolition of the LTA Charge

2. Paragraphs 3 to 12 make necessary amendments as a result of the abolition of the LTA.

3. Paragraph 13 amends Schedule 32 (meaning of expressions used in the table in section 216(1)) by substituting sections 232 and 236 for section 216. It provides for and defines benefit crystallisation events for the purposes of the annual allowance.

### Part 2: Taxation of Lump Sums

4. Paragraph 16 removes references to the lifetime allowance from section 164 of Finance Act 2004 and inserts references to relevant benefit crystallisation events in ITEPA.

5. Paragraph 17 inserts the new pension commencement excess lump sum into the existing lump sum rule at Finance Act 2004 and makes other consequential changes.

6. Paragraph 20 ensures that tax-free lump sum death benefits are not considered when calculating income deducted for the purposes of the Tapered Annual Allowance.

7. Paragraph 21 applies the existing provision and penalties regarding false statement to include those elements of pension income taxed under Chapter 15A or Section 579A of ITEPA 2003.

8. Paragraph 22 removes references to winding-up lump sum death benefits as these have not been payable since 6 April 2015.

9. Paragraph 23 inserts 278A and 278B into Part 4 Finance Act 2004. These provisions define disqualifying pension credits and when a dependants' annuity is related to a member lifetime annuity. These sections were previously contained in Schedule 29 to Finance Act 2004.

10. Paragraph 26 amends Schedule 29 to Finance Act 2004 (pension commencement lump sums) to ensure continued operation of permitted maximum and applicable amounts which limit the pension commencement lump sum.

11. Subparagraph (9) introduces paragraph 3C into Schedule 29 of Finance Act 2004 defining a new authorised lump sum, the pension commencement excess lump sum. This replaces the previous facility where pension schemes were permitted to pay a lifetime allowance excess lump sum when paying commencement lump sums.

12. Paragraphs 27 to 29 make necessary amendments to Schedule 29 paragraph 4 (serious-ill health lump sum), paragraph 4A of that schedule (uncrystallised funds pension lump sum) and paragraph 5 of that schedule (short service refund lump sum) to facilitate the abolition of the LTA and introduction of the new allowances.

13. Paragraph 30 makes the necessary amendments to Schedule 29 to Finance Act 2004 (trivial commutation lump sum) to facilitate the abolition of the LTA and introduction of the new allowances.

14. Subparagraph (2) amends the calculation provided to value a member's relevant crystallised pension rights for purposes of calculating a member's eligibility to a trivial commutation lump sum remains based on the existing £30,000 commutation limit.

15. Paragraph 36 inserts new paragraph 12A to clarify what references to the amount of individual's lump sum or lump sum and death benefit allowance being available means.

16. Paragraph 37 removes references to pension death benefits which were time limited and as a result are no longer payable.

17. Paragraphs 39 to 40 make technical changes to reflect the substitution of existing Chapter 15A ITEPA with new Chapter 15A in ITEPA.

18. Paragraph 41 substitutes Chapter 15A of ITEPA with new Chapter 15A of ITEPA:

## Chapter 15A

19. Section 637B applies income tax to the new authorised payment, a pension commencement excess lump sum.

20. Section 637C provides that a serious ill-health lump sum is tax free provided it is paid to someone under the age of 75 and does not exceed the permitted maximum.

21. Subsection (3) defines permitted maximum as the amount that remains available of the lump sum and death benefit allowance.

22. Subsection (4) provides that where the serious ill-health lump sum is paid to someone aged 75 or over the lump sum is taxed as if it were pension income.

23. Section 637D provides that 25% of an uncrystallised funds pension lump sum is tax free provided it is within the permitted maximum and the remaining 75% is taxed as if it were pension income.

24. Subsection (2) provides that where some part of the 25% would exceed the permitted maximum, it is taxed as if it were pension income.

25. Subsection (3) defines the permitted maximum as the lower of the amount remaining available of both the lump sum allowance and the lump sum and death benefit allowance.

26. Section 637E maintains the position that a short service refund lump sum paid under a registered pension scheme is taxable only under section 205 of Finance Act 2004.

27. Section 637F provides that a refund of excess contributions lump sum is not subject to income tax when paid under a registered pension scheme.

28. Section 637G provides that a trivial commutation lump sum, or a winding-up lump sum, may have a tax-free element. The tax-free element is 25% of any uncrystallised rights. The remainder is taxed as if it were pension income.

29. Section 637H maintains the position that a defined benefit lump sum death benefit is tax free where it is paid within 2 years of the relevant period in respect of a member who died under the age of 75 and does not exceed the permitted maximum. Subsections (2) to (6) set out the circumstances in which some or all of the defined benefit lump sum death benefit will be subject to a tax charge.

30. Section 637I maintains the position that a pension protection lump sum death benefit is tax free in respect of a member who died under the age of 75 and does not exceed the permitted maximum. Subsections (2) to (6) set out the circumstances in which some or all of the pension protection lump sum death benefit will be subject to a tax charge.

31. Section 637J maintains the position that an uncrystallised funds lump sum death benefit is tax free where it is paid within 2 years of the relevant period in respect of a member who died under the age of 75 and does not exceed the permitted maximum. Subsections (2) to (6) set out the circumstances in which some, or all of, the uncrystallised funds lump sum death benefit will be subject to a tax charge.

32. Section 637K maintains the position that an annuity protection lump sum death benefit is tax free in respect of a member who died under the age of 75 and does not exceed the permitted maximum. Subsections (2) to (4) set out the circumstances in which some or all of the annuity protection lump sum death benefit will be subject to a tax charge.

33. Section 637L maintains the provision that a drawdown pension fund lump sum death benefit is tax free where it is paid within 2 years of the relevant period in respect of a member who died under the age of 75 and does not exceed the permitted maximum. Subsections (2) to (6) set out the circumstances in which some or all of the drawdown pension fund lump sum death benefit will be subject to a tax charge.

34. Section 637M maintains the provision that a flexi-access drawdown lump sum death benefit is tax free where it is paid within 2 years of the relevant period in respect of a

member who died under the age of 75 and does not exceed the permitted maximum. Subsections (2) to (6) set out the circumstances in which some or all of the flexi-access drawdown funds lump sum death benefit will be subject to a tax charge.

35. Section 637N provides that where a trivial commutation lump sum death benefit is paid from a registered pension scheme it is treated as taxable pension income for the tax year it is paid.

36. Section 637Q establishes the availability of an individual's lump sum allowance. Where there has been no relevant benefit crystallisation event, defined in subsection (2) as an individual becoming entitled to a relevant lump sum, the whole lump sum allowance is available. Where there has been a relevant benefit crystallisation event, the allowance available is reduced by the total of the non-taxable amounts in relation to each lump sum to which the individual has become entitled.

37. Section 637S provides how to establish the amount available of an individual's lump sum and death benefit allowance. Where there have been no relevant benefit crystallisation events, defined in subsection (2) as an individual becoming entitled to an authorised lump sum or a person becoming entitled to a lump sum death benefit, the whole lump sum and death benefit allowance is available. Where there has been a relevant benefit crystallisation event, the allowance available is reduced by the total of the non-taxable amounts of any lump sum or lump sum death benefit to which someone has become entitled. Subsections (7) and (8) make specific provision for the sequencing of relevant benefit crystallisation events.

## Part 3: Non-UK schemes

38. Paragraph 45 substitutes section 244A with new sections 244AA, 244AB and 244AC. Section 244AA states that the overseas transfer charge arises where no exclusion applies or where the transfer exceeds the member's available overseas transfer allowance. Section 244AC sets out the circumstances for the overseas transfer charge for a transfer where no exclusions apply.

39. Paragraph 46 amends section 244B (exclusion: member and receiving scheme in the same country) to exclude recognised transfers to a QROPS and relieved relevant non-UK scheme transfers which meet the conditions for this exclusion from the overseas transfer charge under section 244AC.

40. Paragraph 47 amends section 244C (exclusion: receiving scheme in EEA state or Gibraltar, and member resident in UK or EEA state) to exclude transfers which meet the conditions for this exclusion from the overseas transfer charge under section 244AC.

41. Paragraphs 48 to 50 amend sections 244D, 244E and 244F to exclude transfers which meet the conditions for these exclusions from the overseas transfer charge under section 244AC.

42. Paragraph 51 amends section 244G (exclusions: avoidance of double charge, and transitional protections) to exclude transfers which meet the conditions for this exclusion from the overseas transfer charge under section 244AC.

43. Subparagraph (4) inserts a provision to exclude onward transfers from the overseas transfer charge under section 244AC only where an overseas transfer charge under section 244IA(1) arose on the original transfer and none of the member's overseas transfer allowance was available on the original transfer, such that the entirety of the value of the original transfer would have already been subject to an overseas transfer charge.

44. Paragraph 52 amends section 244H to provide that the existing regulation making power can provide further exclusions from the overseas transfer charge under 244AC in relation to recognised transfers to a QROPS, relieved relevant non-UK scheme transfers, and onward transfers to QROPS.

45. Paragraph 53 amends section 244I to clarify that the circumstances in which exclusions from the charge under 244AC do not apply in relation to recognised transfers to a QROPS, relieved relevant non-UK scheme transfers, and onward transfers to QROPS.

46. Paragraph 54 inserts sections 244IA, 244IB and 244IC after section 244I. Section 244IA sets out that an overseas transfer charge arises where there is a transfer to a QROPS and this transfer is excluded from the charge under 244AC, but the transferred value exceeds the member's available overseas transfer allowance. It also sets out that an overseas transfer charge arises where there is a transfer to a QROPS charged under 244AC because no exclusion applies, but this person becomes entitled to a repayment of the original charge and the transfer would, had the 244AC charge not initially have arisen, have exceeded the member's available allowance. Section 244IB defines the member's overseas transfer allowance as an amount equal to the individual's lump sum and death benefit allowance. Finally, section 244IC sets out how to determine the availability of a member's overseas transfer allowance.

47. Paragraph 55 amends 244J (persons liable to charge) to state that a member is liable to the overseas transfer charge in the case of a relieved relevant non-UK scheme transfer.

48. Paragraph 56 inserts section 244JA.

49. Subparagraph (1) set out how to value the amount of an overseas transfer charge arising under section 244AC. This is 25% of the total value of the transfer or, where a 244AC charge is arising on an onward transfer where the original transfer was subject to a 244IA charge, so much of the value of the original transfer that has not already been subject to an overseas transfer charge.

50. Subparagraph (2) sets out how to value an overseas transfer charge arising under section 244IA. This is 25% of the amount that exceeds the member's available overseas transfer allowance.

51. Paragraph 57 amends section 244K (amount of the charge) to provide the meaning of "transferred value" in relation to the overseas transfer charge. Subparagraph (6) inserts paragraph 3A into section 244 setting out that, in the case of a relieved relevant non-UK scheme transfer, the transferred value is the total of the sums and assets transferred which are attributable to the member's UK tax-relieved fund.

52. Paragraph 58 amends section 244M to clarify that only an overseas transfer charge under section 244AC is repayable.

53. Paragraph 59 amends Schedule 33 (Overseas Pension Schemes: Migrant Member Relief).

54. Subparagraph (2)(b) clarifies that, for relevant migrant members, only information concerned relevant benefit crystallisation events need be provided by their scheme manager to HMRC.

55. Subparagraph (3) replaces existing sub paragraph (2A) to clarify that, to be a qualifying overseas pension scheme, the scheme manager must undertake to comply with information requirements related to relevant benefit crystallisation events or to events where an individual first flexibly accesses their pension rights for the purposes of sections 227B to 227F to Finance Act 2004.

56. Paragraph 60 amends Schedule 34 (non-UK schemes: application of certain charges).

57. Subparagraph (2) amends the member payment provisions, such that the charges applied by Chapter 15A of ITEPA 2003 are included within the member payment charges.

58. Subparagraph 3 clarifies that serious-ill health lump sums, and lump sum death benefits paid in respect of a member who died under age 75, where paid from a relevant non-UK scheme and in respect of a transfer member, will remain tax free.

59. Paragraph 61 amends Chapter 4 of Part 9 of ITEPA 2003 to clarify that, where paid to or in respect of a transfer member of a relevant non-UK scheme, a serious ill-health lump sum and an authorised lump sum death benefit paid in respect of a member who dies under the age of 75 are free of tax. This maintains their treatment as previously.

## Amendments of the Pension Schemes (Application of UK Provisions Relevant Non-UK Schemes) Regulations 2006

60. Paragraph 62 amends SI 2006/207 to remove references to benefit crystallisation event 8.

61. Subparagraphs (3)(c) and (4)(b) clarify that the 'amount crystallised' on a transfer from a UK registered scheme to a relevant non-UK scheme is the amount of any sums transferred and the market value of any assets transferred.

62. Subparagraph (6) inserts new paragraphs (ca) and (cb) which clarify a lump sum is a pension commencement excess lump sum as long as it is not paid from the relevant transfer fund of a qualifying recognised overseas pension scheme or from the UK tax-relieved fund of a relevant non-UK scheme. It also inserts new paragraph 12A to maintain how recognised overseas pension schemes establish whether a transfer member has available lump sum or lump sum and death benefit allowance, that is by reference to only the tax-free elements paid by the recognised overseas pension scheme in question.

63. Subparagraph (8) substitutes existing regulation 18 to maintain how recognised overseas pension schemes establish whether a transfer member has available lump sum and lump sum and death benefit allowance, ensuring the correct tax treatment of uncrystallised pension commencement lump sums following abolition of the LTA.

## Part 4: Transitional Protections

64. Paragraph 63 makes consequential amendments to Schedule 29 to Finance Act 2004 on transitional protections following the abolition of the LTA, maintaining the circumstances under which an uncrystallised funds pension lump sum cannot be paid.

65. Paragraph 64 inserts new paragraph 12A (enhancement of allowances) into Schedule 34 to Finance Act 2004. This enhances an individual’s allowances where they are a relieved member of a relieved non-UK pension scheme as if the relieved non-UK pension scheme were a registered pension scheme.

66. Paragraph 67 inserts new paragraph 6A (enhancement of lump sum allowance and lump sum and death benefit allowance) into Schedule 36 to Finance Act 2004. This provides the calculation for enhanced allowances where an individual is entitled to one or more enhancement factors.

67. Paragraph 68 substitutes existing paragraph 7 (primary protection) of Schedule 36 to Finance Act 2004. It increases an individual’s lump sum allowance to maintain their entitlement to tax-free cash at the same level as prior to the abolition of the LTA. This section also provides that an individual’s lump sum and death benefit allowance is increased to the value of their pension rights at 5 April 2006 where they hold primary protection and sets out how to calculate the primary protection factor.

68. Subparagraphs (8) and (9) maintain the prevention of uncrystallised funds lump sums being paid where the individual has protected lump sum rights exceeding £375,000 or where the lump sum condition is met.

69. Paragraph 71 amends paragraph 12 (enhanced protection) of Schedule 36 to Finance Act 2004. It defines the permitted maximum for the lump sums and lump sum death benefits contained within new Chapter 15A ITEPA 2003 for those who have enhanced protection, as well as defining the level of their allowances.

70. Subparagraph (3F) provides HMRC with a regulation making power to provide the detail on how pension schemes will value uncrystallised pension.

71. Sub-paragraph (3G) maintains the prevention of uncrystallised funds lump sums being paid where the lump sum condition is met.

72. Paragraphs 72 to 73 make consequential changes to the legislation on enhanced protection following the abolition of the LTA that maintain the protection cessation events for individuals who applied for enhanced protection on or after 15 March 2023.

73. Paragraph 75 substitutes existing paragraph 18 (pre-commencement pension credits) of Schedule 36 to Finance Act 2004. It sets an individual’s lump sum allowance at the lesser of £268,275 increased by their pension credit factor, or £375,000, maintaining

their entitlement to tax-free cash at the same level as prior to the abolition of the LTA. It also increases an individual's lump sum and death benefit allowance where they became entitled to pension credits before 6 April 2006 and sets out how to calculate the pension credit factor.

74. Subparagraph (7) and (8) maintain the restriction on payment of uncrystallised funds lump sums where the individual has insufficient allowance.

75. Paragraph 76 amends paragraph 19 (individuals permitted to take pension before normal minimum pension age (NMPA)) of Schedule 36 to Finance Act 2004. This replicates the existing provisions relating to an individual who takes pension benefits prior to NMPA and has a protected pension age of less than 50. It reduces the lump sum allowance and their lump sum and death benefit allowance only when lump sums are taken.

76. Paragraph 77 makes consequential changes to the legislation on pre-commencement pensions and benefit rights following the abolition of the LTA.

77. Subparagraphs (3) and (4) provide that on the members first relevant benefit crystallisation event following 6 April 2024, 25% of their pre-commencement pension rights is to be deducted from their individual's lump sum and lump sum and death benefit allowances.

78. Paragraph 78 inserts new paragraphs 20A (pension credits from previously crystallised rights), 20B (non-residence: general), 20C (non-residence: money purchase arrangements), 20D (non-residence: other arrangements), 20E (transfers from recognised overseas pension scheme: general), 20F (overseas scheme transfers: money purchase arrangements) and 20G (overseas scheme transfers: other arrangements). These increase the availability of an individual's lump sum and death benefit allowance where they were entitled to enhancement factors under the LTA and set out how to calculate these enhancement factors going forward. They also maintain the existing restriction on the payment of uncrystallised funds lump sum where in the individual has insufficient allowance.

79. Paragraph 82 amends paragraph 27 (pre-commencement benefit rights: enhanced protection: permitted maximum) to define the permitted maximum for a pension commencement lump sum where an individual holds enhanced protection and has protected lump sum rights of more than £375,000. It sets their permitted maximum at the maximum amount that the individual could have been paid on 5 April 2023 under that arrangement, less the value of any pension commencement lump sums paid since that date.

80. Paragraph 83 amends paragraph 28 (pre-commencement benefit rights: no enhanced protection: permitted maximum) of Schedule 36 to Finance Act 2004 to define the permitted maximum for a pension commencement lump sum where an individual has primary protection and lump sum rights of more than £375,000. It sets their permitted maximum at the value of the individual's relevant uncrystallised lump sum rights on 5 April 2006, less the value of any previous pension commencement lump sum taken, subject to any adjustments as laid out in sub-paragraphs (4) and (5).

81. Paragraph 84 amends paragraph 29 (pre-commencement benefit rights: enhanced protection: applicable amount) of Schedule 36 to Finance Act 2004 to define the appliable amount for a pension commencement lump sum where an individual holds enhanced protection and has protected lump sum rights of more than £375,000. It includes details of how schemes should value different types of pension arrangement. It includes a regulation making power for HMRC to specify how schemes should value crystallised pension rights.
82. Paragraph 85 inserts new paragraph 29A to provide that where an individual holds enhanced protection and has protected lump sum rights of more than £375,000, their lump sum allowance is the amount which could have been paid on 5 April 2023.
83. Paragraph 87 substitutes paragraph 34 (pre-commencement benefit rights: application of Schedule 29 to FA 2004 where paragraph 31 applies) to ensure that the permitted maximum is maintained at the level the individual had prior to the abolition of LTA.
84. Subparagraph (3) provides that any pension commencement lump sum paid under scheme-specific lump sum protection only reduces an individual's available lump sum allowance by the standard 25%.
85. Paragraph 90 amends Schedule 18 to Finance Act 2011. This maintains an individual's entitlements prior to abolition of the lifetime allowance where they hold fixed protection.
86. Paragraph 91 amends Schedule 22 to Finance Act 2013. This maintains an individual's entitlements prior to the abolition of the lifetime allowance where they hold fixed protection 2014.
87. Paragraph 92 amends Schedule 6 to Finance Act 2014. This maintains an individual's entitlements prior to the abolition of the lifetime allowance where they hold individual protection 2014.
88. Paragraph 93 amends Schedule 4 to Finance Act 2016. This maintains an individual's entitlements prior to the abolition of the lifetime allowance where they hold fixed protection 2016.
89. Subparagraph (4) maintains an individual's entitlements prior to the abolition of the lifetime allowance where they hold individual protection 2014.
90. Subparagraph (5) amends paragraph 14 of Part 3 to close the window for applications to fixed or individual protection 2016 from 6 April 2025.
91. Paragraph 95 makes consequential amendments to The Taxation of Pension Schemes (Transitional Provisions) Oder 2006 (S.I. 2006/572) following the abolition of the LTA. It inserts new articles 25CA, 25CB and 25CC. These new articles confirm that a stand-alone lump sum is a relevant benefit crystallisation event for the purposes of sections 637S and 637Q of Chapter 15A of ITEPA 2003, as well as clarifying how stand-alone lump sums are treated for tax purposes. This is tax-free unless it exceeds the permitted maximum. Article 25CA sets out that the permitted maximum for Circumstance A is the lesser of the maximum amount of that could have been paid to the member on 5 April 2023 and their available lump sum and death benefit

allowance. Article 25CB sets out that the permitted maximum under Condition B is the amount that could have been paid to the member on 5 April 2023 under that arrangement, less any stand-alone lump sum or pension commencement lump sum paid since that date. Article 25CC sets out that the permitted maximum is the maximum that could have been paid on 5 April 2023 and their available lump sum and death benefit allowance, and that their allowance is only reduced by the standard 25%.

## Part 5: Provision of Information

92. Paragraph 106 amends the Table in regulation 3 (provision of information by scheme administrator to the Commissioners) by removing reportable events specific to the LTA. It inserts new event number 24 'payment of lump sum or lump sum death benefit in relation to relevant benefit crystallisation event', and the information requirements a scheme administrator must provide to HMRC.

93. Paragraph 107 amends regulation 7 (percentage of standard lifetime allowance expended on the happening of a benefit crystallisation event) to ensure that only the non-taxable amounts (as defined in 637Q(6) ITEPA 2003) of lump sums and lump sum death benefits reduce a member's allowance.

94. Paragraph 109 amends regulation 9 (death: provision of information by insurance company to personal representatives) to provide that the insurance company must give the personal representatives information about a deceased member's lump sum and death benefit allowance in connection with their relevant benefit crystallisation events.

95. Paragraph 110 amends regulation 10 (death: provision of information by personal representatives to the Commissioners) to provide that personal representatives must give HMRC information about the amount by which the deceased member's lump sum and death benefit allowance is exceeded in connection with that member's relevant benefit crystallisation events. It also provides for additional information to be provided to HMRC in respect of the deceased member, their pension scheme(s), and their beneficiaries.

96. Paragraph 111 amends regulation 11 (information provided by members to scheme administrator: protections) to provide that a member must give the scheme administrator the reference number issued by HMRC in connection with any protection or enhancement factor they are relying upon.

97. Paragraph 113 amends regulation 11BA (information provided by members to scheme administrators: recognised transfers) so that, in respect of a recognised transfer, the member must provide information to the scheme administrator about any earlier transfers made from a registered pension scheme, or relieved relevant non-UK scheme, to a qualifying recognised overseas pension scheme.

98. Paragraph 116 amends regulation 12A (provision of information about liability for overseas transfer charge) to provide that a scheme administrator must give the member information about whether an overseas transfer charge arose under new sections 244AC or 244IA of Finance Act 2004.

99. Paragraph 117 amends regulation 14 (information provided to members by scheme administrators about benefit crystallisation events) to provide that a scheme administrator must give the member information about the amount of their lump sum allowance and lump sum death benefit allowance in connection with their relevant benefit crystallisation events.

100. Paragraph 118 amends regulation 14ZCA (further information provided by scheme administrators on recognised transfers to overseas schemes) to provide that a scheme administrator must give information to the overseas scheme about the transferred value, whether the overseas transfer charge arose under new sections 244AC or 244IA of Finance Act 2004, and the amount of that charge. Where the transfer was excluded from the overseas transfer charge, the scheme administrator must tell the overseas scheme why the transfer was excluded.

101. Paragraph 119 amends regulation 15 (information between scheme administrators) to provide that, where crystallised rights under one registered pension scheme are transferred to another registered pension scheme, the scheme administrator must give the other scheme administrator information about the amount of a member's lump sum allowance and lump sum death benefit allowance in connection with their relevant benefit crystallisation events.

102. Paragraph 120 amends regulation 16 (pensions and annuities in payment: information provided to and by insurance companies) to provide that the information which must be provided is a statement setting out how much of the member's lump sum allowance and lump sum and death benefit allowance has been used up by their relevant benefit crystallisation events.

103. Paragraph 121 amends regulation 17 (payments to insurance companies from drawdown pension funds) to provide that the information which must be provided is a statement setting out how much of the member's lump sum allowance and lump sum and death benefit allowance has been used up by their relevant benefit crystallisation events.

# Part 6: Commencement and transitional provision

## Availability of individual's lump sum allowance

104. Paragraph 125 provides for how to calculate the availability of an individual's lump sum allowance where the member has had a benefit crystallisation event prior to 6 April 2024, upon their first relevant benefit crystallisation event after that date.

105. Subparagraph (2) provides that a member will have none of their lump sum allowance available if they've previously exceeded their lifetime allowance.

106. Subparagraph (3) sets out the transitional calculation for the lump sum allowance using a percentage of the member's previously used lifetime allowance.

107. Subparagraphs (4) and (5) permit a member to alternatively request a 'transitional tax-free amount certificate', as defined in paragraph 127(1). To do so they must provide complete evidence, as defined in sub-paragraph 129(4), of their lump sum transitional tax-free amount. The lump sum transitional tax-free amount is always

arrived at through a calculation at sub-paragraph 129(1). This figure would then be deducted from their allowance. For either method, if the calculation results in a negative amount, the individual's available allowance will be nil.

## Availability of individual's lump sum and death benefit allowance

108. Paragraph 126 provides for how to calculate the availability of an individual's lump sum and death benefit allowance where the member had a benefit crystallisation event prior to 6 April 2024 and takes their first relevant benefit crystallisation event after that date.

109. Subparagraph (2) provides that a member will have none of their lump sum and death benefit allowance if they have previously exceeded their lifetime allowance.

110. Subparagraph (3) sets out the transitional calculation for the lump sum and death benefit allowance (using a percentage of the member's previously used lifetime allowance).

111. Subparagraph 4 defines "the appropriate percentage" as 100% where the benefit concerned is a serious ill-health lump sum that the member became entitled to before 6 April 2024 and was paid whilst under age 75. Or, a lump sum death benefit paid in respect of a member under age 75 before 6 April 2024, and in all other cases 25%.

112. Subparagraphs (5) and (6) provide for an alternative method wherein a member can request a 'transitional tax-free amount certificate', as defined in subparagraph 127(1). To do so they must provide complete evidence, as defined in subparagraph 129(4), of their lump sum and death benefit transitional tax-free amount. The lump sum and death benefit transitional tax-free amount is always arrived at through a calculation at subparagraph 129(2). This figure would then be deducted from their allowance. For either method, if the calculation results in a negative amount the individual's available allowance will be nil.

## Transitional tax-free amount certificates

113. Paragraph 127 defines and gives further detail on the transitional tax-free amount certificate.

114. Subparagraph (1) states that the certificate is issued by a registered pension scheme and certifies that the scheme administrator is satisfied with the evidenced individual's lump sum and lump sum death benefit transitional tax-free amounts.

115. Subparagraph (2) sets out the criteria for who may apply for a certificate, and the circumstances and the requirements to qualify.

116. Subparagraph (3) states that the scheme administrator of a registered pension scheme must accept or reject application requests within three months.

117. Subparagraph (4) sets out the information that must be included within a certificate and subparagraph (5) gives the scheme administrator discretion for determining what form a certificate may take.

118. Subparagraph (6) requires the scheme administrator to cancel certificates in the event they have been produced using incorrect information.

119. Subparagraph (7) states a certificate is valid when it is issued and ceases to be valid if given notice under subparagraph (6).

120. Subparagraph (8) gives the Commissioners for HMRC powers to make regulations to amend the application time period and make further provisions as necessary.

121. Subparagraph (10) adds the failure of a scheme administrator to issue certificates in line with Paragraph 127 to the existing penalties under section 98 Taxes Management Act 1970.

## Provision of information by scheme administrators to members

122. Paragraph 128 sets out how previous benefit crystallisation events, which occurred prior to 6 April 2024, are to be accounted for in respect of the new lump sum allowance and lump sum and death benefit allowance where statements are required to be produced. It accommodates where a member has a transitional tax-free amount certificate and, where this is not the case, that the amounts to be used should be 25% of the lifetime allowance previously used amount for the lump sum allowance and the appropriate percentage for the lump sum and death benefit allowance.

123. Subparagraph (6) defines the appropriate percentage as 100% where the benefit concerned is a serious ill-health lump sum the member became entitled to before 6 April 2024 and was paid whilst under the age of 75. Or, a lump sum death benefit paid in respect of a member under age 75 before 6 April 2024. In all other cases it is 25%.

## Paragraphs 125 to 128: interpretation

124. Paragraph 129 subparagraph (1) defines the 'lump sum transitional tax-free amount' and sets out that this includes payments from a registered pension scheme or the entitlement to a payment, before 6 April 2024. This includes uncrystallised funds pension lump sums where no charge to income tax under Part 9 of ITEPA applies.

125. Subparagraph (2) defines the 'lump sum and death benefit transitional tax-free amount' as payments from a registered pension scheme or the entitlement to a payment, before 6 April 2024, which was not chargeable to income tax under Part 9 of ITEPA or Part 4 of Finance Act 2004.

126. Subparagraph (3) specifies that lump sum and lump sum death benefits are 'relevant' for purposes of subparagraph (2) so long as they were a benefit crystallisation event within part 4 of Finance Act 2004.

127. Subparagraph (4) defines 'complete evidence' in relation to an individual's transitional tax-free amount.

128. Subparagraph (5) sets out all the definitions and links to existing legislation.

129. Subparagraph (6) ensures that references in paragraphs 125 to 128 to provisions of Finance Act 2004 operate even where those references are removed from 6 April 2024. They have the effect they would have had immediately before 6 April 2024.

## Statements for certain members who would not otherwise receive one in the tax year 2024-25

130. Paragraph 130 introduces a requirement for scheme administrators to provide a statement before the end of the tax year 2024-25 to the 'relevant person'. A relevant person is one who has taken a benefit crystallisation event before 6 April 2024 and does not have a pension in payment, before the end of the tax year 2024-25.

131. Subparagraph (2) defines the 'relevant person'.

132. Subparagraph (3) states this must contain the information that would previously have been issued under regulation 14(1) of the Provision of Information Regulations.

## Lump sum death benefits paid on or after 6 April 2024 that crystallised

133. Paragraph 131 provides that lump sum death benefits paid on or after 6 April 2024, from benefits crystallised before 6 April 2024, do not qualify as 'relevant lump sum death benefits' under section 637S.

## References in scheme rules to lifetime allowance excess lump sums

134. Paragraph 132 makes provisions for schemes to interpret the 'lifetime allowance excess lump sum' in their scheme rules as a 'pension commencement excess lump sum' where appropriate and the conditions for a pension commencement excess lump sum are met under paragraph 26(9).

## Power to make further transitional provision

135. Paragraph 133 provides HM Treasury the power to make transitional, transitory or saving provisions through secondary legislation.

## Power to make further provision in connection with the abolition of lifetime allowance charge

136. Paragraph 134 provides HM Treasury the power to amend primary legislation through regulations where it is necessary following the abolition of the Lifetime Allowance.

137. Subparagraph (3) provides that regulations made under this power which increase the liability to tax are subject to the affirmative procedure.

138. Subparagraph (4) ensures that HM Treasury will not have this power beyond 6 April 2026.

# Background note

139. The LTA was the maximum amount of tax relievable pension savings an individual could benefit from over the course of their lifetime. At Spring Budget 2023, the government announced that it would abolish the LTA. The first stage of this was achieved through Finance (No.2) Act 2023. This measure completes the abolition of the LTA following the removal of the LTA charge, to support the government's efforts to encourage individuals to return to work.

140. Protections were available to individuals each time the LTA was reduced, to ensure they were not disadvantaged by the reductions. A Benefit Crystallisation Event was a specific occasion when the value of pension benefits arising (crystallising) were measured against the LTA. A benefit crystallisation event also occurred when a pension scheme member reached age 75.

141. Following the abolition of the LTA, this measure ensures that only those benefits received from pensions schemes which are not already taxed as pension income are tested against the new lump sum allowance, lump sum and death benefit allowance, and overseas transfer allowance. The lump sum allowance maintains the amount of tax-free cash individuals can receive at the same level as applied previously. The lump sum and death benefit allowance maintains the amount of tax-free lump sum death benefits and serious ill-health lump sums individuals, or their beneficiaries, can receive at the same level as applied previously. The overseas transfer allowance ensures that, where an individual transfers their pension savings to a QROPS, the amount which they can transfer tax-free is the same level as applied previously. Regular pension income will not be tested against these allowances, and for most lump sums and lump sum death benefits there is no restriction on the total value, the allowances operate only to limit the amount which can be paid free of tax.

# Clause 15: MPs' pension scheme etc: rectification of discrimination

## Summary

1. This clause provides the Treasury with the power to make regulations to address the tax impacts of a rectification exercise to remedy age-related discrimination when pensions were reformed under pension schemes for members of Parliament from 2015, and under pension schemes for members of the Senedd and members of the Northern Ireland Assembly from 2016. The changes are capable of having retrospective effect to ensure that individuals are, as far as possible, put in the tax position they would have been in had the discrimination not occurred.

## Details of the clause

2. Subsection (1) provides that the Treasury may make regulations about the income tax and capital gains tax treatment of "rectification payments", "tax redress payments" and "tax windfalls" in relation to "rectification exercises" under a "relevant pension scheme". These terms are defined in subsections (2) to (6). It also provides that the Treasury may make regulations in connection with the increase or decrease in the rate of scheme pension or the value of pension rights under a relevant pension scheme.

3. Subsection (2) sets out the three types of pension scheme that can be a "relevant pension scheme" as "an MPs' pension scheme", "a Senedd pension scheme" or "an Assembly pension scheme". These terms are defined for the purposes of this section in subsection (9).

4. Subsection (3) defines a "rectification payment" as a payment resulting from a rectification exercise that is:

    - a payment of pension benefits that would have been payable at an earlier time if the remedy had been retrospective; or
    - a refund of pension contributions.

5. Subsection (4) defines a "tax redress payment" as a compensation payment made to an individual member of a relevant pension scheme following a rectification exercise representing tax that the individual has paid in relation to their remediable service, but would not have been due if the remedy had been retrospective.

6. Subsection (5) defines a "tax windfall" as a liability to either the annual allowance charge, for 2023-24 or any earlier tax year, or the lifetime allowance charge, for 2022-23 or any earlier tax year, that would have arisen if the rectification exercise had been retrospective.

7. Subsection (6) defines a "rectification exercise" as an exercise to remedy age-related discrimination which, under scheme rules, changes a member's entitlement to

pension benefits in respect of their "remediable service" (a term defined in subsection (9)) from being career average benefits to being final salary benefits or from being final salary benefits to being career average benefits. This means that regulations under this power can impact only members who choose to change their pension benefits. Individuals who are offered a choice by their pension scheme but choose not to change their pension benefits are not within scope of regulations made under this power.

8. Subsection (7) provides that regulations made under this section may modify any enactment in the Income Tax Acts or relating to capital gains tax. It allows them to make different provision for different cases so that regulations may apply in a limited way and that they may make other related provision. It also provides that regulations may impose an income tax charge on a tax windfall where less tax arises than if the remedy had been retrospective.

9. Subsection (8) provides that where regulations are made before 6 April 2025 they may apply for the tax year beginning 6 April 2024. Where regulations are made on or after 6 April 2025 they may have effect before they are made only if they do not increase a person's liability to tax.

10. Subsection (9) defines other terms used in this clause. In particular, it defines each of the relevant pension schemes by reference to the legislation under which they are created: "an MPs' pension scheme" is made under Schedule 6 to the Constitutional Reform and Governance Act 2010; "a Senedd pension scheme" is made under section 20 of the Government of Wales Act 2006 and "an Assembly pension scheme" is made under section 48 of the Northern Ireland Act 1998. It also defines "remediable service" by reference to the period of the reforms which took effect from 8 May 2015 to 31 March 2023 for the MPs' pension scheme and 6 May 2016 to 6 May 2021 for the Senedd and Northern Ireland Assembly pension schemes.

# Background note

11. In 2015, reforms were made to the pension scheme for members of Parliament, the Parliamentary Contributory Pension Fund. Members who were close to retirement remained in the final salary section, while the remaining active members started to accrue pension rights in a new career average section. In 2016 similar reforms were made to the Members of the Senedd Pension Scheme and the Assembly Members Pension Scheme in Northern Ireland. Reforms were not made to the pension scheme for members of the Scottish Parliament. These reforms were like those made to the pension rights of members of public service pension schemes. When the Court found that those reforms unlawfully discriminated against younger members and the government considered that the judgment had implications for all of the public service pension schemes within their responsibility, the Independent Parliamentary Standards Authority decided to make changes to the Parliamentary Contributory Pension Fund, as did the Senedd Commission in relation to the Members of the Senedd Pension Scheme.

12. As these changes to the pension provision of affected members are not fully retrospective, the tax position over the remedy period remains unchanged. This means that putting the individual in the tax position they would have been in absent the discrimination will require a slightly different approach to that taken in relation

to public service pension scheme reforms.

13. The clause provides a power to make changes in secondary legislation to ensure smooth implementation of redress payments for age related unfairness caused by past changes to the pensions of members of Parliament, members of the Senedd and members of the Northern Ireland Assembly. It will also ensure that members of the legislative assemblies are given equivalent tax treatment as if the remedied rights had accrued or had been paid when originally due.

# Clause 16 and Schedule 10: Provision relating to the cash basis

## Summary

1. This clause and Schedule make the cash basis the default basis for calculating profits of trades (including professions and vocations) for the tax year 2024-25 and subsequent years, and remove existing restrictions on turnover, deductions for interest payments and loss relief.

## Details of the clause

2. Clause 16 introduces Schedule 10.

## Details of the Schedule

### Part 1: Main provisions

3. Paragraph 1 introduces paragraphs 2 to 5 which amend Chapter 3 of Part 2 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) to make the cash basis the default basis for calculating profits of a trade.

4. Paragraph 2 introduces new section 24A.

5. New subsection 24A(1) requires a person to use the cash basis when calculating the profits of a trade unless it is an excluded trade or they elect to use generally accepted accounting practice (GAAP).

6. New subsection 24A(4) provides that sections 27, 28 and 30 do not apply to a trade using the cash basis. These sections deal with receipts and expenses under GAAP and animals kept for trade purposes. This re-enacts subsection 25A(4) which is omitted by paragraph 4.

7. New subsection 24A(5) provides for the cash basis to not apply when calculating the profits of Lloyd's underwriters.

8. Paragraph 3 makes amendments to section 25 to require GAAP to be used where the cash basis does not apply.

9. Paragraph 4 omits section 25A, which contains the existing provision to elect to use the cash basis.

10. Paragraph 5 introduces new section 25C.

11. New section 25C provides for a person carrying on a trade to elect to use GAAP for that trade, unless it is an excluded trade. An election ceases to have effect in the tax

year the trade becomes an excluded trade or there is an election to use the cash basis: a further election to use GAAP can be made subsequent to that tax year.

12. Paragraph 6 omits sections 31A and 31B ITTOIA, which contain the existing restrictions on turnover that limit eligibility to use the cash basis. It also omits section 31D, which contains the effects of an election under section 25A (itself omitted by paragraph 4) to use the cash basis.

13. Paragraph 7 omits sections 51A and 57B ITTOIA. These sections together provide that, in calculating profits of a trade on the cash basis, a deduction for interest paid is allowed regardless of whether it was an expense incurred wholly and exclusively for the purposes of the trade, and only up to a maximum amount of £500. Omitting these sections allows trades using the cash basis a deduction for interest paid in the same way as a deduction is allowed for trades using GAAP: for an expense incurred wholly and exclusively for the purposes of the trade, and without limit.

14. Paragraph 8(a) omits section 74E of the Income Tax Act 2007 (ITA), which contains the existing restrictions on the availability of loss relief for trades using the cash basis.

15. Paragraph 8(b) amends section 384B ITA to remove the restriction of relief for interest on a loan used to buy plant and machinery for use by a partnership or to buy an interest in a partnership, where the partnership uses the cash basis for its trade. The restriction remains where the partnership uses the cash basis for its property business.

## Part 2: Minor and consequential amendments

16. Paragraph 9 introduces paragraphs 10 to 14 which further amend Chapter 3 of Part 2 ITTOIA.

17. Paragraph 11 introduces new section 25B.

18. New section 25B sets out the categories of trades that are excluded from using the cash basis, and must therefore use GAAP. It also provides for the Treasury to amend the section by regulations. This section largely re-enacts section 31C (omitted by paragraph 16) which has a similar list of persons excluded from electing to use the cash basis and a similar power to amend by order.

19. Paragraph 15 introduces paragraphs 16 to 35 which make consequential amendments to ITTOIA.

20. Paragraph 31 amends the rules regarding eligibility for full relief under the trading allowance in section 783AE. Where the cash basis applies and full relief would not be available, GAAP can be used instead of the cash basis for one or more trades where this reduces relevant income so that it does not exceed the trading allowance, without an election to use GAAP needing to be made for each of those trades.

21. Paragraph 36 makes a consequential amendment to the Taxes Management Act 1970.

22. Paragraph 37 makes a consequential amendment to the Taxation of Chargeable Gains Act 1992.

23. Paragraph 38 introduces paragraphs 39 to 44 which make consequential amendments

to the Capital Allowances Act 2001.

24. Paragraph 45 makes consequential amendments to the Income Tax Act 2007.

25. Paragraph 46 repeals spent provisions.

## Part 3: Commencement and transitional provision

26. Paragraph 47 provides that the amendments apply for the tax year 2024-25 and subsequent tax years.

27. Paragraph 48 makes transitional provision where references to the cash basis are made for a tax year before 2024-25. These treat an election to use the cash basis under section 25A ITTOIA as if the cash basis applied under section 24A ITTOIA.

# Background note

28. The clause and Schedule make the cash basis the default basis for calculating profits of a trade, profession or vocation for income tax purposes. They remove restrictions that currently apply to using the cash basis: the turnover limit for all of a person's trades of £150,000 (or £300,000 if the cash basis is already being used), the interest deduction limit of £500, and the unavailability of some types of loss relief. They also allow an election to be made to use GAAP to calculate the profits of a trade, and excluding certain trades from using the cash basis.

29. The changes simplify small business taxation by extending eligibility for the cash basis, encouraging its use and making the rules for the regime easier to understand and apply. Making the cash basis the default method of calculating trading profits removes barriers to using it and reporting its use.

30. The changes have effect for the tax year 2024-25 and subsequent tax years.

# Clause 17: PAYE regulations: special types of payer or payee

## Summary

1. This clause gives HM Revenue and Customs (HMRC) the power to make regulations that will enable it to set off amounts of tax already paid by a worker and their intermediary on income from engagements under the off-payroll working (IR35) rules against a subsequent PAYE liability of their deemed employer. The provision comes into effect from 6 April 2024 and can apply to deemed direct payments made on or after 6 April 2017.

## Details of the clause

2. Subsection (1) of the clause inserts new section 688AB in Chapter 3 of Part 11 of Income Tax (Earnings and Pensions) Act 2003.
3. Section 688AB(1) provides the power to make provision in the PAYE regulations.
4. Section 688AB(2) enables provision to be made to treat an amount of tax as having been recovered from an individual or their intermediary, and for that amount not to be recoverable from the deemed employer in cases where:
    a. the deemed employer of an individual who provided services through their own intermediary would be liable to pay an amount of tax under PAYE regulations in respect of an engagement, and
    b. an amount of income tax or corporation tax has already been paid or assessed in relation to the engagement.
5. Section 688AB(3) enables HMRC to provide for an officer of HMRC to use the best estimate that can reasonably be made when deciding the amount to be treated as having been recovered from the individual or intermediary.
6. Section 688AB(4) enables HMRC to make provision to prevent the worker and their intermediary from making repayment or relief claims or deducting or setting off the amount treated as having been recovered from them.
7. Section 688AB(5) defines payee and payer.
8. Subsection (2) of the clause sets out that the provision may apply to deemed direct payments made on or after 6 April 2017.

## Background note

9. This clause has been introduced to address the potential over-collection of tax in

cases of non-compliance with the off-payroll working rules by giving HMRC the power to make regulations enabling it to set off amounts of tax already paid by a worker and their intermediary against their deemed employer's PAYE liability in respect of the same work. This supports the Government's policy of ensuring fairness in the tax system.

10. This measure was announced at Autumn Statement 2023, following the publication of a consultation on Off-payroll working (IR35) – calculation of PAYE liability in cases of non-compliance on 27 April 2023.

# Clause 18: Carer's allowance supplement: correction of statutory reference

## Summary

1. This clause inserts the correct legislative reference that Carer's Allowance Supplement payments are made under into Table A, section 660 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

## Details of the Clause

2. Subsection (1) amends Table A, section 660 ITEPA 2003 to correct the legislative reference that Carer's Allowance Supplement is payable under, from sections 24 and 28 to section 81 of the Social Security (Scotland) Act 2018.

3. Subsection (2) provides that the amendment is treated as having effect from when section 12 of Finance Act 2019 (FA 2019), which inserted the reference to Carer's Allowance Supplement into ITEPA 2003, came into force.

## Background note

4. Carer's Allowance Supplement is an extra payment made to individuals in Scotland who are in receipt of Carer's Allowance or Carer's Support Payment. The Scottish Government introduced Carer's Allowance Supplement in September 2018 and it is listed as a taxable social security benefit by inclusion in Table A, section 660 of ITEPA 2003, inserted by FA 2019.

5. The legislative reference that these payments are listed against in Table A is incorrect due to a technical drafting error. This clause corrects the drafting error retrospectively.

# Part 2: Other taxes

# Clause 19: Growth market exemption: qualifying UK multilateral trading facilities etc

## Summary

1. This measure amends the qualifying conditions for markets wishing to apply to HM Revenue & Customs (HMRC) for recognised growth market status, which grants relief from Stamp Duty and Stamp Duty Reserve Tax (SDRT). The amendments have effect from 1 January 2024.

## Details of the clause

2. Subsection (1) introduces the amendments to section 99A Finance Act (FA) 1986, which provides the definition of a 'recognised growth market' for the purposes of Stamp Duty and SDRT.
3. Subsection (2) amends subsection 99A(5) FA 1986.
4. Paragraph (2)(a) adds qualifying UK multilateral trading facilities (MTFs) to the types of markets that qualify for recognition as a growth market.
5. Paragraph (2)(b) increases the company market capitalisation amount from £170 million to £450 million. The majority of the companies whose stock or marketable securities are admitted to trading on the market must have a market capitalisation of less than that amount for it to qualify for recognition as a growth market.
6. Subsection (3) inserts into subsection 99A(6) FA 1986 a definition of a UK MTF.
7. Subsection (4) inserts new subparagraph (6A) into section 99A FA 1986. The new subparagraph requires a qualifying MTF to be operated by a regulated UK investment firm.
8. Subsection (5) sets out that the amendments will come into force on 1 January 2024.

## Background note

9. These amendments have been introduced to allow Financial Conduct Authority (FCA) regulated UK MTFs operated by investment firms to qualify for access to the growth market exemption from Stamp Duty and SDRT.
10. These amendments also increase the level up to which a majority of companies listed on recognised growth markets can be capitalised to £450 million

# Clause 20 and Schedule 11: Capital-raising arrangements etc

## Summary

1. This measure ensures that it continues to be the case that no 1.5% charge to Stamp Duty or Stamp Duty Reserve Tax (SDRT) arises in relation to issues of securities or stock or transfers of securities made in the course of capital-raising arrangements or qualifying listing arrangements. This measure also ensures that it continues to be the case that no 1.5% (or 0.2%) charge to Stamp Duty arises in relation to the issue of bearer instruments. The measure has effect from 1 January 2024.

## Details of the clause

2. Clause 20 introduces Schedule 11.

## Details of the Schedule

### Part 1: Depositary receipts and clearance services

3. Paragraph 2 amends section 67 of FA 1986.

4. Subparagraph (c) inserts new subsection (1A) into section 67 of FA 1986. The new subsection provides that for the purposes of subsection 67(1) of FA 1986 "instrument" does not include a bearer instrument, an exempt capital-raising instrument or an exempt listing instrument.

5. Subparagraph (d) inserts new subsection 9ZA into section 67 of FA 1986. This provides that a charge under section 67 of FA 1986 does not apply where an instrument transfers shares in a company which are held by the company (treasury shares).

6. Paragraph 3 provides that the definition of "depositary receipt" in section 69(1) applies for the purposes of new section 72ZB of FA 1986 in addition to sections 67 and 68 of FA 1986.

7. Paragraph 4 amends section 70 of FA 1986.

8. Subparagraph (c) inserts new subsection (1A) into section 70 of FA 1986. The new subsection provides that for the purposes of subsection 70(1) of FA 1986 "instrument" does not include a bearer instrument, an exempt capital-raising instrument or an exempt listing instrument.

9. Subparagraph (d) inserts new subsection 9ZA into section 70 of FA 1986. This provides that a charge under section 70 of FA 1986 does not apply where an instrument transfers shares in a company which are held by the company (treasury

shares).

10. Paragraph 5 inserts new section 72ZA ("Meaning of "exempt capital-raising instrument") and new section 72ZB ("Meaning of exempt listing instrument'') after section 72 of FA 1986.
11. Subsection 72ZA(1) provides that for the purposes of sections 67 and 70 of FA 1986 an instrument is an "exempt capital-raising instrument" if the instrument transfers relevant securities in the course of capital-raising arrangements.
12. Subsection 72ZA(2) provides the definition of "capital-raising arrangements" for the purposes of section 72ZA.
13. Subsection 72ZA(3) provides that an instrument is not prevented from being an exempt capital-raising instrument in certain circumstances where the transferor is subject to a restriction that has the effect of preventing the transfer of the relevant securities in the course of the capital-raising arrangements.
14. Subsection 72ZB(1) provides that for the purposes of sections 67 and 70 of FA 1986 an instrument is an "exempt listing instrument" if the instrument transfers relevant securities of a company in the course of qualifying listing arrangements and those arrangements do not affect the beneficial ownership of the relevant securities.
15. Subsection 72ZB(2) provides the definition of "listing arrangements" for the purposes of section 72ZB.
16. Subsection 72ZB(3) provides the circumstances where listing arrangements are qualifying.
17. Subsection 72ZB(4) provides that an instrument is not prevented from being an exempt listing instrument in certain circumstances where the transferor is subject to a restriction that has the effect of preventing the transfer of the relevant securities in the course of the qualifying listing arrangements.
18. Subsection 72ZB(5) provides that Section 1005 of the Income Tax Act 2007 applies in relation to section 72ZB as it applies in relation to the Income Tax Acts.
19. Paragraph 6 makes consequential amendments to section 90 of FA 1986 to reflect that a charge does not arise on the issue of bearer instruments or chargeable securities.
20. Paragraph 7 amends section 93 of FA 1986.
21. Subparagraph 2 amends section 93 of FA 1986 so that a charge under that section does not arise on the issue of chargeable securities and makes consequential changes. Subparagraph 2 also inserts new subsection (1A) which sets out the provisions which contain exceptions to the charge to SDRT under section 93 of FA 1986.
22. Paragraph 8 provides that the definition of "depositary receipt" in section 94(1) applies for the purposes of new section 97AC of FA 1986 in addition to section 93 of FA 1986.
23. Paragraph 9 makes consequential amendments to section 95 of FA 1986 (depositary receipts: exceptions) as the exceptions are no longer relevant to issues.

24. Paragraph 10 makes consequential amendments to section 95A of FA 1986 (depositary receipts: exception for replacement securities) as the exception is no longer relevant to issues.
25. Paragraph 11 amends section 96 of FA 1986.
26. Subparagraph 2 amends section 96 of FA 1986 so that a charge under that section does not arise on the issue of chargeable securities and makes consequential changes. Subparagraph 2 also inserts new subsection (1A) which sets out the provisions which contain exceptions to the charge to SDRT under section 96 of FA 1986.
27. Paragraph 12 makes consequential amendments to section 97 of FA 1986 (clearance services: exceptions) as section 97C no longer applies and the exceptions under section 97 are no longer relevant to issues.
28. Paragraph 13 renumbers section 97AA of FA 1986 as new section 97ZA of FA 1986 and the heading is amended. The paragraph also makes consequential amendments to reflect that a 1.5% SDRT charge does not arise on the issue of chargeable securities.
29. Paragraph 14 makes consequential amendments to section 97A of FA 1986 (clearance services; election for alternative system of charge) as the exception is no longer relevant to issues.
30. Paragraph 15 inserts new sections 97AB ("Exempt capital-raising transfers"), 97AC ("Exempt listing transfers") and 97AD ("Exception for transfers of shares held by issuing company") after section 97A of FA 1986.
31. Subsection 97AB(1) provides that there is no charge to tax under section 93 or 96 in respect of an exempt capital-raising transfer.
32. Subsection 97AB(2) provides that for the purposes of subsection 97AB(1) of FA 1986 a transfer of chargeable securities is an "exempt capital raising transfer" if the transfer is in the course of capital-raising arrangements.
33. Subsection 97AB(3) provides the definition of "capital-raising arrangements" for the purposes of section 97AB.
34. Subsection 97AB(4) provides that a transfer of chargeable securities is not prevented from being an exempt capital- raising transfer in certain circumstances where the transferor is subject to a restriction that has the effect of preventing the transfer of the chargeable securities in the course of the capital-raising arrangements.
35. Subsection 97AC(1) provides that there is no charge to tax under section 93 or 96 in respect of an exempt listing transfer.
36. Subsection 97AC(2) provides that for the purposes of subsection 97AC(1) a transfer of chargeable securities is an "exempt listing transfer" if it is a transfer in the course of qualifying listing arrangements and those arrangements do not affect the beneficial ownership of the chargeable securities.
37. Subsection 97AC(3) provides the definition of "listing arrangements" for the purposes of section 97AC.
38. Subsection 97AC(4) provides the circumstances where listing arrangements are

qualifying.

39. Subsection 97AC(5) provides that a transfer of chargeable securities is not prevented from being an exempt listing transfer in certain circumstances where the transferor is subject to a restriction that has the effect of preventing the transfer of the relevant securities in the course of the qualifying listing arrangements.

40. Subsection 97AC(6) provides that Section 1005 of the Income Tax Act 2007 applies in relation to section 97AC as it applies in relation to the Income Tax Acts.

41. New section 97AD of FA 1986 provides that there is no charge to tax under section 93 or 96 in respect of a transfer of shares in a company which are held by the company (treasury shares).

42. Paragraph 16 makes a consequential amendment to section 97B (transfer between depositary receipt system and clearance system) of FA 1986 to reflect the removal of the provisions at section 97C of FA 1986.

43. Paragraph 17 removes the provisions at section 97C of FA 1986 in respect of transfers between depositary receipt and clearance services systems. These provisions are redundant following the removal of the 1.5% SDRT charge on issues.

## Part 2: Bearer instruments

44. Paragraph 18 makes consequential amendments to section 79(2) of FA 1986 as a charge under Schedule 15 of FA 1999 does not arise on issues.

45. Paragraph 19 amends Schedule 15 to FA 1999.

46. Subparagraph 2 removes paragraph 1 of Schedule 15 of FA 1999 so a charge does not arise on the issue of bearer instruments.

47. Subparagraphs 3 to 9 make consequential changes to Schedule 15 of FA 1999 and remove a reference to a previously repealed provision.

## Part 3: Minor and consequential amendments

48. Paragraph 20 makes consequential amendments to section 131(3) of FA 1976 as a charge under Schedule 15 of FA 1999 does not arise on issues.

49. Paragraph 21 makes consequential amendments to section 126 of FA 1984 as a charge on issues does not arise under Schedule 15 of FA 1999 or section 93 of FA 1986.

50. Paragraph 23 makes consequential amendments to section 50 of FA 1987 as a charge under Schedule 15 of FA 1999 does not arise on issues.

51. Paragraph 24 makes consequential amendments to section 143 of FA 1988 as a charge under Schedule 15 of FA 1999 does not arise on issues.

## Part 4: Commencement and transitional provision

52. Paragraph 25 provides commencement provisions in respect of Stamp Duty and SDRT.

53. Paragraph 26 provides transitional provision in respect of the amendments to section

95A of FA 1986 (depositary receipts: exception for replacement securities).

54. Paragraph 27 provides transitional provision in respect of the amendments to section 97ZA of FA 1986 (clearance services: exception for replacement securities).

55. Paragraph 28 provides transitional provision in respect of the amendments to Schedule 15 of FA 1999 (bearer instruments).

56. Paragraph 29 provides transitional provision in respect of the amendments to section 50 of FA 1987 (warrants to purchase government stock etc).

# Background note

57. This measure ensures that it continues to be the case that no 1.5% charge to Stamp Duty or Stamp Duty Reserve Tax (SDRT) arises in relation to issues of securities or stock into depositary receipt systems and clearance services and transfers of securities made in the course of capital-raising arrangements or qualifying listing arrangements. This measure also ensures that it continues to be the case that no 1.5% (or 0.2%) charge to Stamp Duty arises in relation to the issue of bearer instruments. The measure has effect from 1 January 2024.

58. Following EU and UK court decisions in 2009 and 2012 respectively, HM Revenue & Customs (HMRC) recognized that the 1.5% Stamp Duty and SDRT charges on the issue of securities into depositary receipt systems and clearance services (and on certain related transfers) were incompatible with the Capital Duties Directive. UK legislation was not amended as taxpayers are currently able to rely on the direct effect of EU law.

59. The effect of the Retained EU Law (Revocation and Reform) Act 2023 means that it is necessary for the government to legislate in order to maintain the 0% charge.

# Clause 21: New investment exemption

## Summary

1. Clause 21 introduces an exemption from the electricity generator levy for generation receipts from new generating plant, which meets the new investment condition. The exemption will apply to generation receipts that can be attributed to new or additional generation capacity, or where substantially all of the plant in an existing station is replaced.

2. The new investment condition is that on 21 November 2023 there is a significant likelihood of a project consisting of qualifying new generating plant not going ahead.

## Details of the clause

3. Subsections 1 and 2 introduce the exemption of qualifying new generating plant. Where the exemption applies, the effect is to treat any capacity resulting from a project as not being generation of a relevant generating station, as defined in section 280(1) Finance (No, 2) Act 2023.

4. For a new generating station, the exemption will apply to the whole of the generation receipts from that station. For an existing station, only receipts attributable on a fair and reasonable basis to the additional capacity are covered by the exemption. The attribution in that case is to be made in accordance with section 283 Finance (No.2) Act 2023.

5. Subsection 3 introduces new section 311A of the Finance (No2) Act 2023 which explains the key concepts used to define the exemption of qualifying new generating plant. It also sets outs the conditions that must be met for new generating plant to qualify for the exemption.

6. Subsection (1) of new section 311A explains that qualifying new generating plant must be commissioned as part of a qualifying project which meets the new investment condition.

7. Subsection (2) of new section 311A sets out when the new investment condition is met. This is where, as of 21 November 2023, there is a significant likelihood of a project consisting of qualifying new generating plant not going ahead. "A significant likelihood of the project not proceeding" in this context indicates that at the specified date there is a more than a small, negligible or fanciful risk that the project to create the qualifying new generating plant will not proceed.

8. Subsection (3) of new section 311A provides a power for the Treasury to determine that a class of qualifying project(s) is to be treated as meeting the new investment condition should this be needed.

9. Subsection (4) of new section 311A defines a 'qualifying project' as a project to commission a new generating station, an existing generating station where substantially the whole of the existing generating plant is replaced, or a project that

leads to an increase in generating capacity of an existing generating station.

10. Subsections (5) and (6) of new section 311A provides that where a project leads to an increase in capacity of an existing generating station only generation receipts that can attributed to the additional capacity will be exempted from the electricity generator levy. An attribution under these circumstances is to be made on a fair and reasonable basis in accordance with the provisions of section 283 of the Finance (No2) Act 2023.

11. Subsection 4 of the clause amends section 311 of the Finance (No.2) Act 2023 to includes qualifying new generation plant amongst the definitions table for that Part.

# Background note

12. The new investment exemption introduced by this clause was announced at the Autumn Statement 2023. The electricity generator levy is a 45% charge on exceptional amount of generation receipts on incorporated businesses that generate electricity in the UK. It is in effect until 31 March 2028. The exemption from the levy will apply to generation receipts arising from new generating plant as part of a qualifying project which meets the new investment condition on 21 November 2023.

13. Clause 21 was introduced at Report Stage on 5 February 2024.

# Clause 22 and Schedule 12: Ensuring consistency of Parts 3 and 4 of F(No.2)A 2023 with OECD rules etc

## Summary

1. This clause amends the Parts and Schedules of Finance (No.2) Act 2023 that implement multinational top-up tax and domestic top-up tax, the UK version of the Organisation for Economic Co-operation and Development's Pillar Two rules. These amendments are made in a Schedule (Schedule 12).

## Details of the clause

2. Clause 22 introduces Schedule 12.

## Details of the Schedule

### Part 1: Introduction

3. Paragraph 1 introduces Parts 2 to 4 of Schedule 12 and gives effect to them for accounting periods beginning on or after 31 December 2023.

### Part 2: Multinational top-up tax

4. Paragraph 2 subparagraph (1) amends section 122 to allow for partnerships that are not bodies corporate to be chargeable to multinational top-up tax.

5. Subparagraph (2) inserts new section 232A which provides for the continuity and identity of partnerships for the purposes of multinational top-up tax in a number of circumstances where general law might deem a new partnership to have come into existence. Where a partnership has been dissolved, it also provides for a deemed partnership to continue to exist for the purposes of dealing with historic rights and obligations relating to multinational top-up tax.

6. Subparagraph (3) adds a new definition of a partnership to section 259 which excludes bodies corporate as a consequence of the amendment to section 122 (as inserted by paragraph 2(1) above).

7. Subparagraph (4) inserts new section 268A, which applies new section 232A (as inserted by paragraph 2(2) above) for domestic top-up tax purposes.

8. Subparagraph (5) amends section 269 to allow for partnerships that are not bodies corporate to be chargeable to domestic top-up tax and omits subsections from section 269 that are superseded by the application of new section 232A.

9. Subparagraph (6)(a) amends paragraph 3 of Schedule 14 to allow HMRC to address instances where a partnership does not meet its obligations as a filing member. HMRC may issue a notice to any partner so that the partner is treated as the filing member and is responsible for meeting the partnership's filing obligations.

10. Subparagraph (6)(b) inserts new paragraph 37A that provides for a partnership payment notice, which enables HMRC to make a partner liable when an amount of top-up tax payable by a partnership is not paid within 3 months of the due date. This is a similar concept to the group payment notice in paragraph 34 of Schedule 14. New paragraph 37B is also inserted which allows a partner who has paid a top-up tax liability of a partnership to recover the amount from the other partners and allows the payment or recovery of the tax to be disregarded for the partners' own tax purposes. Subparagraph (6)(c) makes consequential amendments to paragraph 39 of Schedule 14.

11. Paragraph 2(7) adds new terms to the index of defined expressions in Schedule 17.

12. Paragraph 3 amends section 127(5) to clarify the definition of a qualifying non-profit subsidiary for the purposes of the excluded entity definition.

13. Paragraph 4 amends section 128 and inserts a new subsection to section 232 to clarify that an entity can be a responsible member in respect of a permanent establishment for which it is the main entity (since an entity does not have ownership interests in its own permanent establishment, which is itself clarified by new section 232(3A)).

14. Paragraph 5 makes a minor correction to Section 131(1). It also amends section 131(2) to clarify the definition of a qualifying de-merger and add a requirement that at least one member of the group which is being broken up is subject to Pillar Two rules.

15. Paragraph 6 amends section 146 to clarify the interaction between this section and section 217, so preventing double counting of a correction.

16. Paragraph 7 amends section 147 to remove ambiguities in the operation of the section as previously drafted.

17. Subsection 147(1) clarifies that this section applies when a member has made contributions, received amounts or otherwise has amounts of income or expenses relating to a pension fund.

18. Subsection 147(2) provides that the relevant group member's contributions to the fund are added to the income or expenses and any amounts received from the fund are subtracted. It also clarifies that the income or expense dealt with by the provision must be directly in respect of the fund – so involve payments between the member and the fund, or accounting entries attributable solely to the member's relationship with the fund. In particular, amounts paid over from another group member for onward payment to the fund (or vice versa) are not to be factored in to the calculation. Subsection (3) reduces or increases the underlying profits based on the result of subparagraph (2).

19. Paragraph 8(1) inserts new section 147A to provide for the treatment of tax credits.

20. New subsection (1) adjusts a member's profits so that qualified refundable tax credits and marketable transferable tax credits are accounted for as income and any other tax credits are accounted for as a tax expense.

21. New subsections (2) and (3) introduce section 148 and section 148A (as inserted by paragraph 8(3) below) which define qualifying refundable tax credits and marketable transferable tax credits.

22. New subsection (4) introduces section 148B and section 148C which provide for the rules for determining the value of marketable transferable tax credits.

23. New subsection (5) introduces section 176A to section 176C which provide for the rules for determining the value of transferable tax credits that are not marketable transferable tax credits.

24. New subsection (6) introduces section 176D to section 176F which provide for the rules for tax credits received under a tax equity partnership arrangement.

25. Paragraph 8(2) amends the heading of section 148 to make clear that the section provides for the meaning of qualifying refundable tax credits, and omits the provision determining their treatment, which is now found in the new section 147A.

26. Paragraph 8(3) inserts new sections 148A to 148C to provide for the meaning of transferable tax credits and marketable transferable tax credits and for their treatment.

27. New section 148A(1) defines a transferable tax credit as a tax credit which meets the transferability condition (as provided for in section 148A(4) below) and where the group member is either:

    a. The originator of the tax credit (the person that was originally granted the tax credit), or

    b. A purchaser of the tax credit (a person that has acquired the tax credit)

28. New subsection (2) provides that a marketable transferable tax credit is a transferable tax credit that meets the marketable condition (as provided for in section 148A(5) below).

29. New subsection (3) provides that whether the transferability and marketable conditions in subsection (1) and subsection (2) are met depends on whether the member is the originator or a purchaser of the tax credit.

30. New subsection (4) provides that the transferability condition is met for:

    a. The originator if the tax credit can legally be transferred to an unconnected person within 15 months of the end of the accounting period in which the credit was granted.

    b. A purchaser if the credit may be further transferred before the end of the accounting period that the credit was purchased in, and under similar conditions.

31. New subsection (5) provides that the marketable condition is met for:

    a. The originator if the credit is transferred to an unconnected person within 15 months of the end of the accounting period at 80% or more of the credit's net present value, or if similar credits are traded between unrelated persons within 15 months at prices that are typically 80% or more of the credit's net present

value.

b. A purchaser if the credit was acquired from an unconnected person at a price of 80% or more of the credit's net present value.

32. New subsection (6) provides for new subsections (7) and (8) which set out how to determine the net present value of a tax credit. This is calculated by assuming that the holder can use the credit it is entitled to in each period, and by using government debt instruments with a similar maturity (and a maximum of 5 years) that are issued in the same accounting period to determine the discount rate.

33. New subsection (9) confirms that the accounting period referenced in subsection (6) is determined based on whether the holder is the purchaser or originator of the tax credit.

34. New subsection (10) confirms that where a transferable tax credit also meets the definition of a qualifying refundable tax credit, it is not treated as a transferable tax credit.

35. New section 148B addresses how to adjust profits for the value of a marketable transferable tax credit for a member that is the originator of the tax credit.

36. New subsection (1) provides that the member's profits are to be adjusted to reflect the value of the marketable transferable tax credits it held as the originator as set out in the subsequent subsections.

37. New subsection (2) provides that the full value of the marketable transferable tax credit is recognised as income if it is not transferred within 15 months of the accounting period in which the tax credit was granted.

38. New subsection (3) provides that the difference between the value of the marketable transferable tax credit and the consideration received is recognised as a loss if the tax credit is transferred for less than its value.

39. New subsection (4) provides that the consideration of the transfer is recognised if the marketable transferable tax credit is transferred within 15 months of the end of the accounting period it was granted.

40. New subsection (5) provides that a loss is recognised on the value of the unused credit when a credit has not been transferred and fully used before it has expired.

41. New section 148C addresses how to adjust profits for the value of a marketable transferable tax credit for a member that is a purchaser of the tax credit.

42. New subsection (1) provides that the member's profits are to be adjusted to reflect the value of the marketable transferable tax credits held as a purchaser.

43. New subsections (2) and (3) provide the calculation for determining the amount that should be recognised as income in the accounting period that the marketable transferable tax credit is used. This is specified as:

*[amount of the tax credit used ÷ full value of the tax credit] x [full value of the tax credit - the purchase price of the tax credit]*

44. New subsections (4) and (5) provide the calculation for determining the amount that should be recognised as a gain or loss when a marketable transferable tax credit is

transferred. This is specified as the amount of the tax credit used and the consideration for the transfer less the purchase price of the tax credit and any amounts recognised as income under section 148C (2).

45. New subsections (6) and (7) provide the calculation for determining the amount that should be recognised as a loss when an unused marketable transferable tax credit expires and has not been transferred. This is specified as the purchase price of the tax credit and any amounts recognised as income under section 148C (2) less the amount of any of the tax credit used.

46. Paragraphs 8(4) and (5) amend section 175 and section 176 respectively to include marketable transferable tax credits when adjusting the member's covered tax balance.

47. Paragraph 8(6) inserts new section 176A which provides the meaning of non-marketable transferable tax credits.

48. New subsection (1) provides for new section 176B and new section 176C (as introduced in this paragraph).

49. New subsection (2) defines a non-marketable transferable tax credit for a member that is the originator of the tax credit as a tax credit that can be transferred to another person or entity that is not a marketable transferable tax credit.

50. New subsection (3) defines a non-marketable transferable tax credit for a member that is a purchaser of the tax credit as any tax credit that is not a marketable transferable tax credit.

51. New subsection (4) provides that the definition of purchaser and originator in this section is the same as the definitions provided for the purposes of section 148A (as inserted by paragraph 8(3) above).

52. New section 176B addresses how to value a non-marketable transferable tax credit for a member who is the originator of the tax credit.

53. New subsection (1) provides that the covered tax balance of a member who is an originator of a non-marketable transferable tax credit is to be adjusted to reflect the value of the tax credit.

54. New subsection (2) provides that the value of the tax credit is to be reflected as it is used.

55. New subsection (3) provides that where a credit is transferred more than 15 months from the end of the accounting period in which it was granted, the transfer is reflected in the accounting period that the transfer occurred.

56. New section 176C addresses how to value a non-marketable transferable tax credit for a member who is purchaser of the tax credit.

57. New subsection (1) provides that the covered tax balance of a member who is a purchaser of a non-marketable transferable tax credit is to be adjusted to reflect the value of the tax credit.

58. New subsection (2) and subsection (3) provide the calculation for determining the amount that should be recognised as a credit to covered taxes in the accounting period that a non-marketable transferable tax credit is used. This is specified as:

*[amount of the tax credit used ÷ full value of the tax credit] x [full value of the tax credit - the purchase price of the tax credit]*

59. New subsections (4) and (5) provide the calculation for determining the amount that should be recognised as a credit to covered taxes (if positive) or a loss in the underlying profits (if negative) when a non-marketable transferable tax credit is transferred. This is specified as the amount of the tax credit used and the consideration for the transfer less the purchase price of the tax credit and any amounts recognised under section 176C(2).

60. New subsection (6) and (7) provide the calculation for determining the amount that should be recognised as a loss when an unused credit expires and has not been transferred. This is specified as the purchase price of the tax credit and any amounts recognised under section 176C(2) less the amount of any of the tax credit used.

61. Paragraph 9 changes the wording of section 151(1) to provide that the treatment provided for in the section should be elective, on an accounting period by accounting period basis. It also introduces and defines 'local tax attributes' for the purposes of this section and clarifies the aggregated treatment where more than one debt is released at the same time. The paragraph also adds the election to the list of annual elections in Paragraph 2 of Schedule 15.

62. Paragraph 10 amends section 152 to clarify that where amounts charged to policyholders are reflected in the members' underling profits then they are excluded from covered taxes. It also extends the definition of a life assurance business to include businesses regulated outside of the UK.

63. Paragraph 11 amends section 153 so that the reference to "excluded dividends" in section 153(1) only refers to the second type of excluded dividends set out in section 141(2)(b).

64. Paragraph 12 amends section 159 to clarify that where an amount is attributable to a main entity, it is not to be reflected in the underlying profits of any permanent establishments of that main entity. In addition, amounts should be reflected (or not reflected) in the underlying profits of the permanent establishment irrespective of whether they are taxable or deductible for tax purposes.

65. Paragraph 13 amends section 163 to ensure the proper application of the election to spread certain capital gains over five years. The changes ensure that when the gain is spread back to a previous period, it will only be allocated to a member if that member was a standard member of the group, and located in the relevant territory, in the period to which the gain is being spread back. For Steps 1-7, it is not necessary that this member be a member of the group and located in the relevant territory in the election period. For Steps 8-12, where any residual gain is allocated evenly across the five periods, the member in the previous period must also be a "current gain member", under which definition it must be a standard member of the group and located in the relevant territory in the election period. The new Step 12 clarifies the outcome where, in one of the periods of the look-back period, there are no standard members of the group located in the relevant territory, and Step 11 consequently does not function. In this case, the fifth of the Step 8 residual amount that was to be allocated to standard members for that period is instead allocated to current gain members for the election period. This procedure mirrors Step 10. (Note that, in Step 1, "first" refers to the earliest period of the look-back period.)

66. Paragraph 14(1) to (7) amends section 168 to allow the profits of transparent entities and reverse hybrid entities to be allocated to individuals as well as to entities (and so be excluded from ETR calculations) when certain conditions are met. Subparagraph (8) inserts a new subsection (12) to ensure that such profits are properly allocated when the ultimate parent of a group is a flow-through entity.

67. Subparagraph (9) makes a minor correction to section 170(2) and inserts new subsection (2A) so that where profits are allocated to the ultimate parent under section 168, those profits are treated as profits to which the owners of the ultimate parent are entitled.

68. Subparagraph (10) amends the definition of "tax transparent" in section 238 to clarify that an entity may be tax transparent to a certain extent (for instance, if it is transparent for the purposes of taxes on income but not taxes on capital gains).

69. Paragraph 15 amends section 173 to ensure that, where a member of a group is made liable to a tax that is a substitute for a tax on profits, it will be a covered tax regardless of which territory is imposing the tax.

70. Paragraph 16 provides for new sections 176D to 176F (as introduced by paragraph 8)

71. New section 176D provides for the allocation of tax credits under tax equity partnerships. Subsection (1) provides that where a member is an investor in a tax equity partnership arrangement and an election is made under section 165, any qualifying flow-through tax benefits (as defined in subsection (2)) provided to the member under the arrangements are excluded from its covered tax balance (and accordingly will increase the combined covered tax balance, to the extent that these have been accounted for within the current tax expense).

72. Subsection (3) provides that new section 176E determines the extent to which any flow-through tax benefits are 'qualifying' for arrangements where the profits of the investor are accounted for using the proportional amortisation method, or where the filing member has made an election to use the proportional amortisation method for that member.

73. Subsection (4) provides that new section 176F applies in all other circumstances. Subsections (5) to (6) provide the conditions for determining whether a member is or is not an investor in a tax equity partnership arrangement.

74. Subsection (7) provides that non-qualifying flow-through tax benefits are reflected as a credit in the covered tax balance. Subsection (8) makes clear that no flow-through tax benefits provided to a member may be reflected in the profits of that member.

75. Subsection (9) provides the meaning of the proportional amortisation method for the purposes of applying the section.

76. Subsection (10) provides the calculation for determining the value of any tax deductible losses to be used by an investor for the purposes of this section. Subsection (11) provides that the election in subsection (3) of this section is an annual election.

77. New section 176E provides for the steps required to determine the extent to which flow-through tax benefits provided to an investor under the proportional amortisation method are qualifying. The section also provides that any amounts that are non-qualifying should be credited to the investor's covered tax balance.

78. New section 176F provides for the steps required to determine the extent to which flow-through benefits provided to an investor under the subtraction method are qualifying.

79. Paragraph 16(2) adds the election in section 176D to the list of elections in schedule 15.

80. Paragraph 17(1) amends section 177 to clarify that a member's qualifying current tax expenses that relate to the profits of a permanent establishment are to be allocated to that permanent establishment and reflected in the permanent establishment's covered taxes.

81. Subparagraph (2) introduces the amendments to section 178.

82. Subparagraph (3) makes a minor correction to the section.

83. Subparagraph (4) inserts new subsections (1A) and (1B). New subsection (1A) provides that, where an amount of qualifying current tax expense relates to profits that are not included in the member's underlying profits, the amount will still be reallocated to another member of the group if the amount would have been so allocated under section 167 or 168 if, hypothetically, the profits had been included in the member's underlying profits. This ensures that, where the profits of a hybrid entity are taxed at the level of its parent, the tax can be allocated to that hybrid entity.

84. New subsection (1B) clarifies the calculation of qualifying current tax expenses that have been reallocated under section 178(1). It does this by specifying that section 175(2)(a) applies to qualifying current tax expense amounts allocated under section 178(1) subject to two assumptions. The first assumption is that the reference to a member's adjusted profits refers to the adjusted profits of the member from which the qualifying current tax expense amounts were allocated. The second assumption is that, where the profits have been allocated from that member to another under section 167 or section 168, they were not excluded from adjusted profits of that first member. It ensures that where profits have been reallocated by section 167 or 168, the exclusion in section 175(2)(a) operates by reference to the entity from which the profits were allocated rather than the entity to which they were allocated.

85. Subparagraph (5) makes a minor amendment to section 178(2) to refer to new subsection (1A).

86. Subparagraph (6) inserts new subsections (5) and (6) to section 178 to clarify that, where an amount of qualifying current tax expense is not reallocated due to the limit relating to mobile income, it remains with the original member. If the income or gains to which the tax expense relates are not included in the adjusted profits of the member to which it would have been allocated, the tax expense is excluded from the covered tax balance of both members.

87. Subparagraph (7) inserts new section 179(1A) to provide that a qualifying current tax expense amount allocated to a controlled foreign company (CFC) is to be regarded as a qualifying current tax expense of that CFC for the purposes of section 175(2)(a).

88. New section 179(3A) and (3B) make equivalent provision to sections 178(5) and (6) for amounts not reallocated from an owner to a CFC.

89. Paragraph 18 makes various amendments to sections 179 and 180, which deal with controlled foreign companies (CFCs). Subparagraphs (2), (3) and (5) define a new term, "CFC entity". The change enables tax that is allocated to a CFC from its parent to also be

allocated to permanent establishments of, or disregarded entities owned by, that CFC. It supplants the term "blended CFC entity" that was defined in section 180(10). Subparagraph (4) deletes that subsection and makes other consequential changes.

90. Paragraph 19 amends section 180 to ensure that the effective tax rate of an entity in a blended CFC regime is calculated correctly.

91. Paragraph 20 amends section 183(3)(b), ensuring that the domestic tax rate of the member is used where it relates to the utilisation of a domestic loss. It also inserts new section 183A.

92. New section 183A provides that, where a member was required to set a domestic loss against foreign income, and its territory consequently allows foreign tax credits that could otherwise have been used against the relevant income to be used in future periods, a special foreign tax asset will be created. This asset must be used to increase the covered tax balance of the member. It provides that the value of that asset is the amount of the domestic loss used, multiplied by the nominal rate of tax in the member's territory but restricted to the minimum rate of 15%. It limits the amount of the asset that can be used in the period to the additional amount of foreign tax credits that may be credited as a result of the utilisation of the domestic loss. Any remainder may be carried forward.

93. Paragraph 21(1) amends and inserts a new subsection to section 196 to clarify the calculation of eligible payroll costs for the purposes of the substance based income exclusion where an employee carried out work in two or more territories.

94. Paragraph 21(2) inserts new subsection (6A) to section 197 to clarify the calculation of eligible tangible assets amounts for the purposes of the substance based income exclusion where an asset is located in more than one territory during the period.

95. Paragraph 22 amends sections 196(1) and 197(5) to clarify that the inclusion of payroll costs and assets when calculating the substance based income exclusion is voluntary.

96. Paragraph 23 amends section 197(4) to include impairment losses and the reversal of a previous impairment loss in the calculation of the substance based income exclusion.

97. Paragraph 24 inserts new subsection (7A) in section 197 to clarify the calculation of eligible tangible asset amounts for the purposes of the substance based income exclusion where part of an asset is held for lease, but another part of the asset is retained for use by the member holding the asset.

98. Paragraph 25(1) inserts new subsection (7A) in section 195 to provide for new section 197A.

99. Paragraph 25(2) inserts new section 197A which provides for the treatment and valuation of operating leases for the purposes of the substance based income exclusion.

100. Paragraph 26 inserts new section 198A to introduce a power to make further provisions by way of regulations concerning the treatment of payroll costs and assets for the purposes of the substance based income exclusion.

101. Paragraph 27 amends subsection (1) in section 211 to provide that, where:

- assets are transferred intra-group between two parties located in the same territory,
- the parties are in a tax consolidation group in that territory, and

- an election to exclude intra-group transactions has been made,

the value of the assets used in determining the adjusted profits of the transferee is the carrying value of the assets in the hands of the transferor.

If the above conditions are met but the transfer is not part of a qualifying reorganisation, the value of the assets used will instead be the carrying value of the asset immediately after the transfer, determined under the accounting standard of the transferee used to determine its underlying profits, and subject to adjustments to those profits made in accordance with Chapter 4.

102. Paragraph 28 inserts new subsection (6A) to section 213 to specify how profits or qualifying tax expense which have been allocated to an investment entity that is being treated as tax transparent by election are then further allocated to group members by reason of that election.

103. Paragraph 29(1) inserts new section 251A, which provides a definition of "country-by-country report" and "the OECD's guidance on country-by-country reporting", with consequential changes to the definition of "qualifying country-by-country report" in Schedule 16, which is relevant to the transitional safe harbour rules.

104. Paragraph 29(2) and (3) make consequential amendments to section 276 and paragraph 3 of Schedule 16 in relation to the transitional safe harbour. Paragraph 3(8) and 3(9) of Schedule 16 allows a group to access the safe harbour in cases where no jurisdiction requires it to file a country-by-country report. In this case the group may use, in place of the figures that would normally be taken from the country-by-country report, the figures from a notional country-by-country report. It is necessary to determine these figures in the same way that they would have been determined were the group to have actually prepared a country-by-country report (according to either the legislation of the ultimate parent jurisdiction, or the OECD guidance on country-by-country reporting). Although the country-by-country report is notional, there is still a requirement for it to be qualifying, and the conditions for being a qualifying country-by-country report must be met in relation to the figures used in the test. Consequently, in the context of the safe harbour, the requirements for a group that is not required to file a country-by-country report will be no less than the requirements for any other group, except that it will not be required to prepare and file the full country-by-country report.

105. Paragraph 30 amends section 227(2) to address the possibility of a joint venture in which two multinational groups each hold 50% ownership interests.

106. Paragraph 31 amends section 236(2) by combining paragraphs (b) and (c) and simplifying the language. It also clarifies the language of subsection (2)(e) by creating a new subsection (2A) and amends the test in subsection (2)(e) so that it applies to all ownership interests, including indirect interests.

107. Paragraph 32(1) amends subsection (6) of section 239. The omission in section 239(6)(c) addresses the case where an entity is dual resident in the UK and a different territory that does not apply an IIR, and has been determined, as the result of a treaty, to be located in the territory that does not apply an IIR. In this case, the treaty determination will not be overruled to allow the UK to apply the IIR. (The non-treaty tie-breakers may still be overruled in order to allow this, in the case where there is no determinative treaty.) The

substitution in 239(6) ensures that where a non-treaty tie-breaker is to be overruled to allow the UK to apply IIR, this outcome is properly achieved. It also ensures that a group will not become a multinational group solely because of this rule.

108. Paragraph 32(2) ensures that the test to determine the location of an entity is applied after having assumed that the flow-through entity is located in the territory in which it was created, if the flow-through entity would consequently be a responsible member. This assumption is necessary because whether the flow-through entity is a responsible member or not will depend on its location.

109. Paragraph 33(1) replaces section 254 with updated rules on currency conversions.

110. Subsection (1) provides that calculations are to be carried out in the currency of the consolidated financial statements of the ultimate parent.

111. Subsection (2) provides that where an amount must be converted into the currency of the consolidated financial statements, the conversion is done to accord with the authorised accounting standard of the consolidated financial statements (or the authorised accounting standard chosen for the purpose of determining the deemed consolidated financial statements under section 249(1)(d)).

112. Subsection (3) provides that where a provision requires an amount to be converted into euros for the purpose of comparison with a threshold in the legislation, the average exchange rate for the previous December should be used.

113. Subsection (4) and subsection (5) specify the source of rates for the purposes of subsection (3).

114. Paragraph 33(2) amends Step 4 of section 123, which specifies that amounts of tax are to be converted into sterling. The amendment clarifies when a conversion under Step 4 will be required.

115. Paragraph 34(1) amends section 255 which determines whether the OECD's Pillar Two rules are considered to apply to a member of a group. It is clarified that the test applies period-by-period and for a particular member of the group (the "relevant member"), rather than the group as a whole. Two new conditions are introduced, both of which must be met in addition to that in the current provision. Condition B ensures that at least one member that is located in the territory of the relevant member is subject to a qualifying IIR tax or undertaxed profits tax (UTPR). Condition C is that the transitional safe harbour does not apply to the territory for that period.

116. Paragraph 34(2) amends paragraph 2 of Schedule 16, to ensure the correct application of the provision on intra-group transfers before entry into the regime in paragraph 2 of Schedule 16. This is necessary to establish the meaning of "before entry into the regime" for this purpose.

117. Paragraph 34(3) amends paragraph 3 of Schedule 16, to ensure the proper functioning of the "once out, always out" requirement in the transitional safe harbour, under which a group cannot use the safe harbour for a territory if the Pillar Two rules applied to the group for that territory in a previous period.

118. Paragraph 35(1) inserts new section 256A to provide for instances where a qualifying domestic top-up tax (QDT) credit is not taken into account to reduce any top-up tax

amounts or additional top-up amounts due under the IIR or UTPR. An amount of QDT is treated as not accruing where its enforceability is in question, which means that either the member disputes its enforceability or the tax authority that imposed the QDT considers the amount unenforceable. If enforceability is established, either because the amount is paid or the dispute is settled, any QDT amounts will accrue.

119. Paragraph 35(2) includes consequential amendments to provide for new section 256A.

120. Paragraph 36 inserts new subsections into section 262 which provides a power to amend legislation to ensure consistency with Pillar Two. Previously, the power could only be used prospectively to make amendments for the purpose of ensuring consistency with the Pillar Two rules. The changes are designed to broaden the circumstances in which the power can be used (most notably to make changes which anticipate amendments to the Pillar Two rules), and to permit a limited degree of retrospectivity in circumstances as provided for in new subsection (1C) below.

121. New subsection (1A) extends the power so that it can be used to a) ensure consistency with commentary and guidance not yet published by the OECD and b) where it is considered necessary to secure the effective operation of multinational top-up tax and domestic top-up tax and it is expected that corresponding changes will be made to the Pillar Two rules in the future.

122. New subsection (1B) limits the accounting periods in relation to which any regulations made under power will come into effect. It does not permit a change for an accounting period which had already ended prior to the change being made, or for an accounting period which had ended prior to the relevant OECD commentary or guidance being published. In consequence, any retrospective application of such regulations is limited to the already elapsed portions of accounting periods during which the change is made, or accounting periods during which the relevant OECD guidance or commentary is published.

123. New subsection (1C) provides that provisions introduced by such regulations may only be introduced retrospectively where they are considered to be generally beneficial to persons affected by the implementation of the Pillar Two rules or by that provision.

124. New subsection (1D) defines 'generally beneficial' for the purposes of new subsection (1C) to include simplifications and savings in compliance costs as well as reductions in Pillar Two tax liabilities in the UK or elsewhere.

125. Paragraph 37 amends paragraph 51 of Schedule 14 to provide that HMRC is not liable to repay any amount of overpaid tax unless a claim has been made. This paragraph also inserts new paragraph 33A to Schedule 14 to clarify that any amount paid that was not due incurs interest at the rate provided for in regulations.

126. Paragraph 38 amends paragraph 2 and inserts new subparagraphs (3)(b)(i) and (3A) in Schedule 16 which deals with intra-group transfers before entry into the regime. The amendment adjusts the value of deferred tax assets that can be taken into account in relation to such transfers. Additionally, new sub-paragraphs (12) and (13) ensure the correct application of this provision where there are a series of intra-group transfers before the group enters the regime.

127. Paragraph 39 amends paragraphs 3(1) and 6(6) in Part 2 of Schedule 16 to clarify that the

transitional safe harbour election is made by the filing member in respect of a territory and has the effect that all members located in the territory are treated as not having any top-up amounts for the purposes of multinational top-up tax. It also amends paragraph 4(3) in that Part of that Schedule to specify that, when calculating whether the routine profits test is met for the transitional safe harbour (under paragraph 9), the figure for the qualifying substance based income amount must be derived from the same qualifying financial statements from which the profit (loss) before income tax figure is derived.

128. Paragraph 40 inserts new Part 3 to Schedule 16 to provide for the transitional reporting election, which may change the reporting requirements for the information contained within the information return for all members in the territory for which the election is made. HMRC may specify in a notice what the alternative reporting requirements are for the accounting periods for which an election is made. The existing provisions for the submission of information returns in Schedule 14 apply to these alternative requirements. The new Part 3 includes the conditions that are required to be met to make the election.

129. Paragraph 41 inserts a new Schedule 16A titled 'Multinational top-up tax: safe harbours'.

130. New Part 1 Chapter 1 introduces the qualifying domestic minimum top-up tax (QDMTT) safe harbour election. The filing member may make an election under which all members of the group located in a territory are treated as not having top-up tax amounts for the purposes of calculating multinational top-up tax. The election can only be made if a QDMTT applies. The election cannot be made where the enforceability of an amount of QDMTT is in question such that section 256A is in point. Additionally, the following "switch-off rules" apply:

- If the ultimate parent or another responsible member is a flow-through entity and the territory it is located in cannot impose a qualifying domestic top-up tax on an ultimate parent or responsible member that is a flow-through entity, the election cannot be made for the territory of that responsible member. (It is possible that a QDMTT will necessarily impose the tax on a flow-through entity but only where there are no other members on which the tax can be imposed. In this case, the switch-off rule in Condition B would not apply.)
- If the qualifying domestic top-up tax imposed in the territory does not apply to a group within scope of Pillar Two in the initial phase of international expansion, the election cannot be made for that territory.

131. New Chapter 2 provides for the application of the safe harbour to non-standard members of the group. A separate election can be made for joint venture groups, investment entities, and minority owned members. There are two further switch-off rules for joint venture groups and investment entities.

## Part 3: Domestic top-up tax

132. Paragraph 42 inserts new subsections into Section 267, and new sections 267A and 272A, which are designed to ensure that domestic top-up tax does not compromise the bankruptcy remote status of certain entities used in securitisation transactions.

133. New subsection (3A) of section 267 provides that a securitisation company (as defined in the applicable regulations) that is not a member of a domestic top-up tax group is

an excluded entity for domestic top-up tax purposes.

134. A definition of a securitisation company is inserted into subsection 4 of section 267.

135. New section 267A provides that a securitisation company that would otherwise be treated as a member of a group is not treated as such for the purposes of the domestic top-up tax (except that its revenue is to be considered when assessing whether the total revenue of the group exceeds the threshold).

136. New section 272A deals with covered bond vehicles, as defined in paragraph 53(7) of Schedule 19 to Finance Act 2011. The effect of the section is to prevent such vehicles being liable to domestic top-up tax if the group has another UK entity that is not a covered bond vehicle. In such cases, any top-up tax which would have been payable by the covered bond vehicle is apportioned amongst those other UK entities.

137. Paragraph 43 inserts new subsections into section 267 which deals with investment entities for the purposes of the domestic top-up tax, and makes consequential changes to section 266 and section 272.

138. New subsection 3B of section 267 provides that investment entities are excluded entities for the purposes of the domestic top-up tax where they are either not members or a group, or members of a UK-only group.

139. New subsections 3C and 3D of section 267 provide that where an investment entity is a member of a multinational group, it is not a qualifying entity, but its top-up amounts are to be attributed to other members of the group located in the UK.

140. Section 272 is amended to include a reference to qualifying investment entities for the purposes of determining the top-up amounts of group entities.

141. Paragraph 44 amends sections 272 and section 273 to clarify the treatment of qualifying refundable tax credits for domestic top-up tax purposes.

142. Paragraph 45 inserts new sections 273A and 273B, and amends section 276 to set out the effect of becoming subject to Pillar Two rules.

143. New section 273A provides that for domestic top-up tax purposes, the first accounting period in which an entity is a qualifying entity is treated as the first accounting period for which Pillar Two rules apply.

144. New section 273B applies in cases where the Pillar Two rules did not apply to a qualifying entity for one or more accounting periods ("pre-Pillar Two periods") in relation to the recaptured deferred tax liability rules and special loss deferred tax asset elections.

145. Section 276 is amended to ensure that the transitional provisions apply correctly in relation to the domestic top-up tax.

146. Paragraph 46 inserts new section 273C which deals with the treatment of dividends from protected cell companies. This section provides that where a dividend or other distribution from a protected cell company is made either to an entity that is not a member of a group, or to an entity that is a member of a UK-only group, it is treated as an excluded dividend for the purposes of the domestic top-up tax rules.

147. Paragraph 47 amends section 262 which provides a power to ensure consistency with Pillar Two rules. This amendment ensures that all the relevant schedules are within scope of the power.

## Part 4: Minor and technical changes

148. Paragraph 48 introduces minor changes to clarify the rules in relation to qualifying multinational groups in chapter 2 of Part 3 by amending sections 127, 128 and 130.

149. Paragraph 49 amends section 132 in chapter 3 of Part 3 to update a cross-reference.

150. Paragraph 50 amends sections 138, 140, 142, 149, 150 and 165 in chapter 4 of Part 3 to clarify the language used and make minor changes to the rules for the calculation of adjusted profits.

151. Section 140 is amended to replace references to "shares" with references to "ownership interests" and clarifies the circumstances where section 140 does not apply by inserting a reference to insufficient records.

152. Section 142 is amended to allow qualifying interests to include those in subsection (3).

153. Section 149 is amended to refer to both counterparties in relation to the arm's length requirement.

154. New subsection 6A is inserted into section 150 so that in relation to identifying high tax members of a multinational group, accounting periods are ignored where there is no standard member in a territory to which Pillar Two rules apply. In addition, standard members are regarded as high tax members where a transitional safe harbour election applies.

155. Paragraph 51 amends sections 185 and 187 chapter 5 of Part 3 to adjust the covered tax balance rules by inserting a reference to deferred tax liabilities, and by clarifying the application of elections for special loss deferred tax assets. Additionally, section 186 is amended so that it is no longer an election. Instead, a group will choose to apply this section by completing the information return accordingly.

156. Paragraph 52 amends sections 194, 196 and 197 in chapter 6 of Part 3, making minor changes to the top-up amount calculations, and in particular the substance based income exclusion rules.

157. Subsection 1 of section 197 is amended to clarify the eligible tangible asset amount for the purposes of the substance based income exclusion rules is the average of the values held at the start and end of the period.

158. Paragraph 53 amends section 201 in chapter 7 of Part 3 to insert references to individuals into the rules dealing with the allocation of top-up amounts.

159. Paragraph 54 amends section 205 and section 217 in chapter 8 of Part 3, which deals with further adjustments. The amendments to section 205 insert references to section 203, and to members in a relevant territory. The amendment to section 217 is a clarification in relation to the reduction of the covered tax balance.

160. Paragraph 55 amends section 220 and section 221 in chapter 9 of Part 3, which deal with investment entities, to update the cross-references in those sections, and amends

section 229, which deals with multi-parented groups, to update a cross-reference.

161. Paragraph 56 amends a number of definitions in chapter 10 of Part 3, including inserting references to ownership interests held by individuals.

162. Paragraph 57 amends sections 271, 272 and 273 in Part 4 (domestic top-up tax).

163. Section 271 is amended to adjust the language used in the election for one member to be made liable for the top-up amounts of the group to refer to "elected" members rather than "responsible" members.

164. Section 272 and section 273 are amended to clarify the rules which determine top-up amounts for group members and non-group members.

165. Paragraph 58 makes minor changes to schedules 14 to 17, which deal with administration, elections, transitional provisions and definitions.

166. Paragraph 58(1) first amends Paragraph 6 of Schedule 14 so that a group that exclusively has excluded entities located in the UK does not need to register with HMRC. Further it amends paragraph 34 so that group payment notices may not be issued to a securitisation entity or an investment entity and makes amendments to paragraphs 35(1) and 36(3) to ensure the change to paragraph 34 works as intended. Paragraph 37 is amended to ensure the group payment notice works as intended, and also to prevent a group payment notice being issued to place liability on a securitisation company, a covered bond vehicle or an investment entity.

167. Paragraphs 58(2) to paragraph 58(4) makes minor changes to Schedules 15 to 17, which deal with elections, transitional provisions, and definitions.

# Background note

168. This measure makes amendments to the multinational top-up tax and domestic top-up tax, which were introduced in Finance (No.2) Act 2023 and will come into effect from 31 December 2023.

169. The provisions in that act implement the "Income Inclusion Rule" (IIR) and a "Qualifying Domestic Minimum Top-Up Tax" (QDMTT) in line with the approach agreed with international partners through the Organisation for Economic Co-operation and Development (OECD).

170. The OECD approach was published as the Pillar Two model rules. The model rules were agreed in December 2021 by the Inclusive Framework on Base Erosion and Profit Shifting, a group of over 130 countries committed to cooperation in the field of international tax.

171. The model rules set out an approach that has been designed to ensure that large multinational enterprises pay a minimum level of tax in each territory in which they operate. The minimum level of tax that has been agreed under the rules is 15%. If necessary, a top-up charge is applied to bring the effective tax rate up to 15%.

# Clause 23: Rates of tobacco products duty

## Summary

1. This clause 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. It also provides for changes to the simplified calculation contained within the Travellers' Allowances Order 1994 (TAO), S.I. 1994/955. These changes are to have effect from 6pm on 22 November 2023.

## Details of the clause

2. Subsection (1) 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 £294.72 per thousand cigarettes to £316.70 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 £393.45 per thousand cigarettes to £422.80 per thousand cigarettes.
   - Cigars – The duty rate on cigars is increased from £367.61 per kilogram to £395.03 per kilogram.
   - Hand-rolling tobacco – The duty rate on hand-rolling tobacco is increased from £351.03 per kilogram to £412.32 per kilogram.
   - Other smoking tobacco and chewing tobacco – The duty rate on other smoking tobacco and chewing tobacco is increased from £161.62 per kilogram to £173.68 per kilogram.
   - Tobacco for heating – The duty rate on tobacco for heating is increased from £302.93 per kilogram to £325.53 per kilogram.

3. Subsection (2) contains consequential amendments that make commensurate changes to the simplified calculation of duty specified in the TAO.

## Background note

4. This clause increases excise duty on all tobacco products and the MET by the duty escalator RPI +2%. In addition, the excise duty rate for hand-rolling tobacco is increased by an additional 10% (RPI + 12%).

5. The 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 higher of either the usual application of duty or the MET.

6. The TAO was amended by Regulations 2-8 of the Travellers' Allowances and Miscellaneous Provisions (EU Exit) Regulations 2020/1412 which came into force on IP completion day. It introduced a regime of simplified calculation of duty on excise goods brought into Great Britain in the personal luggage of travellers to facilitate declarations where the amount brought exceeds the allowances. As a result of the increases to excise duty on tobacco products, the rates in Schedule 2 of the TAO, applied for the purposes of the simplified calculation, will be amended.

# Clause 24: Rates of vehicle excise duty

## Summary

1. This clause provides for changes to certain rates of vehicle excise duty (VED) by amendment of Schedule 1 to the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2024.

## Details of the clause

2. Subsection (2) amends sub-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 £20 to £345. It also amends sub-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 £10 to £210.

3. Subsection (3) amends paragraph 1B of Schedule 1 to VERA to substitute new VED rates for light passenger vehicles first registered between 1 March 2001 and 31 March 2017. The reduced rate applies to alternatively 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 two rows, "405" were substituted for "700" and "725", and (b) in column (4), in the last two rows. "415" were substituted for "710" and "735".

5. Subsection (5) amends paragraph 1GC of Schedule 1 to VERA to change rates on the first vehicle licence for light passenger vehicles first registered on or after 1 April 2017.

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 is increased by £10 to £180. The standard rate of duty is increase by £10 to £190.

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 or after 1 April 2017. In paragraph (a) the rate is increased by £30 to £590 and in paragraph (b) the rate is increased by £30 to £600.

9. Subsection (9) amends paragraph 1J(a) 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 £15 to £335.

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 £25 for motorcycles with an engine size not more than 150cc; by £3 to £55 for motorcycles with an engine size of over 150cc but not more than 400cc; by £4 to £84 for motorcycles with an engine size of over 400cc but not more than 600cc; and by £6 to £117 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 VED chargeable on vehicles is dependent on various factors including the vehicle type, date of first registration, engine size, fuel type and CO2 emissions. In general:

    a. cars and vans first registered prior to March 2001, and all motorcycles, pay VED by reference to their 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 CO2 emissions and fuel type.

    d. cars registered on or after 1 April 2017 pay VED based on CO2 emissions and fuel type when first licensed, followed by a standard rate for subsequent licences.

12. As announced at Autumn Statement 2023, the rates of VED for light passenger and light goods vehicles and motorcycles, will increase in line with inflation (based on the Retail Price Index). VED rates for light passenger and light goods vehicles and motorcycles have only increased in line with inflation since 2010.

# Clause 25: Rates of air passenger duty

## 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, and the higher rate of APD for flights to destinations in the domestic band, are unchanged. Rate changes for flights otherwise to domestic band destinations, as well as Band B and Band C destinations, will be as follows:

   - Domestic reduced and standard rates will rise by £0.50 and £1 respectively (from £6.50 to £7 and £13 to £14)
   - Band B reduced, standard and higher rates will rise by £1, £3 and £7 respectively (from £87 to £88, £191 to £ 194 and £574 to £581)
   - Band C reduced, standard and higher rates will rise by £1, £2, and £6 respectively (from £91 to £92, £200 to £202 and £601 to £607)

2. These changes to the rates of APD will come into effect in relation to the carriage of passengers beginning on or after 1 April 2024.

## Details of the clause

3. Subsection (2) amends the reduced and standard rates of APD for flights to domestic band destinations.
4. Subsection (3) amends the reduced and standard rates of APD for flights to Band B destinations.
5. Subsection (4) amends the reduced and standard rates of APD for flights to Band C destinations.
6. Subsection (5) amends the higher rate of APD for flights to Band B and Band C destinations.
7. Subsection (6) states that these changes apply to the carriage of passengers beginning on or after 1 April 2024.

## Background note

8. 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 four destination bands: the domestic band include flights within the UK, Band A includes international destinations whose capital is up to 2,000 miles from London, Band B includes destinations whose capital is between 2,001 miles and 5,500 miles from London and Band C includes all other destinations.

9. It was announced at the Spring Budget 2023 that APD rates for 2024 – 2025 would increase in line with inflation (based on the retail price index RPI) as forecast at Spring Budget 2023.

# Clause 26: Rebate on heavy oil and certain bioblends used for heating

## Summary

1. This clause makes minor amendments to the Hydrocarbon Oil Duties Act 1979 (HODA) to reverse the exclusion from the list of "excepted machines", that can use rebated fuel since 1 April 2022, of machines and appliances that use heavy oil (other than gas oil), or bioblends that do not contain gas oil, for commercial heating.

## Details of the clause

2. Subsection (1) amends Schedule 1A, paragraph 8, sub-paragraph (1) to:

   (i) In paragraph (e), for the words from "kerosene" to the end substitute "for fuel—

   "(i) heavy oil other than gas oil, or

   (ii) bioblend other than bioblend that is a mixture of biodiesel and gas oil."

## Background note

3. At Budget 2020, the government announced that it would remove the entitlement to use rebated gas oil (diesel) and biofuels from most sectors to help meet its climate change and air quality targets from April 2022.

4. As part of these reforms, the government decided to continue to allow rebated heavy oils (other than gas oil) such as kerosene, and rebated bioblends that contain them to be used for all heating uses. This was due to a concern that removing entitlement to use these fuels for this purpose would significantly increase the heating bills of households and businesses that use them, especially in areas off the gas grid.

5. Paragraph 8(1)(e) of Schedule 1A to the Hydrocarbon Oil Duties Act 1979 (HODA) designates machines and appliances that use kerosene for any heating as excepted machines, but it does not apply to machines and appliances that use other types of heavy oil (other than gas oil) or bioblends that contain them. This was not the government's intention. The April 2022 changes were intended only to restrict the use of rebated gas oil and biofuels, while the tax treatment of other heavy oils, including fuel oil and bioblends that do not contain gas oil, would remain the same. This measure amends the minor anomaly that prevents excepted machines from using certain rebated heavy oil and bioblends for commercial heating. It will have effect from the date of Royal Assent.

# Clause 27: Vehicle excise duty exemption for foreign vehicles

## Summary

1. This clause enabled regulations to be made exempting foreign vehicles, or foreign vehicles that meet certain conditions, from vehicle excise duty. In the first instance it is intended that the power will be exercised to provide for a 3-year exemption in respect of Ukrainian plated and registered vehicles belonging to individuals granted visas under the schemes introduced in relation to the conflict in Ukraine.

## Details of the clause

2. The clause inserts new section 5A into the Vehicle Excise and Registration Act 1994. The new section confers a power on the Secretary of State to make regulations exempting foreign vehicles from vehicle excise duty. The details of the new section 5A, inserted by this clause, are as follows.

3. Subsection 5A(1) provides that the Secretary of State may, by regulations, make vehicle excise duty exemptions with respect to foreign vehicles.

4. Subsections 5A(2), (3), (4) and (5) make provision as to the scope of the power conferred by section 5A(1). Specifically, section 5A(2) provides that regulations made under this section may amend subordinate legislation made under the Vehicle Excise and Registration Act 1994 or the Motor Vehicles (International Circulation) Act 1952. Subsection 5A(3) provides that any exemption may be made subject to conditions or for a specified period. Subsections 5A(4) and (5) provide that an exemption may be given, but not removed, retrospectively.

5. Subsection 5A(6) defines expressions that are used elsewhere in that section. In particular, it defines a foreign vehicle as a vehicle that is registered outside of the United Kingdom.

## Background note

6. This measure will enable regulations to be made whose effect will be to exempt individuals who have been granted visa clearance under the Family, Sponsor and Extension Ukrainian visa schemes from the requirement to tax their Ukrainian plated and registered vehicles in the UK for a period of 36 months, subject to certain conditions. In addition, the measure would also enable the Secretary of State to make regulations providing for vehicle excise duty exemptions for other groups of foreign registered vehicles if it were considered appropriate to do so.

# Clause 28: Interpretation of VAT and excise law

## Summary

1. This measure clarifies how value added tax (VAT) and excise legislation should be interpreted in the light of changes made by the Retained EU Law (Revocation and Reform) Act 2023 (REULA 2023). It sits alongside amendments made by REULA 2023 to the European Withdrawal Act 2018 (EUWA 2018).

2. REULA 2023 ends the supremacy and special status afforded to retained European Union law (REUL) in the United Kingdom (UK). In relation to VAT and excise, this measure confirms that it will no longer be possible for any part of any UK Act of Parliament or subordinate legislation to be quashed or disapplied on the basis it was incompatible with EU law. It also ensures that the rule known as the principle of consistent interpretation continues to apply so UK VAT and excise legislation continues to be interpreted as Parliament intended, drawing on rights and principles that currently apply in interpreting UK law.

3. This legislation ensures the stability of the VAT and excise regimes and provides legal certainty for business following the changes in REULA 2023 taking effect. It mitigates the risk of re-litigating settled interpretation of UK law, protecting billions of pounds of Exchequer revenue - VAT and excise duty (on alcohol, tobacco and hydrocarbon oil) raise over £200 billion of revenue per year.

## Details of the clause

4. Subsection (1) sets out that the clause makes provision as to how EUWA 2018 as amended by REULA 2023 is to apply for the sole purpose of interpreting VAT and excise legislation.

5. Subsection (2) states that section 4 EUWA 2018 (retained EU rights, powers, liabilities etc.) continues to have effect in interpreting VAT and excise legislation.

6. Subsection (3) excepts Articles 110 and 111 of the Treaty on the Functioning of the European Union (which relate to internal taxation on products) from applying to the interpretation of VAT and excise legislation.

7. Subsection (4) ensures that, as is the case for other domestic law in consequence of REULA 2023, it will no longer be possible for UK VAT and excise legislation to be quashed or disapplied on the basis that it was incompatible with REUL or assimilated law. There are no longer any circumstances in which a provision of an Act of Parliament or subordinate legislation dealing with VAT or excise can be struck down on the basis that it is incompatible with REUL or assimilated law.

8. Subsection (4), read with subsection 6(b) also provides that, the rule known as the principle of consistent interpretation remains applicable, solely for the purpose of interpreting VAT and excise legislation. It also provides that, consistent with the ending of EU supremacy, Acts of Parliament or subordinate legislation passed or made after the transitional period ended (11 pm on 31 December 2020) are to be

interpreted in the normal, domestic way, unless the new legislation amends earlier legislation and the legislature intends for the rule of consistent interpretation to apply to the provision as amended.

9. Subsection (5) provides that retained principles of EU law are still relevant solely for the limited purpose of interpreting VAT and excise legislation. However, this is subject to other provisions made by REULA 2023, in particular, in respect of the changes to the test for higher courts to depart from retained EU case law.

10. Subsection (6) provides that for the purpose of this section:

    - "duty of excise" means duties of excise charged on alcohol, tobacco and fuel;
    - the "superseded provisions" which are referred to in subsection (4) (and which will continue to apply for the purpose of interpreting VAT and excise law) are section 5(1) to (3) of EUWA 2018 as they had effect before their repeal under section 3(3)(a)(i) of REULA 2023.
    - references to "retained general principles of EU law" is to that term as defined in EUWA 2018 (see section 6(7)) before the REULA2023 changes take effect.

11. Subsection (7) states that this clause has to be read alongside sections 42 and 47 of the Taxation (Cross-border Trade) Act 2018 which also make provision about REUL in relation to VAT and excise and which continue to have effect.

12. Subsection (8) provides that this section is treated as having come into force on 1 January 2024.

# Background note

13. REULA 2023 ends the supremacy and special status afforded to REUL in the UK. This measure confirms that, in relation to VAT and excise law, it will no longer be possible for any UK Act of Parliament or domestic subordinate legislation to be quashed or disapplied on the basis that it was incompatible with REUL or assimilated law. It also confirms that the government is taking a bespoke approach in relation to UK VAT and excise law so that it continues to be interpreted as Parliament intended, drawing on a number of rights and principles that currently apply in interpreting UK law. This measure mitigates the risk of re-litigating settled interpretation of UK law, directly relevant to the collection of billions of pounds of revenue - VAT and excise duty from alcohol, tobacco and hydrocarbon oil raise over £200 billion of revenue per year. It ensures stability of the regimes and provides legal certainty for business following the changes made by REULA 2023 taking effect on 1 January 2024.

14. REUL is European Union (EU) legislation (and EU derived domestic legislation) that continued to apply in the UK after the UK's exit from the EU. It was introduced as a temporary measure by EUWA 2018 to ensure legal continuity. REULA 2023 introduces provisions to allow for the amendment of REUL and to remove the special status it has in the UK legal system from the end of 2023.

# Clause 29: Rates of landfill tax

## Summary

1. This clause amends section 42(1)(a) of the Finance Act 1996("FA96") to increase both rates of Landfill Tax in line with inflation (rounded up 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 and Northern Ireland on or after 1 April 2024. The increased standard rate also applies from the same date to any disposal of relevant materials made (or treated as made) at an unauthorised waste site in England and Northern Ireland. The standard rate will increase to £103.70 per tonne and the lower rate to £3.30 per tonne.

## Details of the clause

2. Subsection (1) amends section 42 of the FA 96.

3. Subsection (2) substitutes "£102.10" to "£103.70" in sections 42(1)(a) of FA96.

4. Subsection (3) substitutes "£102.10" to "£103.70" and "£3.25" to "£3.30" in sections 42(2) of FA96.

5. Subsection (4) provides the commencement date for the change to the standard and lower rate of tax.

## Background note

6. 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.

7. 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 taxable material. From 1 April 2018 the scope of Landfill Tax was extended to include the disposal of relevant materials made to unauthorised 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.

8. From 1 April 2018, the scope of Landfill Tax was extended to sites operating without the appropriate environmental disposal permit. The standard rate of Landfill Tax applies to all disposals at unauthorised sites.

# Clause 30: Rate of aggregates levy

## Summary

1. This clause increases the rate of aggregates levy in line with inflation with effect from 1 April 2024.

## Details of the clause

2. Subsection (1) replaces the rate of £2 per tonne in section 16(4) of the Finance Act 2001 with the new rate of £2.03 per tonne.

3. Subsection (2) provides for this change to apply to aggregate subjected to commercial exploitation on or after 1 April 2024.

## Background note

4. Aggregates levy was introduced on 1 April 2002. It is a tax on primary virgin rock, sand or gravel, which is mainly used for bulk fill in construction works. The levy provides an incentive to aggregate producers and construction businesses to use recycled or secondary aggregate, as these materials do not attract the tax.

5. The rate of the levy has remained frozen at £2 per tonne since 2009. At Spring Budget 2023, the government announced that it would increase the rate of the levy in line with the Retail Price Index (RPI) with effect from 1 April 2024.

# Clause 31: Rate of plastic packaging tax

## Summary

1. This clause increases the rate of plastic packaging tax (PPT) in line with the Consumer Price Index (CPI). The increased rate will apply to chargeable plastic packaging components produced in, or imported into, the United Kingdom on or after 1 April 2024.

## Details of the clause

2. Subsection (1) amends Section 45(1) of the Finance Act 2021, increasing the rate of PPT from £210.82 per tonne to £217.85 per tonne.

3. Subsection (2) provides for the new rate of PPT to apply to chargeable plastic packaging components produced in, or imported into, the United Kingdom on or after 1 April 2024.

## Background note

4. PPT was introduced on 1 April 2022 to provide a clear economic incentive for businesses to use recycled plastic in the manufacture of plastic packaging, which will create greater demand for recycled plastic packaging. In turn this will stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

5. The new rate maintains the real terms value of the incentive to include 30% or more recycled plastic in plastic packaging components, by increasing the rate of PPT in line with CPI.

# Part 3: Miscellaneous and final

# Clause 32: Increase in maximum terms of imprisonment for tax offences

## Summary

1. This clause will double the maximum term of imprisonment for the most egregious tax fraud from 7 to 14 years. It was announced at Spring Budget 2023 and will take effect from Royal Assent.

## Details of the clause

2. Subsection (1) details all the offences that are changing from 7 to 14 years.
3. Subsection (2) provides that the changes in Subsections 3 and 5 below apply detailed changes to Customs and Excise management Act 1979
4. Subsection (3) identifies offences relating to:
    - Improper importation of firearms (5A) the maximum penalty remains at life. The reference to 7 years has changed to 14 years.
    - Improper importation of seal skins (5B) the maximum penalty remains at 2 years. The reference 7 years has changed to 14 years.
    - Improper importation of counterfeiting (5AA) has been omitted and will now come under the new maximum of 14 years which previously carried 10 years.
    - Improper importation of nuclear material (5C) has been omitted as this remains unchanged at 14 years.
5. Subsection (4) identifies offences relating to:
    - Improper importation of firearms (4A) the maximum penalty remains at life. The reference to 7 years has changed to 14 years.
    - Improper importation of counterfeiting (4AA) has been omitted and will now come under the new maximum of 14 years which previously carried 10 years.
    - Improper importation of nuclear material (4B) has been omitted as this remains unchanged at 14 years.
6. Subsection (5) identifies offences relating to:
    - Improper importation of firearms (4A) the maximum penalty remains at life. The reference to 7 years has changed to 14 years.
    - Improper importation of seal skins (4B) the maximum penalty remains

at 2 years. The reference 7 years has changed to 14 years.

- Improper importation of counterfeiting (4AA) has been omitted and will now come under the new maximum of 14 years which previously carried 10 years.
- Improper importation of nuclear material (4C) has been omitted as this remains unchanged at 14 years.

7. Subsection (6) provides that subject to Subsection 7 only offences part or wholly committed after Royal Assent will be subject to the increased maximum term of 14 years.
8. Subsection (7) explains that the penalty for contravention of rebated heavy oil and bioblend for private pleasure craft (14E) has not come into force yet. This will take effect when new legislation at Paragraph 9 Schedule 11 FA 2020 takes effect.

# Background note

9. This measure was announced at Spring Budget 2023 and supports the government's aim of tackling fraud.

# Clause 33 and Schedule 13: Disqualification of directors etc promoting tax avoidance schemes

## Summary

1. This measure amends the Company Directors Disqualification Act 1986, introducing a new power, which allows His Majesty's Revenue and Customs (HMRC) to apply to the court for a disqualification order. This is in relation to directors and other persons who control or exercise influence over a company involved in promoting tax avoidance and operating against the public interest.
2. The power is in two parts:
   - Disqualification following a winding up under s85 of Finance Act 2022 (FA2022).
   - Disqualification on finding of unfitness if the person is or was a director of a company promoting tax avoidance.

## Details of the clause

3. Clause 32 introduces Schedule 13.

## Details of the Schedule

4. Paragraph 1 inserts new sections 8ZF and 8ZG to the Company Directors Disqualification Act 1986.
5. Subsection (1) of new section 8ZF provides for the conditions under which a court must make a disqualification order against a person. These are that the person was a director of a company wound up as a promoter of tax avoidance, or a company connected to such a promoter, under section 85 FA2022; and that the person held that status at a time the company was engaged in promoting avoidance.
6. Subsection (2) of new section 8ZF allows for an officer of HMRC to make an application to the court for a disqualification order under this section if the officer believes it would be expedient in the public interest to do so.
7. Subsection (3) of new section 8ZF specifies that HMRC may not apply for a disqualification order under this section after the end of the period of 3 years beginning with the day on which the court made the winding-up order, unless the court permits otherwise.
8. Subsection (4) of new section 8ZF provides that the period of disqualification under this new section is between 2 and 15 years.

9. Subsection (5) of new section 8ZF provides that an officer of HMRC may accept a disqualification undertaking. This allows the officer to accept an undertaking from a person that the person will not do the things that they could be prevented from doing by a disqualification order, such as acting as a director.

10. Subsection (6) of new section 8ZF defines the terms “company”, “the court” and “director” for the purposes of this section.

11. Subsection (1) of new section 8ZG specifies the conditions under which a court may make a disqualification order. These are that the person is, or was after the coming into force of this section, a director of a company that carries on a business as a promoter; and that the person’s conduct in relation to the company makes them unfit to be concerned in the management of a company.

12. Subsection (2) of new section 8ZG ensures that Value Added Tax and other indirect taxes are included within the scope of this measure.

13. Subsection (3) of new section 8ZG ensures that relevant conduct occurring before, as well as after, this section comes into force will be considered by the court when deciding whether to make a disqualification order under subsection 1.

14. Subsection (4) of new section 8ZG specifies that an officer of HMRC may make an application to the court for a disqualification order under this section if it appears to the officer to be expedient in the public interest to do so.

15. Subsection (5) of new section 8ZG sets the maximum period of disqualification under this new section at 15 years.

16. Subsection (6) of new section 8ZG provides that an officer of HMRC may accept a disqualification undertaking. This allows the officer to accept an undertaking that the person will not do the things that they could be prevented from doing by a disqualification order.

17. Subsection (7) of new section 8ZG defines the terms “company”, “the court”, “director” and “indirect tax” for the purposes of this section.

18. Paragraph 2 makes minor and consequential amendments to the Company Directors Disqualification Act 1986.

19. Paragraph 3 amends the heading of Article 17 of the Company Directors Disqualification (Northern Ireland) Order 2022.

20. Paragraph 4 details how the amendments made by this measure apply to England and Wales, Scotland and Northern Ireland.

21. Paragraph 4(3) applies the other provisions of the Company Directors Disqualification Act 1986 to Northern Ireland so far as they relate to new sections 8ZF and 8ZG. Sections 13, 14 and 15 are excluded from this application because the offences and liabilities they refer to are already provided for in Northern Ireland by Articles 17, 18 and 19 of the Company Directors Disqualification (Northern Ireland) Order 2002.

22. Paragraph 5 allows for the relevant rules, regulations or practice directions governing the practice and procedure (including fees) of disqualification applications under

existing provisions in the Company Directors Disqualification Act 1986 and the equivalent legislation in Northern Ireland to apply in relation to HMRC disqualification applications, subject to any necessary modifications.

23. Paragraph 6 specifies that in this Schedule "CDDA 1986" means the Company Directors Disqualification Act 1986.

# Background note

24. The measure was first announced at Spring Budget 2023 as part of a package of measures to build on and complement anti-avoidance measures introduced in Finance Acts 2021 and 2022.

25. The government launched an 8-week consultation on 27 April 2023, 'Tougher consequences for promoters of tax avoidance'. The consultation included proposals for a new power allowing HMRC to apply to the court for a disqualification order in relation to directors and other persons who control or exercise influence over a company which is involved in promoting tax avoidance and operating against the public interest. The consultation closed on 22 June 2023.

26. The measure will directly disrupt the business models of promoters who use stooge and intermediate shadow directors and, in turn, will deter other individuals from becoming directors of companies involved in promoting tax avoidance. The measure will come into effect on Royal Assent.

# Clause 34: Promoters of tax avoidance: failure to comply with stop notice etc

## Summary

1. This measure makes amendments to Part 5 Finance Act 2014 to introduce new offences relating to failure to comply with certain duties imposed following the issue of a stop notice. Stop notices form part of the Promoters of Tax Avoidance Schemes (POTAS) regime. A stop notice specifies an avoidance scheme and requires the persons subject to the notice to stop promoting the scheme. The recipient of a stop notice must also comply with certain other requirements, including giving copies of the notice to related persons within 5 days.

## Details of the clause

2. Subsection (1) inserts new section 277A and new section 277B to Finance Act 2014.

3. Section 277A(1) provides that a person subject to a stop notice who, without reasonable excuse, promotes the scheme covered by the notice in contravention of the duty imposed under section 236B(1) of FA 2014 is guilty of an offence.

4. Section 277A(2) provides that the recipient of a stop notice ("R") is guilty of an offence if:

    - R fails to comply with a duty to provide a copy of the stop notice to another person ("P") without reasonable excuse,
    - P subsequently promotes the scheme covered by the stop notice in contravention of the duty imposed under section 236B(1) of Finance Act 2014; and
    - R is still subject to the stop notice at the time P breaches the duty imposed on them by section 236B(1) of Finance Act 2014.

5. Section 277A(3) sets out specific circumstances which are excluded from being taken into account when considering whether or not R has a reasonable excuse in respect of the offences.

6. Section 277B(1) provides that where an offence under new section 277A is committed by a body corporate or partnership, a 'relevant person' is also guilty of the offence if it was committed with the relevant person's consent or connivance, or was due to the neglect of the relevant person.

7. Section 277B(2) defines "relevant person" for the purposes of section 277B(1).

8. Subsection (2) inserts reference to new section 277A into section 280(1) of Finance Act 2014.

9. Subsection (3) provides that the section 277A(1) offence applies in relation to a failure to comply with section 236B(1) of Finance Act 2014 that occurs on or after

Royal Assent.

10. Subsection (4) provides that the section 277A(2) offence applies in relation to relevant duties that arise on or after Royal Assent.

11. Subsection (5) amends a reference in section 236B(7) of Finance Act 2014.

# Background note

12. The measure was first announced at Spring Budget 2023 as part of a package of measures to build on and complement anti-avoidance measures introduced in Finance Acts 2021 and 2022.

13. The government launched an 8-week consultation on 27 April 2023, 'Tougher consequences for promoters of tax avoidance'. The consultation included proposals for a new criminal offence for failing to comply with a stop notice. The consultation closed on 22 June 2023. The measure will enhance the deterrent effect of stop notices by providing that failure to comply with certain duties will be an offence.

14. The measure will come into effect on the day the Act is passed. For offences under new section 277A(2) the measure will apply where an obligation to give a copy of a stop notice to one or more related persons arises on or after the day the Act is passed.

# Clause 35: Construction industry scheme: gross payment status

## Summary

1. This clause makes changes to the Construction Industry Scheme (CIS) rules in Chapter 3 of Part 3, and Schedule 11 to, Finance Act 2004 (FA 2004). It expands the grounds for immediate removal of Gross Payment Status (GPS) for cases of fraud involving Value Added Tax (VAT), Corporation Tax Self-Assessment (CTSA), Income Tax Self-Assessment (ITSA) and Pay As You Earn (PAYE). It also adds compliance with VAT obligations to the GPS compliance test, which must be passed by subcontractors to obtain and keep GPS. The amendments apply to GPS applications and compliance checks made on or after 6 April 2024. For existing GPS holders, VAT obligations before 6 April 2024 will not be checked as part of the compliance test.

## Details of the clause

2. Subsection (1) introduces the amendments to FA 2004.

3. Subsection (2) amends the grounds for cancelling GPS in section 66 of FA 2004.

4. Subsection (2)(a)(i) amends section 66(1)(b) of FA 2004 to provide that where an incorrect return or information is provided "in connection with an obligation arising" under the CIS legislation then an HMRC officer may cancel GPS.

5. Subsection (2)(a)(ii) amends section 66(1)(c) of FA 2004 to provide that where a contractor or subcontractor fails to comply with "an obligation arising under or in connection with" the provisions of the CIS legislation then an HMRC officer may cancel GPS.

6. Subsection (2)(b)(i) amends section 66(3)(b) of FA 2004 to expand the grounds for immediate removal of GPS As well as considering cases where fraudulent returns and fraudulent incorrect information is provided under the CIS provisions, the grounds are amended to include where a contractor or subcontractor provides fraudulent returns or fraudulent information in connection with an obligation:

   - arising under any provision of PAYE regulations;
   - to submit a self-assessment return;
   - arising under any provision of the VAT Act 1994 or of regulations made under it.

7. Subsection (2)(b)(ii) amends section 66(3)(c) of FA 2004 to provide that where a contractor or subcontractor has knowingly failed to comply with "an obligation arising under or in connection with" any provision of the CIS legislation then an HMRC officer may immediately cancel GPS.

8. Subsection (3) amends the compliance tests within Schedule 11 to the FA 2004.

9. Subsections (3)(a)(i), (3)(b)(i) and (3)(c)(i) replace references in paragraphs (4)(1)(a)(iii), (8)(1)(a)(iii) and (12)(1)(a)(iii) of FA 2004 to "the PAYE Regulations (SI 2003/2682)" with "PAYE regulations". "PAYE regulations" are defined in Schedule 1 to the Interpretation Act 1978 as meaning regulations made under section 684 of the Income Tax (Earnings and Pensions) Act 2003.

10. Subsections (3)(a)(ii), (3)(b)(ii) and (3)(c)(ii) amend paragraphs (4)(1)(a)(iii), (8)(1)(a)(iii) and (12)(1)(a)(iii) of FA 2004 to add the requirement to account for or pay VAT as required by or under the VAT Act 1994 to the GPS compliance test, which must be passed by subcontractors to obtain and keep GPS.

11. Subsection (4) provides that amendments made by this clause have effect for applications for GPS made on or after 6 April 2024 and for existing GPS holders from 6 April 2024.

12. Subsection (5) provides that for existing GPS holders at 6 April 2024 any failures to comply with VAT obligations prior to 6 April 2024 will not be grounds to cancel GPS under section 66(1)(a).

## Background note

13. At Tax Administration and Maintenance Day (TAMD) 2023, the government published the consultation: Construction Industry Scheme (CIS) reform, proposing compliance and simplification changes to the CIS, and inviting suggestions on ways the Scheme could be simplified and digitalised further.

14. This measure is designed to tackle serious non-compliance within the construction sector by strengthening GPS. It will especially tackle supply chain fraud involving CIS and VAT. The changes will both protect the Exchequer and create a fairer scheme for the construction sector.

# Clause 36: Additional information to be contained in returns under TMA 1970 etc

## Summary

1. This clause introduces amendments to the types of tax returns in which HM Revenue and Customs collects data. The modifications are for the purpose of improving and enhancing the quality of the data HMRC collects. Amendments to the Taxes Management Act 1970 and to Chapter 6 of Part 11 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), will enable HMRC to create regulations specifying additional information that the Commissioners consider relevant for the collection and management of tax.

## Details of the clause

2. Subsection (1) introduces new subsections 1I, 1J, 1K and 1L to section 8 of the Taxes Management Act (TMA) 1970 (personal return), which expands the information which can be required in a return, through regulations which are to be made by statutory instrument. It limits the information that can be required, to information which is related to the collection and management of taxes listed in section 1 TMA. It also introduces a penalty of up to £60 for failure to comply with new requirements, and provides that regulations may make different provision for different cases.

3. Subsection (2) introduces new subsections 1G, 1H, 1I and 1J to section 8A TMA 1970 (trustee's return), which expands the information which can be required in a return, through regulations which are to be made by statutory instrument. It limits the information that can be required, to information which is related to the collection and management of taxes listed in section 1 TMA. It also introduces a penalty of up to £60 for failure to comply with the new requirements, and provides that regulations may make different provision for different cases.

4. Subsection (3) introduces new subsections 5F, 5G, 5H and 5I to section 12AA TMA 1970 (trustee's return), which expands the information which can be required in a return, through regulations which are to be made by statutory instrument. It limits the information that can be required, to information which is related to the collection and management of taxes listed in section 1 TMA. It also introduces a penalty of up to £60 for failure to comply with the new requirements, and provides that regulations may make different provision for different cases.

5. Subsection (4) inserts new section 707A before section 708 Chapter 6 of Part 11 of Income Tax (Earnings and Pensions) Act 2003, which expands the information which can be required in a Pay As You Earn (PAYE) return, through regulations which are to be made by statutory instrument. It limits the information that can be required to information which is related to the collection and management of taxes listed in section 1TMA 1970.

6. Subsection (5) provides that the amendments in this clause will have effect for the tax

year 2025-26 and subsequent tax years.

# Background note

7. This clause has been introduced to require businesses to change the information they provide to HMRC via both income tax self-assessment and real-time returns completed by employers.

8. HMRC intends to implement three specific new requirements. Firstly, employers will be required to provide more detailed information on employee hours worked via Real Time Information PAYE reporting. Secondly, shareholders in owner-managed businesses will be required to provide the amount of dividend income received from their own companies separately to other dividend income, and the percentage share they hold in their own companies via their Self-Assessment return. Finally, the self-employed will be required to provide information on start and end dates of self-employment via their Self-Assessment return.

# Clause 37: Commencement of rules imposing penalties for failure to make returns etc

## Summary

1. This clause makes changes to the existing regulation-making powers that enable HM Treasury to bring into force the penalties (and consequential changes) that are set out in Schedules 24-27 to Finance Act 2021.

## Details of the Clause

2. Subsection (1) provides for changes to existing regulation-making powers to enable the commencement of the relevant penalties in respect of "eligible volunteers".
3. Subsection (2) defines the term "eligible volunteer" for the purposes of the clause.
4. Subsection (3) allows regulations to give HM Revenue and Customs the discretion to decide whether a customer can be a volunteer; and to provide that, once a customer has volunteered, they cannot opt out of the new system of penalties. However, HM Revenue and Customs may decide that a customer can no longer be a volunteer. It also enables regulations to set out the consequences of a customer ceasing to be a volunteer.
5. Subsection (4) provides further details about what regulations may set out as the consequences of a customer ceasing to be a volunteer.

## Background note

6. The new system of penalties, set out in the Finance Act 2021, imposes points-based sanctions for late submission of returns and penalties for late payment of tax liabilities. It will come into effect for Self-Assessment customers mandated for Making Tax Digital (MTD) from 6 April 2026.
7. This measure will enable regulations to be made, so that eligible customers who volunteer to join to test the MTD service will be subject to the new late filing penalty in respect of the annual obligation to file a tax return, only. They will also be subject to the new late payment penalty for late payment of tax.
8. Where a change in circumstances means that HM Revenue and Customs does not have the functionality to support a customer, they may be moved back into the existing penalty regime.

# Clause 38: Abbreviations used in Act

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 39: Short title

1. This clause provides for the bill to be known as "Finance Act 2024" upon Royal Assent.