



# Finance Act 2012

## 2012 CHAPTER 14

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance. [17th July 2012]

Most Gracious Sovereign

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and to grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 1

#### INCOME TAX AND CORPORATION TAX CHARGES AND RATE BANDS

##### *Income tax*

#### **1 Charge for 2012-13 and rates for 2012-13 and subsequent tax years**

- (1) Income tax is charged for the tax year 2012-13, and for that tax year—
- (a) the basic rate is 20%,
  - (b) the higher rate is 40%, and

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- (c) the additional rate is 50%.
- (2) For the tax year 2013-14—
  - (a) the basic rate is 20%,
  - (b) the higher rate is 40%, and
  - (c) the additional rate is 45%.
- (3) In Chapter 2 of Part 2 of ITA 2007 (rates at which income tax is charged)—
  - (a) in section 8(3) (dividend additional rate), for “42.5%” substitute “ 37.5% ”,
  - (b) in section 9(1) (trust rate), for “50%” substitute “ 45% ”, and
  - (c) in section 9(2) (dividend trust rate), for “42.5%” substitute “ 37.5% ”.
- (4) In section 394 of ITEPA 2003 (charge on relevant benefits provided under employer-financed retirement benefits scheme), in subsection (4) for “50%” substitute “ 45% ”.
- (5) In section 640 of ITTOIA 2005 (capital sums treated as income of the settlor: grossing-up of deemed income), in subsection (6)(b)—
  - (a) omit the “and” at the end of sub-paragraph (ii),
  - (b) in sub-paragraph (iii) for “or any subsequent tax year.” substitute “ , 2011-12 or 2012-13, and ”, and
  - (c) after that sub-paragraph insert—
    - “(iv) 45%, if the relevant year is the year 2013-14 or any subsequent tax year.”
- (6) The amendments made by subsections (3) to (5) have effect for the tax year 2013-14 and subsequent tax years.

## **2 Basic rate limit for 2012-13**

- (1) For the tax year 2012-13 the amount specified in section 10(5) of ITA 2007 (basic rate limit) is replaced with “ £34,370 ”.
- (2) Accordingly section 21 of that Act (indexation of limits), so far as relating to the basic rate limit, does not apply for that tax year.

## **3 Personal allowance for 2012-13 for those aged under 65**

- (1) For the tax year 2012-13 the amount specified in section 35(1) of ITA 2007 (personal allowance for those aged under 65) is replaced with “ £8,105 ”.
- (2) Accordingly section 57 of that Act (indexation of allowances), so far as relating to the amount specified in section 35(1) of that Act, does not apply for that tax year.

## **4 Personal allowances from 2013**

- (1) Chapter 2 of Part 3 of ITA 2007 (personal allowance etc) is amended in accordance with subsections (2) to (6).
- (2) In section 35 (personal allowance for those aged under 65)—
  - (a) in subsection (1), for paragraph (a) substitute—
    - “(a) was born after 5 April 1948, and”, and
  - (b) in the heading for “aged under 65” substitute “ **born after 5 April 1948** ”.

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- (3) In section 36 (personal allowance for those aged 65 to 74)—
- (a) for subsection (1) substitute—
    - “(1) An individual who makes a claim is entitled to a personal allowance of £10,500, or (if greater) the section 35 amount, for a tax year if the individual—
      - (a) was born after 5 April 1938 but before 6 April 1948, and
      - (b) meets the requirements of section 56 (residence etc).”
  - (b) in subsection (2)—
    - (i) for “For” substitute “ If the allowance under subsection (1) is greater than the section 35 amount, for ”,
    - (ii) in paragraph (a), for “half the excess” substitute “ an amount equal to half of that excess income ”, and
    - (iii) in paragraph (b), for the words from “amount” to the end substitute “ section 35 amount. ”,
  - (c) after that subsection insert—
    - “(2A) In this section “the section 35 amount” means the amount of any allowance to which the individual would be entitled under section 35 for the tax year if the individual had been born after 5 April 1948.”,
    - and
  - (d) in the heading for “**aged 65 to 74**” substitute “ **born after 5 April 1938 but before 6 April 1948** ”.
- (4) In section 37 (personal allowance for those aged 75 and over)—
- (a) for subsection (1) substitute—
    - “(1) An individual who makes a claim is entitled to a personal allowance of £10,660, or (if greater) the section 35 amount, for a tax year if the individual—
      - (a) was born before 6 April 1938, and
      - (b) meets the requirements of section 56 (residence etc).”
  - (b) in subsection (2)—
    - (i) for “For” substitute “ If the allowance under subsection (1) is greater than the section 35 amount, for ”,
    - (ii) in paragraph (a), for “half the excess” substitute “ an amount equal to half of that excess income ”, and
    - (iii) in paragraph (b), for the words from “amount” to the end substitute “ section 35 amount. ”,
  - (c) after that subsection insert—
    - “(2A) In this section “the section 35 amount” means the amount of any allowance to which the individual would be entitled under section 35 for the tax year if the individual had been born after 5 April 1948.”,
    - and
  - (d) in the heading for “**aged 75 and over**” substitute “ **born before 6 April 1938** ”.
- (5) In section 41 (allowances in year of death), omit subsections (2) and (3).
- (6) In section 57 (indexation of allowances)—

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- (a) in subsection (1)—
    - (i) in paragraph (a) for “aged under 65” substitute “ born after 5 April 1948 ”, and
    - (ii) omit paragraphs (b) and (c), and
  - (b) in subsection (3)(a), for “, 36(1), 37(1),” substitute “ and ”.
- (7) In section 508A of ICTA (contemplative religious communities: profits exempt from corporation tax), in subsections (5) and (9)(b) for “under 65” substitute “ born after 5 April 1948 ”.
- (8) The amendments made by this section have effect for the tax year 2013-14 and subsequent tax years.

### *Corporation tax*

#### **5 Main rate of corporation tax for financial year 2012**

- (1) In section 5(2)(a) of FA 2011 (main corporation tax rate for financial year 2012 on profits other than ring fence profits), for “25%” substitute “ 24% ”.
- (2) The amendment made by this section is treated as having come into force on 1 April 2012.

#### **6 Charge and main rate for financial year 2013**

- (1) Corporation tax is charged for the financial year 2013.
- (2) For that year the rate of corporation tax is—
  - (a) 23% on profits of companies other than ring fence profits, and
  - (b) 30% on ring fence profits of companies.
- (3) In subsection (2) “ring fence profits” has the same meaning as in Part 8 of CTA 2010 (see section 276 of that Act).

#### **7 Small profits rate and fractions for financial year 2012**

- (1) For the financial year 2012 the small profits rate is—
  - (a) 20% on profits of companies other than ring fence profits, and
  - (b) 19% on ring fence profits of companies.
- (2) For the purposes of Part 3 of CTA 2010, for that year—
  - (a) the standard fraction is 1/100th, and
  - (b) the ring fence fraction is 11/400ths.
- (3) In subsection (1) “ring fence profits” has the same meaning as in Part 8 of that Act (see section 276 of that Act).



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## CHAPTER 2

### INCOME TAX: GENERAL

#### *Child benefit*

#### **8 High income child benefit charge**

Schedule 1 contains provision for and in connection with a high income child benefit charge.

#### *Anti-avoidance*

#### **9 Post-cessation trade or property relief: tax-generated payments or events**

- (1) Part 4 of ITA 2007 (loss relief) is amended as follows.
- (2) In section 96(7) (post-cessation trade relief), after paragraph (b) insert—  
“(ba) section 98A (denial of relief for tax-generated payments or events),”.
- (3) After section 98 insert—

##### **“98A Denial of relief for tax-generated payments or events**

- (1) Post-cessation trade relief is not available to a person in respect of a payment or an event which is made or occurs directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements (and, accordingly, no section 261D claim may be made in respect of the payment or event).
- (2) For this purpose “relevant tax avoidance arrangements” means arrangements—
  - (a) to which the person is a party, and
  - (b) the main purpose, or one of the main purposes, of which is the obtaining of a reduction in tax liability as a result of the availability of post-cessation trade relief (whether by making a claim for that relief or a section 261D claim).
- (3) In this section—
  - (a) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
  - (b) “section 261D claim” means a claim under section 261D of TCGA 1992.”
- (4) In section 125(6) (post-cessation property relief), after paragraph (b) insert—  
“(ba) section 98A (denial of relief for tax-generated payments or events),”.
- (5) The amendments made by subsections (2) and (3) have effect in relation to—
  - (a) payments which are made on or after 12 January 2012 except where they are made pursuant to an unconditional obligation in a contract made before that date, or

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- (b) events which occur on or after that date.
- (6) The amendment made by subsection (4) has effect in relation to—
  - (a) payments which are made on or after 13 March 2012 except where they are made pursuant to an unconditional obligation in a contract made before that date, or
  - (b) events which occur on or after that date.
- (7) In subsections (5)(a) and (6)(a) “an unconditional obligation” means an obligation which may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).
- (8) For the purposes of subsections (5)(b) and (6)(b) section 98 of ITA 2007 applies for determining when an event occurs.

## **10 Property loss relief against general income: tax-generated agricultural expenses**

- (1) Chapter 4 of Part 4 of ITA 2007 (losses from property businesses) is amended as follows.
- (2) In section 117(3) (overview of Chapter), for “section 127A” substitute “sections 127A and 127B”.
- (3) In section 120(7) (deduction of property losses from general income), at the end insert “and section 127B (no relief for tax-generated agricultural expenses)”.
- (4) After section 127A insert—

### **“127B No relief for tax-generated agricultural expenses**

- (1) This section applies if—
  - (a) in a tax year a person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership),
  - (b) the business has a relevant agricultural connection for the purposes of section 120 (see section 123(3) to (7)), and
  - (c) any allowable agricultural expenses deducted in calculating the loss arise directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements.
- (2) No property loss relief against general income may be given to the person for so much of the applicable amount of the loss as is attributable to expenses falling within subsection (1)(c).
- (3) For the purposes of subsection (2), the applicable amount of the loss is to be treated as attributable to expenses falling within subsection (1)(c) before anything else.
- (4) In subsection (1) “relevant tax avoidance arrangements” means arrangements—
  - (a) to which the person is a party, and
  - (b) the main purpose, or one of the main purposes, of which is the obtaining of a reduction in tax liability by means of property loss relief against general income.

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- (5) In subsection (4) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (6) In this section “the applicable amount of the loss” has the meaning given by section 122 and “allowable agricultural expenses” has the meaning given by section 123.”
- (5) The amendments made by this section have effect in relation to expenses arising directly or indirectly in consequence of, or otherwise in connection with—
  - (a) arrangements which are entered into on or after 13 March 2012, or
  - (b) any transaction forming part of arrangements which is entered into on or after that date.
- (6) But those amendments do not have effect where the arrangements are, or any such transaction is, entered into pursuant to an unconditional obligation in a contract made before that date.
- (7) “An unconditional obligation” means an obligation which may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).

## **11 Gains from contracts for life insurance etc**

- (1) In Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc), after section 473 insert—

### **“473A Connected policies or contracts treated as single policy or contract**

- (1) Policies or contracts which are connected with each other are treated as a single policy or contract for the purposes of this Chapter.
- (2) A policy or contract is “connected” with another policy or contract if—
  - (a) they meet the condition in subsection (3) in relation to each other, and
  - (b) the terms on which either of them is issued are significantly more or less favourable than would reasonably be expected if the other were ignored or any policy or contract meeting the condition in that subsection in relation to either of them were ignored.
- (3) A policy or contract meets the condition in this subsection in relation to another policy or contract if—
  - (a) they are at any time simultaneously in force, and
  - (b) either of them is issued with reference to the other or with a view to enabling the other to be issued on particular terms or facilitating its being issued on those terms.
- (4) If—
  - (a) there is a policy or contract (“A”) with which two or more other policies or contracts are connected as a result of subsection (2), but
  - (b) the other policies or contracts are not connected with each other as a result of that subsection,

A and the other policies or contracts are (as a result of this subsection) to be regarded as “connected” with each other.”

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- (2) In section 491(2) of that Act (calculating gains from contracts for life insurance etc: general rules), in the definition of “PG”, at the end insert “ but only in so far as those gains have been, or fall to be, taken into account in calculating the total income of a person as a result of this Chapter or Chapter 2 of Part 13 of ITA 2007 ”.
- (3) In section 552 of ICTA (information: duty of insurers), for subsection (13) substitute—
- “(13) For the purposes of this section—
- (a) section 491(2) of ITTOIA 2005 is taken to have effect as if, in the definition of “PG”, the words from “but” to the end were omitted, and
- (b) no account is to be taken of the effect of section 541A of that Act.”
- (4) The amendments made by this section have effect in relation to—
- (a) any policy issued in respect of an insurance made on or after 21 March 2012, or
- (b) any contract made on or after that date.
- (5) The amendments made by this section also have effect in the case of any insurance or contract made before 21 March 2012 if on or after that date—
- (a) the policy or contract is varied with the result that there is an increase in the benefits secured,
- (b) there is an assignment of rights, or a share of the rights, conferred by the policy or contract (whether or not for money's worth), or
- (c) some or all of the rights conferred by the policy or contract become held as security for a debt.
- (6) For the purposes of subsection (5)(a)—
- (a) an exercise of rights conferred by a policy or contract is to count as a variation of the policy or contract, and
- (b) the reference to an increase in the benefits secured by a policy or contract includes an increase in the benefits secured by another policy or contract with which the policy or contract is connected (within the meaning given by section 473A of ITTOIA 2005, as inserted by subsection (1)).

## **12 Settlements: income originating from settlors other than individuals**

- (1) ITTOIA 2005 is amended as follows.
- (2) In section 627 (income where settlor retains an interest: exceptions), at the end insert—
- “(4) The rule in section 624(1) does not apply in relation to income which—
- (a) arises under a settlement, and
- (b) originates from any settlor who was not an individual.”
- (3) In section 645 (property or income originating from settlor), in subsection (2), for “section 644” substitute “ sections 627 and 644 ”.
- (4) The amendments made by this section have effect in relation to income arising on or after 21 March 2012.

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## Reliefs

### 13 Champions League final 2013

- (1) No liability to income tax arises in respect of any income from the 2013 Champions League final that arises to a person who is—
  - (a) an employee or contractor of an overseas team that competes in the final, and
  - (b) non-UK resident at the time of the final.
- (2) The reference in subsection (1) to income from the 2013 Champions League final is to income related to duties or services performed by the person in the United Kingdom in connection with the final.
- (3) The exemption under subsection (1) does not apply to—
  - (a) income that arises as a result of a contract entered into after the final, or of any amendment, after the final, of a contract entered into before the end of the final, or
  - (b) income that is the subject of tax avoidance arrangements.
- (4) Income is the subject of tax avoidance arrangements if—
  - (a) arrangements have been made which, but for subsection (3)(b), would result in a person obtaining an exemption under subsection (1) for the income, and
  - (b) those arrangements, or other arrangements of which they form part, have as their main purpose, or one of their main purposes, the obtaining of that exemption.
- (5) Section 966 of ITA 2007 (deduction of sums representing income tax) does not apply to any payment or transfer which gives rise to income benefiting from the exemption under subsection (1).
- (6) In this section—

“the 2013 Champions League final” means the final of the UEFA Champions League 2012/2013 competition held in England in 2013;

“contractor”, in relation to an overseas team, means an individual who is not an employee of the team but who performs services for the team—

- (a) under the terms of a contract with the team, or
- (b) under the terms of a contract, or that individual's employment, with a company which is a member of the same group of companies as the team (within the meaning given by section 152 of CTA 2010);

“employee” and “employment” are to be read in accordance with section 4 of ITEPA 2003;

“income” means employment income or profits of a trade, profession or vocation (including profits treated as arising as a result of section 13 or 14 of ITTOIA 2005);

“overseas team” means a football club which is not a member of the Football Association, the Scottish Football Association, the Football Association of Wales or the Irish Football Association.

#### Modifications etc. (not altering text)

C1 S. 13 modified (17.7.2013) by Finance Act 2013 (c. 29), Sch. 45 para. 159

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#### **14 Cars: security features not to be regarded as accessories**

- (1) ITEPA 2003 is amended as follows.
- (2) In section 125 (meaning of “accessory” and related terms) after subsection (3) insert—
  - “(3A) Subsection (2) needs to be read with section 125A (security features not to be regarded as accessories).”
- (3) After that section insert—

##### **“125A Security features not to be regarded as accessories**

- (1) This section applies where a car made available to an employee has a relevant security feature.
- (2) The relevant security feature is not an accessory for the purposes of this Chapter if it is provided in order to meet a threat to the employee's personal physical security which arises wholly or mainly because of the nature of the employee's employment.
- (3) In this section “relevant security feature” means—
  - (a) armour designed to protect the car's occupants from explosions or gunfire,
  - (b) bullet-resistant glass,
  - (c) any modification to the car's fuel tank designed to protect the tank's contents from explosions or gunfire (including by making the tank self-sealing), and
  - (d) any modification made to the car in consequence of anything which is a relevant security feature by virtue of paragraph (a), (b) or (c).
- (4) The Treasury may by regulations amend the definition of “relevant security feature” in subsection (3).”
- (4) In Part 2 of Schedule 1 (index of defined expressions), in the entry for “accessory”, in the second column for “section 125(2)” substitute “ sections 125(2) and 125A(2) ”.
- (5) The amendments made by this section have effect for the tax year 2011-12 and subsequent tax years.

#### **15 Termination payments to MPs ceasing to hold office**

- (1) In section 291 of ITEPA 2003 (exemptions: termination payments to MPs and others ceasing to hold office), for subsection (2)(a) substitute—
  - “(a) made under section 5(1) of the Parliamentary Standards Act 2009 in connection with a person's ceasing to be a member of the House of Commons.”.
- (2) The amendment made by this section has effect in relation to grants and payments made on or after 1 April 2012.

#### **16 Employment income exemptions: armed forces**

- (1) Chapter 8 of Part 4 of ITEPA 2003 (exemptions: special kinds of employees) is amended as follows.

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- (2) In section 297A (exemption for Operational Allowance), in subsection (2), for “by the Secretary of State” substitute “ under a Royal Warrant made under section 333 of the Armed Forces Act 2006 ”.
- (3) In section 297B (exemption for Council Tax Relief), in subsection (2), for “by the Secretary of State” substitute “ under a Royal Warrant made under section 333 of the Armed Forces Act 2006 ”.
- (4) After that section insert—

**“297C Armed forces: Continuity of Education Allowance**

- (1) No liability to income tax arises in respect of payments of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown during their employment under the Crown or after their deaths.
- (2) The Continuity of Education Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006.”
- (5) The amendments made by this section have effect in relation to payments made on or after 6 April 2012.

*Other provisions*

**17 Taxable benefits: “the appropriate percentage” for cars for 2014-15**

- (1) In section 139 of ITEPA 2003 (car with a CO<sub>2</sub> emissions figure: the appropriate percentage), for subsections (2) and (3) substitute—
  - “(2) If the car's CO<sub>2</sub> emissions figure is less than the relevant threshold for the year, the appropriate percentage for the year is—
    - (a) if the car's CO<sub>2</sub> emissions figure for the year does not exceed 75 grams per kilometre driven, 5%, and
    - (b) otherwise, 11%.
  - (3) If the car's CO<sub>2</sub> emissions figure is equal to the relevant threshold for the year, the appropriate percentage for the year is 12% (“the threshold percentage”).”
- (2) The amendment made by this section has effect for the tax year 2014-15 and subsequent tax years.

**18 Qualifying time deposits**

- (1) In section 866 of ITA 2007 (qualifying time deposits), in subsection (1), after “deposit” insert “ made before 6 April 2012 ”.
- (2) The amendment made by this section is treated as having come into force on 6 April 2012.

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## CHAPTER 3

### CORPORATION TAX: GENERAL

#### *Support for business*

#### **19 Profits arising from the exploitation of patents etc**

Schedule 2 contains provision about the treatment for corporation tax purposes of profits arising from the exploitation of patents etc.

#### **20 Relief for expenditure on R&D**

Schedule 3 contains provision about corporation tax relief for expenditure on research and development.

#### **21 Real estate investment trusts**

Schedule 4 amends Part 12 of CTA 2010 (real estate investment trusts).

#### *Anti-avoidance*

#### **<sup>F1</sup>22 Treatment of the receipt of manufactured overseas dividends**

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#### **Textual Amendments**

**F1** S. 22 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, Sch. 29 para. 50(2)

#### **23 Loan relationships: debts becoming held by connected company**

(1) Chapter 6 of Part 5 of CTA 2009 (loan relationships: connected companies and impairment losses and releases of debt) is amended as follows.

(2) In section 362 (parties becoming connected where creditor's rights subject to impairment adjustment)—

(a) in subsection (1)—

(i) omit paragraph (c) (impairment in pre-connection carrying value of creditor's loan relationship), and

(ii) omit the “and” before that paragraph and, at the end of paragraph (a), insert “ and ”,

(b) for subsections (3) and (4) substitute—

“(3) The amount treated as released is the amount (if any) by which the pre-connection carrying value in D's accounts exceeds the pre-connection carrying value in C's accounts.

(4) In subsection (3)—



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“the pre-connection carrying value in D's accounts” means the amount that would be the carrying value of the liability representing the loan relationship in D's accounts if a period of account had ended immediately before C and D became connected, and

“the pre-connection carrying value in C's accounts” means—

- (a) in any case where C was a party to the loan relationship as creditor on the last day of the period of account ending immediately before the one in which C and D became connected, the cost of the asset representing the loan relationship which would be given on that day on an amortised cost basis of accounting, and
  - (b) in any other case, the amount or value of any consideration given by C for the acquisition of the asset representing the loan relationship.”, and”
- (c) in subsection (5)—
- (i) in the opening words, for “the carrying value is determined taking no account of—” substitute “ no account is to be taken of— ”,
  - (ii) at the end of paragraph (a) insert “ or ”, and
  - (iii) omit paragraph (c) (together with the “or” before that paragraph), and
- (d) in the heading, at the end insert “ **etc** ”.

(3) After section 363 insert—

**“363A Arrangements for avoiding section 361 or 362**

- (1) This section applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, of any party in entering into them (or any part of them) is—
    - (a) to avoid an amount being treated as released under section 361 or 362, or
    - (b) to reduce the amount which is treated as released under section 361 or 362.
  - (2) The arrangements (or part of the arrangements) are not to achieve that effect (so that an amount, or a greater amount, falls to be treated as released under section 361 or 362).
  - (3) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).”
- (4) The amendments made by subsection (2) have effect as follows—
- (a) the amendments made by paragraphs (a), (b) and (d) have effect in relation to any case where the companies become connected on or after 27 February 2012, but if the companies become connected on or after that date but before 1 April 2012 section 362 of CTA 2009 has effect as if the following were substituted for subsections (3) and (4) of that section—

“(3) The amount treated as released is whichever is the greater of the following amounts—

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- (a) the amount (if any) that the pre-connection carrying value in C's accounts would have been adjusted for impairment if a period of account had ended immediately before the companies became connected, and
  - (b) the amount (if any) by which the pre-connection carrying value in D's accounts exceeds the pre-connection carrying value in C's accounts.
- (4) In subsection (3) “the pre-connection carrying value”, in relation to C's accounts or D's accounts, means the amount that would be the carrying value of the asset or liability representing the loan relationship in the accounts if a period of account had ended immediately before the companies became connected.”, and”
- (b) the amendments made by paragraph (c) have effect in relation to any case where the companies become connected on or after 1 April 2012, and section 363 of CTA 2009 applies for the purposes of this subsection as it applies for the purposes of sections 361 to 362 of that Act.
- (5) The amendment made by subsection (3) has effect in relation to—
- (a) arrangements entered into on or after 27 February 2012, or
  - (b) arrangements entered into before that date where the amount is treated as released, or would have been treated as released, on or after that date.
- (6) But subsection (5)(b) does not apply if the amount is treated as released, or would have been treated as released, pursuant to an unconditional obligation in a contract made before 27 February 2012.
- (7) An “unconditional” obligation is one which may not be varied or extinguished by the exercise of a right (whether under the contract or otherwise).
- (8) The conditions in section 361(1)(a) to (c) of CTA 2009 are treated as met (and the remaining provisions of that section have effect accordingly) in any case where—
- (a) arrangements are entered into by any party at any time,
  - (b) directly or indirectly in consequence of, or otherwise in connection with, those arrangements a company (“C”) becomes a party to a loan relationship as creditor,
  - (c) the time at which C becomes a party to the loan relationship falls on or after 1 December 2011 but before 27 February 2012,
  - (d) directly or indirectly in consequence of, or otherwise in connection with, those arrangements C subsequently becomes connected with another company (“D”) which is a party to the loan relationship as debtor, and
  - (e) that subsequent time falls before 27 February 2012.
- (9) For the purposes of subsection (8)—
- (a) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
  - (b) the reference to C becoming connected with D is to be read in accordance with section 363 of CTA 2009.
- (10) Subsections (8) and (9) are to have effect as if they were contained in Part 5 of CTA 2009 (and the cases in which section 361 of CTA 2009 has effect in accordance with subsection (8) include any case where C or D is a member of a firm which becomes or is a party to the loan relationship and in that case references to C or D (other than

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references to the connection which C or D has with a company) are references to the firm).

- (11) For the purpose of applying section 361 of CTA 2009 in accordance with subsection (8) no account is to be taken of anything done on or after 27 February 2012.
- (12) If section 361 of CTA 2009 has effect in accordance with subsection (8), section 362 of that Act does not apply.

## 24 Companies carrying on businesses of leasing plant or machinery

- (1) CTA 2010 is amended as follows.
- (2) In section 385 (sales of lessors: no carry back of the expense)—
- (a) for subsections (2) and (3) substitute—
- “(2) No part of a loss may be deducted under section 37(3)(b) (relief for trade losses against total profits of earlier accounting periods) from so much of the company's total profits as derive from the income.
- (3) For the purpose of determining how much of those profits derive from the income, those profits are to be calculated on the basis that the income is the final amount to be added.”, and
- (b) in the heading, for “**No carry back of the expense**” substitute “**No carry back of loss against the income**”.
- (3) In section 392 (sales of lessors: “relevant change in relationship”), at the end insert “or section 394ZA (company joining tonnage tax group)”.
- (4) After section 394 insert—

### “394ZA Company joining tonnage tax group

There is a relevant change in the relationship between A and a principal company of A on any day if—

- (a) on that day A becomes a member of a tonnage tax group for the purposes of Schedule 22 to FA 2000 without entering tonnage tax on that day, or
- (b) the day ends immediately before the day on which, for the purposes of that Schedule, A both becomes a member of a tonnage tax group and enters tonnage tax.”
- (5) In section 394A (sales of lessors: “qualifying change of ownership”)—
- (a) the existing text becomes subsection (1), and
- (b) after that subsection insert—
- “(2) If the qualifying change of ownership would (but for this subsection) occur on any day as a result of—
- (a) section 393 or 394ZA, or
- (b) section 394 or 394ZA,
- it is treated instead for the purposes of the sales of lessors Chapters as occurring on that day solely as a result of section 394ZA.”
- (6) In section 427 (sales of lessors: no carry back of the expense)—

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- (a) for subsections (2) and (3) substitute—
- “(2) No part of a loss may be deducted under section 37(3)(b) (relief for trade losses against total profits of earlier accounting periods) from so much of the company's total profits as derive from the income.
- (3) For the purpose of determining how much of those profits derive from the income, those profits are to be calculated on the basis that the income is the final amount to be added.”, and
- (b) in the heading, for “**No carry back of the expense**” substitute “ **No carry back of loss against the income** ”.
- (7) In section 950 (transfers of trade without a change of ownership: transfers of trade involving business of leasing plant or machinery), after subsection (3) insert—
- “(3A) For the purposes of subsection (2)(a) the principal company or companies of the predecessor immediately before the transfer are not to be regarded as the same as the principal company or companies of the successor immediately afterwards (so far as they would otherwise have been so regarded) if—
- (a) there is a relevant change in the relationship between the successor and a principal company of the successor within section 394ZA (company joining tonnage tax group), and
- (b) that change occurs on or before the transfer day (whether the change occurs on or after 21 March 2012 or before that date).”
- (8) In Schedule 22 to FA 2000 (tonnage tax), after paragraph 79 insert—
- “79A (1) This paragraph applies if—
- (a) a balancing charge under this Part of this Schedule arises to the company on the disposal of any plant or machinery, and
- (b) the plant or machinery is taken into account in calculating income that the company is treated as receiving under section 383 or 417 of the Corporation Tax Act 2010 (sales of lessors) as a result of section 394ZA of that Act (company joining tonnage tax group).
- (2) The balancing charge is to be reduced by the relevant part of the sales of lessors expense so far as relief has not previously been given for that expense (whether under this sub-paragraph or otherwise).
- (3) “The sales of lessors expense” means—
- (a) the expense which the company is treated as incurring under section 383 or 417 of the Corporation Tax Act 2010 as a result of section 394ZA of that Act, or
- (b) if section 386 or 419 of that Act applies or has applied, the expense which derives from the expense within paragraph (a).
- (4) If the sales of lessors expense is incurred at a time when the company is in tonnage tax, the “relevant part” of that expense is so much of it as, on a just and reasonable basis, is attributable to the matters set out in paragraph 56(1)(a) or (b).
- (5) If—

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- (a) the sales of lessors expense is not incurred at a time when the company is in tonnage tax,
  - (b) that expense is taken into account in calculating a loss made by the company in a trade, and
  - (c) the loss is one to which paragraph 56 applies,the “relevant part” of the sales of lessors expense is so much of the apportioned loss as, on a just and reasonable basis, is derived from the sales of lessors expense.
- (6) The reference here to the apportioned loss is to the loss that is attributable to the matters set out in paragraph 56(1)(a) or (b).”
- (9) The amendments made by subsections (2) and (6) have effect—
  - (a) where the income arises as a result of a company becoming a member of a tonnage tax group on or after 21 March 2012 and entering tonnage tax at the same time,
  - (b) where the income arises as a result of a company becoming a member of a tonnage tax group on or after 23 April 2012 without entering tonnage tax at the same time, or
  - (c) where the relevant day is on or after 21 March 2012 (in any case not within paragraph (a) or (b)).
- (10) The amendments made by subsections (3) to (5) and (8) have effect—
  - (a) where a company becomes a member of a tonnage tax group on or after 21 March 2012 and enters tonnage tax at the same time, or
  - (b) where a company becomes a member of a tonnage tax group on or after 23 April 2012 without entering tonnage tax at the same time.
- (11) The amendment made by subsection (7) has effect—
  - (a) except in a case within paragraph (b), where the transfer day is on or after 21 March 2012, and
  - (b) in a case where the relevant change in the relationship occurs as a result of a company becoming a member of a tonnage tax group without entering tonnage tax at the same time, where the transfer day is on or after 23 April 2012.

### *Insurance*

## **25 Corporate members of Lloyd's: stop-loss insurance and quota share contracts**

- (1) In section 225 of FA 1994 (corporate members of Lloyd's: stop-loss and quota share insurance), after subsection (3B) insert—
  - “(3C) Subsection (3D) applies to any premium which is payable by a corporate member under a stop-loss insurance taken out in respect of its underwriting business and in relation to which section 220(2)(a) does not apply.
  - (3D) The premium is to be treated for the purposes of the Corporation Tax Acts—
    - (a) as an amount that arises to the member directly from its membership of the syndicate or syndicates in relation to the activities of which the stop-loss insurance was taken out, and

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- (b) as if it were payable in the underwriting year in which the profits or losses arising to the member directly from its membership of the syndicate or syndicates concerned are declared.
- (3E) If a premium is payable under a stop-loss insurance in respect of two or more underwriting years, the amount of the premium treated, as a result of subsection (3D)(b), as payable in each of those years is to be determined on a just and reasonable basis.
- (3F) If—
  - (a) a corporate member enters into a quota share contract, and
  - (b) the main purpose, or one of the main purposes, of entering into it was to secure that amounts payable by the member under the contract were not dealt with on the basis set out in subsection (3G),
 the contract is treated for the purposes of subsections (3C) to (3E) as if it were a stop-loss insurance (and, accordingly, the amounts payable under it are treated for those purposes as premiums).
- (3G) Amounts are dealt with on the basis set out in this subsection if they are treated as payable in the underwriting year in which the profits or losses arising to a corporate member directly from its membership of one or more syndicates are declared.”
- (2) The amendment made by this section has effect in relation to—
  - (a) any stop-loss insurance (as defined by section 230(1) of FA 1994) taken out on or after 6 December 2011, or
  - (b) any quota share contract (as defined by section 225(4) of FA 1994) entered into on or after that date.
- (3) If before 6 December 2011 a corporate member enters into a multi-year contract—
  - (a) insurance is to be regarded for the purposes of subsection (2)(a) as taken out on the anniversary date of the contract which falls on or after the day on which this Act is passed, and
  - (b) premiums payable under the insurance in respect of an underwriting year beginning on or after that day are premiums falling to be dealt with in accordance with the amendment made by this section.
- (4) For this purpose—
  - “multi-year contract” means a contract which (unless cancelled) operates in respect of successive underwriting years, and
  - “the anniversary date of the contract” means the date which is the anniversary of the date on which the contract was entered into.
- (5) If—
  - (a) before 6 December 2011 a corporate member enters into a contract for insurance in respect of an underwriting year, and
  - (b) on or after 6 December 2011 the contract is renewed in respect of a further underwriting year (whether as a result of the exercise of an option conferred by the contract or otherwise),
 insurance is to be regarded for the purposes of subsection (2)(a) as taken out on the date of the renewal.

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## 26 Abolition of relief for equalisation reserves: general insurers

- (1) Sections 444BA to 444BD of ICTA (equalisation reserves) are repealed.
- (2) In consequence of the repeal of those sections, omit—
  - (a) in TMA 1970, in the second column of the table in section 98, the entry relating to regulations under section 444BB of ICTA and the entry relating to regulations under section 444BD of ICTA,
  - (b) in FA 1996, section 166 and Schedule 32,
  - (c) in FA 2003, in section 153(1)(a), the reference “444BB(3)(b),”,
  - (d) in CTA 2009, paragraphs 155 and 156 of Schedule 1, and
  - (e) in TIOPA 2010, paragraph 9 of Schedule 8.
- (3) The amendments made by this section have effect in relation to accounting periods ending on or after such day (“the specified day”) as is specified in an order made by the Treasury (and different days may be specified for different cases).
- (4) In the case of an insurance company's existing equalisation or equivalent reserve—
  - (a) an amount equal to one-sixth of the amount of the reserve is to be treated as a receipt of the company's business in the calendar year in which the specified day falls, and
  - (b) an amount equal to one-sixth of the amount of the reserve is to be treated as a receipt of the company's business in each of the next five calendar years.
- (5) If there are different accounting periods falling in a calendar year, a receipt arising as a result of subsection (4) is apportioned between those periods in proportion to the number of days of the calendar year falling in those periods.
- (6) If—
  - (a) the company ceases to carry on the business in a calendar year, and
  - (b) an amount would otherwise have been treated as a result of subsection (4) as a receipt of the company's business in a later calendar year,any amount within paragraph (b) is treated instead as a receipt of the company's business in the accounting period in which the company ceased to carry on the business.
- (7) For the purposes of this section—
  - (a) “equalisation reserve”, in relation to an insurance company, means the equalisation reserve in respect of a business which the company was required, by virtue of equalisation reserves rules (within the meaning of section 444BA of ICTA), to maintain,
  - (b) “equivalent reserve” means an equivalent reserve (within the meaning of section 444BD of ICTA) in relation to which section 444BA of ICTA applied,
  - (c) a company's “existing” equalisation or equivalent reserve means the equalisation or equivalent reserve as it stood immediately before the first accounting period of the company (“the relevant accounting period”) in relation to which the amendments made by this section have effect (but see subsection (8)), and
  - (d) references in this section to the company's business are to the business in respect of which the equalisation or equivalent reserve was maintained.
- (8) If—

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- (a) an insurance company has made an election under section 444BA(4) of ICTA in relation to an accounting period ending before the specified day, and
- (b) an amount would, but for this section, have been carried forward to the relevant accounting period of the company as a deductible amount,

that amount is not to be carried forward to that period as a deductible amount but is instead to be deducted from the amount of the equalisation or equivalent reserve as it stood immediately before that period.

- (9) References in this section to section 444BA of ICTA include that section as modified by regulations made under section 444BB or 444BC of that Act.

**Modifications etc. (not altering text)**

- C2** S. 26(4)-(8) applied (with modifications) (1.1.2016) by [The Lloyds Underwriters \(Transitional Equalisation Reserves\) \(Tax\) Regulations 2015 \(S.I. 2015/1983\)](#), regs. 1, 3, 4

**Commencement Information**

- II** S. 26 has effect as specified by [The Finance Act 2012, Sections 26 and 30 \(Abolition of Relief for Equalisation Reserves\) \(Specified Day\) Order 2015 \(S.I. 2015/1999\)](#), art. 2

**27 Election to accelerate receipts under s.26(4)**

- (1) An insurance company may make an election in relation to a calendar year (“the relevant year”) for all of the amounts that would, as a result of section 26(4), otherwise be treated as arising in later calendar years as receipts of a business carried on by the company to be treated instead as receipts of the business arising in the relevant year.
- (2) An election under this section—
  - (a) must be made by notice to an officer of Revenue and Customs within 2 years from the end of the relevant year, and
  - (b) is irrevocable.
- (3) A company which makes an election under section 29 as the transferor or the transferee may make an election under this section but not in relation to the calendar year in which the transfer takes place.

**Modifications etc. (not altering text)**

- C3** S. 27 applied (with modifications) (1.1.2016) by [The Lloyds Underwriters \(Transitional Equalisation Reserves\) \(Tax\) Regulations 2015 \(S.I. 2015/1983\)](#), regs. 1, 3, 4

**28 Deemed receipts under s.26(4): double taxation relief**

- (1) This section applies if—
  - (a) a receipt is treated as arising to an insurance company's business in an accounting period as a result of section 26(4),
  - (b) the company carries on business through a permanent establishment outside the United Kingdom by reference to which double taxation relief is afforded in respect of any income or gains, and



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- (c) the permanent establishment is one in relation to which regulation 10(2) of the Insurance Companies (Reserves) (Tax) Regulations 1996 previously applied.
- (2) For the purpose of calculating the profits or losses by reference to which double taxation relief is afforded for the accounting period, only the appropriate proportion (if any) of the receipt is to be taken into account.
- (3) The appropriate proportion of the receipt is—
  - (a) equal to the mean of each proportion found for each relevant period (if any), or
  - (b) equal to such other proportion as the company may determine on a just and reasonable basis.
- (4) For the purposes of subsection (3)(a) a proportion for a relevant period is the proportion which the PE's premium income for the period bears to the company's premium income for the period.
- (5) For the purposes of subsections (3)(a) and (4)—
  - “the company's premium income”, in relation to a relevant period, means the amount of net premiums written by reference to which the calculation under section 444BA(2)(a) or (b) of ICTA was made for the period,
  - “the PE's premium income”, in relation to a relevant period, means so much of the company's premium income for the period as is attributable to the permanent establishment, and
  - a “relevant period” means an accounting period of the company in relation to which each of the following conditions is met—
    - (a) section 444BA of ICTA has applied in relation to the accounting period,
    - (b) the business mentioned in subsection (1)(a) has been carried on through the permanent establishment in the accounting period, and
    - (c) the accounting period is the company's last accounting period in relation to which section 444BA of ICTA applied or is one that falls wholly or partly in the period of six years ending with the day on which that last accounting period ended.
- (6) In subsection (5)—
  - (a) “net premiums written” means gross premiums written net of reinsurance premiums payable under reinsurance ceded, and
  - (b) references to section 444BA of ICTA include that section as modified by regulations made under that Act.

## **29 Transfer of whole or part of the business**

- (1) If—
  - (a) an insurance company carries on a business,
  - (b) amounts fall to be treated as receipts of the business as a result of section 26(4) (“deemed receipts”), and
  - (c) under an insurance business transfer scheme there is a transfer of the whole or part of the business to another insurance company within the charge to corporation tax,

the transferor and the transferee may jointly make an election for those deemed receipts to be allocated between them in accordance with the following provisions.

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- (2) If the transfer is a transfer of the whole of the business or substantially the whole of the business—
- (a) section 26(6) does not apply in relation to the transferor (if it would otherwise have applied),
  - (b) the deemed receipt which, on the assumption that there had been no transfer, would have arisen in the transfer year is apportioned between the transferor and the transferee in accordance with subsection (5), and
  - (c) the remaining deemed receipts (if any) which, on that assumption, would have arisen in subsequent calendar years are treated as receipts of the transferee (and not as receipts of the transferor).
- (3) If the transfer is a transfer of a part of the business and subsection (2) does not apply—
- (a) the appropriate portion of the deemed receipt arising in the transfer year is apportioned between the transferor and the transferee in accordance with subsection (5), and
  - (b) the appropriate portions of the remaining deemed receipts (if any) are treated as receipts of the transferee (and the receipts of the transferor are reduced accordingly).
- (4) The appropriate portion of a deemed receipt is to be determined on a just and reasonable basis.
- (5) An apportionment under subsection (2)(b) or (3)(a) is to be made in proportion to the number of days of the calendar year falling before the day of the transfer and the number of days of the calendar year falling on or after the day of transfer.
- (6) A deemed receipt which is treated as a receipt of the transferee as a result of this section is treated as a receipt of the business of the transferee which consists of or includes the transferred business, and, accordingly, section 26(4) and (6) have effect in relation to the transferee—
- (a) as if references to the company were references to the transferee, and
  - (b) as if references to the business were references to the business of the transferee which consists of or includes the transferred business.
- (7) An election under this section—
- (a) must be made by notice to an officer of Revenue and Customs within 28 days from the end of the day on which the transfer takes place,
  - (b) must be accompanied by an explanation as to the way in which the transferor and the transferee have determined any issue falling to be determined for the purposes of this section, and
  - (c) is irrevocable.
- (8) In this section—
- “the transferred business” means so much of the business as is transferred to the transferee, and
- “the transfer year” means the calendar year in which the transfer takes place.
- (9) If a company makes an election under this section as the transferee, this section has effect for the purposes of any subsequent elections made by the company under this section as the transferor as if references to the business were references to the activities in respect of which deemed receipts are treated as arising to it.

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### **30 Abolition of relief for equalisation reserves: Lloyd's corporate members etc**

- (1) Regulations made by the Treasury under section 47 of FA 2009 (equalisation reserves for Lloyd's corporate and partnership members) that revoke previous regulations made under that section may include provision corresponding to the provision made by sections 26(4) to (8) and 27, subject to such modifications as may be made in the regulations.
- (2) Section 47 of FA 2009 is repealed.
- (3) That repeal has effect in relation to accounting periods ending on or after such day (“the specified day”) as is specified in an order made by the Treasury (and different days may be specified for different cases).
- (4) Subsections (2) and (3) are not to affect the operation of any transitional or saving provision included (whether as a result of this section or otherwise) in regulations made under section 47 of FA 2009 that revoke previous regulations made under that section so far as the provision remains capable of having effect in relation to times falling on or after the specified day.

#### **Commencement Information**

- I2** S. 30(2) has effect as specified by [The Finance Act 2012, Sections 26 and 30 \(Abolition of Relief for Equalisation Reserves\) \(Specified Day\) Order 2015 \(S.I. 2015/1999\)](#), [art. 2](#)

#### *Miscellaneous*

### **F231 Tax treatment of financing costs and income**

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#### **Textual Amendments**

- F2** S. 31 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 11\(2\)\(c\)\(i\)](#)

### **32 Group relief: meaning of “normal commercial loan”**

- (1) CTA 2010 is amended as follows.
- (2) In section 162(2)(c) (meaning of “normal commercial loan”), after “securities in” insert “ a quoted unconnected company (see section 164(2A)) or in ”.
- (3) In section 164 (sections 160 and 162: supplementary), in subsection (2)(c), after “securities in” insert “ a quoted unconnected company (see subsection (2A)) or in ”.
- (4) After subsection (2) of that section insert—
  - “(2A) For the purposes of this section and section 162 a company is a quoted unconnected company if (and only if)—
    - (a) its ordinary shares are listed on a recognised stock exchange, and
    - (b) it is not connected with the relevant company.”

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- (5) In subsection (4) of that section—
  - (a) for “If the candidate company's” substitute “ In the case of a company whose ”, and
  - (b) for “subsection (3)(c) is” substitute “ subsections (2A)(a) and (3)(c) are ”.
- (6) In subsection (5) of that section, for “subsections (3) and (4)” substitute “ this section ”.
- (7) The amendments made by this section have effect in relation to loans made on or after 21 March 2012.

### **33 Company distributions**

- (1) Part 23 of CTA 2010 (company distributions) is amended as follows.
- (2) Section 1002 (exceptions for certain transfers of assets or liabilities between a company and its members) is repealed.
- (3) In section 1020 (transfers of assets or liabilities treated as distributions)—
  - (a) in subsection (2), omit from “But” to the end, and
  - (b) after that subsection insert—
    - “(2A) But the company is not treated as making a distribution under subsection (2) if the transfer of assets or liabilities—
    - (a) is a distribution by virtue of paragraph B in section 1000(1), or
    - (b) would be such a distribution in the absence of subparagraph (a) of that paragraph (distribution representing repayment of capital on the shares).”
- (4) Section 1021 (transfers of assets or liabilities treated as distributions: exceptions) is repealed.
- (5) In consequence of the repeal made by subsection (2)—
  - (a) omit section 194(2) of CTA 2010,
  - (b) in section 998(3) of that Act, for “1002” substitute “ 1003 ”,
  - (c) in section 1001 of that Act, in the third column of the table, omit “Section 1002 (exception for certain transfers of assets and liabilities)”, and
  - (d) omit paragraph 1(2) of Schedule 3 to F(No.3)A 2010.
- (6) The amendments made by this section have effect in relation to distributions made on or after the day on which this Act is passed.

## **CHAPTER 4**

### CAPITAL GAINS

### **34 Annual exempt amount**

- (1) TCGA 1992 is amended as follows.
- (2) In section 3 (annual exempt amount), for the figure specified in subsection (2) substitute “ £10,600 ”.

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- (3) In that section—
- (a) in each of subsections (3), (3A), (3B) and (4), for “RPI” substitute “CPI”, and
  - (b) in subsection (3A), for “retail prices index” substitute “consumer prices index”.
- (4) In section 288 (interpretation), after subsection (2) insert—
- “(2A) In this Act “consumer prices index” means the all items consumer prices index published by the Statistics Board.”
- (5) The amendment made by subsection (2) has effect for the tax year 2012-13 and subsequent tax years.
- (6) Section 3(3) of TCGA 1992 (indexation) does not apply in relation to the tax year 2012-13.
- (7) The amendments made by subsections (3) and (4) have effect for the tax year 2013-14 and subsequent tax years.

### **35 Foreign currency bank accounts**

- (1) TCGA 1992 is amended as follows.
- (2) In section 13 (attribution of gains to members of non-resident companies), in subsection (5), omit paragraph (c).
- (3) In section 251 (debts: general provisions), after subsection (5) insert—
- “(5A) References in this section to the disposal of a debt include the disposal of an interest in a debt (and, in the case of an interest in a debt, the reference in subsection (3) to the amount of the debt is to the amount of the person's interest in the debt).”
- (4) For section 252 substitute—

#### **“252 Foreign currency bank accounts**

- (1) Section 251(1) does not apply in relation to a gain accruing to a person on a disposal of a foreign currency debt (or an interest in such a debt) unless that person is—
- (a) an individual,
  - (b) the trustees of a settlement, or
  - (c) the personal representatives of a deceased person.
- (2) A “foreign currency debt” is a debt—
- (a) owed by a bank in a currency other than sterling, and
  - (b) represented by a sum standing to the credit of an account-holder in an account in that bank.”
- (5) Omit section 252A and Schedule 8A (foreign currency bank accounts).
- (6) The amendments made by this section have effect in relation to disposals occurring on or after 6 April 2012.

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### 36 Collective investment schemes: chargeable gains

- (1) TCGA 1992 is amended as follows.
- (2) In section 99A(2) (treatment of umbrella schemes), after “subsection (1)” insert “ and section 103C ”.
- (3) After section 103B insert—

#### **“103C Power to make regulations about collective investment schemes**

- (1) The Treasury may by regulations make provision about the treatment of participants in collective investment schemes for the purposes of this Act.
- (2) The regulations may, in particular, specify descriptions of collective investment scheme in relation to which they are to apply.
- (3) Regulations under this section may make different provision for different cases or different purposes.
- (4) Regulations under this section—
  - (a) may modify this Act or any other enactment or instrument (whenever passed or made), and
  - (b) may include incidental, consequential, supplementary or transitional provision.
- (5) A statutory instrument containing regulations under this section must be laid before the House of Commons after being made.
- (6) The regulations cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless before the end of that period the instrument is approved by a resolution of the House of Commons.
- (7) After an instrument containing regulations under this section has been approved under subsection (6), subsections (5) and (6) do not apply to any subsequent such instrument (and accordingly section 287(3) applies to any such instrument).
- (8) If regulations cease to have effect as a result of subsection (6), that does not—
  - (a) affect anything previously done under the regulations, or
  - (b) prevent the making of new regulations to the same or similar effect.
- (9) In calculating the period of 40 days for the purposes of subsection (6), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.
- (10) In this section—
 

“modify” includes amend, repeal or revoke, and

“participant”, in relation to a collective investment scheme, is to be read in accordance with section 235 of the Financial Services and Markets Act 2000.”

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### **37 Roll-over relief**

- (1) In section 155 of TCGA 1992 (roll-over relief: relevant classes of assets), in the entry for Class 7A, for “Council Regulation (EC) No. 1782/2003” substitute “ Council Regulation (EC) No 73/2009 ”.
- (2) In section 86 of FA 1993, for subsection (2) (power to add to classes specified in section 155 of TCGA 1992) substitute—
  - “(2) The Treasury may by order made by statutory instrument amend section 155 of the Taxation of Chargeable Gains Act 1992 (roll-over relief: relevant classes of assets) so as to add to or amend the classes of assets specified in that section.
  - (2A) But an order under subsection (2) may not restrict the assets which fall within a class listed in that section (whether by virtue of subsection (2) or otherwise).
  - (2B) An order under subsection (2) may make such consequential amendments of section 156ZB of, or Schedule 7AB to, the Taxation of Chargeable Gains Act 1992 as appear to the Treasury to be appropriate.”
- (3) Accordingly, section 43(3) of FA 2002 is repealed.
- (4) The amendment made by subsection (1) has effect where the disposal of the old assets (or an interest in them) or the acquisition of the new assets (or an interest in them) is on or after 1 January 2009.

## **CHAPTER 5**

### **MISCELLANEOUS**

#### *Enterprise incentives*

### **38 Seed enterprise investment scheme**

Schedule 6 contains provision for and in connection with the seed enterprise investment scheme (including provision for re-investment relief under TCGA 1992).

### **39 Enterprise investment scheme**

Schedule 7 contains provision about the enterprise investment scheme (including provision about deferral relief under Schedule 5B to TCGA 1992).

### **40 Venture capital trusts**

Schedule 8 contains provision about venture capital trusts.

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### *Capital allowances*

#### **41 Plant and machinery: restricting exception for manufacturers and suppliers**

- (1) In section 230 of CAA 2001 (exception for manufacturers and suppliers), in subsection (1), for “restrictions in sections 217 and 218 do” substitute “restriction in section 218 does”.
- (2) The amendment made by subsection (1) has effect in relation to expenditure of B's that is incurred on or after 12 August 2011 (regardless of when the relevant transaction was entered into).
- (3) But, in relation to any such expenditure that is incurred before the next amendment date, the restriction in section 217 of CAA 2001 does not apply (despite subsection (1)) if B can show that the condition in subsection (4) is met.
- (4) The condition is that, had the amendments made by paragraphs 1 to 7 of Schedule 9 had effect in relation to the expenditure, the restriction in section 217 would not have applied.
- (5) “The next amendment date” means the date defined in paragraph 9 of Schedule 9 as the start date.

#### **42 Plant and machinery allowances: anti-avoidance**

Schedule 9 contains provision to counter abuse of Part 2 of CAA 2001.

#### **43 Plant and machinery allowances: fixtures**

Schedule 10 contains provision about plant and machinery allowances in respect of fixtures.

#### **44 Expenditure on plant and machinery for use in designated assisted areas**

Schedule 11 contains provision about first-year allowances in respect of expenditure on plant and machinery for use in designated assisted areas.

#### **45 Allowances for energy-saving plant and machinery**

- (1) Part 2 of CAA 2001 (plant and machinery allowances) is amended as follows.
- (2) In section 45A (expenditure on energy-saving plant or machinery), after subsection (1) insert—
  - “(1A) This section is subject to section 45AA (payments under Energy Act 2008 schemes).”
- (3) After that section insert—

##### **“45AA Section 45A exclusion: payments under Energy Act 2008 schemes**

- (1) Expenditure incurred on or after the relevant date on plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45A if—



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- (a) a payment is made, or another incentive is given, under a scheme established by virtue of section 41 of the Energy Act 2008 (feed-in tariffs) in respect of electricity generated by the plant or machinery, or
  - (b) a payment is made, or another incentive is given, under a scheme established by regulations under section 100 of that Act (renewable heat incentives) in respect of heat generated, or gas or fuel produced, by the plant or machinery.
- (2) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).
- (3) If a person who has made a tax return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, the person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.
- (4) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.
- (5) Except as provided by subsection (6), the relevant date is—
  - (a) for corporation tax purposes, 1 April 2012, and
  - (b) for income tax purposes, 6 April 2012.
- (6) In the case of expenditure incurred on a combined heat and power system, the relevant date in relation to subsection (1)(b) is—
  - (a) for corporation tax purposes, 1 April 2014, and
  - (b) for income tax purposes, 6 April 2014.”
- (4) In section 104A (special rate expenditure)—
  - (a) in subsection (1), omit the “and” after paragraph (e), and after paragraph (f) insert “, and
    - (g) expenditure incurred on or after the third relevant date on the provision of solar panels.”, and
  - (b) after subsection (3) insert—
    - “(3A) The third relevant date is—
      - (a) for corporation tax purposes, 1 April 2012, and
      - (b) for income tax purposes, 6 April 2012.”

#### **46 Plant and machinery: long funding leases**

- (1) Section 70E of CAA 2001 (disposal events and disposal values) is amended as follows.
- (2) In subsection (2A), for the definition of “R” substitute—
  - “R is the sum of—
    - (a) any relevant rebate (see subsections (2F) and (2G)), and
    - (b) any other relevant lease-related payment (see subsections (2FA) and (2G)).”
- (3) After subsection (2F) insert—
  - “(2FA) Relevant lease-related payment” means any payment which—

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- (a) is payable at any time for the benefit (directly or indirectly) of the lessee or a person connected with the lessee,
- (b) is connected with the long funding lease, or with any arrangement connected with that lease, and
- (c) is not—
  - (i) an initial payment or any other payment made to the lessor by the lessee under the lease,
  - (ii) a payment made to the lessor by the lessee under a guarantee of any residual amount (as defined in section 70YE),
  - (iii) an initial payment or any other payment made under a relevant superior lease to the person who is the lessor under that lease by the person who is the lessee under that lease, or
  - (iv) a payment to the seller of the proceeds of a sale of the plant or machinery to which subsection (2FC) applies,

if, and to the extent that, the payment is not otherwise brought into account for tax purposes as income or a disposal receipt by the person for whom the benefit is payable (or would not be if that person were within the charge to tax).

(2FB) For the purposes of subsection (2FA)—

“payment” includes the provision of any benefit, the assumption of any liability and any other transfer of money's worth (and “payable” is to be construed accordingly);

“relevant superior lease” means any lease of the plant or machinery to which the long funding lease mentioned in subsection (1)(a) is inferior.

(2FC) This subsection applies to a sale of the plant or machinery if—

- (a) a person has entered into a relevant transaction with another person in respect of the plant or machinery for the purposes of Chapter 17 of this Part (see section 213) and the sale is within section 213(1)(a),
- (b) the plant or machinery is within section 216(1)(b) (sale and lease back), and
- (c) the conditions in section 227(2) are met.”

(4) For subsection (2G) substitute—

“(2G) In the case of a lease that is not a transaction at arm's length, “relevant rebate” and “relevant lease-related payment” include any amount that would reasonably be expected to have fallen within subsection (2F) or, as the case may be, (2FA) if the lease had been such a transaction.”

(5) The amendments made by this section have effect in relation to cases where the relevant event occurs on or after 21 March 2012.

### *Foreign income and gains*

## 47 Foreign income and gains

Schedule 12 contains provision about the taxation of foreign income and gains.

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### *Pensions*

#### **48 Employer asset-backed pension contributions etc**

Schedule 13 contains—

- (a) provision relating to employers who pay contributions under registered pension schemes and arrangements for which their contributions are used (directly or indirectly), and
- (b) provision amending Chapter 5B of Part 13 of ITA 2007 and Chapter 2 of Part 16 of CTA 2010 (finance arrangements).

### *Charitable giving etc*

#### **49 Gifts to the nation**

Schedule 14 contains provision for a person's tax liability to be reduced in return for giving pre-eminent property to the nation.

#### **50 Gift aid: giving through self-assessment return**

- (1) Section 429 of ITA 2007 (gift aid: giving through self-assessment return) is repealed.
- (2) The following repeals are made in consequence of subsection (1)—
  - (a) in section 426 of ITA 2007 (election by donor: gift treated as made in previous tax year), omit subsection (8),
  - (b) in section 538 of that Act (requirement to make claim), omit subsection (3),
  - (c) in section 133 of FA 2008 (set-off etc where right to be paid a sum has been transferred), in subsection (8)(a), omit the words from “except” to the end,
  - (d) in section 472 of CTA 2010 (gifts qualifying for gift aid relief: corporation tax liability and exemption), omit subsection (5), and
  - (e) in section 475 of that Act (gifts qualifying for gift aid relief: income tax treated as paid and exemption), omit subsection (7).
- (3) Accordingly, the following provisions are also repealed—
  - (a) section 130(9) of FA 2008, and
  - (b) paragraph 3(4) of Schedule 8 to FA 2010.
- (4) The repeals made by this section are treated as having come into force on 6 April 2012.

#### **51 Relief for gift aid and other income of charities etc**

Schedule 15 contains provision about relief in respect of gifts qualifying for gift aid relief and other income of charities and other bodies.

#### **52 Meaning of “community amateur sports club”**

- (1) In section 658 of CTA 2010 (meaning of “community amateur sports club”), for subsection (1) substitute—
  - “(1) A club is entitled to be registered as a community amateur sports club if conditions A and B are met.

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- (1A) Condition A is that the club is, and is required by its constitution to be, a club which—
- (a) is open to the whole community (see section 659),
  - (b) is organised on an amateur basis (see section 660), and
  - (c) has as its main purpose the provision of facilities for, and the promotion of participation in, one or more eligible sports (see section 661).
- (1B) Condition B is that the club meets—
- (a) the location condition (see section 661A), and
  - (b) the management condition (see section 661B)."

(2) In consequence of the amendment made by subsection (1), omit paragraph 31 of Schedule 6 to FA 2010.

(3) The amendments made by this section are treated as having come into force on 6 April 2010.

#### *Other provisions*

### **53 Site restoration payments**

- (1) In section 168 of ITTOIA 2005 (site restoration payments), at the beginning of subsection (2) insert “ Subject to subsection (3A), ”.
- (2) For subsection (3) of that section substitute—
- “(3) The deduction is allowed—
- (a) (if the payment is made, whether directly or indirectly, to a connected person) for the period of account in which that part of the restoration work to which the payment relates is completed, or
  - (b) (in any other case) for the period of account in which the payment is made.
- (3A) But no deduction is allowed if the payment arises from arrangements—
- (a) to which the person carrying on the trade is a party, and
  - (b) the main purpose, or one of the main purposes, of which is to obtain a deduction under this section.”

(3) At the end of that section insert—

“(7) Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).”

(4) In section 145 of CTA 2009 (site restoration payments), at the beginning of subsection (2) insert “ Subject to subsection (3A), ”.

(5) For subsection (3) of that section substitute—

“(3) The deduction is allowed—

    - (a) (if the payment is made, whether directly or indirectly, to a connected person) for the period of account in which that part of the restoration work to which the payment relates is completed, or

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- (b) (in any other case) for the period of account in which the payment is made.
- (3A) But no deduction is allowed if the payment arises from arrangements—
  - (a) to which the company carrying on the trade is a party, and
  - (b) the main purpose, or one of the main purposes, of which is to obtain a deduction under this section.”
- (6) At the end of that section insert—
  - “(7) Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).”
- (7) The amendments made by this section have effect in relation to any site restoration payment made on or after 21 March 2012, other than a payment made pursuant to an unconditional obligation in a contract made before 21 March 2012.
- (8) An unconditional obligation is an obligation which may not be varied or extinguished by the exercise of a right (whether or not under the contract).

## **54 Changes of accounting policy**

- (1) In section 227 of ITTOIA 2005 (adjustment on change of accounting basis: income tax)—
  - (a) in subsection (3)(a) for “relevant change of accounting approach” substitute “change of accounting policy”, and
  - (b) for subsection (4) substitute—
    - “(4) A “change of accounting policy” includes, in particular—
      - (a) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards, and
      - (b) a change from using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards to using UK generally accepted accounting practice.”
- (2) In section 180 of CTA 2009 (adjustment on change of accounting basis: corporation tax)—
  - (a) in subsection (3)(a) for “relevant change of accounting approach” substitute “change of accounting policy”, and
  - (b) for subsection (4) substitute—
    - “(4) A “change of accounting policy” includes, in particular—
      - (a) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards, and
      - (b) a change from using generally accepted accounting practice with respect to accounts prepared in accordance with international accounting standards to using UK generally accepted accounting practice.”

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- (3) Corresponding amendments are to be treated as having been made in section 64 of FA 2002.
- (4) In consequence of the amendment made by subsection (1)(b), omit paragraph 2 of Schedule 6 to F(No.2)A 2005.
- (5) The amendments made by this section have effect in relation to a change of basis if the new basis—
  - (a) is adopted for a period of account which begins on or after 1 January 2012, or
  - (b) is adopted for a period of account which begins before 1 January 2012 and the adoption is in consequence of the issue, revocation, amendment or recognition of, or withdrawal of recognition from, an accounting standard by an accounting body on or after 1 January 2012.
- (6) In this section—
  - “accounting body” means the International Accounting Standards Board, the Accounting Standards Board, or a successor body to either of those Boards;
  - “accounting standard” includes any statement of practice, guidance or other similar document.

## PART 2

### INSURANCE COMPANIES CARRYING ON LONG-TERM BUSINESS

#### CHAPTER 1

##### INTRODUCTORY

###### *Outline of provisions of Part*

## 55 Overview

- (1) This Part makes special provision for corporation tax purposes in relation to life assurance business and other long-term business carried on by insurance companies.
- (2) Chapter 1 explains some of the key concepts for the purposes of this Part, including the concept of basic life assurance and general annuity business (abbreviated to “BLAGAB”).
- (3) Chapter 2—
  - (a) provides for the profits of BLAGAB to be subject to a charge to corporation tax on the I - E basis as the profits of a separate business, and
  - (b) provides for the profits of other long-term business to be charged to corporation tax under section 35 of CTA 2009 as the profits of a single trade.
- (4) Chapter 3 sets out the rules applicable to the I - E charge (which operate in part by reference to the calculation of an insurance company's BLAGAB trade profit or loss).

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- (5) Chapter 4 sets out rules for determining for the purposes of the I - E charge how to apportion items to an insurance company's basic life assurance and general annuity business.
- (6) Chapter 5—
  - (a) provides for the policyholders' share of the I - E profit to be charged at the policyholders' rate (the basic rate of income tax), and
  - (b) provides for policyholder tax to be taken into account in calculating an insurance company's BLAGAB trade profit or loss.
- (7) Chapter 6 contains special rules that are to apply for the purpose of calculating an insurance company's BLAGAB trade profit or loss or the profits of an insurance company's other long-term business.
- (8) Chapter 7 sets out rules for determining for the purposes of that calculation how to allocate items between BLAGAB and other long-term business.
- (9) The remainder of the Part contains—
  - (a) provision in relation to assets held for the purposes of an insurance company's long-term business (see Chapter 8),
  - (b) provision for relieving BLAGAB trade losses and restrictions in relation to the policyholders' share of an I - E profit (see Chapter 9),
  - (c) provision in relation to the transfer of BLAGAB or other long-term business (see Chapter 10), and
  - (d) definitions and other supplementary material (see Chapters 11 and 12).

*Meaning of “life assurance business”*

**56 Meaning of “life assurance business”**

- (1) This section defines for the purposes of this Part what is meant by “life assurance business”.
- (2) Business is “life assurance business” if—
  - (a) it consists of the effecting or carrying out of contracts of insurance which fall within paragraph I, II, III or VII(b) of Part 2 of Schedule 1 to the FISMA (Regulated Activities) Order 2001, or
  - (b) it is capital redemption business (see subsection (3)).
- (3) Business is “capital redemption business” if it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum of a specified amount (or a series of sums of a specified amount) become payable at a future time or over a period.

*Meaning of “basic life assurance and general annuity business”*

**57 Meaning of “basic life assurance and general annuity business”**

- (1) This section defines for the purposes of this Part what is meant by “basic life assurance and general annuity business”.

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- (2) “Basic life assurance and general annuity business” means life assurance business other than—
- (a) pension business (which is defined for the purposes of this section by section 58),
  - (b) child trust fund business (which is defined for the purposes of this section by section 59),
  - (c) individual savings account business (which is defined for the purposes of this section by section 60),
  - (d) business which consists of the effecting or carrying out of immediate needs annuities (within the meaning of section 725 of ITTOIA 2005),
  - (e) re-insurance of life assurance business other than excluded business,
  - (f) overseas life assurance business (which is defined for the purposes of this section by section 61), or
  - (g) protection business (which is defined for the purposes of this section by section 62).
- (3) In subsection (2)(e) “excluded business” means business of any description excluded for the purposes of this section by regulations made by HMRC Commissioners.

**Modifications etc. (not altering text)**

C4 S. 57 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), 5, 6 (with regs. 1(2), 2)

**58 Section 57: meaning of “pension business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “pension business”.
- (2) Life assurance business is “pension business” if—
  - (a) it consists of the effecting or carrying out of contracts entered into for the purposes of a registered pension scheme, or
  - (b) it is the re-insurance of business within paragraph (a).
- (3) Subsection (4) applies if the pension scheme ceases to be a registered pension scheme as a result of the withdrawal of its registration under section 157 of FA 2004.
- (4) The company's life assurance business that was pension business when the scheme was a registered pension scheme is treated as ceasing to be pension business at the beginning of the company's period of account in which the scheme so ceases to be a registered pension scheme.
- (5) If—
  - (a) immediately before 6 April 2006 an annuity contract fell within any of the descriptions of contracts specified in section 431B(2) of ICTA as it had effect immediately before that date, but
  - (b) the contract does not fall to be regarded for the purposes of this section as having been entered into for the purposes of a registered pension scheme,
 the contract is treated for the purposes of this section as having been entered into for those purposes.



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**59 Section 57: meaning of “child trust fund business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “child trust fund business”.
- (2) Life assurance business is “child trust fund business” if it consists of the effecting or carrying out of child trust fund policies.
- (3) But the re-insurance of business consisting of the effecting or carrying out of child trust fund policies is not “child trust fund business”.
- (4) In this section “child trust fund policy” means a policy of life insurance which is an investment under a child trust fund (within the meaning of the Child Trust Funds Act 2004).

**60 Section 57: meaning of “individual savings account business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “individual savings account business”.
- (2) Life assurance business is “individual savings account business” if it consists of the effecting or carrying out of individual savings account policies.
- (3) But the re-insurance of business consisting of the effecting or carrying out of individual savings account policies is not “individual savings account business”.
- (4) In this section “individual savings account policy” means a policy of life insurance which is an investment of a kind specified in regulations made as a result of section 695(1) of ITTOIA 2005.

**61 Section 57: meaning of “overseas life assurance business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “overseas life assurance business”.
- (2) Life assurance business is “overseas life assurance business” if—
  - (a) it consists of the effecting or carrying out of contracts with policyholders or annuitants who are not resident in the United Kingdom, and
  - (b) it does not consist of excluded business,but the re-insurance of business that meets the conditions in paragraphs (a) and (b) is not “overseas life assurance business”.
- (3) For this purpose “excluded business” means—
  - (a) business which is pension business within the meaning of section 58,
  - (b) business which is child trust fund business within the meaning of section 59,
  - (c) business which is individual savings account business within the meaning of section 60, or
  - (d) business of any description excluded by regulations made by HMRC Commissioners.
- (4) HMRC Commissioners may by regulations—

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- (a) make provision as to the circumstances in which a trustee who is a policyholder or annuitant residing in the United Kingdom is to be treated for the purposes of this section as not residing there, and
  - (b) provide that nothing in Chapter 9 of Part 4 of ITTOIA 2005 is to apply to a policy or contract which constitutes overseas life assurance business as a result of provision made under paragraph (a).
- (5) HMRC Commissioners may by regulations make provision for giving effect to this section.
- (6) Regulations under subsection (5) may—
- (a) provide that, in prescribed circumstances, any prescribed issue as to whether business is, or is not, overseas life assurance business (or overseas life assurance business of a particular kind) is to be determined by reference to prescribed matters,
  - (b) require companies to obtain certificates, undertakings, information or declarations from any person for the purposes of the regulations,
  - (c) make provision for dealing with cases where any issue within paragraph (a) is (for any reason) wrongly determined, including provision allowing for charges to tax to be imposed (with or without limits on time) on the insurance company concerned or on the policyholders or annuitants concerned,
  - (d) require companies to supply information and make available books, documents and other records for inspection by officers of Revenue and Customs, and
  - (e) make provision (including provision imposing penalties) for contravention of, or non-compliance with, the regulations.
- (7) The matters that may be prescribed under subsection (6)(a) include—
- (a) the giving of certificates or undertakings,
  - (b) the giving or possession of information, and
  - (c) the making of declarations.
- (8) Regulations under this section may—
- (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision (including provision amending any enactment or instrument made under any enactment).

## **62 Section 57: meaning of “protection business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “protection business”.
- (2) Life assurance business is “protection business” if it consists of the effecting or carrying out of any contract of long-term insurance in relation to which the following conditions are met—
  - (a) the benefits payable cannot exceed the amount of premiums paid except on death or in respect of incapacity due to injury, sickness or other infirmity, and
  - (b) the contract is made on or after 1 January 2013.
- (3) For the purposes of subsection (2)(a) ignore—

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- (a) any benefit (other than a payment of money) that, when the contract is entered into, is provided as an inducement for entering into the contract and that is not repayable (to any extent) in any circumstances,
  - (b) any case where the amount by which the benefits can exceed the amount of premiums paid is an insignificant proportion of those premiums, and
  - (c) any case which a reasonable person, as the policyholder under the policy effected by the contract, can reasonably regard as highly unlikely to arise.
- (4) If at any time—
- (a) a contract is varied otherwise than as a result of the operation of, or the exercise of rights conferred by, provisions forming part of the contract or a connected arrangement, and
  - (b) as a result of the variation the contract becomes, or ceases to be, one in respect of which the condition in subsection (2)(a) is met,
- the contract is to be treated for the purposes of this section as ending at that time and a new contract (on the varied terms) is to be treated for those purposes as being made immediately after that time.
- (5) For this purpose a “connected arrangement”, in relation to a contract, means any agreement or other arrangement entered into in connection with the making of the contract.
- (6) If—
- (a) a contract (“the new contract”) is made on or after 1 January 2013 as a result of the operation of, or the exercise of rights conferred by, provisions of a contract (“the old contract”) made before that date, and
  - (b) the provisions of the new contract were (or could have been) determined by reference to provisions of the old contract when the old contract was made,
- the new contract is to be regarded for the purposes of this section as if it were made before 1 January 2013.

*Meaning of “long-term business” and “PHI business”*

**63 Meaning of “long-term business” and “PHI business”**

- (1) For the purposes of this Part “long-term business” means—
- (a) life assurance business, or
  - (b) other business which consists of the effecting or carrying out of contracts of long-term insurance.
- (2) For the purposes of this Part “PHI business” means the other business mentioned in subsection (1)(b).

**Modifications etc. (not altering text)**

- C5** S. 63 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), 7 (with regs. 1(2), 2)

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*Meaning of contract of “insurance” or “long-term insurance” and “insurance company”*

**64 Meaning of “contract of insurance” and “contract of long-term insurance”**

For the purposes of this Part—

“contract of insurance” has the meaning given by article 3(1) of the FISMA (Regulated Activities) Order 2001, and

“contract of long-term insurance” means a contract which falls within Part 2 of Schedule 1 to that Order.

**65 Meaning of “insurance company”**

- (1) This section defines for the purposes of this Part what is meant by an “insurance company”.
- (2) A person who carries on the activity of effecting or carrying out contracts of insurance is an “insurance company” if—
  - (a) the person has permission under Part 4 of FISMA 2000 to carry on that activity,
  - (b) the person is of the kind mentioned in paragraph 5(d) or (da) of Schedule 3 to FISMA 2000 (EEA passport rights) and carries on that activity in the United Kingdom through a permanent establishment there, or
  - (c) the person qualifies for authorisation under Schedule 4 to FISMA 2000 (Treaty rights) and carries on that activity in the United Kingdom through a permanent establishment there.
- (3) The above definition is subject to the following qualifications—
  - (a) a friendly society within the meaning of Part 3 is not an insurance company, and
  - (b) an insurance special purpose vehicle (see section 139) is an insurance company only if, in addition to falling within subsection (2)(a), (b) or (c), it is a BLAGAB group re-insurer.
- (4) A person is a “BLAGAB group re-insurer” if for an accounting period—
  - (a) the person carries on basic life assurance and general annuity business,
  - (b) it is not the case that substantially all of the person's long-term business is long-term business other than basic life assurance and general annuity business, and
  - (c) all of its life assurance business is re-insurance business of a description which is excluded business for the purposes of section 57(2)(e).

## CHAPTER 2

### CHARGE TO TAX ON I - E BASIS ETC

#### *Separate businesses etc*

**66 Separate businesses for BLAGAB and other long-term business**

- (1) If an insurance company carries on—

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- (a) basic life assurance and general annuity business, and
  - (b) other long-term business,
- the general rule is that business within paragraphs (a) and (b) is to be treated for corporation tax purposes as two separate businesses carried on by the company.
- (2) One of the separate businesses is to consist of the basic life assurance and general annuity business.
  - (3) The other separate business is to be regarded for corporation tax purposes as a single trade consisting of the other long-term business.
  - (4) If an insurance company carries on—
    - (a) life assurance business none of which is basic life assurance and general annuity business, and
    - (b) PHI business,the company is to be treated for corporation tax purposes as carrying on a single trade consisting of the businesses within paragraphs (a) and (b).
  - (5) For the purposes of this Part “non-BLAGAB long-term business” means—
    - (a) a single trade within subsection (3) or (4), or
    - (b) in a case where an insurance company carries on life assurance business none of which is basic life assurance and general annuity business but does not carry on other long-term business, that life assurance business.
  - (6) If an insurance company carries on short-term insurance business, that business is to be regarded for corporation tax purposes as a separate trade.
  - (7) For this purpose “short-term insurance business” means any insurance business which is not long-term business.

**Modifications etc. (not altering text)**

C6 S. 66 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), 8 (with regs. 1(2), 2)

**67 Exception where BLAGAB small part of long-term business**

- (1) There is an exception to the general rule set out in section 66(1) if for an accounting period of an insurance company substantially all of its long-term business is not basic life assurance and general annuity business.
- (2) In that case, there is for the accounting period to be no separate business consisting of the company's basic life assurance and general annuity business.
- (3) There is instead to be one business that is to be regarded for corporation tax purposes as a single trade of the company consisting of its long-term business.
- (4) That single trade is to be regarded as “non-BLAGAB long-term business” for the purposes of this Part.
- (5) Accordingly, references in this Part (apart from in section 66 and this section) to a company's basic life assurance and general annuity business do not include any business which, as a result of this section, is regarded as non-BLAGAB long-term business.

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**Modifications etc. (not altering text)**

**C7** S. 67 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), 9 (with regs. 1(2), 2)

*BLAGAB taxed on I - E basis*

**68 Charge to tax on I - E profit**

- (1) The charge to corporation tax applies to the I - E profit of the basic life assurance and general annuity business carried on by an insurance company.
- (2) For the meaning of “I - E profit”, see section 73.

**69 Exclusion of charge under s.35 of CTA 2009 etc**

The charge to corporation tax under section 68 has effect instead of—

- (a) the charge to corporation tax on income under section 35 of CTA 2009 (charge to tax on trade profits),
- (b) any other charge to corporation tax on income under any other provision of the Corporation Tax Acts that would otherwise have applied, and
- (c) the charge to corporation tax on chargeable gains so far as referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business.

**70 Rules for calculating I - E profit or excess BLAGAB expenses**

- (1) The rules set out in Chapter 3 determine whether for an accounting period an insurance company carrying on basic life assurance and general annuity business has an I - E profit or excess BLAGAB expenses (and, if so, the amount of the profit or expenses).
- (2) Those rules are referred to in this Part as “the I - E rules”.
- (3) The calculation of the I - E profit or excess BLAGAB expenses is to operate by reference to the amounts that are credited or debited in the accounts of the company for a period of account drawn up in accordance with generally accepted accounting practice.
- (4) But, in the case of amounts of a particular description, that is subject to any provision which (whether expressly or by implication) provides for that calculation to operate by reference to something else.
- (5) For the meaning of “excess BLAGAB expenses”, see section 73.

*Non-BLAGAB long-term business*

**71 Charge to tax on profits of non-BLAGAB long-term business**

- (1) The charge to corporation tax on income under section 35 of CTA 2009 (charge to tax on trade profits) applies to the profits of non-BLAGAB long-term business carried on by an insurance company.

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- (2) The rules for calculating those profits are subject to the provision made by—
- (a) Chapter 6 (trade calculation rules applying to long-term business),
  - (b) Chapter 7 (trading apportionment rules), and
  - (c) section 131 (transfers of business).
- (3) Subsection (1) does not apply if the business is mutual business, and in that case no other provision of the Corporation Tax Acts has effect to charge the income of the business to corporation tax.

*PHI only business*

**72 Companies carrying on only PHI business**

Nothing in—

- (a) this Part, or
- (b) any other provision of the Corporation Tax Acts that makes special provision in relation to, or by reference to, long-term business carried on by insurance companies,

is to apply in relation to a company which carries on long-term business which consists wholly of PHI business.

**CHAPTER 3**

THE I - E BASIS

*Introduction*

**73 The I - E basis**

This section sets out rules, in relation to the basic life assurance and general annuity business carried on by an insurance company, for determining whether the company has an I - E profit or excess BLAGAB expenses for an accounting period (and, if so, the amount of the profit or expenses).

*Step 1* Calculate the income chargeable for the accounting period that is referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business. The meaning here of “income” is given by section 74.

*Step 2* Calculate the BLAGAB chargeable gains of the company for the accounting period as adjusted for allowable losses (see section 75).

*Step 3* Calculate so much of the amount (or the total amount) of any I - E receipt under section 92 or 93(5)(a) as is not taken into account in the calculation required by step 1 or 2.

*Step 4* Add together the amounts given by the calculations required by steps 1 to 3. Reduce the total of those amounts [<sup>F3</sup>by the relievable] amount of any non-trading deficit which the company has for the accounting period under section 388 of CTA 2009 (loan relationships and derivative contracts). The result is “I”.

[<sup>F4</sup>In this step, “the relievable amount” of a non-trading deficit means so much of the deficit as does not exceed the total of—

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- (a) the amount given by the calculation required by step 1,
- (b) the amount given by the calculation required by step 2, and
- (c) any amount of an I-E receipt under section 92 brought into account under step 3.]

*Step 5* Calculate the adjusted BLAGAB management expenses of the company for the accounting period (see section 76). The result is “E”.

*Step 6* Subtract E from I (which, if E is a negative figure, would have the effect of increasing the result of the calculation).

If the result is a positive amount, that is (subject to section 95) the amount for the accounting period chargeable to corporation tax under section 68. That amount is referred to in this Part as an “I - E profit”.

If the result is a negative amount, that amount is to be carried forward by the company as an expense to its next accounting period to be used in accordance with step 5 of section 76. That amount is referred to in this Part as “excess BLAGAB expenses”

#### Textual Amendments

- F3** Words in s. 73 substituted (with effect in accordance with s. 67(5) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 67\(2\)\(a\)](#)
- F4** Words in s. 73 inserted (with effect in accordance with s. 67(5) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 67\(2\)\(b\)](#)

### *Definitions of expressions comprising “I”*

#### 74 Meaning of “income”

- (1) In section 73 “income”, in relation to an insurance company, means the following income or credits so far as arising from the company's long-term business—
- (a) income of the company chargeable under Chapter 3 of Part 4 of CTA 2009 in respect of any separate UK property business or overseas property business within section 86(4),
  - (b) credits in respect of any loan relationships of the company,
  - (c) credits in respect of any derivative contracts of the company,
  - (d) credits brought into account by the company under Part 8 of CTA 2009 (intangible fixed assets),
  - (e) income of the company chargeable under Part 9A of CTA 2009 (company distributions),
  - <sup>F5</sup>(f) .....
  - (g) income of the company chargeable under Chapter 6 of Part 10 of CTA 2009 (sale of foreign dividend coupons),
  - (h) income of the company chargeable under Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged),
  - (i) income of the company arising from a source outside the United Kingdom which is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged), <sup>F6</sup>...



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- (j) income of the company chargeable under any provision to which section 1173 of CTA 2010 (miscellaneous charges) applies other than section 752 of CTA 2009 (non-trading gains on intangible fixed assets)<sup>F7</sup>, and
  - (k) income of the company chargeable under regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.]
- (2) The reference in subsection (1)(a) to income chargeable under Chapter 3 of Part 4 of CTA 2009 includes income chargeable under that Chapter in respect of distributions treated by section 548(5) of CTA 2010 as profits of a UK property business carried on by the company.
- (3) References in subsection (1)(b) to (d) to credits need to be read with section 88(3) and (4).
- (4) The reference in subsection (1)(j) to income chargeable as mentioned there needs to be read with section 89(1).
- (5) For the purposes of this section references to income or credits that are chargeable or brought into account under any provision are to income or credits that, but for sections 68 and 69, would be chargeable or brought into account under that provision.
- (6) For the purposes of this section no account is to be taken of income which arises from an asset forming part of the long-term business fixed capital of the company (see section 137).

#### Textual Amendments

- F5** S. 74(1)(f) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **40(a)** (with reg. 32)
- F6** Word in s. 74(1) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **40(b)** (with reg. 32)
- F7** S. 74(1)(k) and word inserted (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **40(c)** (with reg. 32)

## 75 Meaning of “BLAGAB chargeable gains” etc

- (1) This section explains for the purposes of section 73 how to calculate the BLAGAB chargeable gains of the company for the accounting period as adjusted for allowable losses.

*Step 1* First, calculate the chargeable gains—

- (a) that accrue to the company in the accounting period from the disposal of assets held for the purposes of the company's long-term business, and
- (b) that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business.

*Step 2* Then, deduct from the amount of those gains—

- (a) any allowable losses that accrue to the company in the accounting period from the disposal of assets held for the purposes of the company's long-term business and that are so referable, and
- (b) so far as not previously deducted from any chargeable gains, any allowable losses that accrued to the company in a previous accounting period from the disposal of assets held for the purposes of the company's long-term business and that were so referable.

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The resulting amount is the amount of the BLAGAB chargeable gains of the company for the accounting period as adjusted for allowable losses.

- (2) The deduction at step 2 may reduce an amount to nil but no further.
- (3) For the purposes of this section no account is to be taken of a chargeable gain or allowable loss accruing to the company on a disposal for the purposes of TCGA 1992 of an asset that forms part of the long-term business fixed capital of the company.
- (4) References in this section to chargeable gains or allowable losses are references to those gains or losses as calculated in accordance with the rules contained in TCGA 1992.

#### *Definitions of expressions comprising “E”*

### 76 **Meaning of “adjusted BLAGAB management expenses”**

This section explains for the purposes of section 73 how to calculate the adjusted BLAGAB management expenses of the company for the accounting period.

*Step 1* Calculate the ordinary BLAGAB management expenses of the company referable to the accounting period (see sections 77, 81 and 82). In making the calculation ignore so much of those expenses as is deductible under other relevant rules (see section 78(2)). If the company is an overseas life insurance company, see also section 96.

*Step 2* If the expenses calculated in accordance with step 1 include acquisition expenses for the purposes of section 79, reduce the amount given by step 1 in accordance with the rules in that section (which, in the typical case, provide for six-sevenths of the adjusted amount of those expenses to be disallowed for the accounting period and relieved instead as deemed BLAGAB management expenses for the next six accounting periods).

*Step 3* Calculate the total amount of any deemed BLAGAB management expenses for the accounting period (see section 78(3)). For this purpose ignore any amounts that have already been included in step 1.

*Step 4* Find the basic amount by adding together the amount given by the calculation required by step 1 (adjusted, where relevant, in accordance with step 2) and the amount given by the calculation required by step 3. Adjust the basic amount by deducting from it any expenses reversed in the accounting period (see section 78(4)) and any BLAGAB trade loss relieved for the accounting period (see section 78(5)).

*Step 5* Add together any amounts carried forward as expenses from the previous accounting period to the accounting period as a result of section 73 or 93 to give the carried-forward amount. Add the carried-forward amount to the basic amount or, as the case may be, the basic amount adjusted in accordance with step 4. The resulting amount is the amount of adjusted BLAGAB management expenses of the company for the accounting period.

### 77 **Section 76: meaning of “ordinary BLAGAB management expenses” etc**

- (1) This section explains for the purposes of section 76 what is meant by the “ordinary BLAGAB management expenses of the company referable to the accounting period”.
- (2) Amounts are “ordinary BLAGAB management expenses” of the company if—

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- (a) they are, in accordance with generally accepted accounting practice, debited in accounts drawn up by the company for a period of account (but see subsection (3)),
  - (b) they are expenses of management of the company's long-term business that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business, and
  - (c) they are not excluded amounts (see subsections (4) to (7)).
- (3) In a case where acquisition expenses (within the meaning of section 80) incurred in the accounting period fall to be debited in successive accounts drawn up for successive periods of account, those expenses are treated instead as if they were all debited in the accounts drawn up for the first of those periods of account.
- (4) The following are “excluded amounts”—
  - (a) amounts of a capital nature,
  - (b) re-insurance premiums,
  - (c) refunds of premiums,
  - (d) profit commissions and profit participations (however described),
  - (e) a liability of the company to pay an amount of commission or other expenses so far as exceeding the amount which it could reasonably be expected to pay if sections 68 and 69 were not applicable,
  - (f) non-commercial amounts payable by the company,
  - (g) amounts payable in connection with a policy or contract to a policyholder or annuitant under the policy or contract or to any other person entitled to receive benefits under the policy or contract.
- (5) For the purposes of subsection (4)(f) expenses or other amounts are “non-commercial amounts” payable by the company so far as the company's purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.
- (6) Amounts payable as mentioned in paragraph (g) of subsection (4) include—
  - (a) amounts payable to any person acting on behalf of a person within that paragraph, and
  - (b) amounts payable to the personal representatives of a deceased person who was (or acted on behalf of a person who was) within that paragraph.
- (7) Amounts payable as mentioned in subsection (4)(g) do not include amounts payable to an insurance company which is a policyholder under the policy.
- (8) In the case of ordinary BLAGAB management expenses in respect of a period of account which coincides with or falls wholly in an accounting period of the company, all of those expenses are “referable to” the accounting period.
- (9) In the case of ordinary BLAGAB management expenses in respect of any other period of account—
  - (a) those expenses are to be apportioned to the accounting period of the company in accordance with section 1172 of CTA 2010, and
  - (b) the apportioned amount of those expenses is “referable to” the accounting period.

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## 78 Section 76: meaning of other expressions

- (1) This section explains for the purposes of section 76 what is meant by—
- “other relevant rules”,
  - “deemed BLAGAB management expenses for the accounting period”,
  - “expenses reversed in the accounting period”, and
  - “BLAGAB trade loss relieved for the accounting period”.
- (2) An expense is deductible under another “relevant rule” if—
- (a) it is deductible as a result of section 92(3),
  - (b) it is deductible in calculating, for corporation tax purposes, the profits of a property business, or
  - (c) it is deductible as a result of section 272 of CTA 2009 in calculating income from the letting of rights to work minerals in the United Kingdom.
- (3) An amount is a “deemed BLAGAB management expense for the accounting period” if it is treated as such for the purposes of section 76 as a result of—
- section 79 or paragraph 33(2) of Schedule 17 (spreading of acquisition expenses),
  - section 83 (general annuity business),
  - section 87(3) (losses from property businesses where land held for purposes of long-term business),
  - section 88(6) (excess of debits in respect of intangible fixed assets),
  - section 89(2) (excess of miscellaneous losses),
  - paragraph 16(1) of Schedule 7 to FA 1991 (transitional relief for old general annuity contracts),
  - section 256(2)(a) of CAA 2001 (allowances in respect of plant or machinery consisting of management asset),
  - section 391(3) of CTA 2009 (loan relationships: carry forward of surplus to next accounting period),
  - <sup>F8</sup> ...
  - section 1162 of CTA 2009 (additional relief for remediation of contaminated or derelict land), or
  - section [<sup>F9</sup>814C(7)] of CTA 2010 (manufactured dividends).
- (4) “Expenses reversed in the accounting period” means the total amount of the expenses—
- (a) which were relieved in any previous accounting period in accordance with step 1 (as read with step 2) or step 3 of section 76, but
  - (b) which are subsequently reversed in the accounting period.
- (5) A “BLAGAB trade loss relieved for the accounting period” [<sup>F10</sup> means any of the following—
- (a) a BLAGAB trade loss of the company for the accounting period in question, so far as relief is given for the loss under—
    - (i) section 37 of CTA 2010 (relief for trade losses against total income), as applied by section 123, or
    - (ii) Chapter 4 of Part 5 of that Act (group relief), as applied by section 125;

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- (b) an amount deducted under section 124B (relief for excess carried forward post-1 April BLAGAB trade losses) from the company's total profits of the accounting period in question;
- (c) an amount of a BLAGAB trade loss of the company relieved under Chapter 3 of Part 5A of CTA 2010 (group relief for carried-forward losses) if the surrender period (see section 188BB(7)) to which the claim relates is the accounting period in question.]

#### Textual Amendments

- F8** Words in s. 78(3) omitted (with effect in accordance with Sch. 15 paras. 28, 29 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 15 para. 26\(2\)](#)
- F9** Word in s. 78(3) substituted (1.1.2014) by [Finance Act 2013 \(c. 29\)](#), [Sch. 1 para. 52](#), [Sch. 29 para. 50\(3\)](#)
- F10** Words in s. 78(5) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 184](#)

## 79 Spreading of acquisition expenses

- (1) This section applies if the ordinary BLAGAB management expenses of an insurance company referable to an accounting period for the purposes of section 76 include acquisition expenses (as defined by section 80) incurred in the accounting period.
- (2) In the case of the acquisition expenses—
  - (a) a reduction is to be made at step 2 in section 76 so as to secure that only one-seventh of the adjusted amount of those expenses counts as ordinary BLAGAB management expenses of the company referable to the accounting period, and
  - (b) the remainder of that adjusted amount is to be relieved as deemed BLAGAB management expenses for succeeding accounting periods in accordance with the following provisions.
- (3) References in this section to the adjusted amount of the acquisition expenses are to—
  - (a) the amount of those expenses calculated as mentioned in step 1 of section 76 (and see, in particular, section 77(3)), less
  - (b) any amount of re-insurance commission or any repayment or refund (in whole or in part) that forms part of an I - E receipt of the company for the accounting period as a result of section 92.
- (4) The remainder of the adjusted amount of the acquisition expenses is relieved as follows.
- (5) One-seventh of the adjusted amount of the acquisition expenses is treated for the purposes of section 76 as a deemed BLAGAB management expense for each succeeding accounting period.
- (6) But, if a succeeding accounting period is less than a year, the fraction of that amount to be relieved for that period is proportionately reduced.
- (7) The reliefs operate until the whole of the adjusted amount of the acquisition expenses has been used up (and, accordingly, the rules in subsections (5) and (6) have effect subject to this subsection).

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- (8) The treatment of any part of the adjusted amount of the acquisition expenses as a deemed BLAGAB management expense for an accounting period (“the period concerned”) as set out in subsections (5) to (7) is subject to the following restriction.
- (9) If expenses are reversed in the period concerned or any preceding accounting period, any acquisition expenses included in those expenses are not to count as deemed BLAGAB management expenses for the period concerned.

## **80 Section 79: meaning of “acquisition expenses”**

- (1) This section explains for the purposes of section 79 what is meant by “acquisition expenses”.
- (2) The following are “acquisition expenses”—
  - (a) commissions (however described) other than commissions for persons who collect premiums from house to house,
  - (b) any other expenses payable solely for the purpose of the acquisition of business, and
  - (c) so much of any other expenses payable partly for that purpose, and partly for other purposes, as are properly attributable to the acquisition of business.
- (3) The exclusion from paragraph (a) of subsection (2) of commissions for persons who collect premiums from house to house does not prevent their counting as expenses under another paragraph of that subsection.
- (4) For the purposes of that subsection “the acquisition of business” includes—
  - (a) the securing of the payment of increased or additional premiums in respect of a policy of insurance issued in respect of an insurance already made, and
  - (b) the securing of the payment of increased or additional consideration in respect of an annuity contract already made.

## **81 Amounts treated as ordinary BLAGAB management expenses**

- (1) This section applies in relation to amounts which meet the conditions in section 77(2) (a) and (b).
- (2) The relevant permissive rules apply for the purpose of treating the amounts as ordinary BLAGAB management expenses for the purposes of section 76 as they apply for the purpose of treating amounts as expenses of management for the purposes of Chapter 2 of Part 16 of CTA 2009 (companies with investment business).
- (3) The following provisions of CTA 2009 are “relevant permissive rules”—
  - (a) section 1000 (costs of setting up employee share ownership trust),
  - (b) section 1234 (payments for restrictive undertakings),
  - (c) section 1235 (employees seconded to charities and educational establishments),
  - (d) section 1237 (counselling and other outplacement expenses),
  - (e) section 1238(1) to (3) (retraining courses),
  - (f) sections 1239 to 1242 (redundancy payments and approved contractual payments),
  - (g) section 1243 (payments made by the Government), and

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- (h) section 1244 (contributions to local enterprise organisations or urban regeneration companies).
- (4) If—
  - (a) an employer's liability to corporation tax for an accounting period is determined on the assumption that a deduction for expenditure is allowed as a result of the application by this section of section 1238(1) to (3) of CTA 2009, and
  - (b) the deduction would not otherwise have been allowed,section 75(2) to (4) of CTA 2009 (retraining courses: recovery of tax) apply.
- (5) If—
  - (a) an amount is treated as an ordinary BLAGAB management expense as a result of the application by this section of section 1242 of CTA 2009, and
  - (b) the amount would otherwise be regarded as an acquisition expense for the purposes of section 79,the expense is not to be so regarded.
- (6) Section 1253 of CTA 2009 (contributions to local enterprise organisations or urban regeneration companies: disqualifying benefits) applies in the case of amounts treated, as a result of the application by this section of section 1244 of that Act, as ordinary BLAGAB management expenses as it applies in the case of amounts for which a deduction has been made under section 1219 of that Act as a result of section 1244 of that Act.
- (7) For the purposes of this section—
  - (a) references in any relevant permissive rule to a company carrying on business that consists wholly or partly of making investments or to a company with investment business are to be read as references to a company carrying on basic life assurance and general annuity business,
  - (b) references in any relevant permissive rule to an amount being deductible under section 1219 of CTA 2009 are to be read as references to an amount being deductible as an ordinary BLAGAB management expense,
  - (c) section 1239 of CTA 2009 is to be treated as having effect with the omission of subsection (1)(c),
  - (d) the reference in section 1240(4) of CTA 2009 to sections 1224 to 1227 of that Act is to be read as a reference to section 77(8) and (9) of this Act, and
  - (e) section 1243 of CTA 2009 is to be treated as having effect with the omission of subsection (1)(c).
- (8) An amount is treated as an ordinary BLAGAB management expense as a result of this section only so far as it would not otherwise be regarded as an ordinary BLAGAB management expense.

## **82 Restrictions in relation to ordinary BLAGAB management expenses**

- (1) This section applies in relation to an amount which is (or, but for this section, would be) regarded for the purposes of section 76 as an ordinary BLAGAB management expense of an insurance company.
- (2) Section 1249(1) and (2) of CTA 2009 (unpaid remuneration) apply for the purpose of determining the period of account for which the amount is debited in the accounts

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of the company for the purposes of section 77; but this subsection is subject to the operation of section 79.

- (3) Section 1249(1) and (3) of CTA 2009 apply for the purpose of determining whether the amount is to be regarded as an ordinary BLAGAB management expense of the company.
- (4) Section 1251(1) and (2) of CTA 2009 (car hire) apply for the purpose of determining the amount of the ordinary BLAGAB management expense of the company.
- (5) For the purposes of subsections (2) to (4)—
  - (a) references in section 1249 or 1251 of CTA 2009 to a company with investment business are to be read as references to a company carrying on basic life assurance and general annuity business (and, accordingly, the reference in section 1251(1) to total profits is to be read as a reference to profits of basic life assurance and general annuity business), and
  - (b) references in section 1249 or 1251 of CTA 2009 to an amount being deductible under section 1219 of CTA 2009 are to be read as references to an amount being deductible as an ordinary BLAGAB management expense.
- (6) If—
  - (a) an amount is reduced as a result of subsection (4) or a corresponding rule,
  - (b) subsequently there is a rebate (however described) of the hire charges, and
  - (c) an amount representing the rebate is deductible as a reversed expense or taken into account in calculating the amount of an I - E receipt under section 92,
 the amount that would otherwise be so deductible or taken into account is reduced by 15%.
- (7) If—
  - (a) an amount is reduced as a result of subsection (4) or a corresponding rule,
  - (b) subsequently a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency arrangement, and
  - (c) an amount representing the release is deductible as a reversed expense,
 the amount that would otherwise be so deductible is reduced by 15%.
- (8) For the purposes of subsections (6) and (7)—
 

“corresponding rule” means section 56(2) or 1251(2) of CTA 2009 or section 48(2) of ITTOIA 2005,

“deductible as a reversed expense” means deductible at step 4 in section 76 as an expense reversed in an accounting period, and

“statutory insolvency arrangement” has the meaning given by section 1319(1) of CTA 2009.

### **83 General annuity business**

- (1) This section applies if an insurance company pays qualifying BLAGAB annuities in an accounting period.
- (2) An amount equal to the difference between—
  - (a) the total amount of those annuities paid by the company in the accounting period, and



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- (b) the total of the amounts exempt under section 717 of ITTOIA 2005 (exemption for part of purchased life annuity payments) contained in those annuities so paid,  
is treated for the purposes of section 76 as a deemed BLAGAB management expense for the accounting period.
- (3) An annuity is a “qualifying BLAGAB annuity” if—
- (a) it is referable to the company's basic life assurance and general annuity business, and
  - (b) it is paid under a contract made by the company in an accounting period beginning on or after 1 January 1992 (but see section 85).
- (4) For the purposes of this section the amounts exempt under section 717 of ITTOIA 2005 are so much of the payments under the qualifying BLAGAB annuities as would be within the exemption under that section if—
- (a) section 718 of ITTOIA 2005 were omitted, and
  - (b) the exemption under section 717 of ITTOIA 2005 applied in relation to companies as well as individuals.
- (5) If a qualifying BLAGAB annuity (“the actual annuity”) is a steep-reduction annuity, the calculations required by subsection (2)(a) and (b) are to be made as if—
- (a) the contract for the actual annuity provided instead for the annuities identified below (“the deemed annuities”), and
  - (b) the consideration for each of the deemed annuities were equal to an apportionment of the consideration for the actual annuity on a just and reasonable basis.
- (6) The deemed annuities are—
- (a) an annuity the payments in respect of which are confined to payments in respect of the actual annuity that fall to be made at the earliest time for the making in respect of that annuity of a reduced payment within section 84(1)(c), and
  - (b) an annuity the payments in respect of which are all the payments in respect of the actual annuity other than those mentioned in paragraph (a).
- (7) If a deemed annuity within subsection (6)(b) (“the later annuity”) would itself be a steep-reduction annuity, the deemed annuities—
- (a) do not include the later annuity, but
  - (b) include instead the annuities which would be identified by subsection (6) (with as many further applications of this subsection as may be necessary for securing that none of the deemed annuities is a steep-reduction annuity) if references in that subsection to the actual annuity were to the later annuity.
- (8) This section needs to be read with section 84 (meaning of “steep-reduction annuity” etc).

#### **84 General annuity business: meaning of “steep-reduction annuity” etc**

- (1) For the purposes of section 83 an annuity is a “steep-reduction annuity” if—
- (a) the amount of any payment in respect of it (but not its term) depends on a contingency other than the duration of a human life or lives,

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- (b) the annuitant is entitled to payments of different amounts at different times, and
  - (c) the payments include a payment (“a reduced payment”) of an amount which is substantially smaller than the amount of at least one of the earlier payments.
- (2) If there are different intervals between the payments, it is to be assumed for the purposes of subsection (1)(b) and (c)—
- (a) that the annuitant's entitlement, after the first payment, to payments is an entitlement to payments at yearly intervals on the anniversary of the first payment, and
  - (b) that the amount to which the annuitant is assumed to be entitled is equal to the annuitant's assumed entitlement for the year ending with the anniversary in question.
- (3) For this purpose the annuitant's assumed entitlement for a year is determined as follows—
- (a) the annuitant's entitlement to each payment is taken to accrue at a constant rate during the interval between the previous payment and that payment, and
  - (b) the annuitant's assumed entitlement for a year is taken to be equal to the total amount which, in accordance with paragraph (a), is treated as accruing in the year.
- (4) In the case of an annuity to which subsection (2) applies, the reference in section 83(6) (a) to the making of a reduced payment is to be read as a reference to the making of a payment which (applying subsection (3)(a)) is taken to accrue at a rate that is substantially less than the rate at which at least one of the earlier payments is taken to accrue.
- (5) If—
- (a) a question arises whether a payment is substantially smaller than, or accrues at a rate substantially less than, an earlier payment, and
  - (b) the annuitant or (as the case may be) every annuitant is an individual who is beneficially entitled to all the rights conferred on him or her as such an annuitant,
- the question is determined without regard to so much of the difference between the amounts or rates as is referable to a reduction falling to be made as a result of a death.
- (6) If the amount of any one or more of the payments depends on a contingency, the annuitant's entitlement to the payments is determined for the purposes of section 83 and this section according to whatever is the most likely outcome in relation to the contingency (applying any relevant actuarial principles).
- (7) If an agreement or other arrangement has effect for varying the rights of the annuitant in relation to a payment, the payment is taken for the purposes of section 83 and this section to be a payment of the amount to which the annuitant is entitled in accordance with the agreement or other arrangement.
- (8) For the purposes of this section references to a contingency include a contingency consisting wholly or partly in the exercise of an option.

## **85 General annuity business: payments made in pre-1992 accounting periods**

- (1) If—

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- (a) a payment in respect of an annuity is made by an insurance company under a group annuity contract made in a pre-1992 accounting period, and
- (b) the company's liabilities first include an amount in respect of that annuity in a post-1992 accounting period,

the payment is treated for the purposes of section 83(3)(b) as if the contract had been made in a post-1992 accounting period.

(2) If—

- (a) a payment in respect of an annuity is made by a re-insurer under a re-insurance treaty made in a pre-1992 accounting period, and
- (b) the re-insurer's liabilities first include an amount in respect of that annuity in a post-1992 accounting period,

the payment is, as respects the re-insurer, treated for the purposes of section 83(3)(b) as if the treaty had been made in a post-1992 accounting period.

(3) In this section—

“a pre-1992 accounting period” means an accounting period beginning before 1 January 1992,

“a post-1992 accounting period” means an accounting period beginning on or after 1 January 1992,

“group annuity contract” means a contract under which the insurance company undertakes to become liable to pay annuities to or in respect of persons who may subsequently be specified or otherwise ascertained under or in accordance with the contract (whether or not annuities under the contract are also payable to or in respect of persons who are specified or ascertained at the time the contract is made), and

“re-insurance treaty” means a contract under which one insurance company is obliged to cede, and another (referred to in this section as a “re-insurer”) to accept, the whole or part of a risk of a class or description to which the contract relates.

#### *Special rules applying to I - E basis*

### **86 Separate property businesses for BLAGAB etc**

- (1) This section modifies the rules in sections 208 and 209 of CTA 2009 (basic meaning of UK and overseas property business) for the purpose of applying the I - E rules in relation to an insurance company.
- (2) The company is treated as carrying on separate UK property businesses or overseas property businesses in accordance with the following provisions.
- (3) The exploitation of land held otherwise than for the purposes of the company's long-term business is treated as a separate business from the exploitation of land held for those purposes.
- (4) In the case of the exploitation of land held for the purposes of the company's long-term business, each of the following is treated as a separate business—
  - (a) the exploitation of land which is matched to BLAGAB liabilities of the company,
  - (b) the exploitation of land which is matched to other long-term business liabilities of the company, and

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- (c) the exploitation of land so far as it is not matched to long-term business liabilities of the company.
- (5) In the case of land part of which is matched to a BLAGAB liability or other long-term business liability, only the part of the land in question is to count for the purposes of this section as matched to the liability in question.
- (6) In this section “land” means any estate, interest or right in or over land.

### **87 Losses from property businesses where land held for long-term business**

- (1) This section applies for the purpose of applying the I - E rules in relation to an insurance company if, in an accounting period, the company makes a loss in any of its separate UK property businesses or overseas property businesses within section 86(4).
- (2) The provisions of Chapter 4 of Part 4 of CTA 2010 (loss relief: property businesses) do not apply to the loss.
- (3) So far as the loss is referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, it is treated for the purposes of section 76 as a deemed BLAGAB management expense for the accounting period.
- (4) If the company has two or more separate property businesses within section 86(4), then for the purposes of subsection (3) the loss in question is taken to be the total net loss after—
  - (a) setting the losses from the businesses which are referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, against
  - (b) the profits from the businesses which are so referable.

### **88 Loan relationships, derivative contracts and intangible fixed assets**

- (1) This section applies if an insurance company has—
  - (a) credits or debits in respect of any loan relationships,
  - (b) credits or debits in respect of any derivative contracts, or
  - (c) credits or debits brought into account by the company under Part 8 of CTA 2009 (intangible fixed assets),
 that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business.
- (2) In the application of the I - E rules in relation to the company's basic life assurance and general annuity business—
  - (a) the loan relationship rules,
  - (b) the derivative contract rules, and
  - (c) the intangible fixed asset rules,
 have effect as if the activities carried on by the company in the course of its basic life assurance and general annuity business did not constitute the whole or any part of a trade or of a property business.
- (3) In the application of the I - E rules for an accounting period in relation to the company's basic life assurance and general annuity business—

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- (a) BLAGAB credits in respect of its loan relationships for the period are to count as income for the purposes of those rules only in so far as they exceed BLAGAB debits in respect of its loan relationships for the period, and
  - (b) BLAGAB credits brought into account by the company under Part 8 of CTA 2009 for the period are to count as income for the purposes of those rules only in so far as they exceed BLAGAB debits brought into account by the company under that Part for the period.
- (4) References in subsection (3)(a) to BLAGAB credits or BLAGAB debits in respect of a company's loan relationships include, as a result of subsection (2) and section 574 of CTA 2009, BLAGAB credits or BLAGAB debits in respect of the company's derivative contracts.
- (5) If for an accounting period the BLAGAB debits mentioned in subsection (3)(a) exceed the BLAGAB credits mentioned there, the excess is dealt with in accordance with sections 388 to 391 of CTA 2009.
- (6) If for an accounting period the BLAGAB debits mentioned in subsection (3)(b) exceed the BLAGAB credits mentioned there, the <sup>F11</sup>excess is treated for the purposes of section 76 as a deemed BLAGAB management expense for that period.]
- (7) In this section—
  - “BLAGAB credits”, in relation to a company, means credits arising from the company's long-term business that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business,
  - “BLAGAB debits”, in relation to a company, means debits arising from the company's long-term business that are referable, in accordance with Chapter 4, to its basic life assurance and general annuity business,
  - “the loan relationship rules” means the rules set out in Part 5 of CTA 2009 (including provisions of other enactments by reference to which amounts are to be brought into account for the purposes of that Part),
  - “the derivative contract rules” means the rules set out in Part 7 of CTA 2009, and
  - “the intangible fixed asset rules” means the rules set out in Part 8 of CTA 2009.

#### Textual Amendments

- F11** Words in s. 88(6) substituted (with effect in accordance with s. 67(5) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 67\(3\)](#)

## 89 Miscellaneous income and losses

- (1) In the application of the I - E rules for an accounting period in relation to an insurance company's basic life assurance and general annuity business, BLAGAB miscellaneous income of the company for the period is to count as income for the purposes of those rules only in so far as it exceeds BLAGAB miscellaneous losses of the company for the period.
- (2) If for an accounting period the BLAGAB miscellaneous losses exceed the BLAGAB miscellaneous income, the excess—
  - (a) is carried forward to the next accounting period, and

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- (b) is treated for the purposes of section 76 as a deemed BLAGAB management expense for that period.
- (3) In this section—
- “BLAGAB miscellaneous income”, in relation to a company, means income of the company arising from its long-term business which—
- (a) is chargeable under any provision to which section 1173 of CTA 2010 (miscellaneous charges) applies other than section 752 of CTA 2009 (non-trading gains on intangible fixed assets), and
  - (b) is referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, and
- “BLAGAB miscellaneous losses”, in relation to a company, means losses of the company arising from its long-term business which—
- (a) arise from miscellaneous transactions, and
  - (b) are referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business.
- (4) For the purposes of subsection (3) a transaction is a “miscellaneous transaction” if income arising from it would be chargeable under any provision to which section 1173 of CTA 2010 applies other than—
- (a) section 752 of CTA 2009, or
  - (b) regulation 18(4) of the Offshore Funds (Tax) Regulations 2009 (offshore income gains).
- (5) For the purposes of this section references to income that is chargeable under any provision to which section 1173 of CTA 2010 applies are to income that, but for sections 68 and 69, would be chargeable under that provision.

## **90 Investment return where risk in respect of policy or contract re-insured**

- (1) This section applies if an insurance company re-insures any risk in respect of a policy or contract attributable to its basic life assurance and general annuity business.
- (2) For the purposes of the I - E rules the investment return on the policy or contract is treated as accruing to the company while the risk remains re-insured by the company under the re-insurance arrangement.
- (3) The investment return that is treated as accruing to the company—
  - (a) is treated for the purposes of those rules as income that is referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business, and
  - (b) is, accordingly, brought into account for the purposes of those rules at step 1 in section 73.
- (4) HMRC Commissioners may make provision by regulations as to the amount of investment return that is treated as accruing in each accounting period during which the re-insurance arrangement is in force.
- (5) HMRC Commissioners may by regulations exclude from the operation of this section—
  - (a) such descriptions of insurance company,
  - (b) such descriptions of policies or contracts, and
  - (c) such descriptions of re-insurance arrangement,

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as may be prescribed by the regulations.

- (6) Nothing in this section applies in relation to the re-insurance of a policy or contract where the policy or contract was made, and the re-insurance arrangement effected, before 29 November 1994.

## **91 Regulations under section 90(4): supplementary provision**

- (1) This section applies to regulations under section 90(4).
- (2) The regulations may provide for the calculation of the investment return treated as accruing to a company in respect of a policy or contract in an accounting period to be made by reference to—
- (a) the total amount of sums paid (by way of premium or otherwise) by the company to the re-insurer during the accounting period and any earlier accounting periods,
  - (b) the total amount of sums paid (by way of commission or otherwise) by the re-insurer to the company during the accounting period and any earlier accounting periods,
  - (c) the total amount of the net investment return treated as accruing to the company in any earlier accounting periods, that is to say, net of tax at such rate as may be prescribed by the regulations, and
  - (d) such percentage rate of return as may be prescribed by the regulations.
- (3) The regulations may make provision dealing with the transfer of the re-insurance arrangement from one insurance company to another.
- (4) The regulations must provide that the amount of investment return treated as accruing in respect of a policy or contract in the final accounting period during which the policy or contract is in force is the amount, ascertained in accordance with the regulations, by which the overall profit exceeds the total amount treated as accruing in earlier accounting periods.
- (5) “The overall profit” means the profit over the whole period during which the policy or contract, and the re-insurance arrangement, were in force.
- (6) If the overall profit is less than the total amount treated as accruing in earlier accounting periods, the difference—
- (a) must be set off against amounts treated as a result of section 90 as accruing in the final accounting period from other policies or contracts, and
  - (b) if not fully set off as mentioned in paragraph (a), may be carried forward for set-off against amounts treated as a result of that section as accruing in subsequent accounting periods.
- (7) The regulations may—
- (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.
- (8) An example of the kind of supplementary provision within subsection (7)(b) is provision requiring payments made during an accounting period to be treated as made on such date or dates as may be prescribed by the regulations.

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### *Deemed I - E receipts*

## **92 Certain BLAGAB trading receipts to count as deemed I - E receipts**

- (1) This section applies if—
  - (a) an insurance company has receipts that are taken into account in calculating its BLAGAB trade profit or loss (see section 136) for an accounting period,
  - (b) the receipts would not fall within the charge to corporation tax apart from this section, and
  - (c) the receipts are not excluded receipts.
- (2) The appropriate amount of the receipts is an I - E receipt of the company for the accounting period.
- (3) The “appropriate amount” of the receipts is found by deducting expenses from the receipts so far as is necessary for calculating the full amount of the profits.
- (4) Chapter 1 of Part 20 of CTA 2009 (general rules for restricting deductions) is to apply to that calculation.
- (5) The following receipts are “excluded” receipts—
  - (a) premiums,
  - (b) sums received under re-insurance contracts (but see subsection (6) for exceptions),
  - (c) sums which do not fall within the charge to corporation tax because of an exemption,
  - (d) payments received under the Financial Services Compensation Scheme, and
  - (e) payments received from other insurance companies to enable the company to meet its obligations to policyholders.
- (6) A sum received under a re-insurance contract is not an excluded receipt if—
  - (a) it is a re-insurance commission (however described), or
  - (b) it is a sum calculated to any extent by reference to the ordinary BLAGAB management expenses of the company referable to the accounting period (within the meaning of section 77).

### *Minimum profits charge*

## **93 Minimum profits test**

- (1) This section applies if an insurance company has a BLAGAB trade profit for an accounting period.
- (2) A comparison must be made between—
  - (a) the I - E profit or excess BLAGAB expenses for the accounting period, and
  - (b) the BLAGAB trade profit for the accounting period, adjusted as need be in accordance with sections 94<sup>F12</sup>, 124, 124A and 124C].
- (3) In making the calculation required by subsection (2)(a), it is to be assumed that this Chapter has effect with the omission of subsection (5)(a) (but, apart from that, all the other rules in this Chapter have effect for the purposes of that calculation).



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- (4) If there are excess BLAGAB expenses for the accounting period, the amount of the excess is treated for the purposes of this section as a negative figure equal to that amount.
- (5) If, for the accounting period, the adjusted BLAGAB trade profit exceeds the adjusted I - E profit or excess BLAGAB expenses—
  - (a) an amount equal to the difference is an I - E receipt of the company for the accounting period (see section 73), and
  - (b) the same amount is carried forward to the company's next accounting period as an expense (see section 76).

#### Textual Amendments

- F12** Words in s. 93(2) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 185](#)

## 94 Adjustment of I - E profit or excess BLAGAB expenses

- (1) This section applies if the BLAGAB trade profit for the accounting period includes non-taxable distributions receivable by the company in that period that are referable, in accordance with Chapter 7, to the company's basic life assurance and general annuity business.
- (2) For the purposes of section 93(5) (the comparison of the BLAGAB trade profit with the I - E profit or excess BLAGAB expenses), the calculation required by section 73 is performed again but adding to the amount of “I” found by step 4 the total amount of the non-taxable distributions receivable by the company in the accounting period that are so referable.
- (3) Accordingly, once an adjustment is made in accordance with subsection (2), an amount of excess BLAGAB expenses for the accounting period might become an adjusted I - E profit for that period.
- (4) For the purposes of this Part “non-taxable distributions” means distributions that are exempt for the purposes of Part 9A of CTA 2009 (company distributions).
- (5) For the purposes of this Part the amount of a non-taxable distribution does not include any amount withheld from it on account of tax payable under the laws of a territory outside the United Kingdom.

### *Non-BLAGAB allowable losses*

## 95 Use of non-BLAGAB allowable losses to reduce I - E profit

- (1) This section applies if—
  - (a) an insurance company has an I - E profit for an accounting period, and
  - (b) non-BLAGAB allowable losses have accrued to the company that are available for deduction in accordance with section 210A(2) of TCGA 1992 from the shareholders' share of BLAGAB chargeable gains that have accrued to the company.

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- (2) Those losses may be deducted from those gains in accordance with that provision so as to reduce the amount of the I - E profit for the accounting period to nil but no further.
- (3) For the purposes of subsection (1)(a), assume that non-BLAGAB allowable losses cannot be deducted from any BLAGAB chargeable gains (and, accordingly, ignore the effect of this section).

*Overseas life insurance companies*

**96 Expenses referable to exempt FOTRA profits**

- (1) This section applies if the profits for an accounting period of the basic life assurance and general annuity business carried on by an overseas life insurance company in the United Kingdom consist of or include exempt FOTRA profits.
- (2) In making the calculation required by step 1 of section 76 for the accounting period, ignore so much of the ordinary BLAGAB management expenses of the company as are referable to exempt FOTRA profits.
- (3) The relevant proportion of those expenses is to be regarded for the purposes of this section as referable to exempt FOTRA profits.
- (4) The relevant proportion is—

$$\frac{\text{FOTRA}}{\text{FOTRA} + \text{I}}$$

where—

FOTRA is the amount of the exempt FOTRA profits arising in the accounting period, and

I is the amount of I found by the calculations required by step 4 in section 73 in relation to the company's basic life assurance and general annuity business for the accounting period.

- (5) In this section “exempt FOTRA profits” means profits in respect of which no liability to corporation tax arises as a result of section 1279 of CTA 2009.

**CHAPTER 4**

APPORTIONMENT RULES FOR I - E CHARGE

*Introduction*

**97 Application of Chapter**

- (1) This Chapter applies in the case of an insurance company that carries on—
  - (a) basic life assurance and general annuity business, and
  - (b) other business.

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- (2) This Chapter contains rules for determining for the purposes of Chapter 3—
- (a) the credits or other income, the debits or other losses and the expenses that are referable to the company's basic life assurance and general annuity business, and
  - (b) the chargeable gains and allowable losses accruing on the disposal of assets (or parts of assets) that are referable to the company's basic life assurance and general annuity business.

**Modifications etc. (not altering text)**

- C8** S. 97 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), **10** (with regs. 1(2), 2)

*Allocation of income, losses and expenses*

**98 Commercial allocation**

- (1) This section makes provision for determining—
- (a) the credits or other income and the debits or other losses arising from the company's long-term business, and
  - (b) the expenses incurred in the course of the company's long-term business, that, for the purposes of Chapter 3, are to be regarded as referable to its basic life assurance and general annuity business.
- (2) Those items are to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the income or losses arise or the expenses are incurred.
- (3) A method is an “acceptable commercial method” if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of Chapter 3 for determining for a period of account what is referable to the company's basic life assurance and general annuity business.
- (4) The Treasury may make regulations for the purposes of this section—
- (a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
  - (b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.
- (5) Subject to any provision made by regulations under subsection (4), the method adopted for the purposes of this section for a period of account—
- (a) must be consistent with the method adopted for the purposes of section 115 for that period, and
  - (b) in the case of an overseas life insurance company, must also be consistent with the method for that period for attributing assets in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009 to its permanent establishment in the United Kingdom.
- (6) In this section “debts or other losses” means—
- (a) losses in any separate UK property business carried on by the company which is within section 86(4),

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- (b) losses in any separate overseas business carried on by the company which is within section 86(4),
- (c) debits in respect of any loan relationships of the company,
- (d) debits in respect of any derivative contracts of the company,
- (e) debits brought into account by the company under Part 8 of CTA 2009 (intangible fixed assets), and
- (f) losses of the company which arise from miscellaneous transactions (as defined by section 89(4)).

**Modifications etc. (not altering text)**

- C9** S. 98 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), **11** (with regs. 1(2), 2)

*Allocation of chargeable gains and allowable losses on disposals of assets*

**99 Application of sections 100 and 101**

- (1) Sections 100 and 101 apply for determining the chargeable gains or allowable losses that, for the purposes of Chapter 3, are to be regarded as referable to a company's basic life assurance and general annuity business whenever it disposes of assets held for the purposes of its long-term business (including cases where, as a result of Chapter 8 or any other provision of the Corporation Tax Acts, it is deemed to make a disposal).
- (2) Expressions that are used in sections 100 and 101 and in TCGA 1992 have the same meaning in those sections as they have for the purposes of that Act.

**100 Assets wholly or partly matched to BLAGAB liabilities**

- (1) If, immediately before the disposal, the whole of the asset was matched to a BLAGAB liability, the whole of the gain or loss is referable to the company's basic life assurance and general annuity business.
- (2) If, immediately before the disposal, a part of the asset was matched to a BLAGAB liability, the appropriate portion of the gain or loss is referable to the company's basic life assurance and general annuity business.
- (3) “The appropriate proportion” means the proportion equal to the proportion of the asset matched to the BLAGAB liability.
- (4) If, as a result of Chapter 8, there is a disposal of a part of an asset where the part concerned is matched to a BLAGAB liability, the whole of the gain or loss is referable to the company's basic life assurance and general annuity business.
- (5) The concept of the whole or a part of an asset being matched to a BLAGAB liability is explained by section 138.

**101 Commercial allocation for disposals not wholly dealt with by section 100**

- (1) This section applies if, in the case of the disposal—
  - (a) no part of the gain or loss is dealt with by section 100, or

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- (b) section 100 deals with only a proportion of the gain or loss.
- (2) The gain or loss, or (as the case may be) the remaining proportion of the gain or loss, which is referable to the company's basic life assurance and general annuity business is determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the disposal is made.
- (3) A method is an “acceptable commercial method” if it secures that gains or losses are referable to the company's basic life assurance and general annuity business in a way that fairly represents the contribution that the assets in question have made to that business during the period in which they have been held for the purposes of the company's long-term business.
- (4) The Treasury may make regulations for the purposes of this section—
  - (a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
  - (b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.
- (5) Subject to any provision made by regulations under subsection (4), the method adopted for the purposes of this section for a period of account—
  - (a) must be consistent with the method adopted for the purposes of section 98 for that period and the method adopted for the purposes of section 115 for that period, and
  - (b) in the case of an overseas life insurance company, must also be consistent with the method for that period for attributing assets in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009 to its permanent establishment in the United Kingdom.

## CHAPTER 5

### I - E PROFIT: POLICYHOLDERS' RATE OF TAX

#### *Tax rate on policyholders' share of I - E profit*

#### **102 Policyholders' rate of tax on policyholders' share of I - E profit**

- (1) This section applies if an insurance company has an I - E profit for an accounting period.
- (2) The rate of corporation tax chargeable for a financial year on the policyholders' share (if any) of the I - E profit is the policyholders' rate of tax.
- (3) The policyholders' rate of tax is the rate at which income tax at the basic rate is charged for the tax year that begins on 6 April in the financial year.
- (4) The policyholders' share of the I - E profit is determined in accordance with section 103.

<sup>F13</sup>(5) .....

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### Textual Amendments

- F13** S. 102(5) omitted (with effect in accordance with Sch. 1 para. 22 of the amending Act) by virtue of Finance Act 2014 (c. 26), **Sch. 1 para. 18**

## 103 Rules for determining policyholders' share of I - E profit

- (1) This section determines for the purposes of section 102 the policyholders' share of the I - E profit of an insurance company for an accounting period.
- (2) If the basic life assurance and general annuity business of the company carried on by the company in the accounting period is mutual business, the policyholders' share of the I - E profit is the whole of that profit.
- (3) In any other case, the policyholders' share of the I - E profit is determined as follows.
- (4) The first step is to calculate whether the company has a BLAGAB trade profit for the accounting period, and, if so, its amount.
- (5) If the company does not have a BLAGAB trade profit for that period, the policyholders' share of the I - E profit is the whole of that profit.
- (6) If—
  - (a) the company has a BLAGAB trade profit for that period, and
  - (b) the adjusted amount of the BLAGAB trade profit is less than the amount of the I - E profit for that period,
 the difference between those amounts represents the policyholders' share of the I - E profit.
- (7) If—
  - (a) the company has a BLAGAB trade profit for that period, and
  - (b) the adjusted amount of the BLAGAB trade profit is equal to or more than the amount of the I - E profit,
 there is no policyholders' share of the I - E profit.
- (8) References to the adjusted amount of the BLAGAB trade profit are to be read in accordance with section 104.

### Modifications etc. (not altering text)

- C10** S. 103 applied by 2010 c. 4, s. 269ZE(10) (as inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 4 para. 16**)

## 104 Meaning of “the adjusted amount”

- (1) This section explains for the purposes of section 103 what is meant by the adjusted amount of the BLAGAB trade profit.
- (2) The following adjustments are to be made to the amount of the BLAGAB trade profit.

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- (3) If relief is available under section 124<sup>F14</sup>, 124A or 124C] (carry forward of BLAGAB trade losses against subsequent profits), the BLAGAB trade profit is to be reduced as mentioned in that section.
- (4) If, as a result of relief given under <sup>F15</sup>any of those sections], the BLAGAB trade profit is reduced to nil, then the adjusted amount of the BLAGAB trade profit for the purposes of section 103 is nil.
- (5) If—
  - (a) the BLAGAB trade profit is not reduced to nil as a result of relief given under section 124<sup>F16</sup>, 124A or 124C or no relief is available under those sections,] and
  - (b) in the accounting period BLAGAB non-taxable distributions are receivable by the company,the BLAGAB trade profit is reduced or further reduced (but not below nil) by subtracting from it an amount equal to the shareholders' share of those distributions.
- (6) The BLAGAB trade profit as so reduced or further reduced is the adjusted BLAGAB trade profit for the purposes of section 103.

#### Textual Amendments

- F14** Words in s. 104(3) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 186\(a\)](#)
- F15** Words in s. 104(4) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 186\(b\)](#)
- F16** Words in s. 104(5)(a) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 186\(c\)](#)

#### 105 Meaning of “BLAGAB non-taxable distributions” and “shareholders' share”

- (1) This section explains for the purposes of section 104 what is meant by—  
“BLAGAB non-taxable distributions”, and  
“the shareholders' share” of BLAGAB non-taxable distributions.
- (2) Non-taxable distributions are “BLAGAB” non-taxable distributions if they are referable, in accordance with Chapter 7, to the company's basic life assurance and general annuity business.
- (3) The “shareholders' share” of the BLAGAB non-taxable distributions receivable by the company in the accounting period is the relevant proportion of those distributions.
- (4) The relevant proportion is—

$$\frac{\text{BTP}}{\text{BNTD} + 1}$$

where—

BTP is the amount of the BLAGAB trade profit of the company for the accounting period,

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BNTD is the amount of the BLAGAB non-taxable distributions receivable by the company in the accounting period, and

I is the total of the amounts given by the calculations required by steps 1 to 3 in section 73 (I - E basis: income referable to BLAGAB) in relation to the company's basic life assurance and general annuity business for the accounting period.

- (5) If BTP exceeds BNTD + I, the shareholders' share of the BLAGAB non-taxable distributions receivable by the company in the accounting period is the whole of those distributions.

*Policyholder tax and calculation of BLAGAB trade profit or loss*

**106 Deduction for current policyholder tax**

- (1) This section applies for the purpose of calculating the BLAGAB trade profit or loss for an accounting period of any basic life assurance and general annuity business carried on by an insurance company in a case where the company has an I - E profit for that period.
- (2) In calculating the profit or loss for the accounting period, a deduction is allowed for an amount equal to the amount of corporation tax charged at the policyholders' rate of tax on the policyholders' share of the company's I - E profit for that period.

**107 Expenses or receipts for deferred policyholder tax**

- (1) This section applies for the purpose of calculating the BLAGAB trade profit or loss for a period of account of any basic life assurance and general annuity business carried on by an insurance company.
- (2) In calculating the profit or loss, an amount is brought into account that is equal to—
- (a) the closing deferred policyholder tax balance for the period of account, less
  - (b) the closing deferred policyholder tax balance for the previous period of account.
- (3) The amount—
- (a) is brought into account as an expense, if it is a negative figure, and
  - (b) is brought into account as a receipt, if it is a positive figure.
- (4) The amount is brought into account under this section only if, in accordance with generally accepted accounting practice, it is debited or credited in accounts drawn up by the company for the period of account.
- (5) If the closing deferred policyholder tax balance for a period of account is a liability, the amount of the balance is taken to be a negative figure for the purposes of this section.
- (6) If the closing deferred policyholder tax balance for a period of account is an asset, the amount of the balance is taken to be a positive figure for the purposes of this section.
- (7) Section 108 applies for determining the closing deferred policyholder tax balance for a period of account.



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## **108 Meaning of “the closing deferred policyholder tax balance” etc**

- (1) For the purposes of section 107 “the closing deferred policyholder tax balance for a period of account” means so much of the closing amount shown, in accordance with generally accepted accounting practice, in the accounts of the company for that period in respect of deferred tax as is wholly attributable to policyholder tax.
- (2) Provision forming part of the closing amount is “wholly attributable to policyholder tax” if—
  - (a) the provision is made in respect of a BLAGAB matter (see subsection (3)), and
  - (b) anything included in the closing amount in respect of that matter is calculated wholly by reference to the policyholders' rate of tax chargeable on the policyholders' share of the company's I - E profit for any accounting period.
- (3) A “BLAGAB matter” means—
  - (a) an amount of excess BLAGAB expenses,
  - (b) an amount of acquisition expenses falling to be relieved in the future in accordance with section 79,
  - (c) an amount of expenses otherwise falling to be taken into account in the future under the I - E rules,
  - (d) an amount of BLAGAB allowable loss (within the meaning of section 210A of TCGA 1992) carried forward for future use,
  - (e) an amount to which section 213 of TCGA 1992 applies (spreading of gains and losses under section 212), or
  - (f) an amount in respect of the future disposal (or part disposal) of an asset which would fall to be taken into account in accordance with section 75.
- (4) If—
  - (a) for a period of account of the company the provision made in respect of a BLAGAB matter is taken into account for the purposes of section 107, and
  - (b) for a subsequent period of account of the company the provision made in respect of that matter is no longer wholly attributable to policyholder tax because the condition in subsection (2)(b) ceases to be met,there is to be a reversal in the subsequent period of account in respect of the provision (so far as section 107 does not otherwise apply in relation to the case).
- (5) The reversal in the subsequent period of account is to be made as follows—
  - (a) if the provision was an amount which for accounting purposes was regarded as an asset, a negative amount equal to that amount is to be taken into account in calculating the closing deferred policyholder tax balance for that period for the purposes of section 107, and
  - (b) if the provision was an amount which for accounting purposes was regarded as a liability, a positive amount equal to that amount is to be taken into account in calculating the closing deferred policyholder tax balance for that period for the purposes of section 107.
- (6) The Treasury may by order amend the definition of a “BLAGAB matter”.
- (7) An order under subsection (6) may contain incidental, supplementary, consequential, transitional, transitory or saving provision.

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## CHAPTER 6

### TRADE CALCULATION RULES APPLYING TO LONG-TERM BUSINESS

#### 109 Application of Chapter

- (1) The rules contained in this Chapter have effect for the purpose of—
  - (a) calculating the BLAGAB trade profit or loss of any basic life assurance and general annuity business carried on by an insurance company, and
  - (b) calculating for corporation tax purposes the profits of any non-BLAGAB long-term business carried on by an insurance company,
 but, in the case of section 112, see also subsection (6) of that section.
- (2) In this Chapter references to the calculation of the profits are, in the case of the calculation of the BLAGAB trade profit or loss, to be read as references to the calculation of that profit or loss.
- (3) See also section 47 of CTA 2009 (losses calculated on same basis as profits).
- (4) In the case of the calculation of the BLAGAB trade profit or loss, see also sections 106 to 108.

#### 110 Allocations to policyholders

- (1) In calculating the profits for an accounting period, a deduction is allowed for any amount which is allocated to policyholders or annuitants in respect of the accounting period.
- (2) But there is no deduction for an amount of a capital nature that—
  - (a) is allocated to holders of with-profits policies, and
  - (b) has not been funded from an amount credited in accounts of the business drawn up in accordance with generally accepted accounting practice (whether drawn up by the company or another company).
- (3) For this purpose a payment made in connection with the reattribution of inherited estate is to be regarded as an amount of a capital nature.
- (4) “With-profits policies” means policies under which the holders are eligible to participate in surplus.

#### 111 Dividends and other distributions

- (1) Dividends or other distributions—
  - (a) which are receivable by the company, and
  - (b) which are referable, in accordance with Chapter 7, to the business concerned, are to be brought into account as receipts in calculating the profits.
- (2) This rule—
  - (a) applies whether or not the distributions are exempt for the purposes of Part 9A of CTA 2009 or would otherwise be dealt with under that Part, but
  - (b) does not apply in the case of distributions that are of a capital nature.

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## 112 Index-linked gilt-edged securities

- (1) If, for an accounting period, a company has a loan relationship which is represented by an index-linked gilt-edged security, sections 400 to 400C of CTA 2009 (adjustments for changes in index) are not to apply in calculating the profits for the accounting period.
- (2) But subsection (1) does not apply to loan relationships of the company that are qualifying PHI loan relationships.
- (3) A loan relationship is a “qualifying PHI loan relationship” if
  - (a) the loan relationship is identified in the records of the company as an asset held for the purposes of index-linked PHI business carried on by the company, and
  - (b) none of the credits or debits in respect of the loan relationship are referable to BLAGAB,but see subsection (5) for a case in which a loan relationship meeting the conditions in paragraphs (a) and (b) is not a qualifying PHI loan relationship.
- (4) Credits or debits are referable to BLAGAB if—
  - (a) they are referable, in accordance with Chapter 4, to any basic life assurance and general annuity business of the company, or
  - (b) they are taken into account in calculating the profit or loss that is, in accordance with Chapter 7, allocated to any basic life assurance and general annuity business of the company.
- (5) A loan relationship which, but for this subsection, would be a qualifying PHI loan relationship of the company is not a qualifying PHI loan relationship if the value of the loan relationship when added to the value of qualifying PHI loan relationships of the company exceeds the value of the liabilities incurred by the company for the purposes of its index-linked PHI business.
- (6) A loan relationship of the company which at any time is a qualifying PHI loan relationship is to be regarded for the purposes of this Part as an asset which is held at that time for the purposes of the company's long-term business but which is not matched to its long-term business liabilities or held by it for the purposes of any with-profits funds.
- (7) In this section—

“index-linked gilt-edged security” has the same meaning as it has in sections 400 to 400C of CTA 2009 (see section 399(4) of that Act), and

“index-linked PHI business” means PHI business so far as consisting of the effecting or carrying out of contracts of long-term insurance under which the benefits payable are linked to an index of prices published by the Statistics Board.

## 113 Receipts or expenses relating to long-term business fixed capital

Receipts or expenses which arise from an asset forming part of the long-term business fixed capital of the company are to be left out of account in calculating the profits.

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## CHAPTER 7

### TRADING APPORTIONMENT RULES

#### 114 Application of Chapter

- (1) This Chapter applies in the case of an insurance company which, as a result of section 66, has—
  - (a) a business consisting of basic life assurance and general annuity business, and
  - (b) a non-BLAGAB long-term business.
- (2) The rules contained in this Chapter determine—
  - (a) how to allocate between those two businesses the profits or loss of the long-term business calculated in accordance with generally accepted accounting practice, and
  - (b) how to allocate the tax adjustments in making the calculations mentioned in subsection (5)(a) and (b).
- (3) The amount of the profits or loss mentioned in subsection (2)(a) is referred to in this Chapter as the “accounting profit or loss”.
- (4) For the purposes of this Chapter “the tax adjustments” means the adjustments required or authorised by law in calculating for corporation tax purposes the profits of the long-term business (applying the same rules as apply to the calculation for those purposes of the profits of non-BLAGAB long-term business).
- (5) The rules contained in this Chapter have effect for the purpose of—
  - (a) calculating the BLAGAB trade profit or loss of the company, and
  - (b) calculating for corporation tax purposes the profits of the non-BLAGAB long-term business carried on by the company.

#### **Modifications etc. (not altering text)**

**C11** S. 114 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), **12** (with regs. 1(2), 2)

#### 115 Commercial allocation of accounting profit or loss and tax adjustments

- (1) The accounting profit or loss, and the tax adjustments, are to be allocated between the two separate businesses in accordance with an acceptable commercial method adopted by the company.
- (2) A method is an “acceptable commercial method” if it secures that the accounting profit or loss, and the tax adjustments, are allocated to the two separate businesses in a way that fairly represents the contribution made by those businesses to the accounting profit or loss as adjusted to take into account the tax adjustments.
- (3) The Treasury may make regulations for the purposes of this section—
  - (a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
  - (b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.

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- (4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account—
- (a) must be consistent with the method adopted for the purposes of section 98 for that period, and
  - (b) in the case of an overseas life insurance company, must also be consistent with the method for that period for attributing assets in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009 to its permanent establishment in the United Kingdom.

**Modifications etc. (not altering text)**

**C12** S. 115 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), **13** (with regs. 1(2), 2)

## CHAPTER 8

### ASSETS HELD FOR PURPOSES OF LONG-TERM BUSINESS

#### *Transfers of assets from different categories*

#### **116 UK life insurance companies**

- (1) If, at any time in a period of account of a UK life insurance company, an asset (or a part of an asset) held by the company—
- (a) ceases to be within one of the long-term business categories, and
  - (b) comes within another of those categories,
- the company is treated for the purposes of corporation tax on chargeable gains as if it had disposed of and immediately re-acquired the asset (or part) at that time for a consideration equal to the fair value of the asset (or part) at that time.
- (2) The long-term business categories in question are—
- (a) assets which are matched to BLAGAB liabilities of the company,
  - (b) assets which are matched to other long-term business liabilities of the company,
  - (c) assets which are held by the company for the purposes of any with-profits fund but which are not matched to its long-term business liabilities, and
  - (d) assets which are held for the purposes of the company's long-term business but which are not matched to its long-term business liabilities or held by it for the purposes of any with-profits funds.
- (3) If the company has more than one with-profits fund within subsection (2)(c), the assets which are held by it for the purposes of a particular fund but which are not matched to its long-term business liabilities are treated as assets within a separate long-term business category.
- (4) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

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- (5) If, at any time in a period of account of a UK life insurance company, an asset (or a part of an asset) held by the company—
- (a) ceases to be within a category set out in subsection (6), and
  - (b) comes within the other category set out there,
- the company is treated for the purposes of corporation tax as if it had disposed of and immediately re-acquired the asset (or part) for a consideration equal to the fair value of the asset (or part) at that time.
- (6) The categories in question are—
- (a) assets which are held for the purposes of the company's long-term business, and
  - (b) other assets.

### **117 Overseas life insurance companies: rule corresponding to s.116**

- (1) If, at any time in a period of account of an overseas life insurance company, an asset (or a part of an asset) held by the company—
- (a) ceases to be within one of the UK long-term business categories, and
  - (b) comes within another of those categories,
- the company is treated for the purposes of corporation tax on chargeable gains as if it had disposed of and immediately re-acquired the asset (or part) at that time for a consideration equal to the fair value of the asset (or part) at that time.
- (2) The UK long-term business categories in question are—
- (a) UK assets which are matched to BLAGAB liabilities of the company,
  - (b) UK assets which are matched to other long-term business liabilities of the company,
  - (c) UK assets which are held by the company for the purposes of any with-profits fund but which are not matched to its long-term business liabilities, and
  - (d) UK assets which are held for the purposes of the company's long-term business but which are not matched to its long-term business liabilities or held by it for the purposes of any with-profits funds.
- (3) If the company has more than one with-profits fund within subsection (2)(c), the UK assets which are held by it for the purposes of a particular fund but which are not matched to its long-term business liabilities are treated as assets within a separate UK long-term business category.
- (4) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.
- (5) If, at any time in a period of account of an overseas life insurance company, an asset (or a part of an asset) held by the company—
- (a) ceases to be within a category set out in subsection (6), and
  - (b) comes within another category set out there,
- the company is treated for the purposes of corporation tax as if it had disposed of and immediately re-acquired the asset (or part) for a consideration equal to the fair value of the asset (or part) at that time.
- (6) The categories in question are—

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- (a) UK assets which are held for the purposes of the company's long-term business,
  - (b) other UK assets, and
  - (c) assets which are held by the company but which are not UK assets.
- (7) For the purposes of this section and section 118, assets (whether situated in the United Kingdom or elsewhere) are “UK assets” of an overseas life insurance company if, in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009, they fall to be attributed to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

## **118 Transfers of business and transfers within a group**

- (1) If—
- (a) as a result of an insurance business transfer scheme transferring long-term business, a UK life insurance company or an overseas life insurance company acquires an asset, and
  - (b) the asset (or part of it) is within one of the applicable categories at the time immediately before the acquisition but is not within that category immediately after that time,
- the transferor is treated for the purposes of corporation tax on chargeable gains as if it had disposed of and immediately re-acquired the asset (or part) at the time immediately before the acquisition.
- (2) The consideration for this deemed disposal and re-acquisition is equal to the fair value of the asset (or part) at that time.
- (3) If the transferor or the transferee is an overseas life insurance company, an asset (or part of an asset) is taken as being in the same category immediately before and after the acquisition if the asset (or part)—
- (a) was within one category immediately before the acquisition, and
  - (b) was within a corresponding category immediately after the acquisition.
- (4) Subsections (1) to (3) do not apply if all the income of the long-term business of either the transferor or the transferee is chargeable to corporation tax on income under section 35 of CTA 2009.
- (5) For the purposes of subsections (1) to (3) “the applicable categories” means—
- (a) in the case of a UK life insurance company, the long-term business categories or a category of assets which are not held for the purposes of its long-term business, and
  - (b) in the case of an overseas life insurance company, the UK long-term business categories, a category of UK assets which are not held for the purposes of its long-term business or a category of assets which are held by it but which are not UK assets.
- (6) If—
- (a) a UK life insurance company or an overseas life insurance company disposes of or acquires an asset (or part of an asset),
  - (b) immediately before or after doing so, the asset (or part) is within the applicable category, and

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(c) section 171 or 173 of TCGA 1992 (transfers within a group) would, but for this subsection, apply to the disposal or acquisition, that section does not apply to the disposal or acquisition.

- (7) For the purposes of subsection (6) “the applicable category” means—
- (a) in the case of a UK life insurance company, the category of assets which are held for the purposes of its long-term business, and
  - (b) in the case of an overseas life insurance company, the category of UK assets which are held for the purposes of its long-term business.

### *Share pooling rules*

## **119 UK life insurance companies**

- (1) If the assets of a UK life insurance company include securities of a class all of which would, but for this section, be regarded as one holding for the purposes of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—
  - (a) so many of the securities so far as matched to BLAGAB liabilities of the company are treated as a separate holding,
  - (b) so many of the securities so far as matched to other long-term business liabilities of the company are treated as a separate holding,
  - (c) so many of the securities as are held by the company for the purposes of any with-profits fund but are not matched to its long-term business liabilities are treated as a separate holding,
  - (d) so many of the securities as are held for the purposes of the company's long-term business but are not matched to its long-term business liabilities or held by it for the purposes of any with-profits funds are treated as a separate holding, and
  - (e) any remaining securities are treated as a separate holding which is held otherwise than for the purposes of the company's long-term business.
- (2) If the company has more than one with-profits fund within subsection (1)(c), so many of the securities as are held by it for the purposes of a particular fund but are not matched to its long-term business liabilities are treated as a separate holding for the purposes of corporation tax on chargeable gains.
- (3) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.
- (4) In that case, if the company's assets include securities of a class all of which would, but for this section, be regarded as one holding for the purposes of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—
  - (a) so many of the securities as are held for the purposes of its long-term business are treated as a separate holding, and
  - (b) any remaining securities are treated as a separate holding which is held otherwise than for the purposes of its long-term business.

## **120 Overseas life insurance companies: rule corresponding to s.119**

- (1) If the assets of an overseas life insurance company include securities of a class all of which would, but for this section, be regarded as one holding for the purposes



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of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—

- (a) so many of the securities so far as UK securities matched to BLAGAB liabilities of the company are treated as a separate holding,
  - (b) so many of the securities so far as UK securities matched to other long-term business liabilities of the company are treated as a separate holding,
  - (c) so many of the securities as are UK securities held by the company for the purposes of any with-profits fund but not matched to its long-term business liabilities are treated as a separate holding,
  - (d) so many of the securities as are UK securities held for the purposes of the company's long-term business but not matched to its long-term business liabilities or held by it for the purposes of any with-profits funds are treated as a separate holding,
  - (e) any remaining UK securities are treated as a separate holding which is held otherwise than for the purposes of the company's long-term business, and
  - (f) any securities which are held by the company but which are not UK securities are treated as a separate holding.
- (2) If the company has more than one with-profits fund within subsection (1)(c), so many of the securities as are UK securities held by it for the purposes of a particular fund but are not matched to its long-term business liabilities are treated as a separate holding for the purposes of corporation tax on chargeable gains.
- (3) Subsection (1) does not apply if all the income of the company's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.
- (4) In that case, if the company's assets include securities of a class all of which would, but for this section, be regarded as one holding for the purposes of corporation tax on chargeable gains, the following pooling rules apply instead for those purposes—
- (a) so many of the securities as are UK securities held for the purposes of its long-term business are treated as a separate holding,
  - (b) any remaining UK securities are treated as a separate holding which is held otherwise than for the purposes of its long-term business, and
  - (c) any securities which are held by the company but which are not UK securities are treated as a separate holding.
- (5) For the purposes of this section, securities (whether situated in the United Kingdom or elsewhere) are “UK securities” of an overseas life insurance company if, in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009, they fall to be attributed to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

## **121 Sections 119 and 120: supplementary**

- (1) The applicable pooling rules also apply if the assets of the company in question include securities of a class and but for this section—
  - (a) some of them would be regarded as a 1982 holding for the purposes of corporation tax on chargeable gains, and
  - (b) the rest of them would be regarded as a section 104 holding for those purposes.
- (2) “The applicable pooling rules” means—
  - (a) the pooling rules set out in section 119(1)(a) to (e) and (4)(a) and (b), or

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- (b) the pooling rules set out in section 120(1)(a) to (f) and (4)(a) to (c).
- (3) In applying the applicable pooling rules in a case within subsection (1)—
  - (a) the reference in any of the paragraphs in section 119(1) or (4) or 120(1) or (4) to a separate holding is to be read, where necessary, as a reference to a separate 1982 holding and a separate section 104 holding, and
  - (b) the questions whether that reading is necessary for a paragraph and, if it is, how many securities falling within the paragraph constitute each of the two holdings are determined in accordance with paragraph 12 of Schedule 6 to FA 1990 and the identification rules applying on any subsequent acquisitions and disposals.
- (4) If the applicable pooling rules apply, section 105 of TCGA 1992 has effect as if securities regarded as included in different holdings as a result of those rules were securities of different classes.
- (5) In this section—
  - “1982 holding” has the same meaning as in section 109 of TCGA 1992, and
  - “section 104 holding” has the same meaning as in section 104(3) of TCGA 1992.
- (6) In this section and sections 119 and 120 “securities” means—
  - (a) shares,
  - (b) securities of a company, and
  - (c) any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

*Long-term business fixed capital*

**122 Assets forming part of long-term business fixed capital**

For the purposes of this Chapter assets that form part of the long-term business fixed capital of an insurance company are to be regarded as assets held by the company otherwise than for the purposes of its long-term business.

**CHAPTER 9**

RELIEF FOR BLAGAB TRADE LOSSES ETC

*The reliefs*

**123 Relief for BLAGAB trade losses against total profits**

- (1) Section 37 of CTA 2010 (relief for trade losses against total profits) is to apply in relation to a BLAGAB trade loss for an accounting period as it applies in relation to any other loss made in a trade for an accounting period.
- (2) Subsection (1) applies despite the fact that, had there been a BLAGAB trade profit for the accounting period, that profit would not have been charged to tax under section 35 of CTA 2009 and the I - E rules would have been applicable instead.

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## **124 Carry forward of [<sup>F17</sup>pre-1 April 2017] BLAGAB trade losses against subsequent profits**

- (1) This section applies if an insurance company carrying on basic life assurance and general annuity business makes a BLAGAB trade loss for an accounting period [<sup>F18</sup>beginning before 1 April 2017].
- (2) Relief is available under this section for that part of the BLAGAB trade loss (“the unrelieved loss”) for which no relief is given under section 37 of CTA 2010 (as applied by section 123).
- (3) The relief for the unrelieved loss is to be given as follows.
- (4) The unrelieved loss is to be carried forward to subsequent accounting periods (so long as the company continues to carry on basic life assurance and general annuity business).
- (5) For the purposes of—
  - (a) section 93 (minimum profits charge), and
  - (b) section 104 (policyholders' rate of tax),the BLAGAB trade profit of any such period is reduced by the unrelieved loss so far as that loss cannot be used under this subsection to reduce the BLAGAB trade profit of an earlier period [<sup>F19</sup>(but see also section 124D)].
- (6) Relief under this section is subject to restriction or modification in accordance with section 137(7) of CTA 2010 and other applicable provisions of the Corporation Tax Acts.

### **Textual Amendments**

- F17** Words in s. 124 heading inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 25\(2\)](#)
- F18** Words in s. 124(1) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 25\(3\)](#)
- F19** Words in s. 124(5) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 25\(4\)](#)

## **[<sup>F20</sup>124A Carry forward of post-1 April 2017 BLAGAB trade losses against subsequent profits**

- (1) This section applies if—
  - (a) an insurance company carrying on basic life assurance and general annuity business makes a BLAGAB trade loss for an accounting period beginning on or after 1 April 2017 (“the loss-making period”),
  - (b) relief under—
    - section 37 of CTA 2010 (as applied by section 123), or
    - Part 5 of CTA 2010 (group relief) (as applied by section 125),is not given for an amount of the loss (“the unrelieved amount”), and
  - (c) the company continues to carry on basic life assurance and general annuity business in the next accounting period (“the later period”).
- (2) The unrelieved amount is carried forward to the later period.

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- (3) Relief for the unrelieved amount is given to the company in the later period if the company has a BLAGAB trade profit for the later period.
- (4) The relief is given as set out in subsection (5).
- (5) For the purposes of—
  - (a) section 93 (minimum profits charge), and
  - (b) section 104 (policyholders' rate of tax),
 the BLAGAB trade profit of the later period is reduced by the unrelieved amount (but see also section 124D).
- (6) Relief under this section is subject to restriction or modification in accordance with section 137(7) of CTA 2010 and other applicable provisions of the Corporation Tax Acts.

#### Textual Amendments

**F20** Ss. 124A-124E inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 26](#)

#### Modifications etc. (not altering text)

**C13** Ss. 124A-124E: power to amend conferred by 2010 c. 4, s. 269ZQ (as inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 16](#))

### **124B Excess carried forward post-1 April 2017 losses: relief against total profits**

- (1) This section applies if—
  - (a) an amount of an insurance company's BLAGAB trade loss for an accounting period is carried forward to an accounting period of the company (“the later period”) under section 124A(2) or 124C(3), and
  - (b) any of that amount (“the unrelieved amount”) is not deducted under section 124A(5) or 124C(6) (as the case may be) from the company's BLAGAB trade profit (if any) of the later period.
- (2) The company may make a claim for relief to be given for the unrelieved amount under this section.
- (3) If the company makes a claim, the relief is given by deducting the unrelieved amount, or any part of it specified in the claim, from the company's total profits of the later period.
- (4) But (if the company is a Solvency 2 insurance company)—
  - (a) the company may not make a claim under this section if the unrelieved amount is wholly a shock loss, and
  - (b) the company may not make a claim specifying a part of the unrelieved amount if that part is (to any extent) a shock loss.
- (5) For the purposes of subsection (4) assume that in any use by the company of the BLAGAB trade loss for relief under—
  - (a) section 37 of CTA 2010 (as applied by section 123),
  - (b) Part 5 of CTA 2010 (as applied by section 125), or

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- (c) section 124A(5) or 124C(6),  
any part of it that is a shock loss is used before any part of it that is not a shock loss.
- (6) A claim under this section must be made—
- (a) within the period of two years after the end of the later period, or
  - (b) within such further period as an officer of Revenue and Customs may allow.
- (7) Relief under this section is subject to restriction or modification in accordance with section 137(7) of CTA 2010 and other applicable provisions of the Corporation Tax Acts.
- (8) In this section—
- “Solvency 2 insurance company” means an insurance undertaking, a reinsurance undertaking or a third-country insurance undertaking;
- “insurance undertaking” has the meaning given in Article 13(1) of the Solvency 2 Directive;
- “reinsurance undertaking” has the meaning given in Article 13(4) of the Solvency 2 Directive;
- “Solvency 2 Directive” means Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);
- “shock loss” has the meaning given by section 269ZK of CTA 2010;
- “third-country insurance undertaking” means an undertaking that has received authorisation under Article 162 of the Solvency 2 Directive from the Prudential Regulation Authority or the Financial Conduct Authority.

#### Textual Amendments

- F20** Ss. 124A-124E inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 26](#)

#### Modifications etc. (not altering text)

- C13** Ss. 124A-124E: power to amend conferred by 2010 c. 4, s. 269ZQ (as inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 16](#))
- C14** S. 124B restricted by 2010 c. 4, s. 676BC (as inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 76](#))

### 124C Further carry forward against subsequent profits of post-1 April 2017 loss not fully used

- (1) This section applies if—
- (a) an amount of an insurance company's BLAGAB trade loss for an accounting period is carried forward to an accounting period (“the later period”) of the company under section 124A(2) or subsection (3) of this section,
  - (b) any of that amount is unrelieved in the later period, and
  - (c) the company continues to carry on basic life assurance and general annuity business in the accounting period (“the further period”) after the later period.
- (2) An amount carried forward as mentioned in subsection (1)(a) is “unrelieved in the later period” so far as it is not—

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- (a) deducted under section 124A(5) or subsection (6) of this section from the company's BLAGAB trade profit (if any) of the later period,
  - (b) deducted from the company's total profits of the later period on a claim under 124B, or
  - (c) surrendered by way of group relief for carried-forward losses under Part 5A of CTA 2010.
- (3) So much of the amount mentioned in subsection (1)(a) as is unrelieved in the later period is carried forward to the further period.
- (4) Relief for the amount carried forward under subsection (3) (“the remaining carried forward amount”) is given to the company in the further period if the company has a BLAGAB trade profit for that period.
- (5) The relief is given as set out in subsection (6).
- (6) For the purposes of—
- (a) section 93 (minimum profits charge), and
  - (b) section 104 (policyholders' rate of tax),
- the BLAGAB trade profit of the further period is reduced by the remaining carried forward amount (but see also section 124D).
- (7) Relief under this section is subject to restriction or modification in accordance with section 137(7) of CTA 2010 and other applicable provisions of the Corporation Tax Acts.

#### Textual Amendments

**F20** Ss. 124A-124E inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 4 para. 26**

#### Modifications etc. (not altering text)

**C13** Ss. 124A-124E: power to amend conferred by 2010 c. 4, s. 269ZQ (as inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 4 para. 16**)

### 124D Restriction on deductions from BLAGAB trade profits

- (1) The sum of any deductions made by a company for an accounting period under sections 124(5), 124A(5) and 124C(6) may not exceed the relevant maximum.
- But this is subject to subsection (6).
- (2) In this section the “relevant maximum” means the sum of—
- (a) 50% of the company's relevant BLAGAB trade profits for the accounting period, and
  - (b) the company's BLAGAB trade profits deductions allowance for the accounting period.
- (3) A company's “relevant BLAGAB trade profits” for an accounting period are—
- (a) the company's BLAGAB trade profit for the accounting period, less
  - (b) the company's BLAGAB trade profits deductions allowance for the accounting period.

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But if the allowance mentioned in paragraph (b) exceeds the profit mentioned in paragraph (a), the company's "relevant BLAGAB trade profits" for the accounting period are nil.

- (4) A company's "BLAGAB trade profits deductions allowance" for an accounting period—
  - (a) is so much of the company's deductions allowance for the period as is specified in the company's tax return as its BLAGAB trade profits deductions allowance for the period, and
  - (b) accordingly, is nil if no amount of the company's deductions allowance for the period is so specified.
- (5) An amount specified under subsection (4)(a) as a company's BLAGAB trade profits deductions allowance for an accounting period may not exceed the difference between—
  - (a) the amount of the company's deductions allowance for the period, and
  - (b) the total of any amounts specified for the period under sections 269ZB(7)(a) of CTA 2010 (trading profits deduction allowance) and 269ZC(5)(a) of CTA 2010 (non-trading profits deduction allowance).
- (6) Subsection (1) does not apply to a company for an accounting period if the company's BLAGAB trade profit for the accounting period is not greater than nil.
- (7) Section 269ZB(9) of CTA 2010 gives the meaning of "deductions allowance" in relation to a company and an accounting period.

#### **Textual Amendments**

**F20** Ss. 124A-124E inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 26](#)

#### **Modifications etc. (not altering text)**

**C13** Ss. 124A-124E: power to amend conferred by 2010 c. 4, s. 269ZQ (as inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 16](#))

### **124E Section 124D: shock losses excluded from the restriction**

- (1) Subsection (2) applies where the company making a deduction under section 124A(5) or 124C(6) is a Solvency 2 insurance company.
- (2) The deduction is to be ignored for the purposes of section 124D(1) and section 269ZD(2)(b)(iii) of CTA 2010 so far as it is a deduction of a shock loss.
- (3) Where, by virtue of subsection (2), any deductions made by a Solvency 2 insurance company for an accounting period would be ignored for the purposes of section 124D(1), the references in section 124D(3)(a) and (6) to the company's BLAGAB trade profit have effect as references to that profit as reduced by those deductions.
- (4) In this section "Solvency 2 insurance company" and "shock loss" have the same meaning as in section 124B.]

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

#### **Textual Amendments**

**F20** Ss. 124A-124E inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 26](#)

#### **Modifications etc. (not altering text)**

**C13** Ss. 124A-124E: power to amend conferred by 2010 c. 4, s. 269ZQ (as inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 16](#))

## **125 Group relief**

- (1) Part 5 of CTA 2010 (group relief) is to apply in relation to a BLAGAB trade loss for an accounting period as it applies in relation to any other loss made in a trade for an accounting period.
- (2) Subsection (1) applies despite the fact that, had there been a BLAGAB trade profit for the accounting period, that profit would not have been charged to tax under section 35 of CTA 2009 and the I - E rules would have been applicable instead.
- (3) If for an accounting period an insurance company has—
  - (a) an I - E profit, and
  - (b) losses or other amounts within section 99(1)(d) to (g) of CTA 2010,
 the company's gross profits of the accounting period for the purposes of section 105 of that Act (restriction on surrender of those amounts) are not to include the policyholders' share of the I - E profit (as determined for the purposes of section 102).
- [<sup>F21</sup>(4) For provision about the application of Part 5A of CTA 2010 (group relief for carried-forward losses) in relation to BLAGAB trade losses see subsections (3) to (5) of section 188BB of that Act.]

#### **Textual Amendments**

**F21** S. 125(4) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 187](#)

### *Restrictions*

## **126 Restrictions in respect of non-trading deficit**

- (1) The amount of a BLAGAB trade loss for an accounting period of an insurance company that is available for relief under—
  - (a) section 37 of CTA 2010 (as applied by section 123), or
  - (b) Part 5 of CTA 2010 (group relief) (as applied by section 125),
 is to be reduced by the amount of any relevant non-trading deficit which the company has for the accounting period.

[<sup>F22</sup>(1A) A loss falls within subsection (1B) so far as it—



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- (a) would (apart from that subsection) be available for relief under section 124B (excess carried forward post-1 April 2017 losses: relief against total profits), and
  - (b) arose in an accounting period for which the insurance company has a relevant non-trading deficit.
- (1B) A loss (or amount of a loss) falling within this subsection is available for relief under section 124B only so far as it exceeds the amount of that relevant non-trading deficit.
- (1C) A loss falls within subsection (1D) so far as it—
- (a) is an amount which a company (“the surrendering company”) may surrender by virtue of section 188BB(4) (surrender of carried-forward BLAGAB trade losses), and
  - (b) arose in an accounting period for which the surrendering company has a relevant non-trading deficit.
- (1D) A loss (or amount of a loss) falling within this subsection is available for relief under Chapter 3 of Part 5A of CTA 2010 (claims for group relief) only so far as it exceeds the amount of that relevant non-trading deficit.
- (1E) For the purposes of subsections (1A) and (1C) it is to be assumed (where relevant) that in previous accounting periods losses which arose earlier have been utilised before losses which arose later.]
- (2) [<sup>F23</sup>In this section references] to a relevant non-trading deficit for an accounting period [<sup>F24</sup>are] to the non-trading deficit which the company [<sup>F25</sup>has, calculated by reference only to credits and debits—
- (a) arising in respect of such of the company's loan relationships as are debtor relationships (see section 302(6) of CTA 2009), and
  - (b) referable, in accordance with Chapter 4, to the company's basic life assurance and general annuity business.]

#### Textual Amendments

- F22** S. 126(1A)-(1E) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 188\(2\)](#)
- F23** Words in s. 126(2) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 188\(3\)\(a\)](#)
- F24** Word in s. 126(2) substituted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 188\(3\)\(b\)](#)
- F25** Words in s. 126(2) substituted (with effect in accordance with s. 67(5) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 67\(4\)](#)

### 127 No relief against policyholders' share of I - E profit

- (1) This section applies in the case of an insurance company carrying on basic life assurance and general annuity business.
- (2) None of the following reliefs are to be given against the policyholders' share of any I - E profit of the company for any accounting period (as determined for the purposes of section 102).
- (3) The reliefs in question are—

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- [<sup>F26</sup>(za) relief under section 124B (relief of excess carried-forward BLAGAB trade losses against total profits),]
    - (a) relief under section 37 of CTA 2010 (including as applied by section 123),
    - (b) relief under Chapter 2 or 4 of Part 4 of CTA 2010 (loss relief),
    - (c) relief under Part 5 of CTA 2010 (group relief) (including as applied by section 125),
  - [<sup>F27</sup>(ca) relief under Chapter 3 of Part 5A of CTA 2010 (group relief for carried-forward losses),]
    - (d) relief in respect of any qualifying charitable donation,
    - (e) relief in respect of any amount representing a non-trading deficit on the company's loan relationships calculated otherwise than by reference to debits and credits referable, in accordance with Chapter 4, to its basic life assurance and general annuity business.
- (4) If the company's basic life assurance and general annuity business is mutual business, subsection (3)(d) does not apply.

#### Textual Amendments

- F26** S. 127(3)(za) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 189\(a\)](#)
- F27** S. 127(3)(ca) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 189\(b\)](#)

## CHAPTER 10

### TRANSFERS OF LONG-TERM BUSINESS

#### *Transfers of BLAGAB*

#### **128 Relief for transferee in respect of transferor's BLAGAB expenses**

- (1) This section applies if, under an insurance business transfer scheme, there is a transfer of basic life assurance and general annuity business (or any part of that business) from one insurance company to another.
- (2) Acquisition expenses relief is to be given to the transferee for any acquisition expenses for which, on the assumptions set out below, that relief would have been given to the transferor for an accounting period starting after the date of the transfer.
- (3) “Acquisition expenses relief” means relief given, in accordance with section 79 (spreading of acquisition expenses), at step 3 in section 76.
- (4) For the transferee's first accounting period ending after the date of the transfer, acquisition expenses relief for the acquisition expenses within subsection (2) is to be determined as if that period had started with the date after the date of the transfer.
- (5) Relief at step 5 in section 76 is to be given to the transferee for any excess BLAGAB expenses for which, on the assumptions set out below, that relief would have been given to the transferor for an accounting period starting after the date of the transfer.

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- (6) For the purposes of this section it is to be assumed that—
  - (a) the transferor had continued to carry on the transferred business after the transfer, and
  - (b) the transferor had an accounting date ending with the date of the transfer (if that would not otherwise be the case).
- (7) If the transfer is a transfer of part of the business, references in this section to any expenses are to be read as references to the appropriate part of the expenses.
- (8) Any relief given to the transferee as a result of this section is instead of any relief that would otherwise have been given to the transferor.

## **129 Intra-group transfers and demutualisation**

- (1) This section applies if—
  - (a) under an insurance business transfer scheme, there is a transfer of basic life assurance and general annuity business (or any part of that business) from one insurance company to another, and
  - (b) the transfer is a relevant intra-group transfer or is in connection with a demutualisation.
- (2) A transfer is a “relevant intra-group transfer” if—
  - (a) the transferor and transferee are members of the same group of companies when the transfer occurs, and
  - (b) the transferee is within the charge to corporation tax in relation to the transfer.
- (3) A transfer is “in connection with a demutualisation” if—
  - (a) it is for the purposes of the conversion of a company (under the law of any territory) from one without share capital to one with share capital (without any change of legal personality), or
  - (b) it is a transfer by a mutual life insurance company of all, or substantially all, of its basic life assurance and general annuity business to an insurance company which is not a mutual life insurance company,and for the purposes of paragraph (b) a “mutual life insurance company” means an insurance company which carries on mutual life assurance business.
- (4) For the purpose of calculating the BLAGAB trade profit or loss of the transferor for any accounting period, any amount in respect of the transfer that is debited or credited in accounts drawn up by the transferor in accordance with generally accepted accounting practice is to be ignored.
- (5) For the purpose of calculating the BLAGAB trade profit or loss of the transferee for any accounting period, any amount in respect of the transfer that is debited or credited in accounts drawn up by the transferee in accordance with generally accepted accounting practice is to be ignored.
- (6) But if there is a difference between—
  - (a) the net amount recognised by the transferee in respect of the transfer of contracts of long-term insurance or contracts made in the course of capital redemption business, and
  - (b) the net amount recognised by the transferor in respect of the transfer of those contracts,

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the amount of the difference is to be taken into account for the purpose of calculating the BLAGAB trade profit or loss of the transferee for the accounting period in which those contracts are transferred.

- (7) The difference is to be taken into account—
- (a) as a receipt (if, when added to the net amount in subsection (6)(b), the result is the net amount in subsection (6)(a)), and
  - (b) as an expense (if, when subtracted from the net amount in subsection (6)(b), the result is the net amount in subsection (6)(a)).
- (8) The net amount recognised by an insurance company in respect of the transfer of the contracts is determined by subtracting—
- (a) the total amount in respect of [<sup>F28</sup>relevant] liabilities relating to the contracts that is or would be recognised for the purposes of a balance sheet drawn up at the relevant time by the company in accordance with generally accepted accounting practice, from
  - (b) the total amount in respect of [<sup>F29</sup>relevant] assets relating to the contracts that is or would be recognised for those purposes,
- [<sup>F30</sup>In this paragraph, “relevant liabilities” and “relevant assets” means those liabilities and assets which give rise to amounts that are taken into account as part of the calculation under Chapter 6 of Part 2, and “relevant time” means the time immediately before the transfer (in the case of the transferor) and the time immediately after it (in the case of the transferee).]
- (9) The Treasury may by order amend any of subsections (6) to (8).
- (10) This section does not apply to any amount that arises in respect of a transfer so far as the transfer consists of a with-profits fund transfer.

The reference here to a with-profits fund transfer is a reference to—

- (a) a transfer of business from a with-profits fund to a fund that is not a with-profits fund, or
- (b) a transfer of business from a fund that is not a with-profits fund to a with-profits fund.

- (11) If this section applies, the provisions of Part 4 of TIOPA 2010 (transfer pricing) do not apply.

#### Textual Amendments

- F28** Word in s. 129(8)(a) inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Insurance Companies \(Amendment to Section 129 of, and Schedule 17 to, the Finance Act 2012\) Regulations 2015 \(S.I. 2015/1959\)](#), regs. 1, **2(2)**
- F29** Word in s. 129(8)(b) inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Insurance Companies \(Amendment to Section 129 of, and Schedule 17 to, the Finance Act 2012\) Regulations 2015 \(S.I. 2015/1959\)](#), regs. 1, **2(2)**
- F30** Words in s. 129(8) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Insurance Companies \(Amendment to Section 129 of, and Schedule 17 to, the Finance Act 2012\) Regulations 2015 \(S.I. 2015/1959\)](#), regs. 1, **2(3)**

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### **130 Transfers between non-group companies: present value of in-force business**

- (1) This section applies if—
  - (a) under an insurance business transfer scheme, there is a transfer of basic life assurance and general annuity business (or any part of that business) from one insurance company to another,
  - (b) either the transferor and transferee are not members of the same group of companies when the transfer occurs or, if they are, the transfer consists of or includes a with-profits fund transfer within the meaning of section 129(10),
  - (c) the accounts of the transferee drawn up in accordance with generally accepted accounting practice include an asset that represents, as at the time of the transfer, the value of future profits arising from the relevant transferred business, and
  - (d) the asset is not one to which Part 8 of CTA 2009 (intangible fixed assets) applies.
- (2) Amounts in respect of the asset that are debited or credited in accounts drawn up by the transferee in accordance with generally accepted accounting practice are to be taken into account in calculating the BLAGAB trade profit or loss of the transferee.
- (3) In subsection (1)(c) “the relevant transferred business” means—
  - (a) if the transferor and transferee are not members of the same group of companies when the transfer occurs, the business (or part of the business) transferred under the insurance business transfer scheme, and
  - (b) if the transfer consists of or includes a with-profits fund transfer, the business transferred by the with-profits fund transfer.
- (4) For the purposes of subsection (1)(c) no account is to be taken of an asset so far as it is regarded for accounting purposes as internally-generated.
- (5) This section does not apply so far as section 129(5) applies in relation to the transfer.
- (6) Nothing in this section is to apply in relation to transfers taking place before 1 January 2013.

#### *Transfers of non-BLAGAB long-term business*

### **131 Application of ss. 129 and 130 to transfers of non-BLAGAB long-term business**

- (1) This section applies if, under an insurance business transfer scheme, there is a transfer of non-BLAGAB long-term business (or any part of that business) from one insurance company to another.
- (2) If, for the purposes of section 129, the transfer—
  - (a) is a relevant intra-group transfer, or
  - (b) is in connection with a demutualisation,section 129 applies for the purpose of calculating for corporation tax purposes the profits of the non-BLAGAB long-term business of the transferor or transferee for any accounting period.
- (3) If the conditions in section 130(1)(b) to (d) are met in the case of the transfer, section 130 applies for the purpose of calculating for corporation tax purposes the

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profits of the non-BLAGAB long-term business of the transferee for any accounting period.

*Transfers of long-term business: anti-avoidance*

**132 Anti-avoidance**

- (1) This section applies if—
  - (a) under an insurance business transfer scheme, there is a transfer on or after 1 January 2013 from one insurance company to another of basic life assurance and general annuity business (or any part of that business) or non-BLAGAB long-term business (or any part of that business), and
  - (b) the main purpose, or one of the main purposes, of a company (“C”) in entering into one or more of the arrangements included in the insurance business transfer arrangements is an unallowable purpose.
- (2) The “insurance business transfer arrangements” consist of—
  - (a) the insurance business transfer scheme under which the transfer is made, and
  - (b) any arrangement entered into on or after 1 January 2013 with a connection (direct or indirect) to that scheme.
- (3) A purpose is an “unallowable purpose” if—
  - (a) it consists of securing a tax advantage for C or any other company, or
  - (b) it is not amongst C's business or other commercial purposes.
- (4) There are to be made such adjustments of any income or gains chargeable to corporation tax as are required to negate any tax advantage arising to C or any other company so far as referable to the unallowable purpose on a just and reasonable apportionment.
- (5) For the purposes of this section—
  - (a) “arrangement” includes any agreement, scheme, transaction or understanding (whether or not legally enforceable), and
  - (b) section 1139 of CTA 2010 (meaning of “tax advantage”) applies, but reading references to tax as references to corporation tax.
- (6) If C is not within the charge to corporation tax in respect of a part of its activities, C's business or other commercial purposes for the purposes of this section do not include the purposes of that part of its activities.

**133 Clearance procedure**

- (1) Section 132 does not apply if, on an application by C, HMRC Commissioners give a notice under this section stating that they are satisfied—
  - (a) that C's main purpose in entering into the arrangements included in the insurance business transfer arrangements is not an unallowable purpose or none of C's main purposes in entering into those arrangements is an unallowable purpose, or
  - (b) that the transferor and the transferee are members of the same group of companies when the transfer occurs and that the transfer produces no tax advantage for the group.

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- (2) For this purpose the transfer produces no tax advantage for the group if—
- (a) as a result of the insurance business transfer arrangements, there is an increase in the liability to corporation tax of one or more companies which are members of the group, and
  - (b) the amount (or total amount) of that increase is at least equal to the amount (or total amount) of the reduction in the liability to corporation tax of the transferor or the transferee that arises as a result of those arrangements.

### **134 Section 133: supplementary**

- (1) An application under section 133 must—
- (a) be in writing, and
  - (b) contain particulars of the insurance business transfer arrangements.
- (2) HMRC Commissioners may by notice require C to provide further particulars in order to enable them to determine the application.
- (3) A requirement may be imposed under subsection (2) within 30 days of the receipt of the application or of any further particulars required under that subsection.
- (4) If a notice under that subsection is not complied with within 30 days or such longer period as HMRC Commissioners may allow, they need not proceed further on the application.
- (5) HMRC Commissioners must give notice to C of their decision on an application under section 133—
- (a) within 30 days of receiving the application, or
  - (b) if they give a notice under subsection (2), within 30 days of that notice being complied with.
- (6) If any particulars provided under this section do not fully and accurately disclose all facts and considerations material for the decision of HMRC Commissioners, any resulting notice under section 133 is void.

### *Interpretation*

### **135 Meaning of “group” of companies**

For the purposes of this Chapter whether or not at any time companies are members of the same group of companies is to be determined in accordance with section 170(2) to (11) of TCGA 1992.

## **CHAPTER 11**

### **DEFINITIONS**

### **136 Meaning of “BLAGAB trade profit” and “BLAGAB trade loss”**

- (1) In relation to the carrying on by an insurance company of basic life assurance and general annuity business, this section explains for the purposes of this Part what is meant by—

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- (a) the “BLAGAB trade profit” of the company, and
  - (b) the “BLAGAB trade loss” of the company.
- (2) The company has a “BLAGAB trade profit” for an accounting period if, calculated in accordance with the ordinary trading rules, there are profits of that business for the accounting period that, but for sections 68 and 69, would be chargeable to corporation tax on income under section 35 of CTA 2009 (charge to tax on trade profits).
- (3) The amount of the BLAGAB trade profit is the amount of those profits that, but for those sections, would be so chargeable.
- (4) The company has a “BLAGAB trade loss” for an accounting period if, calculated in accordance with the ordinary trading rules, the company makes a loss in that business for the accounting period in a case where, had there been profits, they would, but for those sections, have been so chargeable.
- (5) The ordinary trading rules have effect for the purpose of calculating the company's BLAGAB trade profit or loss subject to the provision made by—
- (a) sections 106 to 108 (policyholder tax),
  - (b) Chapter 6 (trade calculation rules applying to long-term business),
  - (c) Chapter 7 (trading apportionment rules), and
  - (d) sections 129 and 130 (transfers of BLAGAB).
- (6) For the purposes of this section “the ordinary trading rules” means the rules for calculating the profits of a trade for the purposes of the charge to corporation tax on income under section 35 of CTA 2009.

### **137 Meaning of “the long-term business fixed capital”**

- (1) This section explains for the purposes of this Part what is meant by an asset forming part of “the long-term business fixed capital” of an insurance company.
- (2) An asset forms part of “the long-term business fixed capital” of the company if—
- (a) it is held for the purposes of its long-term business, and
  - (b) it is a structural asset of that business.
- (3) The reference to a structural asset of a company's long-term business includes shares, debts and loans which—
- (a) are held by the company in a fund that is not a with-profits fund, and
  - (b) are of a kind that, if they had been held on 31 December 2012, their value would have been required to be entered in lines 21 to 24 of Form 13 in the periodical return of the company for the period ending immediately before 1 January 2013 (UK insurance dependants and other insurance dependants).
- (4) For the purposes of subsection (3)(b) “periodical return” has the same meaning as it has in Chapter 1 of Part 12 of ICTA.
- (5) The Treasury may make regulations providing for assets of a company's long-term business which are of a description specified in the regulations to be regarded for the purposes of this section as being, or as not being, structural assets of that business.



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**Modifications etc. (not altering text)**

**C15** S. 137 applied by 1992 c. 12, Sch. 7AC para. 30A(1) (as inserted (with effect in accordance with s. 28(7) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 28\(5\)](#))

**138 Meaning of assets that are “matched to” liabilities**

- (1) This section—
  - (a) defines for the purposes of this Part what is meant by an asset that is matched to a BLAGAB liability or other long-term business liability and what is meant by the whole or a part of an asset being matched, and
  - (b) explains for those purposes how to work out the part of an asset that is matched to a BLAGAB liability or other long-term business liability.
- (2) An asset is matched to a BLAGAB liability if, in accordance with the applicable method, some or all of the income or other return arising from that particular asset is specifically referable to the company's basic life assurance and general annuity business.
- (3) An asset is matched to another long-term business liability if, in accordance with the applicable method, some or all of the income or other return arising from that particular asset is specifically referable to the company's non-BLAGAB long-term business.
- (4) The whole of an asset is matched to a BLAGAB liability if, in accordance with the applicable method, the whole of the income or other return arising from that particular asset is specifically referable to the company's basic life assurance and general annuity business.
- (5) A part of an asset is matched to a BLAGAB liability or other long-term business liability if, in accordance with the applicable method, part of the income or other return arising from that particular asset is specifically referable to the company's basic life assurance and general annuity business or (as the case may be) its non-BLAGAB long-term business.
- (6) A part of an asset is matched to a BLAGAB liability or other long-term business liability in proportion to the income or other return arising from that particular asset that, in accordance with the applicable method, is specifically referable to the company's basic life assurance and general annuity business or (as the case may be) its non-BLAGAB long-term business.
- (7) For the purposes of this section “the applicable method”—
  - (a) in relation to the company's basic life assurance and general annuity business, means the method adopted for the purposes of section 98 which has effect in relation to the period of account in which the income or other return arises, and
  - (b) in relation to the company's non-BLAGAB long-term business, means the method adopted for the purposes of section 115 which has effect in relation to the period of account in which the income or other return arises.
- (8) For the purposes of this section any income or other return arising from an asset is to be regarded as specifically referable to a category of business in accordance with the applicable method in so far as that method is adopted in relation to the income or other return in consequence of a contractual requirement imposed on the company relating to the category of business in question.

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### 139 Minor definitions

(1) In this Part—

“closing”, in relation to a period of account, means the position at the end of the period of account,

“derivative contract” has the same meaning as in Part 7 of CTA 2009,

“fair value”—

(a) in relation to money, means its amount, and

(b) in relation to other assets, means the amount which an independent person selling the assets would get,

“HMRC Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,

“insurance business transfer scheme” means—

(a) a scheme falling within section 105 of FISMA 2000, including an excluded scheme falling within Case 2, 3, 4 or 5 of subsection (3) of that section, or

(b) a scheme which would fall within that subsection but for subsection (1) (b) of that section,

“insurance special purpose vehicle” means an undertaking which—

(a) assumes risks from insurance or re-insurance undertakings, and

(b) fully funds its exposures to those risks through the proceeds of a debt issue or other financing mechanism where the repayment rights of the providers of the mechanism are subordinated to the re-insurance obligations of the undertaking,

“liabilities”, in relation to an insurance company, means—

(a) the mathematical reserves of the company as determined in accordance with section 1.2 of the [<sup>F31</sup>INSPRU], and

(b) liabilities of the company (whose value falls to be determined in accordance with section 1.3 of the [<sup>F32</sup>GENPRU]) which arise from deposit back arrangements,

“overseas life insurance company” means an insurance company which is not resident in the United Kingdom but which carries on life assurance business in the United Kingdom through a permanent establishment there,

“re-insurance” includes retrocession,

“UK life insurance company” means an insurance company other than an overseas life insurance company,

“with-profits fund” has the meaning given by the [<sup>F33</sup>IPRU (INS)].

(2) In this Part any reference to the debiting or crediting of an amount in accounts drawn up by an insurance company is a reference to bringing in the amount as a debit or credit in—

(a) the company’s profit and loss account, income statement or statement of comprehensive income (or other comprehensive income),

(b) a statement of total recognised gains and losses, or

(c) any other statement of items used in calculating the company’s income or gains, or its losses or expenses, for accounting purposes,

irrespective of how any account or statement within any of paragraphs (a) to (c) is described or otherwise referred to.

(3) For this purpose—

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“credit” means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account, and

“debit” means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.

(4) In this section—

“deposit back arrangements” means arrangements by which an amount is deposited by the re-insurer under a contract of re-insurance with the cedant,

[<sup>F34</sup>“GENPRU” means the General Prudential Sourcebook made by the Prudential Regulation Authority under FISMA 2000,

“INSPRU” means the Prudential Sourcebook for Insurers made by the Prudential Regulation Authority under FISMA 2000, and

“IPRU (INS)” means the Interim Prudential Sourcebook for Insurers made by the Prudential Regulation Authority under FISMA 2000.]

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#### Textual Amendments

**F31** Words in s. 139(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 16(2)(a)(i)**

**F32** Words in s. 139(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 16(2)(a)(ii)**

**F33** Words in s. 139(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 16(2)(b)**

**F34** Words in s. 139(4) inserted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 16(3)(a)**

**F35** Words in s. 139(4) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Consequential Amendments\) Order 2013 \(S.I. 2013/636\)](#), art. 1(2), **Sch. para. 16(3)(b)**

## 140 Abbreviations

(1) In this Part—

“FISMA 2000” means the Financial Services and Markets Act 2000, and

“FISMA (Regulated Activities) Order 2001” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(2) For abbreviations of other Acts, see section 228.

## 141 Index of defined terms, etc

(1) In this Part the following expressions are defined or otherwise explained by the provisions indicated—

<i>Expression</i>	<i>Where explained</i>
basic life assurance and general annuity business (abbreviated to “BLAGAB”)	sections 57 and 67(5)
BLAGAB trade loss	section 136

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BLAGAB trade profit	section 136
closing	section 139(1)
contract of insurance	section 64
contract of long-term insurance	section 64
debiting or crediting an amount in accounts drawn up by a company	section 139(2) and (3)
derivative contract	section 139(1)
excess BLAGAB expenses	section 73
fair value	section 139(1)
HMRC Commissioners	section 139(1)
I - E profit	section 73
the I - E rules	section 70(1) and (2)
insurance business transfer scheme	section 139(1)
insurance company	section 65
insurance special purpose vehicle	section 139(1)
liabilities	section 139(1)
life assurance business	section 56
long-term business	section 63(1)
long-term business fixed capital	section 137
matched (in case of assets matched to a BLAGAB liability or other long-term business liability)	section 138
non-BLAGAB long-term business	sections 66 and 67
non-taxable distributions	section 94(4) and (5)
overseas life insurance company	section 139(1)
PHI business	section 63(2)
re-insurance	section 139(1)
UK life insurance company	section 139(1)
with-profits fund	section 139(1)

- (2) The expressions in the above table have the same meaning in any other provision of the Corporation Tax Acts that makes special provision in relation to—
- (a) insurance companies,
  - (b) any category of life assurance business carried on by insurance companies, or
  - (c) long-term business carried on by insurance companies.

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## CHAPTER 12

### SUPPLEMENTARY

#### *Powers conferred on Treasury or HMRC Commissioners*

#### **142 Power to amend Part 2 etc**

- (1) If, in consequence of the exercise of any power under FISMA 2000, they consider it expedient to do so, the Treasury may by order amend—
  - (a) this Part, or
  - (b) any other provision of the Corporation Tax Acts that makes special provision in relation to insurance companies, any category of life assurance business carried on by insurance companies or long-term business carried on by insurance companies.
- (2) An order under subsection (1) may be made so as to have effect in relation to—
  - (a) any period ending on or before the day on which the order is made, or
  - (b) any period beginning before and ending after that day,but only if the power under FISMA 2000 is exercised so as to have effect in relation to the period.
- (3) An order under subsection (1) may—
  - (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

#### **143 Power to amend definition of “insurance business transfer scheme” etc**

- (1) If, in consequence of any amendment of section 105 of FISMA 2000 (insurance business transfer schemes), they consider it expedient to do so, the Treasury may by order amend—
  - (a) the definition of “insurance business transfer scheme” given by section 139, or
  - (b) any other provision of the Corporation Tax Acts that makes special provision in relation to insurance companies, any category of life assurance business carried on by insurance companies or long-term business carried on by insurance companies.
- (2) An order under subsection (1) may be made so as to have effect in relation to—
  - (a) any period ending on or before the day on which the order is made, or
  - (b) any period beginning before and ending after that day,but only if the amendment of section 105 of FISMA 2000 has effect in relation to that period.
- (3) An order under subsection (1) may—
  - (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

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#### **144 Power to modify provisions applying to overseas life insurance companies**

- (1) The Treasury may by regulations provide for the Corporation Tax Acts to have effect in relation to overseas life insurance companies subject to such exceptions and other modifications as may be prescribed by the regulations.
- (2) The power under subsection (1) includes power to make provision in place of, and in consequence to repeal or revoke, any provision in relation to overseas life insurance companies which is made by or under—
  - (a) this Part, or
  - (b) any other provision of the Corporation Tax Acts.
- (3) Regulations under subsection (1) may be made so as to have effect in relation to any period ending on or after the day on which the regulations are made.
- (4) Regulations under subsection (1) may—
  - (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.
- (5) The power to make consequential provision conferred by subsection (4)(b) includes power to amend any provision made by or under any Act.

#### **145 Orders and regulations**

- (1) Any power of the Treasury or HMRC Commissioners to make any order or regulations under this Part is exercisable by statutory instrument.
- (2) Any statutory instrument containing any order or regulations made by the Treasury or HMRC Commissioners under this Part is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) Nothing in this Part that authorises the inclusion of any particular kind of provision in any order or regulations under this Part is to be read as restricting the generality of the provision that may be included in the order or regulations.

*Minor and consequential amendments and transitional provision*

#### **146 Minor and consequential amendments**

Schedule 16 contains minor and consequential amendments.

#### **147 Transitional provision**

Schedule 17 contains transitional provision in connection with the coming into force of this Part.

*Commencement etc*

#### **148 Commencement**

- (1) The provisions of this Part (other than section 149) have effect in relation to accounting periods of companies beginning on or after 1 January 2013.

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- (2) Subsection (1) is subject to the operation of any provision of Schedule 17 in relation to times before that date.

### **149 Accounting periods straddling 1 January 2013**

- (1) If, apart from this section, an insurance company would have had an accounting period beginning before 1 January 2013 and ending on or after that date, the accounting period of the company is to end instead on 31 December 2012.
- (2) Accordingly, the rules in section 10 of CTA 2009 (end of accounting period) are subject to this section.

## **PART 3**

### **FRIENDLY SOCIETIES CARRYING ON LONG-TERM BUSINESS**

#### *Outline of provisions of Part*

### **150 Overview**

- (1) This Part makes special provision for corporation tax purposes in relation to long-term and other business carried on by friendly societies.
- (2) Sections 151 and 152 contain provision for applying provisions of the Corporation Tax Acts relating to insurance companies so that they also apply to friendly societies, subject to provision made by regulations.
- (3) Sections 153 to 163 make provision for, and in connection with, a special exemption from corporation tax for BLAGAB or eligible PHI business.
- (4) Sections 164 to 169 make provision for, and in connection with, a further exemption from corporation tax for other business.
- (5) The remainder of the Part contains—
- (a) provision in relation to certain transfer schemes (see section 170),
  - (b) provision for an exemption from corporation tax for unregistered friendly societies (see section 171), and
  - (c) definitions and other supplementary material (see sections 172 to 179).

#### *Long-term business rules to apply to friendly societies*

### **151 Friendly societies subject to same basic rules as mutual insurers**

- (1) The Corporation Tax Acts apply to—
- (a) life assurance business carried on by friendly societies, and
  - (b) other long-term business carried on by friendly societies,
- in the same way as they apply respectively to mutual life assurance business carried on by insurance companies and other long-term business carried on by insurance companies.

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- (2) Subsection (1) does not apply to business which is exempt BLAGAB or eligible PHI business.
- (3) The Treasury may by regulations provide that the Corporation Tax Acts as applied by subsection (1) have effect subject to such exceptions or other modifications as may be prescribed by the regulations.
- (4) The regulations may require any part of any business to be treated as a separate business.
- (5) The regulations may make provision having retrospective effect.
- (6) The regulations may—
  - (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

## **152 Friendly societies subject to transfer of business rules**

- (1) In this section “the transfer of business rules” means—
  - (a) Chapter 10 of Part 2, and
  - (b) any other provisions of the Corporation Tax Acts that apply on the transfer from an insurance company to another insurance company of the whole or part of its life assurance business or of its other long-term business.
- (2) The transfer of business rules apply in the same way—
  - (a) on the transfer of the whole or part of the business of a friendly society to another friendly society,
  - (b) on the amalgamation of friendly societies,
  - (c) on the transfer of the whole or part of the business of a friendly society to a company which is not a friendly society,
  - (d) on the conversion of a friendly society into a company which is not a friendly society, and
  - (e) on the transfer of the whole or part of the business of an insurance company to a friendly society.
- (3) The Treasury may by regulations provide that the transfer of business rules as applied by subsection (2) have effect subject to such exceptions or other modifications as may be prescribed by the regulations.
- (4) The regulations may make provision having retrospective effect.
- (5) The regulations may—
  - (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.



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### *Exempt BLAGAB or eligible PHI business*

#### **153 Exemption for certain BLAGAB or eligible PHI business**

- (1) A friendly society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits arising from exempt BLAGAB or eligible PHI business.
- (2) The exemption applies only if the society makes a claim.
- (3) For the meaning of “BLAGAB or eligible PHI business”, see section 154.
- (4) For the meaning of “exempt” BLAGAB or eligible PHI business, see section 155.

#### **154 Meaning of “BLAGAB or eligible PHI business”**

- (1) In this Part “BLAGAB or eligible PHI business” means—
  - (a) basic life assurance and general annuity business, and
  - (b) any PHI business so far as consisting of the effecting or carrying out of qualifying contracts,but see subsections (3) and (4) for some qualifications.
- (2) A contract is a “qualifying” contract if—
  - (a) it is made before 1 September 1996, or
  - (b) it is made on or after that date and it also falls within paragraph I, II or III of Part 2 of Schedule 1 to the FISMA (Regulated Activities) Order 2001.
- (3) A contract made before 1 September 1996 which effects a policy affording provision for injury, sickness or other infirmity is to be regarded for the purposes of this Part as forming part of “BLAGAB or eligible PHI business” only if—
  - (a) the policy also affords assurance for a gross sum independent of injury, sickness or other infirmity,
  - (b) at least 60% of the total premiums are attributable to the provision afforded during injury, sickness or other infirmity, and
  - (c) there is no bonus or addition which may be declared or accrue upon the assurance of the gross sum.
- (4) Business is not to be regarded as “BLAGAB or eligible PHI business” of a friendly society for the purposes of this Part so far as it consists of the assurance of any annuity the consideration for which consists of sums obtainable—
  - (a) on the maturity, or
  - (b) on the surrender,of any other policy of assurance issued by the society which forms part of its exempt BLAGAB or eligible PHI business.

#### **155 Meaning of “exempt” BLAGAB or eligible PHI business**

- (1) In this Part “exempt” BLAGAB or eligible PHI business means BLAGAB or eligible PHI business other than non-qualifying business.
- (2) Business is “non-qualifying” so far as it consists of—

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- (a) the assurance of gross sums, or the granting of annuities, which meet the conditions set out in the following table (which vary according to the date on which the contracts in question were made), or
- (b) the effecting or carrying out of contracts for the assurance of gross sums which are made on or after 20 March 1991 and which are expressed at the outset not to be made in the course of exempt BLAGAB or eligible PHI business.

(3) This is the table mentioned above—

<i>Contracts to which assurance or annuities relate</i>	<i>Applicable limit for premiums or gross sums</i>	<i>Applicable limit for annuities</i>
Contracts made on or after 1 May 1995	Assurance of gross sums under contracts which the total premiums payable in any period of 12 months exceed £270	Granting of annuities under of annual amounts exceeding £156
Contracts made on or after 25 July 1991 but before 1 May 1995	Assurance of gross sums under contracts which the total premiums payable in any period of 12 months exceed £200	Granting of annuities under of annual amounts exceeding £156
Contracts made on or after 1 September 1990 but before 25 July 1991	Assurance of gross sums under contracts which the total premiums payable in any period of 12 months exceed £150	Granting of annuities under of annual amounts exceeding £156
Contracts made on or after 1 September 1987 but before 1 September 1990	Assurance of gross sums under contracts which the total premiums payable in any period of 12 months exceed £100	Granting of annuities under of annual amounts exceeding £156
Contracts made on or after 14 March 1984 but before 1 September 1987	Assurance of gross sums exceeding £750	Granting of annuities of annual amounts exceeding £156
Contracts made before 14 March 1984	Assurance of gross sums exceeding £500	Granting of annuities of annual amounts exceeding £104

- (4) In applying the limits in the above table in relation to the total premiums payable in any period of 12 months (in the case of contracts made on or after 1 September 1987)—
- (a) if the premiums are payable more frequently than annually, ignore an amount equal to 10% of the premiums, and
  - (b) ignore so much of any premium as is charged on the ground that an exceptional risk of death or disability is involved.
- (5) In applying the limits in the above table in the case of contracts made on or after 1 September 1987, ignore any bonus or addition declared upon an annuity.

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- (6) In applying the limits in the above table in the case of contracts made before 1 September 1987, ignore any bonus or addition which—
  - (a) is declared upon the assurance of a gross sum or annuity, or
  - (b) accrues upon the assurance of a gross sum or annuity by reference to an increase in the value of any investments.
- (7) In the case of a contract for the assurance of a gross sum under exempt BLAGAB or eligible PHI business made on or after 1 September 1987 but before 1 May 1995, there is a special rule if the amount payable by way of premium under the contract is increased as a result of a variation made—
  - (a) in the period beginning with 25 July 1991 and ending with 31 July 1992, or
  - (b) in the period beginning with 1 May 1995 and ending with 31 March 1996.
- (8) The rule is that, in relation to any profits relating to the contract as varied, the contract is to be treated for the purposes of the above table as made at the time of the variation.

#### **156 Societies with no provision for assuring gross sums exceeding £2,000 etc**

- (1) This section applies to a friendly society if its rules make no provision for it to carry on BLAGAB or eligible PHI business, or other long-term business, consisting of—
  - (a) the assurance of gross sums exceeding £2,000, or
  - (b) the granting of annuities of annual amounts exceeding £416.
- (2) The table in section 155 applies in relation to a friendly society to which this section applies as if, in the final row of that table—
  - (a) the reference to £500 were a reference to £2,000, and
  - (b) the reference to £104 were a reference to £416.
- (3) If at any time a friendly society to which this section applies amends its rules so as to cease to be such a friendly society, any part of its BLAGAB or eligible PHI business which—
  - (a) relates to contracts made before that time, and
  - (b) immediately before that time was exempt BLAGAB or eligible PHI business,continues to be exempt BLAGAB or eligible PHI business for the purposes of this Part.
- (4) If at any time a friendly society to which this section does not apply amends its rules so as to become a friendly society to which this section applies, any part of its BLAGAB or eligible PHI business which—
  - (a) relates to contracts made before that time, and
  - (b) immediately before that time was not exempt BLAGAB or eligible PHI business,continues not to be exempt BLAGAB or eligible PHI business for the purposes of this Part.
- (5) If at any time a friendly society to which this section does not apply acquires by way of transfer of engagements or amalgamation from another friendly society any BLAGAB or eligible PHI business which—
  - (a) relates to contracts made before that time, and
  - (b) immediately before that time was exempt BLAGAB or eligible PHI business,that business continues to be exempt BLAGAB or eligible PHI business for the purposes of this Part.

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- (6) If at any time a friendly society to which this section applies acquires by way of transfer of engagements or amalgamation from another friendly society any BLAGAB or eligible PHI business which—
- (a) relates to contracts made before that time, and
  - (b) immediately before that time was not exempt BLAGAB or eligible PHI business,
- that business continues not to be exempt BLAGAB or eligible PHI business for the purposes of this Part.

### **157 Transfers to friendly societies**

- (1) If at any time an insurance business transfer scheme transfers any long-term business to a friendly society, any BLAGAB or eligible PHI business which relates to contracts included in the transfer is subsequently not to be capable of being exempt BLAGAB or eligible PHI business for the purposes of this Part.
- (2) This rule does not apply in relation to business relating to contracts to which section 158 applied immediately before the transfer had effect.

### **158 Transfers from friendly societies to insurance companies etc**

- (1) If at any time an insurance company acquires by way of transfer of engagements from a friendly society any BLAGAB or eligible PHI business which—
  - (a) relates to contracts made before that time, and
  - (b) immediately before that time was exempt BLAGAB or eligible PHI business,
 that business continues to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.
- (2) If at any time a friendly society ceases as a result of section 91 of FSA 1992 (conversion into company) to be registered under that Act, any part of its BLAGAB or eligible PHI business which—
  - (a) relates to contracts made before that time, and
  - (b) immediately before that time was exempt BLAGAB or eligible PHI business,
 continues to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.
- (3) If contracts constituting or forming part of the business of a company covered by this section are varied during an accounting period of the company so as to increase the premiums payable under them, the business relating to those contracts is not exempt from corporation tax for that or any subsequent accounting period.
- (4) For the purposes of the Corporation Tax Acts any part of a company's business which is exempt from corporation tax as a result of this section is to be treated as a separate business from any other business carried on by the company.
- (5) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax as a result of this section, the Corporation Tax Acts have effect subject to such exceptions or other modifications as they consider appropriate.
- (6) The regulations may make provision having retrospective effect.

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- (7) The regulations may—
- (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

### **159 Exception in case of breach of maximum benefits payable to members**

- (1) The exemption from corporation tax afforded by section 153, 156(3) or (5) or 158 does not apply in relation to so much of the profits arising to a friendly society or insurance company from any business as is attributable to a policy which—
- (a) is not a qualifying policy as a result of sub-paragraph (2) of paragraph 6 of Schedule 15 to ICTA and is not an excluded policy, and
  - (b) would not be a qualifying policy as a result of that sub-paragraph if all excluded policies were ignored.
- (2) A policy is an excluded policy if—
- (a) it is held otherwise than with the friendly society or insurance company, or
  - (b) the person who has the contract effecting the policy acquired the rights under it on an assignment otherwise than for money or money's worth.
- (3) This section does not withdraw the exemption from corporation tax afforded by section 153, 156(3) or (5) or 158 in relation to profits arising from any part of a business relating to contracts made on or before 3 May 1966.

*Exempt BLAGAB or eligible PHI business: benefits payable by friendly societies etc*

### **160 Maximum benefits payable to members**

- (1) This section imposes restrictions on the entitlement of a person to have at any time outstanding contracts with any one or more friendly societies, registered branches or insurance companies (“relevant persons”) which are—
- (a) for the assurance of gross sums under business which is afforded exemption from corporation tax under section 153, 156(3) or (5) or 158 (see subsections (2) and (3)), or
  - (b) for the assurance by way of annuity under business which is afforded exemption from corporation tax under any of those provisions (see subsection (4)).
- (2) In the case of contracts for the assurance of gross sums made before 1 September 1987, a person is not entitled to have outstanding at any time with relevant persons contracts which, taking them all together, are for the assurance of more than £750 (but see subsection (9)).
- (3) In the case of contracts for the assurance of gross sums at least one of which was made on or after that date, a person is not entitled to have outstanding at any time with relevant persons—
- (a) contracts under which the total premiums payable in any period of 12 months exceed £270,
  - (b) contracts made before 1 May 1995 under which the total premiums payable in any period of 12 months exceed £200,

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- (c) contracts made before 25 July 1991 under which the total premiums payable in any period of 12 months exceed £150, or
  - (d) contracts made before 1 September 1990 under which the total premiums payable in any period of 12 months exceed £100.
- (4) In the case of contracts for the assurance by way of annuity, a person is not entitled to have at any time outstanding with relevant persons contracts which, taking them all together, are for the assurance of more than £156 (but see subsection (9)).
- (5) In applying the limits in this section in relation to the total premiums payable in any period of 12 months—
- (a) if the premiums are payable more frequently than annually, ignore an amount equal to 10% of the premiums, and
  - (b) ignore so much of any premium as is charged on the ground that an exceptional risk of death or disability is involved.
- (6) In applying the limits in this section, ignore —
- (a) any bonus or addition which is declared upon an assurance of a gross sum or annuity or which accrues upon an assurance of a gross sum or annuity by reference to an increase in the value of any investments,
  - (b) any policy of insurance or annuity contract by means of which the benefits to be provided under an occupational pension scheme (within the meaning of section 150(5) of FA 2004) are secured,
  - (c) any annuity contract which constitutes, or is issued or held in connection with, a registered pension scheme other than one within paragraph (b), and
  - (d) any increase in a benefit under a friendly society contract (within the meaning given by section 6 of the Decimal Currency Act 1969) resulting from the adoption of a scheme prescribed or approved under subsection (3) of that section.
- (7) In the case of a contract for the assurance of a gross sum made on or after 1 September 1987 but before 1 May 1995, there is a special rule if the amount payable by way of premium under the contract is increased as a result of a variation made—
- (a) in the period beginning with 25 July 1991 and ending with 31 July 1992, or
  - (b) in the period beginning with 1 May 1995 and ending with 31 March 1996.
- (8) The rule is that, in relation to times when the contract has effect as varied, the contract is to be treated for the purposes of this section as made at the time of variation.
- (9) If a person's outstanding contracts with relevant persons were contracts which were all made before 14 March 1984—
- (a) subsection (2) has effect as if the reference to £750 were a reference to £2,000, and
  - (b) subsection (4) has effect as if the reference to £156 were a reference to £416.

## **161 Section 160: supplementary**

- (1) This section makes further provision for the purposes of section 160 the application of which depends on whether or not a friendly society is an old society.
- (2) For the purposes of this Part an “old society” means—
- (a) a registered friendly society which was registered before 4 February 1966,

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- (b) a registered friendly society which was registered in the period beginning with that date and ending with 3 May 1966 and which on or before 3 May 1966 carried on any life or endowment business (within the meaning of section 29 of FA 1966), or
  - (c) an incorporated friendly society which, before its incorporation, was a registered friendly society within paragraph (a) or (b).
- (3) In applying the limits in section 160(3) in relation to the total premiums payable in any period of 12 months, ignore £10 of the premiums payable under any contract made before 1 September 1987 by an old society.
- (4) In applying the limits in section 160(3), the premiums under any contract for an annuity which was made before 1 June 1984 by a friendly society other than an old society are to be dealt with as if the contract were for the assurance of a gross sum.
- (5) In applying the limits in section 160 in any case where a person has outstanding with relevant persons one or more contracts made after 13 March 1984 and one or more contracts made on or before that date, any contract for an annuity which was made before 1 June 1984 by a friendly society other than an old society is to be regarded—
- (a) as a contract for the annual amount concerned, and
  - (b) as a contract for the assurance of a gross sum equal to 75% of the total premiums which would be payable under the contract if it were to run for its full term or, as the case may be, if the member concerned were to die at the age of 75.

## **162 Section 160: statutory declarations**

A friendly society, registered branch or insurance company may require a person to make and sign a statutory declaration—

- (a) that the total amount assured under outstanding contracts entered into by that person with any one or more friendly societies, registered branches or insurance companies (taken together) does not exceed the limits set out in section 160, and
- (b) that the total premiums under those contracts do not exceed those limits.

*Exempt BLAGAB or eligible PHI business: directions to old societies*

## **163 Directions given to old societies**

- (1) HMRC Commissioners may give a direction under this section to an old society.
- (2) The Commissioners may give the direction if—
- (a) the society begins to carry on exempt BLAGAB or eligible PHI business or, in their opinion, begins to carry on exempt BLAGAB or eligible PHI business on an enlarged scale or of a new character, and
  - (b) it appears to them, having regard to the restrictions placed on qualifying policies issued by friendly societies other than old societies by paragraphs 3(1)(b) and 4(3)(b) of Schedule 15 to ICTA, that for the protection of the revenue it is expedient to give the direction.

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- (3) The direction is that (and has the effect that) the society is to be treated for the purposes of this Part and Schedule 15 to ICTA as a friendly society other than an old society with respect to business carried on after the date of the direction.
- (4) The society may appeal against the direction on the ground that—
  - (a) it has not begun to carry on business as mentioned in subsection (2)(a), or
  - (b) the direction is not necessary for the protection of the revenue.
- (5) The appeal must be made within 30 days of the date on which the direction is given.
- (6) If a registered friendly society in respect of which a direction is in force under this section becomes an incorporated friendly society, the direction continues to have effect, so that for the purposes of this Part and Schedule 15 to ICTA it is treated as a friendly society other than an old society.

#### *Exemption for other business*

### **164 Societies registered before 1 June 1973, etc**

- (1) A registered friendly society which is a qualifying society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits other than those arising from—
  - (a) life assurance business, or
  - (b) PHI business comprised in BLAGAB or eligible PHI business.
- (2) A registered friendly society is a qualifying society if—
  - (a) it was registered before 1 June 1973 (but see section 168 for circumstances in which it ceases to be a qualifying society),
  - (b) it is registered on or after that date and its business is limited to the provision, in accordance with its rules, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of this section by HMRC Commissioners, or
  - (c) it is registered on or after that date but before 27 March 1974 and its rules limit the total amount which may be paid by a member by way of contributions and deposits to not more than £1 per month or such greater amount as HMRC Commissioners may authorise for the purposes of this section.
- (3) For the purposes of this section a registered friendly society formed on the amalgamation of two or more friendly societies is treated as registered before 1 June 1973 if, at the time of amalgamation, each of the societies amalgamated was a qualifying society (but otherwise is treated as registered at that time).
- (4) The exemption applies only if the society makes a claim.

### **165 Incorporated friendly societies**

- (1) An incorporated friendly society which is a qualifying society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits other than those arising from—
  - (a) life assurance business, or
  - (b) PHI business comprised in BLAGAB or eligible PHI business.



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- (2) An incorporated friendly society is a qualifying society if it falls within any of cases A to C (but see section 168 for circumstances in which it ceases to be a qualifying society).
- (3) Case A is that, immediately before its incorporation, it was a registered friendly society which was a qualifying society within the meaning of section 164.
- (4) Case B is that—
  - (a) it was formed otherwise than by the incorporation of a registered friendly society or the amalgamation of two or more friendly societies, and
  - (b) its business is limited to the provision, in accordance with its rules, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of this section by HMRC Commissioners.
- (5) Case C is that—
  - (a) it was formed by the amalgamation of two or more friendly societies, and
  - (b) at the time of the amalgamation each of the societies being amalgamated was a qualifying society within the meaning of section 164 or this section.
- (6) The exemption applies only if the society makes a claim.
- (7) The exemption does not apply to any profits arising or accruing to the society from, or by reason of its interest in, a body corporate—
  - (a) which is a subsidiary of the society (within the meaning of FSA 1992), or
  - (b) of which the society has joint control (within the meaning of FSA 1992).

## **166 Transfers from friendly societies to insurance companies etc**

- (1) For the purposes of this Part “relevant other business” means any business other than—
  - (a) life assurance business, or
  - (b) PHI business comprised in BLAGAB or eligible PHI business.
- (2) If—
  - (a) at any time an insurance company acquires by way of transfer of engagements from a friendly society any relevant other business, and
  - (b) immediately before that time the society was exempt from corporation tax on profits arising from that business as a result of section 164 or 165,the insurance company is exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.
- (3) If a friendly society—
  - (a) at any time ceases as a result of section 91 of FSA 1992 (conversion into company) to be registered under that Act, and
  - (b) immediately before that time the society was, as a result of section 164 or 165, exempt from corporation tax on profits arising from any relevant other business carried on by it,the company into which the society is converted is exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.

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- (4) If during an accounting period of a company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on relevant other business relating to contracts made before the time of transfer or conversion, the company is not exempt from corporation tax as a result of this section for that or any subsequent accounting period.
- (5) For the purposes of the Corporation Tax Acts any part of a company's business which is exempt from corporation tax as a result of this section is to be treated as a separate business from any other business carried on by the company.
- (6) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax as a result of this section, the Corporation Tax Acts have effect subject to such exceptions or other modifications as they consider appropriate.
- (7) The regulations may make provision having retrospective effect.
- (8) The regulations may—
  - (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

## **167 Transfers between friendly societies**

- (1) If—
  - (a) at any time a friendly society acquires by way of transfer of engagements or amalgamation from another friendly society any relevant other business, and
  - (b) immediately before that time the transferor was exempt from corporation tax on profits arising from that business as a result of section 164 or 165,
 the transferee is exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.
- (2) If during an accounting period of the transferee there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on relevant other business relating to contracts made before that time, the transferee is not exempt from corporation tax as a result of this section for that or any subsequent accounting period.
- (3) If—
  - (a) at any time a friendly society acquires by way of transfer of engagements or amalgamation from another friendly society any relevant other business, and
  - (b) immediately before that time the transferor was not exempt from corporation tax on profits arising from that business as a result of section 164 or 165,
 the transferee is not exempt from corporation tax on its profits arising from the relevant other business so far as relating to contracts made before that time.
- (4) The Treasury may by regulations provide that, where any part of the business of a friendly society is, or is not, exempt from corporation tax as a result of this section, the Corporation Tax Acts have effect subject to such exceptions or other modifications as they consider appropriate.
- (5) The regulations may make provision having retrospective effect.
- (6) The regulations may—

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- (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.
- (7) Nothing in this section applies in relation to transfers or amalgamations taking place before 21 July 2008.

## **168 Withdrawal of qualifying status**

- (1) HMRC Commissioners may give a direction under this section to—
- (a) a registered friendly society which is a qualifying society for the purposes of section 164 as a result of its registration before 1 June 1973, or
  - (b) an incorporated friendly society which is a qualifying society for the purposes of section 165 as a result of falling within case A or C and whose business and rules are not of a kind mentioned in section 164(2)(b) or (c).
- (2) The Commissioners may give the direction if—
- (a) the society begins to carry on relevant other business or, in their opinion, begins to carry on relevant other business on an enlarged scale or of a new character, and
  - (b) it appears to them, having regard to the restrictions imposed by section 164 on registered friendly societies registered on or after 1 June 1973, that for the protection of the revenue it is expedient to give the direction.
- (3) The direction is that (and has the effect that) the society ceases to be a qualifying society as from the date of the direction.
- (4) The society may appeal against the direction on the ground that—
- (a) it has not begun to carry on business as mentioned in subsection (2)(a), or
  - (b) the direction is not necessary for the protection of the revenue.
- (5) The appeal must be made within 30 days of the date on which the direction is given.

## **169 Payments by non-qualifying societies treated as qualifying distributions**

- (1) This section applies if—
- (a) a friendly society which is not a qualifying society makes a payment to a member in respect of the member's interest in the society,
  - (b) the payment is made in the course of relevant other business, and
  - (c) the payment exceeds the total amount of any sums paid by the member to the society by way of contributions or deposits after deducting from that total any relevant previous payment and any relevant earlier repayment.
- (2) The excess is treated for the purposes of corporation tax and income tax as a <sup>F36</sup>... distribution.
- (3) In this section—
- (a) the reference to a relevant previous payment is to the amount of any previous payment made by the society to the member in respect of the member's interest in the society, and
  - (b) the reference to a relevant earlier repayment is to the amount of any earlier repayment of sums paid by the member to the society by way of contributions or deposits.

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- (4) In the case of an incorporated friendly society which, immediately before its incorporation, was a registered friendly society which was not a qualifying society—
- (a) references in this section to payments (or repayments) to or from the society include payments (or repayments) to or from the registered friendly society, but
  - (b) subsection (3)(a) does not apply to a payment made before 27 March 1974 or, if the registered friendly society was previously a qualifying society but ceased to be one as a result of a direction given to it under section 168(1)(a), a payment made on or before such later date as was specified in the direction.
- (5) In the case of any other incorporated friendly society which was previously a qualifying society but ceased to be one as a result of a direction given to it under section 168(1)(b), subsection (3)(a) does not apply to a payment made on or before the date specified in the direction.
- (6) In the case of a registered friendly society, subsection (3)(a) does not apply to—
- (a) a payment made before 27 March 1974, or
  - (b) if the society was previously a qualifying society but ceased to be one as a result of a direction given to it under section 168(1)(a), a payment made on or before such later date as was specified in the direction.
- (7) For the purposes of this section—
- (a) a registered friendly society is not a qualifying society at any time if, at that time, it is not a qualifying society within the meaning of section 164, and
  - (b) an incorporated friendly society is not a qualifying society at any time if, at that time, it is not a qualifying society within the meaning of section 165.

#### **Textual Amendments**

**F36** Word in [s. 169\(2\)](#) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 70](#)

### *Miscellaneous*

#### **170 Transfer schemes under s.6(5) of FSA 1992**

- (1) This section applies if assets of a branch of a registered friendly society have been identified in a scheme under section 6(5) of FSA 1992 (property, rights etc excluded from transfer to the society on its incorporation).
- (2) In relation to any time after the incorporation of the society, the assets are to be treated for the purposes of the Tax Acts as assets of the society (and, accordingly, any corporation tax or income tax liability arising in respect of them is a liability of the society rather than of the branch).
- (3) If, as a result of this section, corporation tax or income tax in respect of any of the assets becomes chargeable on and is paid by the society, the society may recover from the trustees in whom those assets are vested the amount of the tax paid.

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## **171 Exemption for unregistered friendly societies**

- (1) A friendly society which is neither a registered friendly society nor an incorporated friendly society is not liable to pay corporation tax (whether on income or chargeable gains) on its profits if its income does not exceed £160 a year.
- (2) The exemption applies only if the society makes a claim.

### *Interpretation*

## **172 Minor definitions**

- (1) In this Part—
  - “friendly society”, without qualification, means (except in section 171) a registered friendly society or an incorporated friendly society,
  - “incorporated friendly society” means a society incorporated under FSA 1992,
  - “policy”, in relation to BLAGAB or eligible PHI business, includes an instrument evidencing a contract to pay an annuity upon human life,
  - “registered branch” has the same meaning as in FSA 1992 (and includes any branch that as a result of section 96(3) of FSA 1992 is treated as a registered branch), and
  - “registered friendly society” has the same meaning as in FSA 1992 (and includes any society that as a result of section 96(2) of FSA 1992 is treated as a registered friendly society).
- (2) Any other expression which is used in this Part and in Part 2 has the same meaning in this Part as in that Part.
- (3) References in this Part to a friendly society include, in the case of a registered friendly society, references to any branch of that society.
- (4) It is declared that for the purposes of this Part (except where provision to the contrary is made) a friendly society formed on the amalgamation of two or more friendly societies is treated as different from the amalgamated societies.
- (5) A registered friendly society formed on the amalgamation of two or more friendly societies is treated for the purposes of this Part as registered not later than 3 May 1966 if at the time of the amalgamation—
  - (a) all the societies amalgamated were registered friendly societies eligible for the exemption conferred by section 153, and
  - (b) at least one of them was an old society,or, if the amalgamation took place before 19 March 1985, the society was treated as registered not later than 3 May 1966 as a result of the proviso to section 337(4) of the Income and Corporation Taxes Act 1970.
- (6) An incorporated friendly society formed on the amalgamation of two or more friendly societies is treated for the purposes of this Part as a society which, before its incorporation, was a registered friendly society registered not later than 3 May 1966 if at the time of the amalgamation—
  - (a) all the societies amalgamated were registered friendly societies eligible for the exemption conferred by section 153, and
  - (b) at least one of them was an old society.

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**Modifications etc. (not altering text)**

**C16** S. 172 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), **14** (with regs. 1(2), 2)

**173 Abbreviations**

(1) In this Part—

“FSA 1992” means the Friendly Societies Act 1992, and

“FISMA (Regulated Activities) Order 2001” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(2) For abbreviations of other Acts, see section 228.

**174 Index of defined terms**

In this Part the following expressions are defined or otherwise explained by the provisions indicated—

<i>Expression</i>	<i>Where explained</i>
basic life assurance and general annuity business (abbreviated to “BLAGAB”)	sections 57, 67(5) and 172(2)
BLAGAB or eligible PHI business	section 154
contract of insurance	sections 64 and 172(2)
exempt BLAGAB or eligible PHI business	section 155
friendly society	section 172(1)
HMRC Commissioners	sections 139(1) and 172(2)
incorporated friendly society	section 172(1)
insurance business transfer scheme	sections 139(1) and 172(2)
insurance company	sections 65 and 172(2)
life assurance business	sections 56 and 172(2)
long-term business	sections 63(1) and 172(2)
old society	section 161(2)
PHI business	sections 63(2) and 172(2)
policy	section 172(1)
registered	section 172(5) and (6)
registered branch	section 172(1)
registered friendly society	section 172(1) and (3)
relevant other business	section 166
re-insurance	sections 139(1) and 172(2)

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**Modifications etc. (not altering text)**

- C17 S. 174 modified (31.12.2012) by [The Friendly Societies \(Modifications of the Tax Acts\) Regulations 2012 \(S.I. 2012/3008\)](#), regs. 1(1), 15 (with regs. 1(2), 2)

*Regulations*

**175 Regulations**

- (1) Any power of the Treasury to make any regulations under this Part is exercisable by statutory instrument.
- (2) Any statutory instrument containing any regulations made by the Treasury under this Part is subject to annulment in pursuance of a resolution of the House of Commons.
- (3) Nothing in this Part that authorises the inclusion of any particular kind of provision in any regulations under this Part is to be read as restricting the generality of the provision that may be included in the regulations.

*Consequential amendments and transitional provision*

**176 Consequential amendments**

Schedule 18 contains consequential amendments.

**177 Transitional provision**

Schedule 19 contains transitional provision in connection with the coming into force of this Part.

*Commencement etc*

**178 Commencement**

The provisions of this Part (other than section 179) have effect in relation to accounting periods of companies beginning on or after 1 January 2013.

**179 Accounting periods straddling 1 January 2013**

- (1) If, apart from this section, a friendly society would have had an accounting period beginning before 1 January 2013 and ending on or after that date, the accounting period of the society is to end instead on 31 December 2012.
- (2) Accordingly, the rules in section 10 of CTA 2009 (end of accounting period) are subject to this section.

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## PART 4

### CONTROLLED FOREIGN COMPANIES AND FOREIGN PERMANENT ESTABLISHMENTS

#### 180 Controlled foreign companies and foreign permanent establishments

Schedule 20 makes—

- (a) provision for and in connection with a charge on UK resident companies which have interests in non-UK resident companies controlled by UK resident persons, and
- (b) provision about foreign permanent establishments of UK resident companies.

## PART 5

### OIL

#### 181 Transfers within a group by companies carrying on ring fence trade

- (1) Section 171A of TCGA 1992 (election to reallocate gain or loss to another member of group) is amended as follows.
- (2) In subsection (4), at the end insert “ (but see subsection (4A)) ”.
- (3) After subsection (4) insert—
  - “(4A) An election may not be made under this section to transfer the whole or part of a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on such a trade.
  - (4B) In subsection (4A)—
    - “ring fence chargeable gain”, in relation to a company, means—
      - (a) a chargeable gain accruing to the company on a material disposal within the meaning of section 197 (disposals of interests in oil fields etc: ring fence provisions), or
      - (b) a chargeable gain treated as accruing to the company by virtue of section 197(4);
    - “ring fence trade” has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act).”
- (4) The amendments made by this section have effect in relation to chargeable gains accruing, or treated by virtue of section 197(4) of TCGA 1992 as accruing, in chargeable periods ending on or after 6 December 2011 (but see also subsection (5)).
- (5) In relation to a chargeable period of a company beginning before 6 December 2011 and ending on or after that date (“the straddling period”), the amendments made by this section have effect as if, for the purposes of section 197 of TCGA 1992, so much of the straddling period as falls before 6 December 2011, and so much of that period as falls on or after that date, were separate chargeable periods.



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## **182 Supplementary charge**

- (1) In section 330 of CTA 2010 (supplementary charge in respect of ring fence trades), in subsection (2), for “profits of the company’s ring fence trade” substitute “ company’s ring fence profits ”.
- (2) This section is treated as having come into force on 6 December 2011.

## **183 Relief in respect of decommissioning expenditure**

Schedule 21 contains provision about the relief available in respect of decommissioning expenditure.

## **184 Reduction of supplementary charge for certain oil fields**

Schedule 22 contains provision extending the availability of field allowances for oil fields.

# **PART 6**

## **EXCISE DUTIES**

### *Tobacco products duty*

## **185 Rates of tobacco products duty**

- (1) For the table in Schedule 1 to TPDA 1979 substitute—

“TABLE

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1. Cigarettes	An amount equal to 16.5 per cent of the retail price plus £167.41 per thousand cigarettes
2. Cigars	£208.83 per kilogram
3. Hand-rolling tobacco	£164.11 per kilogram
4. Other smoking tobacco and chewing tobacco	£91.81 per kilogram”.

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- (2) The amendment made by this section is treated as having come into force at 6 pm on 21 March 2012.

### *Alcoholic liquor duties*

## **186 Rates of alcoholic liquor duties**

- (1) ALDA 1979 is amended as follows.
- (2) In section 5 (rate of duty on spirits), for “£25.52” substitute “ £26.81 ”.
- (3) In section 36(1AA) (rates of general beer duty)—
  - (a) in paragraph (za) (rate of duty on lower strength beer), for “£9.29” substitute “ £9.76 ”, and

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- (b) in paragraph (a) (standard rate of duty on beer), for “£18.57” substitute “£19.51”.
- (4) In section 37(4) (rate of high strength beer duty), for “£4.64” substitute “£4.88”.
- (5) In section 62(1A) (rates of duty on cider)—
- (a) in paragraph (a) (rate of duty per hectolitre on sparkling cider of a strength exceeding 5.5 per cent), for “£233.55” substitute “£245.32”,
- (b) in paragraph (b) (rate of duty per hectolitre on cider of a strength exceeding 7.5 per cent which is not sparkling cider), for “£53.84” substitute “£56.55”, and
- (c) in paragraph (c) (rate of duty per hectolitre in any other case), for “£35.87” substitute “£37.68”.
- (6) For the table in Schedule 1 substitute—

“TABLE OF RATES OF DUTY ON WINE AND MADE-WINE

**PART 1**

WINE OR MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre £</i>
Wine or made-wine of a strength not exceeding 4 per cent	78.07
Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent	107.36
Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling	253.39
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent	245.32
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent	324.56
Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent	337.82

**PART 2**

WINE OR MADE-WINE OF A STRENGTH EXCEEDING 22 PER CENT

<i>Description of wine or made-wine</i>	<i>Rates of duty per litre of alcohol in wine or made-wine £</i>
Wine or made-wine of a strength exceeding 22 per cent	26.81”.

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- (7) The amendments made by this section are treated as having come into force on 26 March 2012.

### **187 Repeal of drawback on British compounds and spirits of wine**

- (1) Section 22 of ALDA 1979 (drawback on British compounds and spirits of wine) is repealed.
- (2) In consequence of the provision made by subsection (1), omit the following provisions—
- (a) in Schedule 1 to the Isle of Man Act 1979, paragraph 29;
  - (b) in Schedule 8 to FA 1981, paragraph 16;
  - (c) in Schedule 4 to FA 1994, paragraph 24;
  - (d) in Schedule 5 to that Act, paragraph 3(1)(ha);
  - (e) in Schedule 42 to FA 2008, paragraph 2(2).

#### *Hydrocarbon oil etc duties*

### **188 Rates of duty and rebates from 1 August 2012 to 31 December 2012**

In relation to products charged with duty under HODA 1979 on or after 1 August 2012 but before 1 January 2013, that Act has effect as if the amendments made by section 20 of FA 2011 had never been made.

### **189 Rebated fuel: private pleasure craft**

- (1) In section 14E of HODA 1979 (rebated heavy oil and bioblend: private pleasure craft), after subsection (7) insert—
- “(7A) A relevant declaration must include an acknowledgement that nothing in this section or done under it (including the making of the declaration) affects any restriction or prohibition under the law of a member State other than the United Kingdom on the use of the heavy oil or bioblend as fuel for propelling craft outside United Kingdom waters (as defined in section 1(1) of the Management Act).”
- (2) The amendment made by this section has effect in relation to supplies made on or after 1 April 2012.

#### *Air passenger duty*

### **190 Air passenger duty**

Schedule 23 amends, and makes amendments connected with, Chapter 4 of Part 1 of FA 1994 (air passenger duty).

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### *Gambling duties*

#### **191 Machine games duty**

Schedule 24 contains provision replacing amusement machine licence duty with a new excise duty and making related changes to VATA 1994.

#### **192 Amusement machine licence duty**

(1) In section 23(2) of BGDA 1981 (amount of duty payable on amusement machine licence), for the table substitute—

“TABLE

<i>Months for which licence granted</i>	<i>Category A £</i>	<i>Category B1 £</i>	<i>Category B2 £</i>	<i>Category B3 £</i>	<i>Category B4 £</i>	<i>Category C £</i>
1	555	280	220	220	200	85
2	1105	555	435	435	395	165
3	1655	830	655	655	595	250
4	2205	1105	870	870	790	330
5	2755	1380	1085	1085	985	410
6	3305	1655	1305	1305	1185	495
7	3860	1930	1520	1520	1380	575
8	4410	2205	1740	1740	1575	655
9	4960	2485	1955	1955	1775	740
10	5510	2760	2170	2170	1970	820
11	6060	3035	2390	2390	2170	900
12	6295	3150	2480	2480	2250	935”.

(2) The amendment made by this section has effect in relation to cases where the application for the amusement machine licence is received by the Commissioners for Her Majesty's Revenue and Customs after 4 pm on 23 March 2012.

#### **193 Rates of gaming duty**

(1) In section 11(2) of FA 1997 (rates of gaming duty), for the table substitute—

“TABLE

<i>Part of gross gaming yield</i>	<i>Rate</i>
The first £2,175,000	15 per cent
The next £1,499,500	20 per cent
The next £2,626,000	30 per cent

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The next £5,542,500	40 per cent
The remainder	50 per cent”.

(2) The amendment made by this section has effect in relation to accounting periods beginning on or after 1 April 2012.

#### 194 Remote gambling: double taxation relief

Schedule 25 contains provision for double taxation relief in respect of remote gambling.

#### *Vehicle excise duty*

#### 195 VED rates for light passenger vehicles, light goods vehicles, motorcycles etc

(1) Schedule 1 to VERA 1994 (annual rates of duty) is amended as follows.

(2) In paragraph 1 (general)—

- (a) in sub-paragraph (2) (vehicle not covered elsewhere in Schedule otherwise than with engine cylinder capacity not exceeding 1,549cc), for “£215” substitute “ £220 ”, and
- (b) in sub-paragraph (2A) (vehicle not covered elsewhere in Schedule with engine cylinder capacity not exceeding 1,549cc), for “£130” substitute “ £135 ”.

(3) In paragraph 1B (graduated rates of duty for light passenger vehicles)—

- (a) for the tables substitute—

“Table 1

#### RATES PAYABLE ON FIRST VEHICLE LICENCE FOR VEHICLE

<i>CO<sub>2</sub> emissions figure</i>		<i>Rate</i>	
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
<b>Exceeding</b>	<b>Not exceeding</b>	<b>Reduced rate</b>	<b>Standard rate</b>
<b>g/km</b>	<b>g/km</b>	<b>£</b>	<b>£</b>
130	140	110	120
140	150	125	135
150	165	160	170
165	175	265	275
175	185	315	325
185	200	450	460
200	225	590	600
225	255	805	815
255		1020	1030

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Table 2

## RATES PAYABLE ON ANY OTHER VEHICLE LICENCE FOR VEHICLE

<i>CO<sub>2</sub> emissions figure</i>		<i>Rate</i>	
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
<b>Exceeding</b>	<b>Not exceeding</b>	<b>Reduced rate</b>	<b>Standard rate</b>
<b>g/km</b>	<b>g/km</b>	<b>£</b>	<b>£</b>
100	110	10	20
110	120	20	30
120	130	90	100
130	140	110	120
140	150	125	135
150	165	160	170
165	175	185	195
175	185	205	215
185	200	240	250
200	225	260	270
225	255	450	460
255		465	475”;

(b) in the sentence immediately following the tables, for paragraphs (a) and (b) substitute—

“(a) in column (3), in the last two rows, “260” were substituted for “450” and “ 465 ”, and

(b) in column (4), in the last two rows, “270” were substituted for “460” and “ 475 ”.”

(4) In paragraph 1J (VED rates for light goods vehicles)—

(a) in paragraph (a), for “£210” substitute “ £215 ”, and

(b) in paragraph (b), for “£130” substitute “ £135 ”.

(5) In paragraph 2(1) (VED rates for motorcycles)—

(a) in paragraph (b), for “£35” substitute “ £36 ”,

(b) in paragraph (c), for “£53” substitute “ £55 ”, and

(c) in paragraph (d), for “£74” substitute “ £76 ”.

(6) The amendments made by this section have effect in relation to licences taken out on or after 1 April 2012.

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## PART 7

### VALUE ADDED TAX

#### 196 Changes to the categorisation of supplies

- (1) Schedule 26 contains provision about the categorisation of supplies for the purposes of value added tax.
- (2) Schedule 27 contains provision for an anti-forestalling charge to value added tax related to changes in the descriptions of exempt or zero-rated supplies.

#### 197 Exempt supplies

- (1) In Part 1 of Schedule 9 to VATA 1994 (index to exempt supplies of goods and services), at the appropriate place in the table insert—

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“Supplies of services by groups involving Group 16”  
cost sharing

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- (2) In Part 2 of that Schedule (the groups), at the end insert—

#### **“GROUP 16 — SUPPLIES OF SERVICES BY GROUPS INVOLVING COST SHARING**

##### *Item No*

- 1 The supply of services by an independent group of persons where each of the following conditions is satisfied—
  - (a) each of those persons is a person who is carrying on an activity (“the relevant activity”) which is exempt from VAT or in relation to which the person is not a taxable person within the meaning of Article 9 of Council Directive 2006/112/EC,
  - (b) the supply of services is made for the purpose of rendering the members of the group the services directly necessary for the exercise of the relevant activity,
  - (c) the group merely claims from its members exact reimbursement of their share of the joint expenses, and
  - (d) the exemption of the supply is not likely to cause distortion of competition.”
- (3) In section 31 of that Act (exempt supplies and acquisitions), after subsection (2) insert—
  - (3) The Treasury may by regulations make an exemption of a group 16 supply of a description specified in the regulations subject to conditions.
- (4) Regulations under subsection (3) may—
  - (a) make different provision for different cases, and
  - (b) make consequential or transitional provision (including provision amending this Act).

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- (5) In subsection (3) “group 16 supply” means a supply falling within Group 16 of Schedule 9.”

## 198 Supply of goods or services by public bodies

- (1) VATA 1994 is amended as follows.
- (2) In section 41 (application to the Crown)—
- (a) omit subsection (2), and
  - (b) in subsection (3)(b) for “a direction under subsection (2) above,” substitute “section 41A,”.
- (3) After that section insert—

### “41A Supply of goods or services by public bodies

- (1) This section applies where goods or services are supplied by a body mentioned in Article 13(1) of the VAT Directive (status of public bodies as taxable persons) in the course of activities or transactions in which it is engaged as a public authority.
- (2) If the supply is in respect of an activity listed in Annex I to the VAT Directive (activities in respect of which public bodies are to be taxable persons), it is to be treated for the purposes of this Act as a supply in the course or furtherance of a business unless it is on such a small scale as to be negligible.
- (3) If the supply is not in respect of such an activity, it is to be treated for the purposes of this Act as a supply in the course or furtherance of a business if (and only if) not charging VAT on the supply would lead to a significant distortion of competition.
- (4) In this section “the VAT Directive” means Council Directive [2006/112/EC](#) on the common system of value added tax.”

## 199 Relief from VAT on low value goods: restriction relating to Channel Islands

- (1) In Schedule 2 to the Value Added Tax (Imported Goods) Relief Order 1984 (S.I. 1984/746) (reliefs for goods of certain descriptions), Group 8 (articles sent for miscellaneous purposes) is amended as follows.
- (2) The existing Note becomes Note (1) (and accordingly “*Note*” in Group 8 becomes “*Notes*”).
- (3) After that Note insert—
  - “(2) Item 8 does not apply in relation to any goods sent from the Channel Islands under a distance selling arrangement.
  - (3) For the purposes of Note (2)—
 

“distance selling arrangement”, in relation to any goods, means any transaction, or series of transactions, under which the person to whom the goods are sent receives them from a supplier without the simultaneous physical presence of the person and the supplier at any time during the transaction or series of transactions, and



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“supplier” means any person who is acting in a commercial or professional capacity.”

- (4) The amendment of that Schedule by this section is without prejudice to any power to amend that Schedule by subordinate legislation.
- (5) The amendments made by this section have effect in relation to goods imported on or after 1 April 2012.

## **200 Group supplies using an overseas member**

- (1) VATA 1994 is amended as follows.
- (2) In section 43 (groups of companies), in subsection (2C)(c), after “above” insert “ and paragraph 8A of Schedule 6 ”.
- (3) In section 83 (appeals), in subsection (1)(v) for “or 2” substitute “ , 2 or 8A ”.
- (4) In section 97(4) (orders requiring Parliamentary approval within 28 days of being made), in paragraph (f), after “1A(7)” insert “ or 8A(7) ”.
- (5) Schedule 6 (valuation: special cases) is amended as follows.
- (6) In paragraph 1 (cases where Commissioners may direct value is open market value), in sub-paragraph (5), after “paragraph”, in the second place it occurs, insert “ 8A or ”.
- (7) After paragraph 8 insert—

“8A

- (1) This paragraph applies where—
  - (a) a supply (“the intra-group supply”) made by a member of a group (“the supplier”) to another member of the group is, by virtue of section 43(2A), excluded from the supplies disregarded under section 43(1)(a), and
  - (b) the representative member of the group satisfies the Commissioners as to the value of each bought-in supply.
- (2) “Bought-in supply”, in relation to the intra-group supply, means a supply of services to the supplier to which section 43(2A)(c) to (e) refers, so far as that supply is used by the supplier for making the intra-group supply.
- (3) The value of the intra-group supply shall be taken to be the total of the relevant amounts in relation to the bought-in supplies.
- (4) The relevant amount in relation to a bought-in supply is the value of the bought-in supply, unless a direction is made under sub-paragraph (5).
- (5) If the value of a bought-in supply is less than its open market value, the Commissioners may direct that the relevant amount in relation to that supply is its open market value.
- (6) A direction under this paragraph must be given by notice in writing to the representative member, but no direction may be given more than 3 years after the time of the intra-group supply.
- (7) The Treasury may by order vary the provision made by this Schedule about the value of supplies of the kind mentioned in sub-paragraph (1)(a).

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(8) An order under sub-paragraph (7) may include incidental, supplemental, consequential or transitional provision (including provision amending section 43 or 83).”

(8) The amendments made by this section have effect in relation to supplies made on or after the day on which this Act is passed.

## 201 Face-value vouchers

(1) In Schedule 10A to VATA 1994 (face-value vouchers), after paragraph 7 insert—

### “Exclusion of single purpose vouchers

7A Paragraphs 2 to 4, 6 and 7 do not apply in relation to the issue, or any subsequent supply, of a face-value voucher that represents a right to receive goods or services of one type which are subject to a single rate of VAT.”

(2) The amendment made by subsection (1) has effect in relation to supplies of face-value vouchers issued on or after 10 May 2012.

(3) Subsection (4) applies where—

- (a) a face-value voucher issued before 10 May 2012 is used on or after that date to obtain goods or services,
- (b) paragraphs 2 to 4, 6 and 7 of Schedule 10A to VATA 1994 would not have applied in relation to the issue, or any subsequent supply, of the voucher because of paragraph 7A of that Schedule if the voucher had been issued on or after 10 May 2012, and
- (c) VAT is not payable under the law of another member State on the supply of the voucher to the user.

(4) The use of the voucher is to be treated for the purposes of VATA 1994 as a supply of the goods or services by the person from whom they are obtained to the user of the voucher.

## 202 Power to require notification of arrival of means of transport in UK

In Schedule 11 to VATA 1994 (administration, collection and enforcement), in paragraph 2 (accounting for VAT and payment of VAT), after sub-paragraph (5) insert—

“(5A) Regulations under this paragraph may make provision—

- (a) for requiring the relevant person to give to the Commissioners such notification of the arrival in the United Kingdom of goods consisting of a means of transport, at such time and in such form and manner, as may be specified in the regulations or by the Commissioners in accordance with the regulations, and
- (b) where notification of the arrival of a means of transport acquired from another member State, or imported from a place outside the member States, is required by virtue of paragraph (a), for requiring any VAT on the acquisition or importation to be paid at such time and in such manner as may be specified in the regulations.

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(5B) The provision that may be made by regulations made by virtue of sub-paragraph (5A) includes—

- (a) provision for a notification required by virtue of that sub-paragraph to contain such particulars relating to the notified arrival of the means of transport and any VAT chargeable on its acquisition or importation as may be specified in the regulations or by the Commissioners in accordance with the regulations,
- (b) provision for such a notification to be given by a person who is not the relevant person and is so specified, or is of a description so specified,
- (c) provision for such a notification to contain a declaration, given in such form and by such person as may be so specified, as to the information contained in the notification, and
- (d) supplementary, incidental, consequential or transitional provision (including provision amending any provision made by or under this Act or any other enactment).

(5C) Subsection (3) of section 97 (orders subject to Commons approval) applies to a statutory instrument containing any regulations made by virtue of sub-paragraph (5A) which amend an enactment as it applies to an order within subsection (4) of that section.

(5D) For the purposes of sub-paragraph (5A)—

“means of transport” has the same meaning as it has in this Act in the expression “new means of transport” (see section 95);

“relevant person”, in relation to the arrival of a means of transport in the United Kingdom, means—

- (a) where the means of transport has been acquired in the United Kingdom from another member State, the person who so acquires it,
- (b) where it has been imported from a place outside the member States, the person liable to pay VAT on the importation, and
- (c) in any other case—
  - (i) the owner of the means of transport at the time of its arrival in the United Kingdom, or
  - (ii) where it is subject to a lease or hire agreement, the lessee or hirer of the means of transport at that time.”

### **203 Non-established taxable persons**

Schedule 28 contains provision about non-established taxable persons.

### **204 Administration of VAT**

Schedule 29 contains provision about the administration of VAT.

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## PART 8

### OTHER TAXES

#### *Landfill tax*

#### **205 Standard rate of landfill tax**

- (1) In section 42(1)(a) and (2) of FA 1996 (amount of landfill tax) for “£64” substitute “£72”.
- (2) The amendments made by this section have effect in relation to disposals made (or treated as made) on or after 1 April 2013.

#### **206 Landfill sites in Scotland**

The following provisions are to be treated as having come into force, in so far as they extend to Scotland, on 21 March 2000—

- (a) paragraph 19 of Schedule 2 to the Pollution Prevention and Control Act 1999 (which inserts paragraph (ba) into section 66 of FA 1996 (landfill sites)), and
- (b) section 6(1) of the Pollution Prevention and Control Act 1999, so far as relating to paragraph 19 of that Schedule.

#### *Climate change levy*

#### **207 Climate change levy**

The following Schedules amend, or make amendments connected with, Schedule 6 to FA 2000 (climate change levy)—

- (a) Schedule 30 (reduced-rate supplies, rates etc);
- (b) Schedule 31 (climate change agreements);
- (c) Schedule 32 (supplies subject to the carbon price support rates and combined heat and power stations).

#### *Inheritance tax*

#### **208 Indexation of rate bands**

- (1) Section 8 of IHTA 1984 (indexation of rate bands) is amended as follows.
- (2) In subsection (1), for “retail prices index for the month of September in 1993 or any later year” substitute “consumer prices index for the month of September in any year”.
- (3) In subsection (2), for “retail prices index” substitute “consumer prices index”.
- (4) For subsection (3) substitute—
 

“(3) In this section, “consumer prices index” means the all items consumer prices index published by the Statistics Board.”
- (5) The amendments made by this section have effect for the purposes of chargeable transfers made on or after 6 April 2015.

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## 209 Gifts to charities etc

Schedule 33 contains provision for a lower rate of inheritance tax to be charged on transfers made on death that include sufficient gifts to charities or registered clubs.

## 210 Settled property: effect of certain arrangements

(1) IHTA 1984 is amended as follows.

(2) In section 48 (settled property: excluded property)—

- (a) in subsection (1), after paragraph (c) insert “or,
- (d) in a case where paragraphs (a), (b) and (d) of section 74A(1) are satisfied—
  - (i) it is a reversionary interest, in the relevant settled property, to which the individual is beneficially entitled, and
  - (ii) the individual has or is able to acquire (directly or indirectly) another interest in that relevant settled property.

Terms used in paragraph (d) have the same meaning as in section 74A.”

- (b) in subsection (3), for “subsection (3B)” substitute “ subsections (3B) and (3D)”, and
- (c) after subsection (3C) insert—

“(3D) Where paragraphs (a) to (d) of section 74A(1) are satisfied, subsection (3)(a) above does not apply at the time they are first satisfied or any later time to make the relevant settled property (within the meaning of section 74A) excluded property.”

(3) After section 74 insert—

### “74A Arrangements involving acquisition of interest in settled property etc

- (1) This section applies where—
  - (a) one or more persons enter into arrangements,
  - (b) in the course of the arrangements—
    - (i) an individual (“the individual”) domiciled in the United Kingdom acquires or becomes able to acquire (directly or indirectly) an interest in property comprised in a settlement (“ the relevant settled property”), and
    - (ii) consideration in money or money's worth is given by one or more of the persons mentioned in paragraph (a) (whether or not in connection with the acquisition of that interest or the individual becoming able to acquire it),
  - (c) there is a relevant reduction in the value of the individual's estate, and
  - (d) condition A or condition B is met.
- (2) Condition A is that—

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- (a) the settlor was not domiciled in the United Kingdom at the time the settlement was made, and
  - (b) the relevant settled property is situated outside the United Kingdom at any time during the course of the arrangements.
- (3) Condition B is that—
- (a) the settlor was not an individual or a close company at the time the settlement was made, and
  - (b) condition A is not met.
- (4) Subsection (6) applies if all or a part of a relevant reduction (“amount A”) is attributable to the value of the individual's section 49(1) property being less than it would have been in the absence of the arrangements.
- (5) “The individual's section 49(1) property” means settled property to which the individual is treated as beneficially entitled under section 49(1) by reason of the individual being beneficially entitled to an interest in possession in the property.
- (6) Where this subsection applies—
- (a) a part of that interest in possession is deemed, for the purposes of section 52, to come to an end at the relevant time, and
  - (b) that section applies in relation to the coming to an end of that part as if the reference in subsection (4)(a) of that section to a corresponding part of the whole value of the property in which the interest in possession subsists were a reference to amount A.
- (7) Subsection (8) applies to so much (if any) of a relevant reduction as is not amount A (“amount B”).
- (8) Tax is to be charged as if the individual had made a transfer of value at the relevant time and the value transferred by it had been equal to amount B.

#### **74B Section 74A: supplementary provision**

- (1) A transfer of value arising by virtue of section 74A is to be taken to be a transfer which is not a potentially exempt transfer.
- (2) For the purposes of section 74A—
- (a) when determining the value transferred by a transfer of value arising by virtue of that section, no account is to be taken of section 3(2),
  - (b) nothing in section 10(1) applies to prevent such a transfer, and
  - (c) nothing in sections 102 to 102C of the Finance Act 1986 applies in relation to such a transfer.
- (3) Where, ignoring this subsection, a transfer of value would arise by virtue of section 74A (“the current transfer”), the value transferred by a relevant related transfer is to be treated as reducing the value transferred by the current transfer.
- But this subsection does not apply if and to the extent that the relevant related transfer has already been applied to reduce another transfer of value arising by virtue of that section.
- (4) “Relevant related transfer” means—

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- (a) where the arrangements consist of a series of operations, any transfer of value constituted by one or more of those operations which occur before or at the same time as the current transfer, other than a transfer of value arising by virtue of section 74A, and
  - (b) where the arrangements consist of a single operation, any transfer of value which arises from that operation, other than a transfer of value arising by virtue of section 74A.
- (5) Section 268(3) does not apply to a transfer of value arising by virtue of section 74A.
- (6) Where—
- (a) a transfer of value has arisen by virtue of section 74A,
  - (b) in the course of the arrangements the individual acquires an interest in possession in settled property, and
  - (c) section 5(1B) applies to the interest in possession so that it forms part of the individual's estate,
- this Act has effect as if that transfer of value had never arisen.

#### **74C Interpretation of sections 74A and 74B**

- (1) Subsections (2) to (4) have effect for the purposes of sections 74A and 74B.
- (2) An individual has an interest in property comprised in a settlement if—
- (a) the property, or any derived property, is or will or may become payable to, or applicable for the benefit of—
    - (i) the individual,
    - (ii) the individual's spouse or civil partner, or
    - (iii) a close company in relation to which the individual or the individual's spouse or civil partner is a participator or a company which is a 51% subsidiary of such a close company,in any circumstances whatsoever, or
  - (b) a person within sub-paragraph (i), (ii) or (iii) of paragraph (a) enjoys a benefit deriving (directly or indirectly) from the property or any derived property.
- (3) A “relevant reduction” in the value of the individual's estate occurs—
- (a) if and when the value of the individual's estate first becomes less than it would have been in the absence of the arrangements, and
  - (b) on each subsequent occasion when the value of that estate becomes less than it would have been in the absence of the arrangements and that difference in value is greater than the sum of any previous relevant reductions.
- (4) The amount of a relevant reduction is—
- (a) in the case of a reduction within subsection (3)(a), the difference between the value of the estate and its value in the absence of the arrangements, and
  - (b) in the case of a reduction within subsection (3)(b), the amount by which the difference in value mentioned in that provision exceeds the sum of any previous relevant reductions.

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(5) In sections 74A and 74B and this section—

“arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations;

“close company” has the meaning given in section 102;

“derived property”, in relation to any property, means—

(a) income from that property,

(b) property directly or indirectly representing—

(i) proceeds of that property, or

(ii) proceeds of income from that property, or

(c) income from property which is derived property by virtue of paragraph (b);

“operation” includes an omission;

“participator” has the meaning given in section 102;

“the relevant time” means—

(a) the time the relevant reduction occurs, or

(b) if later, the time section 74A first applied;

“51% subsidiary” has the same meaning as in the Corporation Tax Acts (see Chapter 3 of Part 24 of the Corporation Tax Act 2010).”

(4) In section 201 (liability for tax: settled property), after subsection (4) insert—

“(4A) Where—

(a) a charge to tax arises under or by virtue of section 74A, or

(b) in a case where paragraphs (a) to (d) of section 74A are satisfied, a charge to tax arises under section 64 or 65 in respect of the relevant settled property (within the meaning of section 74A),

subsection (1) of this section has effect as if the persons listed in that subsection included the individual mentioned in section 74A(1)(b)(i).”

(5) The amendments made by this section are treated as having come into force on 20 June 2012 and have effect in relation to arrangements entered into on or after that day.

### *Bank levy*

## **211 The bank levy**

Schedule 34 contains provision about the bank levy.

### *Stamp duty land tax, stamp duty reserve tax and stamp duty*

## **212 Prevention of avoidance: subsales etc**

(1) In section 45 of FA 2003 (contract and conveyance: effect of transfer of rights), after subsection (1) insert—

“(1A) The reference in subsection (1)(b) to an assignment, subsale or other transaction does not include the grant or assignment of an option.”



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- (2) The amendment made by this section has effect in relation to grants or assignments of options on or after 21 March 2012.

### 213 Rate in respect of residential property where consideration over £2m

<sup>F37</sup>(1) .....

- (2) The amendment made by this section has effect in relation to any land transaction of which the effective date is on or after 22 March 2012.
- (3) But that amendment does not have effect in relation to any transaction—
- effected in pursuance of a contract entered into and substantially performed before 22 March 2012, or
  - effected in pursuance of a contract entered into before that date and not excluded by subsection (4).
- (4) A transaction effected in pursuance of a contract entered into before 22 March 2012 is excluded by this subsection if—
- there is any variation of the contract, or assignment (or assignment) of rights under the contract, on or after 22 March 2012,
  - the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
  - on or after that date there is an assignment (or assignment), subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

#### Textual Amendments

**F37** S. 213(1) omitted (with effect in accordance with s. 2(2) of the amending Act) by virtue of [Stamp Duty Land Tax Act 2015 \(c. 1\)](#), [Sch. para. 21\(c\)\(i\)](#) (with s. 2(3)-(6))

### 214 Higher rate for certain transactions

Schedule 35 contains provision about the amount of tax chargeable on certain transactions involving higher threshold interests in dwellings.

### 215 Disclosure of stamp duty land tax avoidance schemes

In section 308 of FA 2004 (duties of promoter), after subsection (5) insert—

- “(6) The Treasury may by regulations provide for this section to apply with modifications in relation to proposals or arrangements that—
- enable, or might be expected to enable, a person to obtain an advantage in relation to stamp duty land tax, and
  - are of a description specified in the regulations.”

### 216 Health service bodies

- (1) In Part 4 of FA 2003 (stamp duty land tax), after section 67 insert—

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### **“67A Acquisitions by certain health service bodies**

- (1) A land transaction is exempt from charge if the purchaser is any of the following—
  - (a) the National Health Service Commissioning Board;
  - (b) a clinical commissioning group established under section 14D of the National Health Service Act 2006;
  - (c) an NHS foundation trust;
  - (d) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
  - (e) a National Health Service trust established under section 18 of that Act;
  - (f) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.
- (2) Any relief under this section must be claimed in a land transaction return or an amendment of such a return.”
- (2) The following provisions are repealed—
  - (a) section 61(3) to (3C) of the National Health Service and Community Care Act 1990 (stamp duty and stamp duty land tax reliefs for health service bodies);
  - (b) section 58 of the National Health Service Act 2006 (which applies those stamp duty and stamp duty land tax reliefs to NHS foundation trusts);
  - (c) paragraphs 132 and 133 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006.
- (3) The repeals in subsection (2), to the extent that they relate to stamp duty, have effect in relation to any instrument executed on or after the day on which this Act is passed.
- (4) Subject to that, the amendments made by this section have effect in relation to any land transaction of which the effective date is on or after the day on which this Act is passed.
- (5) Until such time as bodies of a kind mentioned in subsection (6) are abolished under the Health and Social Care Act 2011, section 67A of FA 2003 has effect as if the list in that section included bodies of that kind.
- (6) Those bodies are—
  - (a) a National Health Service trust established under section 25 of the National Health Service Act 2006, and
  - (b) a Primary Care Trust.

### **217 Collective investment schemes: stamp duty and stamp duty reserve tax**

- (1) The Treasury may by regulations confer an exemption or other relief from stamp duty or stamp duty reserve tax for transactions relating to collective investment schemes.
- (2) The regulations may, in particular—
  - (a) specify descriptions of collective investment scheme in relation to which the exemption or relief is available, and
  - (b) specify the cases in which the exemption or relief is available.

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- (3) Regulations under this section may make different provision for different cases or different purposes.
- (4) Regulations under this section—
  - (a) may modify any enactment or instrument (whenever passed or made), and
  - (b) may include incidental, consequential, supplementary or transitional provision.
- (5) Regulations under this section are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In this section—
  - “collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000, and
  - “modify” includes amend, repeal or revoke.

## PART 9

### MISCELLANEOUS MATTERS

#### *International matters*

#### **218 Agreement between UK and Switzerland**

- (1) Schedule 36 contains provision giving effect to—
  - (a) an agreement signed on 6 October 2011 between the United Kingdom and the Swiss Confederation on co-operation in the area of taxation, as amended by a protocol signed by them on 20 March 2012 and by a mutual agreement signed by them on 18 April 2012 implementing article XVIII of that protocol, and
  - (b) the joint declaration (concerning a tax finality payment) forming an integral part of that protocol.
- (2) Schedule 36 comes into force on the day on which the agreement of 6 October 2011 enters into force.
- (3) In section 23 of the Constitutional Reform and Governance Act 2010, after subsection (2A) insert—
  - “(2B) Section 20 does not apply to any treaty referred to in section 218(1) of the Finance Act 2012.”

#### **219 Penalties: offshore income etc**

In paragraph 21A of Schedule 24 to FA 2007 (classification of territories), in subparagraph (4)—

- (a) omit “and” at the end of paragraph (b), and
- (b) at the end of paragraph (c) insert—
  - “(d) the existence of any other arrangements between the UK and that territory for co-operation in the area of taxation, and

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- (e) the quality of any such other arrangements (in particular, the extent to which the co-operation provided for in them assists or is likely to assist in the protection of revenue raised from taxation in the UK).”

## **220 International military headquarters, EU forces, etc**

Schedule 37 contains provision about the tax treatment of international military headquarters, EU forces, etc.

### *Financial sector regulation*

## **221 Tax consequences of financial sector regulation**

- (1) The Treasury may by regulations make provision about the tax consequences in relation to securities of any regulatory requirement imposed<sup>[F38]</sup>, or which appears to the Treasury likely to be imposed,] by any EU legislation (whenever adopted) or enactment on—
  - (a) persons who are authorised persons for the purposes of the Financial Services and Markets Act 2000 (see section 31 of that Act), or
  - (b) parent undertakings (as defined in section 420 of that Act) of such persons.
- (2) Regulations under this section may, in particular, make provision—
  - (a) charging any tax or granting, withdrawing or restricting an exemption or other relief from any tax, and
  - (b) about the treatment of arrangements the purpose, or one of the main purposes, of which is to secure a tax advantage.
- (3) Regulations under this section may provide that a reference in the regulations—
  - (a) to any EU legislation or enactment,
  - (b) to any document, or
  - (c) to any provision of any EU legislation, enactment or document
 is to be construed as a reference to that legislation, enactment, document or provision as amended from time to time.
- (4) Regulations under this section—
  - (a) may apply (with or without modifications) or disapply any enactment,
  - (b) may modify, amend, repeal or revoke any enactment,
  - (c) may make different provision for different cases or different purposes, and
  - (d) may include incidental, consequential, supplementary or transitional provision.
- <sup>[F39]</sup>(4A) Where regulations under this section make provision about the tax consequences of any regulatory requirement which appears to the Treasury likely to be imposed by any EU legislation or enactment—
  - (a) the regulations may be made (and, accordingly, may have effect) before the proposed legislation or enactment is adopted, passed or made, and
  - (b) failure after the regulations are made to adopt, pass or make the proposed legislation or enactment does not affect the validity of the regulations.]
- (5) Regulations under this section are to be made by statutory instrument.

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- (6) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.
- (7) In this section—
- “arrangements” includes any arrangements, scheme or understanding of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions;
  - “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and includes an enactment whenever passed or made;
  - “tax” includes stamp duty;
  - “tax advantage” means—
    - (a) a relief from tax (including a tax credit) or increased relief from tax,
    - (b) a repayment of tax or increased repayment of tax,
    - (c) the avoidance, reduction or delay of a charge to tax or an assessment to tax, or
    - (d) the avoidance of a possible assessment to tax.

#### Textual Amendments

**F38** Words in s. 221(1) inserted (17.7.2014) by [Finance Act 2014 \(c. 26\), s. 295\(2\)](#)

**F39** S. 221(4A) inserted (17.7.2014) by [Finance Act 2014 \(c. 26\), s. 295\(3\)](#)

### *Incapacitated persons and minors*

## **222 Removal of special provision for incapacitated persons and minors**

- (1) In TMA 1970 omit—
- (a) section 42(8) (procedure for making claims etc on behalf of incapacitated persons),
  - (b) section 72 (trustees, guardians, etc of incapacitated persons), and
  - (c) section 73 (further provision as to infants).
- (2) In Part 4 of FA 2003 (stamp duty land tax), omit section 106(1) and (2) (persons acting in a representative capacity on behalf of incapacitated persons and minors).
- (3) Accordingly, incapacitated persons are (and minors remain) assessable and chargeable to the taxes in question.
- (4) In consequence of the amendments made by subsections (1) and (2)—
- (a) in section 118(1) of TMA 1970, omit the definitions of “incapacitated person” and “infant”,
  - (b) omit paragraphs 33 and 34 of Schedule 1 to the Age of Legal Capacity (Scotland) Act 1991,
  - (c) in paragraph 5 of Schedule 2 to the Social Security Contributions and Benefits Act 1992—
    - (i) omit paragraph (a) (and the “or” after it), and
    - (ii) in paragraph (b), for “such” substitute “ Class 4 ”,

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- (d) in paragraph 5 of Schedule 2 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992—
    - (i) omit paragraph (a) (and the “or” after it), and
    - (ii) in paragraph (b), for “such” substitute “ Class 4 ”, and
  - (e) in section 81B(4) of FA 2003, omit paragraph (b) (and the “or” before it).
- (5) The amendments made by subsections (1) and (4)(a) to (d) have effect for the tax year 2012-13 and subsequent tax years.
- (6) The amendments made by subsections (2) and (4)(e) have effect in relation to land transactions of which the effective date is on or after the day on which this Act is passed.

#### *Administration*

### **223 Tax agents: dishonest conduct**

- (1) Schedule 38 contains provision about tax agents who engage in dishonest conduct.
- (2) That Schedule comes into force on such day as the Treasury may by order appoint.
- (3) An order under subsection (2)—
  - (a) may make different provision for different purposes, and
  - (b) may include transitional provision and savings.
- (4) The Treasury may by order make any incidental, supplemental, consequential, transitional or saving provision in consequence of Schedule 38.
- (5) An order under subsection (4) may—
  - (a) make different provision for different purposes, and
  - (b) make provision amending, repealing or revoking any provision made by or under an Act (whenever passed or made).
- (6) An order under this section is to be made by statutory instrument.
- (7) A statutory instrument containing an order under subsection (4) is subject to annulment in pursuance of a resolution of the House of Commons.

### **224 Information powers**

- (1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- (2) After paragraph 5 insert—

#### **5A “Power to obtain information about persons whose identity can be ascertained**

- (1) An authorised officer of Revenue and Customs may by notice in writing require a person to provide relevant information about another person (“the taxpayer”) if conditions A to D are met.
- (2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

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- (3) Condition B is that—
- (a) the taxpayer's identity is not known to the officer, but
  - (b) the officer holds information from which the taxpayer's identity can be ascertained.
- (4) Condition C is that the officer has reason to believe that—
- (a) the person will be able to ascertain the taxpayer's identity from the information held by the officer, and
  - (b) the person obtained relevant information about the taxpayer in the course of carrying on a business.
- (5) Condition D is that the taxpayer's identity cannot readily be ascertained by other means from the information held by the officer.
- (6) “Relevant information” means all or any of the following—
- (a) name,
  - (b) last known address, and
  - (c) date of birth (in the case of an individual).
- (7) This paragraph applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to “the taxpayer” are to be read accordingly).”
- (3) In paragraph 6 (notices), in sub-paragraph (1), for “or 5” substitute “, 5 or 5A”.
- (4) In paragraph 31 (right to appeal against notice given under paragraph 5), after “paragraph 5” insert “ or 5A ”.
- (5) Accordingly, in the heading immediately before paragraph 31, at the end insert “ or 5A ”.
- (6) In section 18D of TMA 1970 (savings income: content of regulations under section 18B), in subsection (1), for “sections 17 and 18” substitute “ paragraph 1 of Schedule 23 to the Finance Act 2011 (data-gathering powers) ”.
- (7) The amendments made by subsections (1) to (5) apply for the purpose of checking the tax position of a taxpayer as regards periods or tax liabilities whenever arising (whether before, on or after the day on which this Act is passed).
- (8) The amendment made by subsection (6) is treated as having come into force on 1 April 2012.

## 225 PAYE regulations: information

- (1) Section 684 of ITEPA 2003 (PAYE regulations) is amended as follows.
- (2) In the list in subsection (2)—
- (a) after item 4 insert—
- “4ZA Provision—
- (a) for authorising or requiring a person who provides with respect to payments of or on account of PAYE income a service that is specified or of a specified description

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(“a relevant payment service”) to supply to Her Majesty's Revenue and Customs information about payments with respect to which the service is provided, or any information the Commissioners may request about features of the service provided or to be provided with respect to particular payments;

- (b) for conferring power on the Commissioners to specify by directions circumstances in which provision made by virtue of paragraph (a) or subsection (4ZB) is not to apply in relation to a payment;
- (c) for securing that a supply of information that is authorised by regulations under paragraph (a) is not treated as breaching any obligation of confidence owed in respect of the information by the person supplying it;
- (d) for prohibiting or restricting the disclosure, otherwise than to Her Majesty's Revenue and Customs, of information by a person to whom it was supplied pursuant to a requirement imposed by virtue of subsection (4ZB);
- (e) for requiring a person who provides, or is to provide, a relevant payment service to take steps (including any steps that may be specified, or further specified, in accordance with item 8A(b)) for facilitating the meeting by persons making payments of obligations imposed by virtue of subsection (4ZB).”, and

(b) after item 8 insert—

“8A

Provision requiring compliance with any directions the Commissioners may give—

- (a) about the form and manner in which any information is to be provided under the regulations;
- (b) specifying, or further specifying, steps for the purposes of item 4ZA(e);
- (c) specifying information that a person making payments of or on account of PAYE income must provide about the method by which the payments are made.”

(3) After subsection (3B) insert—

“(3C) References in items 4ZA and 8A of the above list to directions include directions making different provision for different cases.”

(4) After subsection (4) insert—

“(4ZA) Item 8A in the above list does not prejudice the power of the Commissioners under subsection (1) to make provision in PAYE regulations about the matters mentioned in that item.

(4ZB) The persons to whom PAYE information regulations may require information to be supplied include, in the case of information about a payment, a person who provides, or is to provide, with respect to the payment a service such as is mentioned in item 4ZA(a) in the above list.



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(4ZC) In subsection (4ZB) “PAYE information regulations” means PAYE regulations that require information to be supplied for any purpose authorised by subsections (1) and (2).”

*High value residential property or dwellings*

**226 New tax on ownership of high-value residential properties or dwellings**

The Commissioners for Her Majesty's Revenue and Customs may incur expenditure in preparing for the introduction of a new tax to be charged in respect of high-value residential properties or dwellings owned otherwise than by individuals.

*Miscellaneous reliefs etc*

**227 Repeals of miscellaneous reliefs etc**

Schedule 39 contains repeals of miscellaneous reliefs etc.

**PART 10**

FINAL PROVISIONS

**228 Interpretation**

(1) In this Act—

- “ALDA 1979” means the Alcoholic Liquor Duties Act 1979,
- “BGDA 1981” means the Betting and Gaming Duties Act 1981,
- “CAA 2001” means the Capital Allowances Act 2001,
- “CEMA 1979” means the Customs and Excise Management Act 1979,
- “CRCA 2005” means the Commissioners for Revenue and Customs Act 2005,
- “CTA 2009” means the Corporation Tax Act 2009,
- “CTA 2010” means the Corporation Tax Act 2010,
- “F(No.3)A 2010” means the Finance (No. 3) Act 2010,
- “HODA 1979” means the Hydrocarbon Oil Duties Act 1979,
- “ICTA” means the Income and Corporation Taxes Act 1988,
- “IHTA 1984” means the Inheritance Tax Act 1984,
- “ITA 2007” means the Income Tax Act 2007,
- “ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003,
- “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005,
- “OTA 1975” means the Oil Taxation Act 1975,
- “PRTA 1980” means the Petroleum Revenue Tax Act 1980,
- “TCGA 1992” means the Taxation of Chargeable Gains Act 1992,
- “TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010,

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“TMA 1970” means the Taxes Management Act 1970,  
“TPDA 1979” means the Tobacco Products Duty Act 1979,  
“VATA 1994” means the Value Added Tax Act 1994, and  
“VERA 1994” means the Vehicle Excise and Registration Act 1994.

(2) In this Act—

“FA”, followed by a year, means the Finance Act of that year;

“F(No.2)A”, followed by a year, means the Finance (No. 2) Act of that year.

**229 Short title**

This Act may be cited as the Finance Act 2012.

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## SCHEDULES

### SCHEDULE 1

Section 8

#### HIGH INCOME CHILD BENEFIT CHARGE

##### *The high income child benefit charge*

1 In Part 10 of ITEPA 2003 (social security benefits), after Chapter 7 insert—

#### “CHAPTER 8

#### HIGH INCOME CHILD BENEFIT CHARGE

##### **High income child benefit charge**

- 681(B) A person (“P”) is liable to a charge to income tax for a tax year if—
- (a) P's adjusted net income for the year exceeds £50,000, and
  - (b) one or both of conditions A and B are met.
- (2) The charge is to be known as a “high income child benefit charge”.
- (3) Condition A is that—
- (a) P is entitled to an amount in respect of child benefit for a week in the tax year, and
  - (b) there is no other person who is a partner of P throughout the week and has an adjusted net income for the year which exceeds that of P.
- (4) Condition B is that—
- (a) a person (“Q”) other than P is entitled to an amount in respect of child benefit for a week in the tax year,
  - (b) Q is a partner of P throughout the week, and
  - (c) P has an adjusted net income for the year which exceeds that of Q.

##### **The amount of the charge**

- 681(C) The amount of the high income child benefit charge to which a person (“P”) is liable for a tax year is the appropriate percentage of the total of—
- (a) any amounts in relation to which condition A is met, and
  - (b) any amounts in relation to which condition B is met.
- For conditions A and B, see section 681B.
- (2) “The appropriate percentage” is—
- (a) 100%, or
  - (b) if less, the percentage determined by the formula—

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$$\frac{\text{ANI} - L}{X} \%$$

Where—

ANI is P's adjusted net income for the tax year;

L is £50,000;

X is £100.

(3) If—

- (a) the total of the amounts mentioned in paragraphs (a) and (b) of subsection (1), or the amount of the charge determined under that subsection, is not a whole number of pounds, or
- (b) the percentage determined under subsection (2)(b) is not a whole number,

it is to be rounded down to the nearest whole number.

#### **Extension of charge in cases where child not living with claimant**

681D) This section applies where—

- (a) a person (“R”) is entitled to an amount in respect of child benefit for a child for a week in a tax year by virtue of section 143(1)(b) of SSCBA 1992 or section 139(1)(b) of SSCB(NI)A 1992 (persons contributing to the cost of providing for a child),
  - (b) neither R, nor any person who is a partner of R throughout that week, is liable for a charge to income tax in respect of that amount under section 681B, and
  - (c) there is another person (“S”) who, for the purposes of section 143(1)(a) of SSCBA 1992 or section 139(1)(a) of SSCB(NI)A 1992 (persons with whom child is living), is a person who has the child living with him or her in that week.
- (2) Section 681B applies as if S were entitled to the amount of child benefit mentioned in subsection (1)(a).
- (3) Where there is more than one person to whom subsection (1)(c) applies in relation to an amount of child benefit for a week, subsection (2) applies only to the one with the highest adjusted net income for the tax year.
- (4) For the purposes of subsection (1)(a), an amount of child benefit to which R is entitled for a week is to be ignored if—
- (a) the period (which includes that week) for which R is entitled to child benefit by virtue of section 143(1)(b) of SSCBA 1992 or section 139(1)(b) of SSCB(NI)A 1992 in respect of the same child does not exceed 52 weeks, and
  - (b) R is entitled to child benefit in respect of the child for the week immediately before and the week immediately after that period by virtue of section 143(1)(a) of SSCBA 1992 or section 139(1)(a) of SSCB(NI)A 1992.

(5) In this section “child” means—

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- (a) a child within the meaning of section 142 of SSCBA 1992 or section 138 of SSCB(NI)A 1992, or
- (b) a qualifying young person within the meaning of either of those sections.

### Special cases

681(F) The following amounts are to be disregarded for the purposes of this Chapter—

- (a) amounts to which a person is entitled but in respect of which an election under section 13A of the Social Security Administration Act 1992 or section 11A of the Social Security Administration (Northern Ireland) Act 1992 (election for payment of child benefit not to be made if high income child benefit charge would be triggered) has effect;
  - (b) amounts to which a person is entitled by virtue of section 145A of SSCBA 1992 or section 141A of SSCB(NI)A 1992 (entitlement to child benefit after death of child or qualifying young person).
- (2) Subsection (3) applies if—
- (a) a person (“T”) is entitled to an amount in respect of child benefit for a week in a tax year or is treated as so entitled by virtue of section 681D(2),
  - (b) two or more other persons are partners of T throughout the week, and
  - (c) two or more of those persons would, apart from subsection (3), each be liable to a charge under section 681B(1) in relation to that amount.
- (3) Only one of those persons is liable, namely the person with the highest adjusted net income for the tax year.

### Alteration of income limit etc by Treasury order

681(F) The Treasury may by order—

- (a) substitute another amount for the amount for the time being specified in section 681B(1)(a) and defined as “L” in section 681C(2), or
  - (b) substitute another amount for the amount defined as “X” in section 681C(2).
- (2) An order under this section has effect for tax years beginning after the order is made.
- (3) A statutory instrument containing an order under this section which increases any person's liability to income tax may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.

### Meaning of “partner”

681(G) For the purposes of this Chapter a person is a “partner” of another person at any time if any of conditions A to D is met at that time.

- (2) Condition A is that the persons are a man and a woman who are married to each other and are neither—

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- (a) separated under a court order, nor
  - (b) separated in circumstances in which the separation is likely to be permanent.
- (3) Condition B is that the persons are a man and a woman who are not married to each other but are living together as husband and wife.
- (4) Condition C is that the persons are two men, or two women, who are civil partners of each other and are neither—
- (a) separated under a court order, nor
  - (b) separated in circumstances in which the separation is likely to be permanent.
- (5) Condition D is that the persons are two men, or two women, who are not civil partners of each other but are living together as if they were civil partners.

### Other interpretation provisions

681H) This section applies for the purposes of this Chapter.

- (2) “Adjusted net income” of a person for a tax year means the person's adjusted net income for that tax year as determined under section 58 of ITA 2007.
- (3) “Week” means a period of 7 days beginning with a Monday; and a week is in a tax year if (and only if) the Monday with which it begins is in the tax year.”

### *Consequential amendments*

- 2 In section 7 of TMA 1970 (notice of liability to income tax and capital gains tax), in subsection (3), for the words from “his total income” to the end substitute “—
- (a) the person's total income consists of income from sources falling within subsections (4) to (7) below,
  - (b) the person has no chargeable gains, and
  - (c) the person is not liable to a high income child benefit charge.”
- 3 After section 13 of the Social Security Administration Act 1992 insert—

### “13A Election not to receive child benefit

- (1) A person (“P”) who is entitled to child benefit in respect of one or more children may elect for all payments of the benefit to which P is entitled not to be made.
- (2) An election may be made only if P reasonably expects that, in the absence of the election, P or another person would be liable to a high income child benefit charge in respect of the payments to which the election relates made for weeks in the first tax year.
- (3) An election has effect in relation to payments made for weeks beginning after the election is made.
- (4) But where entitlement to child benefit is backdated, an election may have effect in relation to payments for weeks beginning in the period of three months ending immediately before the claim for the benefit was made.

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- (5) An election may be revoked.
- (6) A revocation has effect in relation to payments made for weeks beginning after the revocation is made.
- (7) But if—
- (a) P makes an election which results in all payments, in respect of child benefit, to which P is entitled for one or more weeks in a tax year not being paid, and
  - (b) had no election been made, neither P nor any other person would have been liable to a high income child benefit charge in relation to the payments,
- P may, no later than two years after the end of the tax year, revoke the election so far as it relates to the payments.
- (8) Subsections (2) to (7) are subject to directions under subsection (9).
- (9) The Commissioners for Her Majesty's Revenue and Customs may give directions as to—
- (a) the form of elections and revocations under this section, the manner in which they are to be made and the time at which they are to be treated as made, and
  - (b) the circumstances in which, if child benefit is not being paid to a person at the full rate or the Commissioners are satisfied that there are doubts as to a person's entitlement to child benefit for a child, an election or revocation is not to have effect or its effect is to be postponed.
- (10) For the purposes of this section—
- “child” includes a qualifying young person;
  - “first tax year”, in relation to an election, means the tax year in which the first week beginning after the election is made falls;
  - “week” means a period of 7 days beginning with a Monday; and a week is in a tax year if (and only if) the Monday with which it begins is in the tax year.”

4 After section 11 of the Social Security Administration (Northern Ireland) Act 1992 insert—

**“11A Election not to receive child benefit**

- (1) A person (“P”) who is entitled to child benefit in respect of one or more children may elect for all payments of the benefit to which P is entitled not to be made.
- (2) An election may be made only if P reasonably expects that, in the absence of the election, P or another person would be liable to a high income child benefit charge in respect of the payments to which the election relates made for weeks in the first tax year.
- (3) An election has effect in relation to payments made for weeks beginning after the election is made.

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- (4) But where entitlement to child benefit is backdated, an election may have effect in relation to payments for weeks beginning in the period of three months ending immediately before the claim for the benefit was made.
- (5) An election may be revoked.
- (6) A revocation has effect in relation to payments made for weeks beginning after the revocation is made.
- (7) But if—
- (a) P makes an election which results in all payments, in respect of child benefit, to which P is entitled for one or more weeks in a tax year not being paid, and
  - (b) had no election been made, neither P nor any other person would have been liable to a high income child benefit charge in relation to the payments,
- P may, no later than two years after the end of the tax year, revoke the election so far as it relates to the payments.
- (8) Subsections (2) to (7) are subject to directions under subsection (9).
- (9) The Commissioners for Her Majesty's Revenue and Customs may give directions as to—
- (a) the form of elections and revocations under this section, the manner in which they are to be made and the time at which they are to be treated as made, and
  - (b) the circumstances in which, if child benefit is not being paid to a person at the full rate or the Commissioners are satisfied that there are doubts as to a person's entitlement to child benefit for a child, an election or revocation is not to have effect or its effect is to be postponed.
- (10) For the purposes of this section—
- “child” includes a qualifying young person;
- “first tax year”, in relation to an election, means the tax year in which the first week beginning after the election is made falls;
- “week” means a period of 7 days beginning with a Monday; and a week is in a tax year if (and only if) the Monday with which it begins is in the tax year.”

- 5 (1) ITEPA 2003 is amended as follows.
- (2) In section 1 (overview of contents of Act)—
- (a) in subsection (1)(c), after “see” insert “ Chapters 1 to 7 of”, and
  - (b) in subsection (3), after paragraph (a) insert—
    - “(aa) makes provision for the high income child benefit charge (see Chapter 8 of Part 10).”.
- (3) In section 655 (structure of Part 10), in subsection (1), at the end insert—
- “Chapter 8 makes provision for the high income child benefit charge.”
- (4) In section 684 (PAYE regulations), in subsection (2), after Item 2 insert—



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“2ZA Provision—

- (a) for deductions to be made, if and to the extent that the payee does not object, with a view to securing that income tax payable for a tax year by the payee by virtue of section 681B (high income child benefit charge) is deducted from PAYE income of the payee paid during that year,
- (b) for repayments to be made in a tax year, if and to the extent that the payee does not object, in respect of any amounts overpaid on account of income tax under that section for that tax year, and
- (c) as to the circumstances and manner in which a payee may object to the making of deductions or repayments.”

- (5) In section 685 (tax tables), in subsection (2)(b), after “2” insert “, 2ZA ”.
- (6) In section 717 (orders and regulations made by Treasury or Commissioners), in subsection (4), after “companies” insert “ or to which section 681F(3) (variation of income limit etc for high income child benefit charge: orders increasing liability to tax) applies ”.
- (7) In Part 2 of Schedule 1 (index of defined expressions), insert at the appropriate places—

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“adjusted net income (in Chapter 8 of Part 10)	section 681H”
“partner (in Chapter 8 of Part 10)	section 681G”
“week (in Chapter 8 of Part 10)	section 681H”

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- 6 (1) ITA 2007 is amended as follows.
- (2) In section 1 (overview of the Income Tax Acts), in subsection (1)(a), after “social security income” insert “ and makes provision for the high income child benefit charge ”.
  - (3) In section 30 (additional tax), in subsection (1), after “section 809ZO (tainted charity donations by trustees: charge to tax),” insert—  
“Chapter 8 of Part 10 of ITEPA 2003 (high income child benefit charge),”.

*Commencement*

- 7 (1) The amendments made by this Schedule have effect for the tax year 2012-13 and subsequent tax years.
- (2) In relation to the tax year 2012-13, references in section 681B of ITEPA 2003 (as inserted by paragraph 1) to an amount to which a person is entitled in respect of child benefit for a week in the tax year do not include any amount to which the person is entitled in respect of child benefit for a week beginning before 7 January 2013.
  - (3) In sub-paragraph (2), “week” means a period of 7 days beginning with a Monday.

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## SCHEDULE 2

Section 19

## PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

## PART 1

## AMENDMENTS OF CTA 2010

- 1 (1) In CTA 2010, after Part 8 insert—

## “PART 8A

## PROFITS ARISING FROM THE EXPLOITATION OF PATENTS ETC

## CHAPTER 1

## REDUCED CORPORATION TAX RATE FOR PROFITS FROM PATENTS ETC

**Election for special treatment of profits from patents etc**

- 357A(1) A company may elect that any relevant IP profits of a trade of the company for an accounting period for which it is a qualifying company are chargeable at a lower rate of corporation tax.
- (2) An election under subsection (1) is to be given effect by allowing a deduction to be made in calculating for corporation tax purposes the profits of the trade for the period.
- (3) The amount of the deduction is—

$$RP \times \left( \frac{MR - IPR}{MR} \right)$$

where—

RP is the relevant IP profits of the trade of the company,

MR is the main rate of corporation tax, and

IPR is the special IP rate of corporation tax.

- (4) The special IP rate of corporation tax is 10%.
- (5) Chapter 2 specifies when a company is a qualifying company.
- (6) Chapter 3 makes provision for determining the relevant IP profits or relevant IP losses of a trade.
- (7) Chapter 4 makes provision for an alternative way of determining the relevant IP profits or losses of a trade known as “streaming”.
- (8) Chapter 5 makes provision in relation to the relevant IP losses of a trade.

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- (9) Chapter 6 contains anti-avoidance provisions.
- (10) Chapter 7 contains supplementary provision.

## CHAPTER 2

### QUALIFYING COMPANIES

#### Meaning of “qualifying company”

- 357B) A company is a qualifying company for an accounting period if—
- (a) condition A or B is met, and
  - (b) in the case of a company that is a member of a group, condition C is met.
- (2) Condition A is that, at any time during the accounting period, the company—
- (a) holds any qualifying IP rights, or
  - (b) holds an exclusive licence in respect of any qualifying IP rights.
- For the meaning of “exclusive licence”, see section 357BA.
- (3) Condition B is that—
- (a) the company has held a qualifying IP right or an exclusive licence in respect of such a right,
  - (b) the company has received income in respect of an event which occurred in relation to the right or licence, or any part of which so occurred, at a time when—
    - (i) the company was a qualifying company, and
    - (ii) an election under section 357A had effect in relation to it, and
  - (c) the income falls to be taxed in the accounting period.
- (4) A right is a qualifying IP right for the purposes of this Part if—
- (a) it is a right to which this Part applies (see section 357BB), and
  - (b) the company meets the development condition in relation to the right (see section 357BC).
- (5) Condition C is that the company meets the active ownership condition for the accounting period (see section 357BE).

#### Meaning of “exclusive licence”

- 357BA) In this Part “exclusive licence”, in relation to a right (“the principal right”), means a licence which—
- (a) is granted by the person who holds either the principal right or an exclusive licence in respect of the principal right (“the proprietor”), and
  - (b) confers on the person holding the licence (“the licence-holder”), or on the licence-holder and persons authorised by it, the rights in respect of the principal right that are listed in subsection (2).
- (2) The rights are—

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- (a) one or more rights conferred to the exclusion of all other persons (including the proprietor) in one or more countries or territories, and
  - (b) the right—
    - (i) to bring proceedings without the consent of the proprietor or any other person in respect of any infringement of the rights within paragraph (a), or
    - (ii) to receive the whole or the greater part of any damages awarded in respect of any such infringement.
- (3) Where the licence-holder has any right within subsection (2)(b) by virtue of any enactment or rule of law, the right is to be regarded for the purposes of this section as conferred by the licence.
- (4) Where—
- (a) a company (“C”) that is a member of a group holds either a right to which this Part applies or an exclusive licence in respect of such a right, and
  - (b) C confers on another company that is a member of the group all of the rights held by C in respect of the invention,
- that other company is to be treated for the purposes of this Part as holding an exclusive licence in respect of that right.
- (5) For the purposes of subsection (4) it does not matter if the rights conferred by C do not include the right to enforce, assign or grant a licence of any of those rights.

### **Rights to which this Part applies**

- 357B(1) This Part applies to the following rights—
- (a) a patent granted under the Patents Act 1977,
  - (b) a patent granted under the European Patent Convention,
  - (c) a right of a specified description which corresponds to a right within paragraph (a) or (b) and is granted under the law of a specified EEA state,
  - (d) a supplementary protection certificate,
  - (e) any plant breeders' rights granted in accordance with Part 1 of the Plant Varieties Act 1997,
  - (f) any Community plant variety rights granted under Council Regulation (EC) No 2100/94.
- (2) Where—
- (a) directions are in force under section 22 of the Patents Act 1977 (information prejudicial to national security or safety of public) with respect to an application for a patent under that Act, and
  - (b) the person making the application has been notified under section 18(4) of that Act that the application complies with the requirements of the Act and the rules,
- the person is to be treated for the purposes of this Part as if the person had been granted the patent under that Act.
- (3) Where—

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- (a) a person holds a marketing authorisation in respect of a product in accordance with any EU legislation, and
  - (b) the product benefits from marketing protection (see subsection (4)) or data protection (see subsection (5)),
- the person is to be treated for the purposes of this Part as having been granted a right to which this Part applies in respect of the product.
- (4) For the purposes of this section a product benefits from marketing protection if—
- (a) the product benefits from marketing protection by virtue of Article 14.11 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human use, or
  - (b) any of the following prohibitions is in force—
    - (i) the prohibition on placing on the market a generic of the product imposed by Article 10.1 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use,
    - (ii) the prohibition imposed by Article 8.1 of Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products, and
    - (iii) the prohibition on placing on the market a generic of the product imposed by Article 13.1 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products.
- (5) For the purposes of this section a product benefits from data protection if—
- (a) the product benefits from the data exclusivity conferred by Article 10.5 of Directive 2001/83/EC of the European Parliament and of the Council,
  - (b) the prohibition on referring to the results of tests or trials in relation to the product imposed by Article 74a of that Directive is in force, or
  - (c) data relating to the product benefits from data protection under Article 59 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market.
- (6) The reference to data in subsection (5)(c) does not include a study necessary for the renewal or review of a marketing authorisation granted in respect of the product in accordance with Regulation (EC) No 1107/2009.
- (7) In this section—
- “European Patent Convention” means the Convention on the Grant of European Patents,
  - “rules” means rules made under section 123 of the Patents Act 1977,
  - “specified” means specified in an order made by the Treasury, and
  - “supplementary protection certificate” means a certificate issued under—

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- (a) Council Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products, or
  - (b) Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.
- (8) The Treasury may by order—
- (a) amend this section so as to make provision about the circumstances in which a product benefits from marketing or data protection for the purposes of this section;
  - (b) make such provision amending any reference in this section to EU legislation as appears to them appropriate in consequence of any EU legislation amending or replacing that EU legislation.
- (9) An order made under this section may make any incidental, supplemental, consequential, transitional or saving provision, including provision amending or modifying this Part.

### **The development condition**

357B(1) A company meets the development condition in relation to a right if condition A, B, C or D is met.

Section 357BD (meaning of “qualifying development”) applies for the purposes of this section.

- (2) Condition A is that—
- (a) the company has at any time carried out qualifying development in relation to the right, and
  - (b) the company has not ceased to be, or become, a controlled member of a group since that time.
- (3) Condition B is that—
- (a) the company has at any time carried out qualifying development in relation to the right,
  - (b) the company has ceased to be, or become, a controlled member of a group since that time,
  - (c) the company has, for a period of 12 months beginning with the day on which it ceased to be, or became, a controlled member of the group, performed activities of the same description as those that constituted the qualifying development, and
  - (d) the company remains a member of that group or (as the case may be) does not become a controlled member of any other group.
- (4) Condition C is that—
- (a) the company is a member of a group,
  - (b) another company that is or has been a member of the group has carried out qualifying development in relation to the right, and
  - (c) that other company was a member of the group at the time it carried out the qualifying development.

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- (5) Condition D is that—
- (a) the company is a member of a group,
  - (b) another company that is or has been a member of the group has carried out qualifying development in relation to the right,
  - (c) that other company (“T”) or, where another member of the group begins to carry on the trade which T carried on immediately before becoming a member of the group, either or both of those companies have, while carrying on that trade as a member of the group, performed activities of the same description as those that constituted the qualifying development, and
  - (d) those activities of those companies, taken together, have been performed for a period of 12 months beginning with the day on which T became a member of the group.
- (6) For the purposes of conditions A and B, a company becomes a controlled member of a group at any time if—
- (a) another company (“P”) either becomes the holder of a major interest in the company, or begins to control the company, at that time, and
  - (b) immediately before that time the company was not associated with P or with any company associated with P immediately before that time.
- (7) For the purposes of conditions A and B, a company ceases to be a controlled member of a group at any time if—
- (a) every other company which immediately before that time held a major interest in, or controlled, the company ceases to do so, and
  - (b) as a result the company ceases to be associated with any of those companies.
- (8) Where—
- (a) a company ceases to be a controlled member of a group at any time, and
  - (b) at that time the company holds a major interest in, or controls, any other company,
- that other company is to be treated for the purposes of conditions A and B as also having ceased to be a controlled member of the group at that time.
- (9) In subsections (6) and (7) “associated” is to be read in accordance with section 357GD(3).
- (10) The following provisions apply for the purposes of subsections (6) to (8)—
- section 472 of CTA 2009 (meaning of “control”), and
  - sections 473 and 474 of CTA 2009 (meaning of “major interest”).
- (11) A company that meets the development condition in relation to a right by virtue of the performance of the activities mentioned in subsection (3) or (5) for the period of 12 months so mentioned is to be regarded as meeting that condition in relation to the right during that period (as well as at any other time when the company meets the condition).

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### Meaning of “qualifying development”

- 357B(1) A company carries out “qualifying development” in relation to a right if—
- (a) it creates, or significantly contributes to the creation of, the invention, or
  - (b) it performs a significant amount of activity for the purposes of developing the invention or any item or process incorporating the invention.
- (2) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.
- (3) For the purposes of section 357BC it does not matter whether the qualifying development was carried out before or after—
- (a) the company, or
  - (b) where the company is a member of a group, any member of the group,
- became the holder of the right or (as the case may be) an exclusive licence in respect of the right.

### The active ownership condition

- 357B(1) A company meets the active ownership condition for an accounting period if all or almost all of the qualifying IP rights held by the company in that accounting period are rights in respect of which condition A or B is met.
- (2) Condition A is that during the accounting period the company performs a significant amount of management activity in relation to the rights.
  - (3) In subsection (2) “management activity”, in relation to any qualifying IP rights, means formulating plans and making decisions in relation to the development or exploitation of the rights.
  - (4) Condition B is that the company meets the development condition in relation to the rights by virtue of section 357BC(2) or (3).
  - (5) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

## CHAPTER 3

### RELEVANT IP PROFITS

#### *Steps for calculating relevant IP profits of a trade*

### Relevant IP profits

- 357(1) To determine the relevant IP profits of a trade of a company for an accounting period—



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*Step 1* Calculate the total gross income of the trade for the accounting period (see section 357CA).

*Step 2* Calculate the percentage (“X%”) given by the following formula—

$$\frac{\text{RIPI}}{\text{TI}} \times 100$$

where—

“RIPI” is so much of the total gross income of the trade for the accounting period as is relevant IP income (see sections 357CC and 357CD), and

“TI” is the total gross income of the trade for the accounting period.

*Step 3* Calculate X% of the profits of the trade for the accounting period. If there are no such profits, calculate X% of the losses of the trade (expressed as a negative figure) for the accounting period. In calculating the profits of the trade for the purposes of this step, make any adjustments required by section 357CG (and references in this step to the profits or losses of the trade are to be read subject to any such adjustments).

*Step 4* Deduct from the amount given by Step 3 the routine return figure (see section 357CI). The amount given by this step is the “qualifying residual profit”.

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

*Step 5* If the company has elected for small claims treatment, calculate the small claims amount in relation to the trade (see section 357CM). If the company has not, go to Step 6.

*Step 6* Deduct from the qualifying residual profit the marketing assets return figure (see section 357CN).

*Step 7* If the company has made an election under section 357CQ (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 5 or 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

- (2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.
- (3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).

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### *Total gross income of trade*

#### **Total gross income of a trade**

- 357C(A) For the purposes of this Part the “total gross income” of a trade of a company for an accounting period is the aggregate of the amounts falling within the Heads set out in—
- (a) subsection (3) (revenue),
  - (b) subsection (5) (compensation),
  - (c) subsection (6) (adjustments),
  - (d) subsection (7) (proceeds from intangible fixed assets),
  - (e) subsection (8) (profits from patent rights).
- (2) But the total gross income of the trade does not include any finance income (see section 357CB).
- (3) Head 1 is any amounts which—
- (a) in accordance with generally accepted accounting practice (“GAAP”) are recognised as revenue in the company's profit and loss account or income statement for the accounting period, and
  - (b) are brought into account as credits in calculating the profits of the trade for the accounting period.
- (4) Where the company does not draw up accounts for an accounting period in accordance with GAAP, the reference in subsection (3)(a) to any amounts which in accordance with GAAP are recognised as revenue in the company's profit and loss account or income statement for the accounting period is to be read as a reference to any amounts which would be so recognised if the company had drawn up such accounts for that accounting period.
- (5) Head 2 is any amounts of damages, proceeds of insurance or other compensation (so far as not falling within Head 1) which are brought into account as credits in calculating the profits of the trade for the accounting period.
- (6) Head 3 is any amounts (so far as not falling within Head 1) which are brought into account as receipts under section 181 of CTA 2009 (adjustment on change of basis) in calculating the profits of the trade for the accounting period.
- (7) Head 4 is any amounts (so far as not falling within Head 1) which are brought into account as credits under Chapter 4 of Part 8 of CTA 2009 (realisation of intangible fixed assets) in calculating the profits of the trade for the accounting period.
- (8) Head 5 is any profits from the sale by the company of the whole or part of any patent rights held for the purposes of the trade which are taxed under section 912 of CTA 2009 in the accounting period.

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### **Finance income**

357C(B) For the purposes of this Part “finance income”, in relation to a trade of a company, means—

- (a) any credits which are treated as receipts of the trade by virtue of—
  - (i) section 297 of CTA 2009 (credits in respect of loan relationships), or
  - (ii) section 573 of CTA 2009 (credits in respect of derivative contracts),
- (b) any amount which in accordance with generally accepted accounting practice falls to be recognised as arising from a financial asset, and
- (c) any return, in relation to an amount, which—
  - (i) is produced for the company by an arrangement to which it is party, and
  - (ii) is economically equivalent to interest.

(2) In subsection (1)—

“economically equivalent to interest” is to be construed in accordance with section 486B(2) and (3) of CTA 2009, and

“financial asset” means a financial asset as defined for the purposes of generally accepted accounting practice.

(3) For the purposes of subsection (1)(c), the amount of a return is the amount which by virtue of the return would, in calculating the company's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to the company from a loan relationship.

But, in calculating that profit for the purposes of this subsection, sections 486B(7) and 486C to 486E of that Act are to be ignored.

### *Relevant IP income*

#### **Relevant IP income**

357C(Q) For the purposes of this Part “relevant IP income” means income falling within any of the Heads set out in—

- (a) subsection (2) (sales income),
- (b) subsection (6) (licence fees),
- (c) subsection (7) (proceeds of sale etc),
- (d) subsection (8) (damages for infringement),
- (e) subsection (9) (other compensation).

This is subject to section 357CE (excluded income).

(2) Head 1 is income arising from the sale by the company of any of the following items—

- (a) items in respect of which a qualifying IP right held by the company has been granted (“qualifying items”);
- (b) items incorporating one or more qualifying items;

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- (c) items that are wholly or mainly designed to be incorporated into items within paragraph (a) or (b).
- (3) For the purposes of this Part an item and its packaging are not to be treated as a single item, unless the packaging performs a function that is essential for the use of the item for the purposes for which it is intended to be used.
- (4) In subsection (3) “packaging”, in relation to an item, means any form of container or other packaging used for the containment, protection, handling, delivery or presentation of the item, including by way of attaching the item to, or winding the item round, some other article.
- (5) In a case where a qualifying item and an item that is designed to incorporate that item (“the parent item”) are sold together as, or as part of, a single unit for a single price, the reference in subsection (2)(b) to an item incorporating a qualifying item includes a reference to the parent item.
- (6) Head 2 is income consisting of any licence fee or royalty which the company receives under an agreement granting another person any of the following rights only—
- (a) a right in respect of any qualifying IP right held by the company,
  - (b) any other right in respect of a qualifying item or process, and
  - (c) in the case of an agreement granting any right within paragraph (a) or (b), a right granted for the same purposes as those for which that right was granted.
- In this subsection “qualifying process” means a process in respect of which a qualifying IP right held by the company has been granted.
- (7) Head 3 is any income arising from the sale or other disposal of a qualifying IP right or an exclusive licence in respect of such a right.
- (8) Head 4 is any amount received by the company in respect of an infringement, or alleged infringement, of a qualifying IP right held by the company at the time of the infringement or alleged infringement.
- (9) Head 5 is any amount of damages, proceeds of insurance or other compensation, other than an amount in respect of an infringement or alleged infringement of a qualifying IP right, which is received by the company in respect of an event and—
- (a) is paid in respect of any items that fell within subsection (2) at the time of that event, or
  - (b) represents a loss of income which would, if received by the company at the time of that event, have been relevant IP income.
- (10) But income is not relevant IP income by virtue of subsection (8) or (9) unless the event in respect of which the income is received, or any part of that event, occurred at a time when—
- (a) the company was a qualifying company, and
  - (b) an election under section 357A had effect in relation to it.
- (11) In a case where the whole of that event does not occur at such a time, subsection (8) or (9) (as the case may be) applies only to so much of the amount received by the company in respect of the event as on a just and reasonable apportionment is properly attributable to such a time.

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- (12) Any reference in this section to a qualifying IP right held by the company includes a reference to a qualifying IP right in respect of which the company holds an exclusive licence.

### **Notional royalty**

357CD) This section applies where—

- (a) a company, for the purposes of any trade of the company, holds any rights mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of any such rights, and
  - (b) the rights are relevant qualifying IP rights.
- (2) For the purposes of this section a qualifying IP right is a “relevant qualifying IP right” in relation to an accounting period if—
- (a) the total gross income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that right, and
  - (b) that income is not relevant IP income or excluded income.
- Such income is referred to in this section as “IP-derived income”.
- (3) The company may elect that the notional royalty in respect of the trade for the accounting period is to be treated for the purposes of this Part as if it were relevant IP income.
- (4) The notional royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the IP-derived income for that accounting period.
- (5) The “appropriate percentage” is the proportion of any IP-derived income for an accounting period which the company would pay another person (“P”) for the right to exploit the relevant qualifying IP rights in that accounting period if the company were not otherwise able to exploit them.
- (6) For the purposes of determining the appropriate percentage under this section, assume that—
- (a) the company and P are dealing at arm's length,
  - (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant qualifying IP rights to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the relevant qualifying IP rights as it actually has,
  - (d) the relevant qualifying IP rights are conferred on the relevant day,
  - (e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,
  - (f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant qualifying IP rights, and
  - (g) no income other than IP-derived income will arise from anything done by the company that involves the exploitation by the company of the relevant qualifying IP rights.

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- (7) In subsection (6)(d) “the relevant day”, in relation to a relevant qualifying IP right or a licence in respect of such a right, means—
- (a) the first day of the accounting period, or
  - (b) if later, the day on which the company first began to hold the right or licence.
- (8) In determining the appropriate percentage, the company must act in accordance with—
- (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.
- (9) In this section “excluded income” means any income falling within any of the Heads in section 357CE.

### **Excluded income**

- 357C(E) For the purposes of this Part income falling within any of the Heads set out in the following subsections is not relevant IP income—
- (a) subsection (2) (ring fence income),
  - (b) subsection (3) (income attributable to non-exclusive licences).

- (2) Head 1 is income arising from oil extraction activities or oil rights.

In this subsection “oil extraction activities” and “oil rights” have the same meaning as in Part 8 (see sections 272 and 273).

- (3) Head 2 is income which on a just and reasonable apportionment is properly attributable to a licence (a “non-exclusive licence”) held by the company which—

- (a) is a licence in respect of an item or process, but
- (b) is not an exclusive licence in respect of a qualifying IP right.

- (4) In a case where—

- (a) a company holds an exclusive licence in respect of a qualifying IP right, and
- (b) the licence also confers on the company (or on the company and persons authorised by it) any right in respect of the invention otherwise than to the exclusion of all other persons,

the licence is to be treated for the purposes of this Part as if it were two separate licences, one an exclusive licence that does not confer any such rights, and the other a non-exclusive licence conferring those rights.

### **Mixed sources of income**

- 357C(F) This section applies to any income that—

- (a) is mixed income, or
- (b) is paid under a mixed agreement.

- (2) “Mixed income” means the proceeds of sale in a case where an item falling within subsection (2) of section 357CC and an item not falling within that subsection are sold together as, or as part of, a single unit for a single price.

- (3) A “mixed agreement” is an agreement providing for—

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- (a) one or more of the matters in paragraphs (a) to (c) of subsection (4), and
  - (b) one or more of the matters in paragraphs (d) to (g) of that subsection.
- (4) The matters are—
- (a) the sale of an item falling within section 357CC(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6),
  - (c) a sale or disposal falling within section 357CC(7),
  - (d) the sale of any other item,
  - (e) the grant of any other right,
  - (f) any other sale or disposal,
  - (g) the provision of any services.
- (5) So much of the income as on a just and reasonable apportionment is properly attributable to—
- (a) the sale of an item falling within section 357CC(2),
  - (b) the grant of any right falling within paragraph (a), (b) or (c) of section 357CC(6), or
  - (c) a sale or disposal falling within section 357CC(7),
- is to be regarded for the purposes of this Part as relevant IP income.
- (6) But where the amount of income that on such an apportionment is properly attributable to any of the matters in paragraphs (d) to (g) of subsection (4) is a trivial proportion of the income to which this section applies, all of that income is to be regarded for the purposes of this Part as relevant IP income.

### *Calculating profits of trade*

#### **Adjustments in calculating profits of trade**

- 357C(1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period.
- (2) In calculating the profits of the trade for the accounting period—
- (a) there are to be added the amounts in subsection (3), and
  - (b) there are to be deducted the amounts in subsection (4).
- (3) The amounts to be added are—
- (a) the amount of any debits which are treated as expenses of the trade by virtue of—
    - (i) section 297 of CTA 2009 (debts in respect of loan relationships), or
    - (ii) section 573 of CTA 2009 (debts in respect of derivative contracts), and
  - (b) the amount of any additional deduction for the accounting period obtained by the company under Part 13 of CTA 2009 for expenditure on research and development in relation to the trade.
- (4) The amounts to be deducted are any amounts of finance income brought into account in calculating the profits of the trade for the accounting period.

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(For the meaning of “finance income”, see section 357CB.)

- (5) In a case where there is a shortfall in R&D expenditure in relation to the trade for a relevant accounting period (see section 357CH), the amount of R&D expenditure brought into account in calculating the profits of the trade for that accounting period is to be increased by the amount mentioned in section 357CH(2).
- (6) For the purposes of subsection (5)—
- “R&D expenditure” means expenditure on research and development in relation to the trade,
- “relevant accounting period”, in relation to a company, means—
- (a) the first accounting period for which—
    - (i) the company is a qualifying company, and
    - (ii) an election under section 357A has effect in relation to it, and
  - (b) each accounting period that begins before the end of the period of 4 years beginning with that accounting period, and
- “research and development” means activities, other than oil and gas exploration and appraisal, that fall to be treated as research and development in accordance with generally accepted accounting practice.

### Shortfall in R&D expenditure

- 357CH(1) There is a shortfall in R&D expenditure in relation to a trade of a company for a relevant accounting period if the actual R&D expenditure of the trade for the accounting period (as adjusted under subsections (8) to (11)) is less than 75% of the average amount of R&D expenditure.
- (2) The amount that is to be added to the actual R&D expenditure for the purposes of section 357CG(5) is an amount equal to the difference between—
- (a) 75% of the average amount of R&D expenditure, and
  - (b) the actual R&D expenditure, as adjusted under subsections (8) to (11).
- (3) In this section—
- (a) the “actual R&D expenditure” of a trade of a company for an accounting period is the amount of R&D expenditure that (ignoring section 357CG(5)) is brought into account in calculating the profits of the trade for the accounting period, and
  - (b) “R&D expenditure” and “relevant accounting period” have the meaning given by section 357CG(6).
- (4) The average amount of R&D expenditure is—

$$\frac{E}{N} \times 365$$



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where—

E is the amount of R&D expenditure that—

- (a) has been incurred by the company during the relevant period, and
- (b) has been brought into account in calculating the profits of the trade for any accounting period ending before the first relevant accounting period, and

N is the number of days in the relevant period.

- (5) The relevant period is the shorter of—
  - (a) the period of 4 years ending immediately before the first relevant accounting period, and
  - (b) the period beginning with the day on which the company begins to carry on the trade and ending immediately before the first relevant accounting period.
- (6) For a relevant accounting period of less than 12 months, the average amount of R&D expenditure is proportionately reduced.
- (7) Subsections (8) to (11) apply for the purposes of determining—
  - (a) whether there is a shortfall in R&D expenditure for a relevant accounting period, and
  - (b) if there is such a shortfall, the amount to be added by virtue of subsection (2).
- (8) If the amount of the actual R&D expenditure for a relevant accounting period is greater than the average amount of R&D expenditure, the difference between the two amounts is to be added to the actual R&D expenditure for the next relevant accounting period.
- (9) If—
  - (a) there is not a shortfall in R&D expenditure for a relevant accounting period, but
  - (b) in the absence of any additional amount, there would be a shortfall in R&D expenditure for that accounting period,the remaining portion of the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period.
- (10) For the purposes of this section—
  - “additional amount”, in relation to a relevant accounting period, means any amount added to the actual R&D expenditure for that accounting period by virtue of subsection (8), (9) or (11), and
  - “the remaining portion” of an additional amount is so much of that amount as exceeds the difference between—
    - (a) the actual R&D expenditure for the relevant accounting period in the absence of the additional amount, and
    - (b) 75% of the average amount of R&D expenditure.
- (11) If—
  - (a) there is not a shortfall in R&D expenditure for a relevant accounting period, and

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- (b) there would not be a shortfall in R&D expenditure for that accounting period in the absence of any additional amount, the additional amount is to be added to the actual R&D expenditure for the next relevant accounting period (in addition to any additional amount so added by virtue of subsection (8)).

### *Routine return figure*

#### **Routine return figure**

357C(1) To determine the routine return figure in relation to a trade of a company for an accounting period—

*Step 1* Take the aggregate of any routine deductions made by the company in calculating the profits of the trade for the accounting period. For the meaning of “routine deductions”, see sections 357CJ and 357CK.

*Step 2* Multiply that amount by 0.1.

*Step 3* Calculate X% of the amount given by Step 2. “X%” is the percentage given by Step 2 in section 357C(1).

(2) In a case where—

- (a) the company (“C”) is a member of a group,
- (b) another member of the group incurs expenses on behalf of C,
- (c) had they been incurred by C, C would have made a deduction in respect of the expenses in calculating the profits of the trade for the accounting period, and
- (d) the deduction would have been a routine deduction,

C is to be treated for the purposes of subsection (1) as having made such a routine deduction.

(3) Where expenses are incurred by any member of the group on behalf of C and any other member of the group, subsection (2) applies in relation to so much of the amount of the expenses as on a just and reasonable apportionment may properly be regarded as incurred on behalf of C.

#### **Routine deductions**

357C(1) For the purposes of section 357CI “routine deductions” means deductions falling within any of the Heads set out in—

- (a) subsection (2) (capital allowances),
- (b) subsection (3) (costs of premises),
- (c) subsection (4) (personnel costs),
- (d) subsection (5) (plant and machinery costs),
- (e) subsection (6) (professional services),
- (f) subsection (7) (miscellaneous services).

This is subject to section 357CK (deductions that are not routine deductions).

(2) Head 1 is any allowances under CAA 2001.

(3) Head 2 is any deductions made by the company in respect of any premises occupied by the company.

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- (4) Head 3 is any deductions made by the company in respect of—
- (a) any director or employee of the company, or
  - (b) any externally provided workers.
- (5) Head 4 is any deductions made by the company in respect of any plant or machinery used by the company.
- (6) Head 5 is any deductions made by the company in respect of any of the following services—
- (a) legal services, other than IP-related services;
  - (b) financial services, including—
    - (i) insurance services, and
    - (ii) valuation or actuarial services;
  - (c) services provided in connection with the administration or management of the company's directors and employees;
  - (d) any other consultancy services.
- (7) Head 6 is any deductions made by the company in respect of any of the following services—
- (a) the supply of water, fuel or power;
  - (b) telecommunications services;
  - (c) computing services, including computer software;
  - (d) postal services;
  - (e) the transportation of any items;
  - (f) the collection, removal and disposal of refuse.
- (8) In this section—
- “externally provided worker” has the same meaning as in Part 13 of CTA 2009 (see section 1128 of that Act),
  - “IP-related services” means services provided in connection with—
    - (a) any application for a right to which this Part applies, or
    - (b) any proceedings relating to the enforcement of any such right,
  - “premises” includes any land,
  - “telecommunications service” means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service), and
  - “telecommunication system” means any system (including the apparatus comprised in it) which exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.
- (9) The Treasury may by order amend this section.

### **Deductions that are not routine deductions**

- 357C(KI) For the purposes of section 357CI a deduction is not a “routine deduction” if it falls within any of the Heads set out in—
- (a) subsection (2) (loan relationships and derivative contracts),

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- (b) subsection (3) (R&D expenses),
  - (c) subsection (4) (capital allowances for R&D or patents),
  - (d) subsection (5) (R&D-related employee share acquisitions).
- (2) Head 1 is any debits which are treated as expenses of the trade by virtue of—
- (a) section 297 of CTA 2009 (debts in respect of loan relationships), or
  - (b) section 573 of CTA 2009 (debts in respect of derivative contracts).
- (3) Head 2 is—
- (a) the amount of any expenditure on research and development in relation to the trade for which an additional deduction for the accounting period is obtained by the company under Part 13 of CTA 2009, and
  - (b) the amount of that additional deduction.
- (4) Head 3 is any allowances under—
- (a) Part 6 of CAA 2001 (research and development allowances), or
  - (b) Part 8 of CAA 2001 (patent allowances).
- (5) Head 4 is the appropriate proportion of any deductions allowed under Part 12 of CTA 2009 (relief for employee share acquisitions) in a case where—
- (a) shares are acquired by an employee or another person because of the employee's employment by the company, and
  - (b) the employee is wholly or partly engaged directly and actively in relevant research and development (within the meaning of section 1042 of CTA 2009).
- (6) In subsection (5) “the appropriate proportion”, in relation to a deduction allowed in respect of an employee, is the proportion of the staffing costs in respect of the employee which are attributable to relevant research and development for the purposes of Part 13 of CTA 2009 (see section 1124 of that Act).
- “Staffing costs” has the same meaning as in that Part (see section 1123 of that Act).
- (7) Subsections (5) and (6) of section 1124 of CTA 2009 apply for the purposes of subsection (5)(b) as they apply for the purposes of that section.
- (8) The Treasury may by order amend this section.

#### *Election for small claims treatment*

#### **Companies eligible to elect for small claims treatment**

- 357C(1) A company may elect for small claims treatment for an accounting period if condition A or B is met in relation to the accounting period.
- (2) Condition A is that the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed £1,000,000.
  - (3) Condition B is that—

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- (a) the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period does not exceed the relevant maximum, and
  - (b) the company did not take Step 6 in section 357C(1) or 357DA(1) for the purpose of calculating the relevant IP profits of any trade of the company for any previous accounting period beginning within the relevant 4-year period.
- (4) In subsection (3)(b) “the relevant 4-year period” means the period of 4 years ending immediately before the accounting period mentioned in subsection (3)(a).
- (5) If the company has no associated company in the accounting period, the relevant maximum is £3,000,000.
- (6) If the company has one or more associated companies in the accounting period, the relevant maximum is—

$$\frac{\pounds 3,000,000}{1 + N}$$

where N is the number of those associated companies in relation to which an election under section 357A has effect for the accounting period.

- (7) For an accounting period of less than 12 months, the relevant maximum is proportionately reduced.
- (8) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of this section.
- (9) Sections 25 to 30 (definition of “associated companies”) have effect for the purposes of this section.

### Small claims amount

- 357CM(1) This section applies where a company elects for small claims treatment for an accounting period.
- (2) The small claims amount in relation to each trade of the company for the accounting period is—
- (a) if the amount in subsection (3) is lower than the small claims threshold, 75% of the qualifying residual profit of the trade for the accounting period;
  - (b) in any other case, the amount given by—

$$\frac{SCT}{T}$$

where—

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SCT is the small claims threshold, and

T is the number of trades of the company.

(3) The amount referred to in subsection (2)(a) is—

$$0.75 \times QRP$$

where QRP is the aggregate of the amounts of qualifying residual profit of each trade of the company for the accounting period (but see subsection (4)).

- (4) Any amount of qualifying residual profit of a trade of the company that is not greater than nil is to be disregarded for the purposes of subsection (3).
- (5) If the company has no associated company in the accounting period, the small claims threshold is £1,000,000.
- (6) If the company has one or more associated companies in the accounting period, the small claims threshold is—

$$\frac{\pounds 1,000,000}{1 + N}$$

where N is the number of those associated companies in relation to which an election under section 357A has effect for the accounting period.

- (7) For an accounting period of less than 12 months, the small claims threshold is proportionately reduced.
- (8) Sections 25 to 30 (definition of “associated companies”) have effect for the purposes of this section.

*Marketing assets return figure*

**Marketing assets return figure**

357C(N) The marketing assets return figure in relation to a trade of a company for an accounting period is—

$$NMR - AMR$$

where—

NMR is the notional marketing royalty in respect of the trade for the accounting period (see section 357CO), and

AMR is the actual marketing royalty in respect of the trade for the accounting period (see section 357CP).

(2) Where—

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- (a) AMR is greater than NMR, or
  - (b) the difference between NMR and AMR is less than 10% of the qualifying residual profit of the trade for the accounting period,
- the marketing assets return figure is nil.

### **Notional marketing royalty**

357C(1) The notional marketing royalty in respect of a trade of a company for an accounting period is the appropriate percentage of the relevant IP income for that accounting period.

In this section “relevant IP income”, in relation to a trade of a company for an accounting period, means so much of the total gross income of the trade for the accounting period as is relevant IP income.

- (2) The “appropriate percentage” is the proportion of any relevant IP income for an accounting period which the company would pay another person (“P”) for the right to exploit the relevant marketing assets in that accounting period if the company were not otherwise able to exploit them.
- (3) For the purposes of this section a marketing asset is a “relevant marketing asset” in relation to an accounting period if the relevant IP income of the trade of the company for the accounting period includes any income arising from things done by the company that involve the exploitation by the company of that marketing asset.
- (4) For the purposes of determining the appropriate percentage under this section, assume that—
  - (a) the company and P are dealing at arm's length,
  - (b) the company, or the company and persons authorised by it, will have the right to exploit the relevant marketing assets to the exclusion of any other person (including P),
  - (c) the company will have the same rights in relation to the relevant marketing assets as it actually has,
  - (d) the right to exploit the relevant marketing assets is conferred on the relevant day,
  - (e) the appropriate percentage for the accounting period is determined at the beginning of the accounting period,
  - (f) the appropriate percentage for the accounting period will apply for each succeeding accounting period for which the company will have the right to exploit the relevant marketing assets, and
  - (g) no income other than relevant IP income will arise from anything done by the company that involves the exploitation by the company of the relevant marketing assets.
- (5) In subsection (4)(d) “the relevant day”, in relation to a relevant marketing asset, means—
  - (a) the first day of the accounting period, or
  - (b) if later, the day on which the company first acquired the relevant marketing asset or the right to exploit the asset.
- (6) In determining the appropriate percentage, the company must act in accordance with—

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- (a) Article 9 of the OECD Model Tax Convention, and
  - (b) the OECD transfer pricing guidelines.
- (7) In this section “marketing asset” means any of the following (whether or not capable of being transferred or assigned)—
- (a) anything in respect of which proceedings for passing off could be brought, including a registered trade mark (within the meaning of the Trade Marks Act 1994),
  - (b) anything that corresponds to a marketing asset within paragraph (a) and is recognised under the law of a country or territory outside the United Kingdom,
  - (c) any signs or indications (so far as not falling within paragraph (a) or (b)) which may serve, in trade, to designate the geographical origin of goods or services, and
  - (d) any information which relates to customers or potential customers of the company, or any other member of a group of which the company is a member, and is intended to be used for marketing purposes.

#### **Actual marketing royalty**

- 357C(P) The actual marketing royalty in respect of a trade of a company for an accounting period is X% of the aggregate of any sums which—
- (a) were paid by the company for the purposes of acquiring any relevant marketing assets, or the right to exploit any such assets, and
  - (b) were brought into account as debits in calculating the profits of the trade for the accounting period.
- (2) In this section—
- “relevant marketing assets” has the same meaning as in section 357CO, and
  - “X%” is the percentage given by Step 2 in section 357C(1).

#### *Profits arising before grant of right*

#### **Profits arising before grant of right**

- 357C(Q) This section applies where a company—
- (a) holds a right mentioned in paragraph (a), (b) or (c) of section 357BB(1) (rights to which this Part applies) or an exclusive licence in respect of such a right, or
  - (b) would hold such a right or licence but for the fact that the company disposed of any rights in the invention or (as the case may be) the licence before the right was granted.
- (2) The company may elect that, for the purposes of determining the relevant IP profits of a trade of the company for the accounting period in which the right is granted, there is to be added the amount determined in accordance with subsection (3) (the “additional amount”).
- (3) The additional amount is the difference between—



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- (a) the aggregate of the relevant IP profits of the trade for each relevant accounting period, and
  - (b) the aggregate of what the relevant IP profits of the trade for each relevant accounting period would have been if the right had been granted on the relevant day.
- (4) For the purposes of determining the additional amount, the amount of any relevant IP profits to which section 357A does not apply by virtue of Chapter 5 (relevant IP losses) is to be disregarded.
- (5) In this section “relevant accounting period” means—
  - (a) the accounting period of the company in which the right is granted, and
  - (b) any earlier accounting period of the company which meets the conditions in subsection (6).
- (6) The conditions mentioned in subsection (5)(b) are—
  - (a) that it is an accounting period for which an election made by the company under section 357A has effect,
  - (b) that it is an accounting period for which the company is a qualifying company, and
  - (c) that it ends on or after the relevant day.
- (7) In this section “the relevant day” is the later of—
  - (a) the first day of the period of 6 years ending with the day on which the right is granted, or
  - (b) the day on which—
    - (i) the application for the grant of the right was filed, or
    - (ii) in the case of a company that holds an exclusive licence in respect of the right, the licence was granted.
- (8) Where the company would be a qualifying company for an accounting period but for the fact that the right had not been granted at any time during that accounting period, the company is to be treated for the purposes of this section as if it were a qualifying company for that accounting period.
- (9) Where the company would be a qualifying company for the accounting period in which the right was granted but for the fact that the company disposed of the rights or licence mentioned in subsection (1)(b) before the right was granted, the company is to be treated for the purposes of section 357A as if it were a qualifying company for that accounting period.

## CHAPTER 4

### STREAMING

#### **Alternative method of calculating relevant IP profits: “streaming”**

- 357D) A company may elect to apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of any trade of the company for an accounting period.

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- (2) An election made under subsection (1) is known as a “streaming election”.
- (3) A streaming election has effect—
  - (a) for the accounting period for which it is made, and
  - (b) for each subsequent accounting period.
 This is subject to section 357DB.
- (4) If any of the mandatory streaming conditions in section 357DC is met in relation to a trade of a company for an accounting period, the company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of the trade for that accounting period.

### Relevant IP profits

357DA(1) To determine the relevant IP profits of a trade of a company for an accounting period in accordance with this section—

*Step 1* Take any amounts which are brought into account as credits in calculating the profits of the trade for the accounting period, other than any amounts of finance income (see section 357CB), and divide them into two “streams”, amounts of relevant IP income (see sections 357CC and 357CD) and amounts that are not amounts of relevant IP income. The stream consisting of relevant IP income is “the relevant IP income stream”.

*Step 2* Take any amounts which are brought into account as debits in calculating the profits of the trade for the accounting period, other than any amounts referred to in section 357CG(3), and allocate them on a just and reasonable basis between the two streams. (See also section 357CG(5).)

*Step 3* Deduct from the relevant IP income stream the amounts allocated to that stream under Step 2.

*Step 4* Deduct from the amount given by Step 3 the routine return figure (see subsection (4)). The amount given by this step is the “qualifying residual profit”.

If the amount of the qualifying residual profit is not greater than nil, go to Step 7.

*Step 5* If the company has elected for small claims treatment, calculate the small claims amount in relation to the trade (see section 357CM). If the company has not, go to Step 6.

*Step 6* Deduct from the qualifying residual profit the marketing assets return figure (see section 357CN and subsection (6)).

*Step 7* If the company has made an election under section 357CQ (which provides in certain circumstances for profits arising before the grant of a right to be treated as relevant IP profits), add to the amount given by Step 5 or 6 (or, if the amount of the qualifying residual profit was not greater than nil, Step 4) any amount determined in accordance with subsection (3) of that section.

- (2) If the amount given by subsection (1) is greater than nil, that amount is the relevant IP profits of the trade for the accounting period.

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- (3) If the amount given by subsection (1) is less than nil, that amount is the relevant IP losses of the trade for the accounting period (see Chapter 5).
- (4) The routine return figure, in relation to a trade of a company for an accounting period, is 10% of the aggregate of any routine deductions which—
  - (a) have been made by the company in calculating the profits of the trade for the accounting period, and
  - (b) have been allocated to the relevant IP income stream under Step 2.In this subsection “routine deductions” is to be read in accordance with sections 357CJ and 357CK.
- (5) Subsections (2) and (3) of section 357CI have effect for the purposes of subsection (4) of this section as they have effect for the purposes of that section.
- (6) For the purposes of determining the marketing assets return figure in Step 6, section 357CP (actual marketing royalty) has effect as if the reference to X% of the aggregate of any sums falling within subsection (1) of that section were a reference to the aggregate of any such sums which have been allocated to the relevant IP income stream under Step 2.

#### **Method of allocation**

- 357DB(1) In this section “method of allocation” means the method of allocating, for the purposes of Step 2 in section 357DA(1), the amounts mentioned in that step.
- (2) A company that applies section 357DA for the purposes of determining the relevant IP profits of a trade of the company for an accounting period must use the same method of allocation in relation to the trade for that accounting period as it used in the last accounting period of the company for which it applied that section for the purposes of determining the relevant IP profits of the trade.
  - (3) But subsection (2) does not apply if there is a change of circumstances relating to the trade which makes the use of that method of allocation in relation to the trade for the accounting period inappropriate.
  - (4) In such a case, the company may—
    - (a) use a different method of allocation in relation to the trade for the accounting period (and subsection (2) applies accordingly for subsequent accounting periods), or
    - (b) elect not to apply section 357DA for the purposes of determining the relevant IP profits of the trade for the accounting period.
  - (5) Subsection (4)(b) does not prevent the company making a fresh streaming election in relation to the trade for any subsequent accounting period.

#### **The mandatory streaming conditions**

- 357DC(1) Mandatory streaming condition A is met in relation to a trade of a company for an accounting period if—

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- (a) any amount brought into account as a credit in calculating the profits of the trade for the accounting period is not fully recognised as revenue for the accounting period, and
  - (b) the amount, or the aggregate of any such amounts, is substantial.
- (2) An amount is a “substantial” amount for the purposes of this section if it is greater than—
- (a) £2,000,000, or
  - (b) 20% of the total gross income of the trade for the accounting period, whichever is the lower.
- (3) But an amount is not a substantial amount for the purposes of this section if it does not exceed £50,000.
- (4) The reference in subsection (1)(a) to an amount brought into account as a credit includes a reference to any amount brought into account by virtue of section 147 of TIOPA 2010 (basic transfer-pricing rule).
- (5) Mandatory streaming condition B is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—
- (a) relevant IP income, and
  - (b) a substantial amount of licensing income that is not relevant IP income.
- (6) In subsection (5) “licensing income” means income consisting of any licence fee, royalty or other payment which the company has received under an agreement granting another person any right in respect of any intellectual property held by the company.
- “Intellectual property” has the meaning given by section 712(3) of CTA 2009.
- (7) Mandatory streaming condition C is met in relation to a trade of a company for an accounting period if the total gross income of the trade for the accounting period includes—
- (a) income that is not relevant IP income, and
  - (b) a substantial amount of relevant Head 2 income.
- (8) Income is “relevant Head 2 income” for the purposes of subsection (7) if—
- (a) it is relevant IP income received under an agreement falling within subsection (6) of section 357CC, and
  - (b) every qualifying IP right—
    - (i) in respect of which a right within paragraph (a) of that subsection is granted by the agreement, or
    - (ii) which is granted in respect of an invention in respect of which a right within paragraph (b) of that subsection is granted by the agreement,
 is a right in respect of which the company holds an exclusive licence.
- (9) In a case where—
- (a) relevant IP income is received under an agreement falling within section 357CC(6), but

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(b) the condition in paragraph (b) of subsection (8) above is not met, so much of the relevant IP income as on a just and reasonable apportionment is attributable to any qualifying IP right falling within that paragraph is relevant Head 2 income for the purposes of subsection (7).

## CHAPTER 5

### RELEVANT IP LOSSES

#### **Company with relevant IP losses: set-off amount**

357E Where a company would be entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period but for the fact that there are relevant IP losses of the trade for the accounting period, there is a “set-off amount” in relation to the trade of the company for the accounting period which is equal to the amount of the relevant IP losses.

#### **Effect of set-off amount on company with more than one trade**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
  - (b) the company carries on any other trade.
- (2) The set-off amount is to be reduced (but not to below nil) by any relevant IP profits of that other trade for the accounting period.
- (3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of that other trade for the accounting period as is equal to the amount by which the set-off amount is reduced under subsection (2).

#### **Allocation of set-off amount within a group**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period,
  - (b) the company is a member of a group, and
  - (c) the set-off amount has not been reduced to nil by the operation of section 357EA(2).
- (2) The set-off amount (or so much of it as remains after the operation of section 357EA(2)) is to be reduced (but not to below nil) by any relevant IP profits of a trade of a relevant group member for the relevant accounting period.
- (3) For the purposes of this section—
- (a) “relevant group member” means another member of the group that has made an election under section 357A and is a qualifying company for the relevant accounting period, and

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- (b) “relevant accounting period”, in relation to a company, means the accounting period of the company in or at the end of which the accounting period mentioned in subsection (1)(a) ends.
- (4) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the relevant group member for the relevant accounting period as is equal to the amount by which the set-off amount (or so much of it as remains after the operation of section 357EA(2)) is reduced under subsection (2).
- (5) Where there is more than one relevant group member, the relevant group members may jointly determine the order in which subsection (2) is to apply to them.
- (6) If no determination is made under subsection (5), subsection (2) is to apply first to the trade that has the greatest amount of relevant IP profits of any trade of any of the relevant group members for a relevant accounting period, then to the trade that has the second greatest amount of relevant IP profits of any of those trades for such a period, and so on.

#### **Carry-forward of set-off amount**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
- (b) the set-off amount has not been reduced to nil by the operation of section 357EA(2) or 357EB(2).
- (2) The set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2)) is to be reduced (but not to below nil) by the amount of any relevant IP profits of the trade of the company for the current accounting period.  
  

The “current accounting period” is the accounting period immediately following the accounting period mentioned in subsection (1)(a).
- (3) Section 357A does not apply in relation to so much of the amount of relevant IP profits of the trade of the company for the current accounting period as is equal to the amount by which the set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2)) is reduced under subsection (2).
- (4) If any portion of the set-off amount remains after the operation of subsection (2), that portion (“the remaining portion”) is to be treated as the set-off amount in relation to the trade of the company for the current accounting period (and the provisions of this Chapter apply accordingly).
- (5) If there are relevant IP losses of the trade of the company for the current accounting period, the set-off amount in relation to the trade of the company for that accounting period is the aggregate of the remaining portion and an amount equal to the amount of those relevant IP losses (and the provisions of this Chapter apply accordingly).

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### **Company ceasing to carry on trade, etc**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period, and
- (b) at any time in the accounting period immediately following that accounting period, the company meets any of the conditions in subsection (2).

(2) The conditions are—

- (a) that the company ceases to carry on the trade,
- (b) that the company ceases to be within the charge to corporation tax in respect of the trade, or
- (c) that any election made by the company under section 357A ceases to have effect.

(3) Sections 357EA to 357EC continue to have effect in relation to the set-off amount subject to the following provisions of this section.

(4) Section 357EB has effect as if—

- (a) the reference in subsection (1)(b) to the company being a member of a group were a reference to the company having been a member of the group at the time referred to in subsection (1)(b) of this section,
- (b) for subsection (2) there were substituted—

“(2) The set-off amount (or so much of it as remains after the operation of section 357EA(2)) is to become, or be added to, the set-off amount in relation to a trade of a relevant group member for the relevant accounting period.”,

- (c) subsection (4) were omitted,
- (d) for the words after “determine” in subsection (5) there were substituted “ the relevant group member to which subsection (2) is to apply ”, and
- (e) for subsection (6) there were substituted—

“(6) If no determination is made under subsection (5), subsection (2) is to apply to the trade that has the greatest amount of relevant IP profits of any trade of any of the relevant group members for a relevant accounting period.

(7) If there is no relevant group member with any relevant IP profits of a trade for the relevant accounting period, subsection (2) is to apply to the trade that has the greatest set-off amount in relation to any trade of any of the relevant group members for a relevant accounting period.”

(5) Sections 357EA to 357EC cease to have effect in relation to the set-off amount in relation to the trade of the company for an accounting period if—

- (a) the company is not carrying on any other trade in that accounting period, and
- (b) in the case of a company that was a member of a group at the time referred to in subsection (1)(b) of this section, none of the members

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of the group is a relevant group member (within the meaning of section 357EB).

- (6) In such a case, the set-off amount (so far as remaining after the operation of those sections) is to be reduced to nil.

### **Transfer of a trade between group members**

357E(1) This section applies where—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period,
  - (b) the company is a member of a group,
  - (c) the company ceases to carry on the trade, and
  - (d) another company (“the transferee”) that is a member of the group begins to carry on that trade.
- (2) For the purposes of this Chapter an amount equal to the set-off amount is to become, or be added to, the set-off amount in relation to the trade of the transferee for the accounting period in which the transferee begins to carry on the trade.

### **Payments between group members in consequence of section 357EB**

357E(1) This section applies if—

- (a) there is a set-off amount in relation to a trade of a company for an accounting period,
  - (b) subsection (2) of section 357EB has effect in relation to a relevant group member for the relevant accounting period (within the meaning of that section),
  - (c) the company and the relevant group member have an agreement between them in relation to the relevant IP losses of the company, and
  - (d) as a result of the agreement the company makes a payment to the relevant group member that does not exceed the reduction in the relevant IP profits of the relevant group member arising under section 357EB(4).
- (2) The payment—
- (a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and
  - (b) is not for any purposes of the Corporation Tax Acts to be regarded as a distribution.
- (3) In a case where section 357ED applies (company ceasing to carry on trade, etc), the reference in subsection (1)(d) to the reduction in the relevant IP profits of the relevant group member is to be read as a reference to the amount that becomes, or is added to, the set-off amount in relation to a trade of the relevant group member for the relevant accounting period under section 357EB(2).



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## CHAPTER 6

### ANTI-AVOIDANCE

#### *Licences conferring exclusive rights*

##### **Licences conferring exclusive rights**

- 357F A licence that confers any right in respect of a qualifying IP right to the exclusion of all other persons is not to be regarded as an exclusive licence if the main purpose, or one of the main purposes, of conferring the right is to secure that the licence is an exclusive licence for the purposes of this Part.

#### *Incorporation of qualifying items*

##### **Incorporation of qualifying items**

- 357F(A) Income arising from the sale of any item that incorporates a qualifying item is not relevant IP income if the main purpose, or one of the main purposes, of incorporating the qualifying item is to secure that income arising from any such sale is relevant IP income.

- (2) “Qualifying item” has the same meaning as in section 357CC(2).

#### *Tax advantage schemes*

##### **Tax advantage schemes**

- 357F(B) This section applies where—

- (a) a company is entitled to make a deduction under section 357A(2) in calculating the profits of a trade of the company for an accounting period,
- (b) the company is or has at any time been a party to a scheme, and
- (c) the main purpose, or one of the main purposes, of the company or, where the company is a member of a group, any member of the group in being a party to the scheme is (or was) to obtain the chance of securing a relevant tax advantage.

- (2) There is a “relevant tax advantage” for the purposes of this section if—

- (a) (apart from this section) there would be an increase in the amount of any deduction made under section 357A(2) in calculating the profits of a trade of the company or (as the case may be) any other member of the group for any accounting period, and
- (b) the increase would arise from—
  - (i) the avoidance of the operation of any provision of this Part,
  - (ii) artificially inflating the amount of relevant IP income brought into account in calculating those profits (see subsection (3)), or

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- (iii) a mismatch between relevant IP income and expenditure (see subsection (4)).
- (3) The reference in subsection (2)(b) to artificially inflating the amount of relevant IP income brought into account in calculating the profits mentioned in subsection (2)(a) is a reference to doing any of the following—
- (a) bringing into account in calculating those profits an amount of relevant IP income that wholly or substantially corresponds to an increase in the amounts brought into account as debits in calculating those profits;
  - (b) bringing into account in calculating those profits an additional amount of relevant IP income that wholly or substantially corresponds to a decrease in the amount of income that is not relevant IP income which is brought into account in calculating those profits.
- (4) For the purposes of this section there is a mismatch between relevant IP income and expenditure if—
- (a) any relevant IP income brought into account in calculating the profits mentioned in subsection (2)(a) is attributable to any qualifying IP right or an exclusive licence in respect of any such right, and
  - (b) any expenditure incurred in relation to that right is brought into account in calculating the profits of a trade of the company or (as the case may be) any other member of the group for an accounting period for which an election under section 357A did not have effect.
- (5) The amount of the deduction which may be made by the company for the accounting period mentioned in subsection (1)(a) is the amount that would secure that no relevant tax advantage arises (and may be nil).
- (6) In this section “scheme” includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions.

## CHAPTER 7

### SUPPLEMENTARY

#### *Elections under section 357A*

#### **Making of election under section 357A**

- 357**(1)** An election made by a company under section 357A is made by giving notice to an officer of Revenue and Customs.
- (2) The notice must specify the first accounting period of the company for which the election is to have effect.
  - (3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.

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- (4) The election has effect in relation to each trade carried on by the company.
- (5) Subject to section 357GA, the election has effect for the accounting period specified in the notice and all subsequent accounting periods of the company.

#### **Revocation of election made under section 357A**

- 357G**A**) A company may revoke an election made by it under section 357A by giving notice to an officer of Revenue and Customs.
- (2) The notice must specify the first accounting period of the company for which the revocation is to have effect.
  - (3) The notice must be given on or before the last day on which an amendment of the company's tax return for that accounting period could be made under paragraph 15 of Schedule 18 to FA 1998.
  - (4) The revocation has effect in relation to the accounting period specified in the notice and all subsequent accounting periods of the company.
  - (5) An election made under section 357A by a company that has given notice under this section does not have effect in relation to any accounting period of the company that begins before the end of the period of 5 years beginning with the day after the last day of the accounting period specified in the notice.

#### *Partnerships*

#### **Application of this Part in relation to partnerships**

- 357G**B**) This section applies if a firm (within the meaning of CTA 2009) carries on a trade and any partner in the firm is a company within the charge to corporation tax.
- Such a partner is referred to in this section as a “corporate partner”.
- (2) Subject to the following provisions of this section, this Part applies in relation to the firm as it applies in relation to a company.
  - (3) Any election under this Part—
    - (a) may be made or revoked not by the firm but instead by any one or more of the corporate partners (whether jointly or otherwise), and
    - (b) has effect in relation to each corporate partner making or revoking it as if made or revoked by the firm.
  - (4) Accordingly, any reference in section 357G(3) or 357GA(3) (time limit for making or revoking elections under section 357A) to the company making or revoking the election is to be read as a reference to the corporate partner so doing.
  - (5) Section 1261 of CTA 2009 (accounting periods of firms) applies for the purposes of this Part as it applies for the purposes of Part 17 of that Act.
  - (6) Section 357B (meaning of “qualifying company”) has effect as if in subsection (1) the words “in the case of a company that is a member of a group” were omitted.

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- (7) For the purposes of this Part the firm meets the development condition in relation to a right to which this Part applies if—
  - (a) the firm has at any time carried out qualifying development in relation to the right, or
  - (b) there is a relevant corporate partner in the firm who meets the development condition in relation to the right.
- (8) A “relevant corporate partner” is a corporate partner who is entitled to a share of at least 40% of the profits or losses of the firm for any accounting period of the firm.
- (9) Section 357BD applies for the purposes of subsection (7)(a) of this section as it applies for the purposes of section 357BC.
- (10) Section 357BE (active ownership condition) has effect as if the reference in subsection (4) to section 357BC(2) or (3) included a reference to subsection (7)(a) of this section.
- (11) Sections 357CL and 357CM (election for small claims treatment) have effect as if—
  - (a) any reference to a company having one or more associated companies were a reference to any corporate partner in relation to which an election under section 357CL has effect having one or more associated companies, and
  - (b) any reference to a company having no associated company were a reference to each such corporate partner having no associated company.
- (12) Subsection (13) applies where a corporate partner is a party to an arrangement at any time during an accounting period of the firm which produces for the corporate partner a return within section 357CB(1)(c).
- (13) For the accounting period of the firm the corporate partner's share of a profit or loss of a trade carried on by the firm is determined for corporation tax purposes as if no election under section 357A had effect in relation to the trade.

#### *Cost-sharing arrangements*

#### **Application of this Part in relation to cost-sharing arrangements**

- 357G(1) This section applies where a company is a party to an arrangement under which—
- (a) one of the parties to the arrangement holds a qualifying IP right or an exclusive licence in respect of such a right,
  - (b) each of the parties to the arrangement is required to contribute to the cost of, or perform activities for the purpose of, creating or developing the invention or any item or process incorporating the invention,
  - (c) under the arrangement each of those parties—
    - (i) is entitled to a share of any income attributable to the right or licence, or

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- (ii) has one or more rights in respect of the invention, and
  - (d) the amount of any income received by each of those parties is proportionate to its participation in the arrangement as described in paragraph (b).
- (2) The company is to be treated for the purposes of this Part as if it held the qualifying IP right or (as the case may be) the exclusive licence in respect of the qualifying IP right.
- (3) But this section does not apply where the arrangement produces for the company a return within section 357CB(1)(c).
- (4) The reference in subsection (1)(b) to developing the invention includes developing ways in which the invention may be used or applied.

### *Interpretation*

#### **Meaning of “group”**

- 357GD) For the purposes of this Part a company (“company A”) is a member of a group at any time if any other company is at that time associated with company A.
- (2) The group consists of company A and each company in relation to which the condition in subsection (1) is met.
  - (3) For the purposes of this section a company (“company B”) is associated with company A at a time (“the relevant time”) if any of the following five conditions is met.
  - (4) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.
  - (5) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.
  - (6) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.
  - (7) The fourth condition is that—
    - (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition, and
    - (b) at the relevant time the third company has a major interest in company B.
  - (8) The fifth condition is that—
    - (a) there is a connection between company A and a third company for the accounting period of company A in which the relevant time falls, and
    - (b) at the relevant time the third company has a major interest in company B.
  - (9) In this section, the financial results of any two companies for any period meet “the consolidation condition” if—

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- (a) they are required to be fully comprised in group accounts,
  - (b) they would be required to be fully comprised in such accounts but for the application of an exemption, or
  - (c) they are in fact fully comprised in such accounts.
- (10) In subsection (9) “group accounts” means accounts prepared under—
- (a) section 399 of the Companies Act 2006, or
  - (b) any corresponding provision of the law of a country or territory outside the United Kingdom.
- (11) The following provisions apply for the purposes of this section—
- sections 466 to 471 of CTA 2009 (companies connected for accounting period), and
  - sections 473 and 474 of CTA 2009 (meaning of “major interest”).

### Other interpretation

357G(1) In this Part—

“invention”, in relation to a right to which this Part applies, means the item or process in respect of which the right is granted,

“item” includes any substance,

“the OECD Model Tax Convention” means—

- (a) the version of the Model Tax Convention on Income and on Capital published in July 2010 by the Organisation for Economic Co-operation and Development (“the OECD”), or
- (b) such other document approved and published by the OECD in place of that (or a later) version or in place of that Convention as is designated for the time being by order made by the Treasury,

“the OECD transfer pricing guidelines” means—

- (a) the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published in July 2010 by the OECD, or
- (b) such other document approved and published by the OECD in place of that (or a later) version or in place of those Guidelines as is designated for the time being by order made by the Treasury,

including, in either case, such material published by the OECD as part of (or by way of update or supplement to) the version or other document concerned as may be so designated, and

“qualifying residual profit” of a trade, in relation to any accounting period, is the amount obtained by the application of Steps 1 to 4 in section 357C or (as the case may be) section 357DA in relation to the trade for the accounting period.

- (2) Any reference in this Part to calculating the profits of a trade of a company for an accounting period is a reference to calculating those profits for corporation tax purposes (and any reference to the profits or losses of a trade of a company for an accounting period is to be read accordingly).”

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(2) In Schedule 4 to CTA 2010 (index of defined expressions), at the appropriate place insert—

“exclusive licence (in Part 8A)	section 357BA”;
“finance income (in Part 8A)	section 357CB”;
“group (in Part 8A)	section 357GD”;
“invention (in Part 8A)	section 357GE”;
“item (in Part 8A)	section 357GE”;
“the OECD Model Tax Convention (in Part 8A)	section 357GE”;
“the OECD transfer pricing guidelines (in Part 8A)	section 357GE”;
“qualifying company (in Part 8A)	section 357B”;
“qualifying IP right (in Part 8A)	section 357B(4)”;
“qualifying residual profit of a trade (in Part 8A)	section 357GE”;
“relevant IP income (in Part 8A)	section 357CC”;
“total gross income of a trade (in Part 8A)	section 357CA”.

## PART 2

### AMENDMENTS OF TIOPA 2010

- 2 In Part 4 of TIOPA 2010 (transfer pricing), Chapter 3 (exemptions from basic rule) is amended as follows.
- 3 In section 166 (exemption for small and medium-sized enterprises), in subsection (2)(a), for “section 167” substitute “ sections 167 and 167A ”.
- 4 After section 167 insert—

#### “167A Small enterprises: exception from exemption: transfer pricing notice

- (1) Section 166(1) does not apply in relation to any provision made or imposed if—

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- (a) the potentially advantaged person is a small enterprise for the chargeable period,
  - (b) the person meets the condition in subsection (2), and
  - (c) the Commissioners for Her Majesty's Revenue and Customs give that person a notice requiring the person to calculate the profits and losses of that chargeable period in accordance with section 147(3) or (5) in the case of that provision.
- (2) A person meets the condition referred to in subsection (1)(b) if—
- (a) provision has been made or imposed as between the person and any other person by means of a transaction or series of transactions,
  - (b) the basic pre-condition in section 147 is met in respect of the provision, and
  - (c) the transaction, or one or more of the series of transactions, is taken into account in calculating, for the purposes of Part 8A of CTA 2010 (profits arising from the exploitation of patents etc), the relevant IP profits of a trade of a person who is or was a party to the transaction or transactions.
- (3) A notice under subsection (1) is referred to in this Chapter as a transfer pricing notice.”
- 5 In section 170 (appeals against transfer pricing notices), in subsection (1), for the words from “on the ground that” to the end substitute “on one of the following grounds—
- (a) that the condition in section 167A(1)(b) is not met, or
  - (b) that the condition in section 168(1)(a) is not met.”
- 6 In section 171 (tax returns where transfer pricing notice given), in subsection (3) (a), before “medium-sized” insert “small or ”.

### PART 3

#### COMMENCEMENT AND TRANSITIONAL PROVISION

##### *Application*

- 7 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2013 for which an election under section 357A of CTA 2010 has effect.
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2013 and ending on or after that date (“the straddling period”).
- (3) For the purposes of Part 8A of CTA 2010—
- (a) so much of the straddling period as falls before 1 April 2013, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
  - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of any trade of the company for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.



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*Special treatment of profits from patents etc to be phased in*

- 8 (1) In each of the financial years in the Table below, the reference to RP in the formula in section 357A(3) of CTA 2010 is to be read as a reference to the percentage of RP given for that year—

<i>Financial year</i>	<i>Percentage of RP</i>
2013	60%
2014	70%
2015	80%
2016	90%

- (2) Sub-paragraph (3) applies where there is a set-off amount in relation to any trade of a company for an accounting period falling wholly or partly within a financial year mentioned in the Table in sub-paragraph (1) (“the relevant year”) and—
- (a) section 357EB of CTA 2010 (allocation of set-off amount within group) applies in relation to the set-off amount (or so much of it as remains after the operation of section 357EA(2) of that Act) for a relevant accounting period falling wholly or partly within the financial year following the relevant year, or
- (b) section 357EC of that Act (carry-forward of set-off amount) applies in relation to the set-off amount (or so much of it as remains after the operation of section 357EA(2) or 357EB(2) of that Act).
- (3) For the purposes of section 357EB or (as the case may be) 357EC of CTA 2010 there is to be deducted from the relevant amount an amount equal to the appropriate fraction of that amount.

“The relevant amount” is the amount in relation to which that section applies as mentioned in sub-paragraph (2).

- (4) The appropriate fraction is—

$$\frac{10\%}{P}$$

where P is—

- a the percentage given as the percentage of RP by that Table for the financial year following the relevant year, or
- b where the relevant year is the financial year 2016, 100%.
- (5) If a company's accounting period falls within more than one financial year—
- (a) the amount of any relevant IP profits of a trade of the company for the accounting period, and
- (b) where sub-paragraph (3) applies, the relevant amount (within the meaning of that sub-paragraph),

must for the purposes of this paragraph be apportioned between the financial years in which the accounting period falls on such basis as is just and reasonable.

- (6) In this paragraph—

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“relevant accounting period” has the meaning given by section 357EB(3) of CTA 2010,

“relevant IP profits”, in relation to a trade of a company for an accounting period, has the same meaning in this paragraph as in Part 8A of that Act, and

“set-off amount”, in relation to a trade of a company for an accounting period, is to be read in accordance with Chapter 5 of that Act.

## SCHEDULE 3

Section 20

### RELIEF FOR EXPENDITURE ON R&D

#### *Introductory*

- 1 Part 13 of CTA 2009 (additional relief for expenditure on research and development) is amended as follows.

#### *Amount of relief for expenditure on R&D by small or medium-sized enterprises (“SMEs”)*

- 2 (1) Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.
- <sup>F40</sup>(2) . . . . .
- <sup>F40</sup>(3) . . . . .
- <sup>F40</sup>(4) . . . . .
- (5) In section 1058 (amount of tax credit), in subsection (1)(a), for “12.5%” substitute “11%”.

#### **Textual Amendments**

**F40** Sch. 3 para. 2(2)-(4) omitted (with effect in accordance with s. 27(5) of the amending Act) by virtue of [Finance Act 2015 \(c. 11\), s. 27\(4\)](#)

#### *Removal of R&D threshold*

- 3 (1) Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.
- (2) In section 1043 (overview of Chapter), in subsection (3), omit paragraph (e) (but not the “and” after it).
- (3) In section 1044 (additional deduction in calculating profits of trade), omit subsection (3).
- (4) In section 1045 (alternative treatment for pre-trading expenditure: deemed trading loss)—
- (a) in subsection (1), omit “, B”, and
- (b) omit subsection (3).
- (5) Omit section 1050 (R&D threshold).
- 4 (1) Chapter 3 (relief for SMEs: R&D sub-contracted to SME) is amended as follows.

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- (2) In section 1063 (additional deduction in calculating profits of trade)—
    - (a) in subsection (1), omit “, B”, and
    - (b) omit subsection (3).
  - (3) Omit section 1064 (R&D threshold).
  - 5 (1) Chapter 4 (relief for SMEs: subsidised and capped expenditure on R&D) is amended as follows.
    - (2) In section 1068 (additional deduction in calculating profits of trade)—
      - (a) in subsection (1), omit “, B”, and
      - (b) omit subsection (3).
    - (3) Omit section 1069 (R&D threshold).
  - 6 (1) Chapter 5 (relief for large companies) is amended as follows.
    - (2) In section 1074 (additional deduction in calculating profits of trade)—
      - (a) in subsection (1), omit “, B”, and
      - (b) omit subsection (3).
    - (3) Omit section 1075 (R&D threshold).
- F41-7 .....

**Textual Amendments**

**F41** Sch. 3 para. 7 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

- 8 In consequence of the amendments made by paragraphs 3 to 7, in Schedule 4 to CTA 2009 omit each of the entries for “R&D threshold”.

*Company not a going concern when in administration or liquidation*

- 9 Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.
- 10 (1) Section 1046 (relief only available where company is going concern) is amended as follows.
  - (2) At the end of subsection (2) insert—

“This is subject to subsection (2A).”
  - (3) After subsection (2) insert—
    - “(2A) A company is not a going concern at any time if it is in administration or liquidation at that time.
    - (2B) For the purposes of this section a company is in administration if—
      - (a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
      - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

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- (2C) For the purposes of this section a company is in liquidation if—
  - (a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or
  - (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.”

11 (1) Section 1057 (tax credit only available where company is going concern) is amended as follows.

(2) At the end of subsection (4) insert—

“This is subject to subsection (4A).”

(3) After subsection (4) insert—

“(4A) A company is not a going concern at any time if it is in administration or liquidation at that time.

(4B) For the purposes of this section a company is in administration if—

- (a) it is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
- (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.

(4C) For the purposes of this section a company is in liquidation if—

- (a) it is in liquidation within the meaning of section 247 of that Act or Article 6 of that Order, or
- (b) a corresponding situation under the law of a country or territory outside the United Kingdom exists in relation to the company.”

F42 12 .....

**Textual Amendments**  
 F42 Sch. 3 paras. 12-14 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F42 13 .....

**Textual Amendments**  
 F42 Sch. 3 paras. 12-14 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F42 14 .....

**Textual Amendments**  
 F42 Sch. 3 paras. 12-14 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

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*Removal of limit on amount of tax credit based on PAYE and NIC liabilities*

- 15 (1) Chapter 2 (relief for SMEs: cost of R&D incurred by SME) is amended as follows.
- (2) In section 1058 (amount of tax credit), in subsection (1), omit paragraph (b) (and the “or” before it).
- (3) Omit section 1059 (total amount of company's PAYE and NIC liabilities).

*Abolition of vaccine research relief for SMEs*

- 16 (1) Section 1039 (overview of Part 13) is amended as follows.
- <sup>F43</sup>(2) . . . . .
- (3) In subsection (7)—
- (a) for “Chapters 2 and 7 also provide” substitute “ Chapter 2 also provides ”, and
- (b) in paragraph (a), omit “or 7”.

**Textual Amendments**

**F43** Sch. 3 para. 16(2) omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

<sup>F44</sup>17 . . . . .

**Textual Amendments**

**F44** Sch. 3 para. 17 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

- 18 In section 1046 (relief only available where company is going concern), in subsection (2)(b), omit “or Chapter 7”.
- 19 In section 1057 (tax credit only available where company is going concern), in subsection (4)(b), omit “or Chapter 7”.

<sup>F45</sup>20 . . . . .

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

<sup>F45</sup>21 . . . . .

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

<sup>F45</sup>22 . . . . .

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**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F4523 .....

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F4524 .....

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F4525 .....

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F4526 .....

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F4527 .....

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F4528 .....

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

F4529 .....

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**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

<sup>F45</sup>30 . . . . .

**Textual Amendments**

**F45** Sch. 3 paras. 20-30 omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

31 (1) Chapter 8 (cap on aid for R&D) is amended as follows.

<sup>F46</sup>(2) . . . . .

(3) In section 1115 (“the tax credits”), in subsection (1), omit “or 7”.

**Textual Amendments**

**F46** Sch. 3 para. 31(2) omitted (with effect in accordance with s. 47(15) of the amending Act) by virtue of Finance Act 2016 (c. 24), s. 47(14)(a)

- 32 In consequence of the amendments made by paragraphs 16 to 31—
- (a) in Schedule 4 to CTA 2009 (index of defined expressions), omit the entry for “Chapter 7 surrenderable loss”,
  - (b) in Schedule 1 to CTA 2010, omit paragraphs 672 to 674, and
  - (c) in section 43 of FA 2011, omit subsections (7) to (11).

*Qualifying expenditure on externally provided workers*

33 Chapter 9 (supplementary) is amended as follows.

34 (1) Section 1128 (“externally provided worker”) is amended as follows.

(2) In subsection (7), for “the staff provider” substitute “ a person other than the company (the “staff controller”) ”.

(3) After subsection (8) insert—

“(9) In sections 1129 to 1131 references to “staff controller” are to be read in accordance with subsection (7).”

35 (1) Section 1129 (connected persons) is amended as follows.

(2) In subsection (1), for paragraphs (b) and (c) substitute—

“(b) the company, the staff provider and (if different) the staff controller (or staff controllers) are all connected, and

(c) in accordance with generally accepted accounting practice—

(i) the whole of the staff provision payment has been brought into account in determining the staff provider's profit or loss for a relevant period, and

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- (ii) all of the relevant expenditure of each staff controller has been brought into account in determining the staff controller's profit or loss for a relevant period.”
- (3) In subsection (2)(b), for “the staff provider's relevant expenditure” substitute “ the aggregate of the relevant expenditure of each staff controller ”.
- (4) In subsection (3)—
- (a) for “of the staff provider” substitute “ , in relation to a staff controller, ”, and
- (b) in paragraph (a), for “staff provider” substitute “ staff controller ”.
- (5) In subsection (4)—
- (a) after “ “Relevant period”” insert “ , in relation to a person, ”, and
- (b) in paragraph (a), for “staff provider” substitute “ person ”.
- (6) In subsection (5)—
- (a) for “the staff provider's expenditure” substitute “ the expenditure of a staff controller ”, and
- (b) for “the staff provider” substitute “ a staff controller ”.
- (7) In subsection (7), for “staff provider” substitute “ a staff controller ”.
- 36 (1) Section 1130 (election for connected persons treatment) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) If—
- (a) a company makes a staff provision payment, and
- (b) the company, the staff provider and (if different) the staff controller (or staff controllers) are not all connected,
- they may jointly elect that section 1129 is to apply to them as if they were all connected.”
- (3) In subsection (2), for “must be made” substitute “ has effect ”.
- 37 In section 1131 (qualifying expenditure on externally provided workers: other cases), in subsection (1), for paragraph (b) (but not the “and” following it) substitute—
- “(b) the company, the staff provider and (if different) the staff controller (or staff controllers) are not all connected.”.

#### *Application*

- 38 The amendments made by paragraphs 2 and 16 to 37 have effect in relation to expenditure incurred on or after 1 April 2012.
- 39 The amendments made by paragraphs 3 to 8 and 15 have effect in relation to accounting periods ending on or after 1 April 2012.
- 40 The amendments made by paragraphs 9 to 14 have effect in relation to claims or elections made on or after 1 April 2012.



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## SCHEDULE 4

Section 21

### REAL ESTATE INVESTMENT TRUSTS

#### *Introduction*

- 1 Part 12 of CTA 2010 (real estate investment trusts) is amended as follows.
- Being a UK REIT: conditions for company - close companies*
- 2 (1) Section 525 (becoming a UK REIT: supplementary provision) is amended as follows.
- (2) In subsection (1)(c) for “the conditions” substitute “ conditions A, B, C, E and F ”.
- (3) In subsection (4)(a) omit “D,”.
- (4) Omit subsections (5) to (8).
- 3 In section 527 (being a UK REIT in relation to an accounting period) after subsection (4) insert—
- “(5) Subsections (2)(a) and (3)(a) are also subject to subsections (6) to (8).
- (6) If the accounting period ends during the first 3-year period, condition D in section 528 does not have to be met.
- (7) If the accounting period begins, but does not end, during the first 3- year period, condition D in section 528 only has to be met throughout the part of the accounting period falling after the end of the first 3- year period.
- (8) In subsections (6) and (7) “the first 3-year period” means the period of 3 years beginning with the date specified in the notice given under section 523 or 524.”
- 4 (1) Section 528 (conditions for company) is amended as follows.
- (2) In subsection (4)(b) for the words from “a limited partnership” to the end substitute “ an institutional investor ”.
- (3) After subsection (4) insert—
- “(4A) Institutional investor” means any of the following persons—
- (a) the trustee or manager of—
- (i) an authorised unit trust scheme (as defined in section 237(3) of FISMA 2000), or
- (ii) a unit trust scheme (as defined in section 237(1) of FISMA 2000) which is authorised under the law of a territory outside the United Kingdom in a way which makes it, under that law, the equivalent of an authorised unit trust scheme (as defined in section 237(3) of that Act);
- (b) a company—
- (i) which is an open-ended investment company (as defined in section 236(1) of FISMA 2000) incorporated by virtue of regulations under section 262 of that Act, or
- (ii) which is incorporated under the law of a territory outside the United Kingdom and is, under that law, the equivalent

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- of an open-ended investment company (as defined in section 236(1) of FISMA 2000);
- (c) a person acting on behalf of a limited partnership which is a collective investment scheme (as defined in section 235 of FISMA 2000);
  - (d) the trustee or manager of a pension scheme (as defined in section 150(1) of FA 2004);
  - (e) a person acting in the course of a long-term insurance business (that is, the activity of effecting or carrying out contracts of long-term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544)) who—
    - (i) is authorised under FISMA 2000 to carry on such business, or
    - (ii) has an equivalent authorisation under the law of a territory outside the United Kingdom to carry on such business;
  - (f) a charity;
  - (g) a person registered under any of the following provisions (which provide for registers of social landlords)—
    - (i) in England, section 111 of the Housing and Regeneration Act 2008;
    - (ii) in Scotland, section 20 of the Housing (Scotland) Act 2010 (asp 17);
    - (iii) in Wales, section 1 of the Housing Act 1996;
    - (iv) in Northern Ireland, Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));
  - (h) a person who cannot be liable for corporation tax or income tax (as relevant) on the ground of sovereign immunity.
- (4B) The Treasury may by regulations amend the definition of “institutional investor” by inserting, omitting or amending a description of person in subsection (4A).”
- 5 In section 558 (demergers: disposal of asset) in subsections (3) and (6) for “C to F” substitute “ C, E and F ”.
- 6 In section 559 (demergers: company leaving group UK REIT) in subsections (6) and (9) for “C to F” substitute “ C, E and F ”.
- 7 In section 561 (notice of breach of relevant Chapter 2 condition) after subsection (4) insert—
- “(5) The following subsections apply in relation to condition D in section 528.
- (6) In accordance with section 527(6) and (7), a notification does not have to be given under subsection (1) or (2) if condition D ceases to be met during the first 3-year period.
  - (7) If condition D is not met at the start of the first day after the end of the first 3-year period, for the purposes of subsections (1) to (4) condition D is treated as having ceased to be met at the start of that day.
  - (8) In subsections (6) and (7) “the first 3-year period” has the meaning given by section 527(8).”

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- 8 (1) Section 562 (breach of conditions C and D in section 528) is amended as follows.
- (2) In the heading for “**conditions C and D**” substitute “**condition C**”.
- (3) In subsection (1) for the words from “or D” to “conditions)” substitute “ in section 528 ”.
- (4) In subsection (2)—
- (a) for “both conditions C and D are” substitute “ condition C is ”, and
- (b) for “breaches are” substitute “ breach is ”.
- (5) Omit subsections (3) and (4).
- (6) In subsection (5)—
- (a) in paragraph (a) for “either condition C or D” substitute “ condition C ”, and
- (b) in paragraph (b) omit “or (3)”.
- 9 After section 562 insert—

**“562A Breach of condition D in section 528 (conditions for company)**

- (1) This section makes provision about cases relating to breaches of condition D in section 528 in relation to—
- (a) the principal company of a group UK REIT, or
- (b) a company UK REIT.
- (2) In accordance with section 527(6) and (7), a breach of condition D during the first 3-year period is to be ignored.
- (3) If condition D is not met at the start of the first day after the end of the first 3-year period, the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the first 3-year period.
- (4) If condition D is not met at any time after the start of the day mentioned in subsection (3), the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at—
- (a) the end of the accounting period preceding the accounting period in which the breach began, or
- (b) if later, the end of the first 3-year period.
- (5) Neither subsection (3) nor subsection (4) applies if condition D is not met as a result of—
- (a) the principal company of a group UK REIT becoming a member of another group UK REIT, or
- (b) a company UK REIT becoming a member of a group UK REIT, and, accordingly, the breach is to be ignored.
- (6) Subsection (4) does not apply if—
- (a) condition D is not met as a result of anything done (or not done) by a person other than the company in question, and
- (b) the company remedies the breach not later than the end of the accounting period after that in which the breach began, and, accordingly, the breach is to be ignored.

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(7) But if, in a case within subsection (6), the breach of condition D is not remedied by the time mentioned in that subsection, the group or company (as the case may be) is treated as having ceased to be a UK REIT at the end of the accounting period in which the breach began.

(8) In this section “the first 3-year period” has the meaning given by section 527(8).”

10 (1) Section 572 (termination by notice given by HMRC) is amended as follows.

(2) In subsection (2) after “573,” insert “ 573A, ”.

(3) After subsection (5) insert—

“(5A) Subsection (4)(a) has effect subject to section 573A(8).”

11 After section 573 insert—

**“573A Notice under section 572: condition D in section 528 not met**

(1) An officer of Revenue and Customs may give a notice under section 572(1) if—

- (a) at any time during the first 3-year period, condition D in section 528 is not met, and
- (b) as at that time, subsection (2) has applied to a member of the group or the company (as the case may be) for a period exceeding 3 years or for a number of periods which in total exceed 3 years.

(2) This subsection applies to a company at any time when—

- (a) the company is, or is a member of, a UK REIT,
- (b) condition D in section 528 is not met in relation to the UK REIT, and
- (c) the first 3-year period in relation to the UK REIT has not ended.

(3) Neither subsection (1)(a) nor subsection (2)(b) covers cases in which condition D in section 528 is not met as a result of—

- (a) the principal company of a group UK REIT becoming a member of another group UK REIT, or
- (b) a company UK REIT becoming a member of a group UK REIT.

(4) Subsection (5) applies if—

- (a) a company ceases to carry on a business (“the transferred business”) which it carried on at a time (“the relevant time”) when subsection (2) applied to the company, and
- (b) another company (“company X”) begins to carry on the transferred business.

In paragraph (a) the reference to a business includes a part of a business.

(5) Subsection (2) is to be taken to have applied at the relevant time to the following companies—

- (a) company X, and
- (b) if company X subsequently ceases to carry on the transferred business (or any part of it), any other companies which from time to time carry on the transferred business (or any part of it).

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- (6) In this section “the first 3-year period” has the meaning given by section 527(8).
- (7) If a notice is given under section 572(1) in a case within this section, subsection (8) applies instead of section 572(4)(a).
- (8) The group or company (as the case may be) is to be taken to have ceased to be a UK REIT on—
- (a) the first day of accounting period 1, or
  - (b) such later day as may be specified by the officer of Revenue and Customs in the notice.”
- 12 (1) Section 577 (multiple breaches of conditions in Chapter 2) is amended as follows.
- (2) In subsection (5)(a) for “section 562(2) and (3)” substitute “ section 562A(6) ”.
- (3) In subsection (7)—
- (a) in paragraph (b) omit “or D” and “or (5) to (7)”, and
  - (b) in paragraph (c) for “C to F” substitute “ C, E and F ”.
- (4) After subsection (7) insert—
- “(8) In accordance with section 527(6) and (7), a breach of condition D in section 528 during the first 3-year period (as defined in section 527(8)) is also to be ignored for the purposes of this section.”
- 13 (1) The amendments made by paragraph 2 have effect in relation to notices given under section 523 or 524 specifying a date which is on or after the day on which this Act is passed.
- (2) The amendments made by paragraphs 3 to 12 have effect in relation to—
- (a) groups of companies in respect of which notices are given under section 523 specifying a date which is on or after the day on which this Act is passed, and
  - (b) companies which give notices under section 524 specifying a date which is on or after the day on which this Act is passed.
- (3) The amendments made by paragraph 4 also have effect in relation to—
- (a) groups of companies in respect of which notices are given under section 523 specifying a date which is before the day on which this Act is passed, and
  - (b) companies which give notices under section 524 specifying a date which is before the day on which this Act is passed,
- for accounting periods beginning on or after the day on which this Act is passed (including, in relation to a breach beginning in an accounting period beginning before that day, for the purpose of determining under section 562(3) whether the breach is remedied in an accounting period beginning on or after that day).

*Being a UK REIT: conditions for company - trading of shares on recognised stock exchange*

- 14 In section 527 (being a UK REIT in relation to an accounting period) in subsections (2) and (3) after paragraph (a) insert—
- “(aa) the condition in section 528A (further condition relating to shares) must be met in relation to the period,”.
- 15 In section 528 (conditions for company) in subsection (3) for “listed” substitute “ admitted to trading ”.

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16 After section 528 insert—

**“528A Further condition relating to shares**

- (1) In the case of a group UK REIT, the condition in this section is met in relation to an accounting period if—
  - (a) throughout the accounting period, the shares forming the principal company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of “listed” in relation to shares), or
  - (b) during the accounting period, shares forming part of the principal company's ordinary share capital are traded on a recognised stock exchange.
- (2) In the case of a company UK REIT, the condition in this section is met in relation to an accounting period if—
  - (a) throughout the accounting period, the shares forming the company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of “listed” in relation to shares), or
  - (b) during the accounting period, shares forming part of the company's ordinary share capital are traded on a recognised stock exchange.
- (3) This section is subject to section 528B.

**528B Relaxation of section 528A condition for accounting periods 1 to 3**

- (1) This section relaxes the requirements of section 528A in relation to accounting period 1, accounting period 2 and accounting period 3.
- (2) In the case of a group UK REIT, the condition in section 528A is met in relation to accounting period 1, accounting period 2 and accounting period 3 if—
  - (a) at the end of the relevant period, the shares forming the principal company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of “listed” in relation to shares), or
  - (b) during the relevant period, shares forming part of the principal company's ordinary share capital are traded on a recognised stock exchange.
- (3) In the case of a company UK REIT, the condition in section 528A is met in relation to accounting period 1, accounting period 2 and accounting period 3 if—
  - (a) at the end of the relevant period, the shares forming the company's ordinary share capital meet the requirement of section 1137(2)(b) (definition of “listed” in relation to shares), or
  - (b) during the relevant period, shares forming part of the company's ordinary share capital are traded on a recognised stock exchange.
- (4) In this section—
  - “accounting period 2” means the accounting period following accounting period 1,
  - “accounting period 3” means the accounting period following accounting period 2, and

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“the relevant period” means the period consisting of accounting period 1, accounting period 2 and accounting period 3.”

- 17 In section 561 (notice of breach of relevant Chapter 2 condition) in subsection (3) before “conditions A and B in section 529” insert—

“the condition in section 528A (further condition relating to shares),”.

- 18 Before section 563 insert—

#### **Breach of further condition relating to shares**

“562B) Subsection (2) applies if the condition in section 528A (further condition relating to shares) is not met in relation to an accounting period.

- (2) The group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the previous accounting period.
- (3) But subsection (2) does not apply if the condition is not met as a result of—
- (a) the principal company of a group UK REIT becoming a member of another group UK REIT, or
  - (b) a company UK REIT becoming a member of a group UK REIT, and, accordingly, the breach is to be ignored.
- (4) This section is subject to section 562C.

#### **Breach of further condition relating to shares in accounting periods 1, 2 and 3**

562C) Subsection (2) applies if the condition in section 528A, as relaxed by section 528B, is not met in relation to accounting period 1, accounting period 2 and accounting period 3.

- (2) The group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of accounting period 2.
- (3) But subsection (2) does not apply if the condition, as relaxed, is not met as a result of—
- (a) the principal company of a group UK REIT becoming a member of another group UK REIT, or
  - (b) a company UK REIT becoming a member of a group UK REIT, and, accordingly, the breach is to be ignored.
- (4) In this section “accounting period 2” and “accounting period 3” have the same meaning as in section 528B.”

- 19 (1) Section 572 (termination by notice given by HMRC) is amended as follows.

(2) In subsection (2) before “574” insert “ 573B, ”.

(3) Before subsection (6) insert—

“(5B) Subsection (4)(a) has effect subject to section 573B(9).”

- 20 Before section 574 insert—

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### **Notice under section 572: further condition relating to shares not met**

- “573B) In the case of a group UK REIT, an officer of Revenue and Customs may give a notice under section 572(1) if—
- (a) the condition in section 528A (further condition relating to shares) would not be met in relation to an accounting period (“the relevant accounting period”) but for section 528B, and
  - (b) subsection (2) applies to a company which is a member of the group at any time during the relevant accounting period.
- (2) This subsection applies to a company if it has benefited from the relaxation of the condition in section 528A in relation to 3 or more accounting periods (apart from the relevant accounting period).
- (3) In the case of a company UK REIT, an officer of Revenue and Customs may give a notice under section 572(1) if—
- (a) the condition in section 528A (further condition relating to shares) would not be met in relation to an accounting period (“the relevant accounting period”) but for section 528B, and
  - (b) the company has benefited from the relaxation of the condition in section 528A in relation to 3 or more accounting periods (apart from the relevant accounting period).
- (4) For the purposes of this section a company benefits from the relaxation of the condition in section 528A if—
- (a) it is a member of a group UK REIT at any time during an accounting period in relation to which the condition in section 528A would not be met but for section 528B, or
  - (b) at any time it is a company UK REIT and the condition in section 528A would not be met in relation to an accounting period but for section 528B,
- and the accounting period “in relation to” which the company benefits from the relaxation of the condition in section 528A is the accounting period mentioned in paragraph (a) or (b) (as the case may be).
- (5) None of subsections (1)(a), (3)(a), (4)(a) and (4)(b) covers cases in which the condition in section 528A would not be met as a result of—
- (a) the principal company of a group UK REIT becoming a member of another group UK REIT, or
  - (b) a company UK REIT becoming a member of a group UK REIT.
- (6) Subsection (7) applies if—
- (a) a company ceases to carry on a business (“the transferred business”) which it carried on at any time during an accounting period in relation to which the company benefits from the relaxation of the condition in section 528A, and
  - (b) another company (“company X”) begins to carry on the transferred business.
- In paragraph (a) the reference to a business includes a part of a business.
- (7) The following companies are to be taken to benefit from the relaxation of the condition in section 528A in relation to the accounting period in question—



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- (a) company X, and
    - (b) if company X subsequently ceases to carry on the transferred business (or any part of it), any other companies which from time to time carry on the transferred business (or any part of it).
  - (8) If a notice is given under section 572(1) in a case within this section, subsection (9) applies instead of section 572(4)(a).
  - (9) The group or company (as the case may be) is to be taken to have ceased to be a UK REIT on—
    - (a) the first day of accounting period 1, or
    - (b) such later day as may be specified by the officer of Revenue and Customs in the notice.”
- 21 (1) Subject to what follows, the amendments made by paragraphs 14 to 20 have effect for accounting periods beginning on or after the day on which this Act is passed.
- (2) Sections 528B, 562C and 573B have no effect in relation to—
  - (a) groups of companies in respect of which notices are given under section 523 specifying a date which is before the day on which this Act is passed, or
  - (b) companies which give notices under section 524 specifying a date which is before the day on which this Act is passed.

*Being a UK REIT: condition as to distribution of profits*

- 22 In section 530 (condition as to distribution of profits) in subsection (6D) for “three” substitute “ 6 ”.
- 23 After section 530 insert—

**“530A Condition as to distribution of profits: increase in profits after delivery of tax return**

- (1) Section 530(1) applies subject to subsection (2) below in relation to an accounting period if—
  - (a) the principal company of the group delivered with its tax return for the period the financial statement under section 532(2)(b) showing the amount of the UK profits of the group arising in the period, and
  - (b) as at the relevant date, those profits have been increased from the amount originally shown in the statement.
- (2) Any distribution of those profits made by the principal company before the end of the relevant period is to be treated as having been made within the deadline set by section 530(1)(c).
- (3) But the total amount of profits that may be treated as having been distributed within that deadline by virtue of subsection (2) is limited to 90% of the amount of the increase in profits.
- (4) In subsections (1) and (2) (and this subsection)—
  - “the relevant date” means the date on which the principal company's tax return can no longer be amended,
  - “the relevant period” means the period of 3 months beginning with the relevant date, and

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“UK profits” has the meaning given by section 530(2).

- (5) Section 530(4) applies subject to subsection (6) below in relation to an accounting period if—
- (a) the company delivered its tax return for the period showing the amount of the profits of its property rental business arising in the period as calculated in accordance with section 599, and
  - (b) as at the relevant date, those profits have been increased from the amount originally shown in the return.
- (6) Any distribution of those profits made before the end of the relevant period is to be treated as having been made within the deadline set by section 530(4)(b).
- (7) But the total amount of profits that may be treated as having been distributed within that deadline by virtue of subsection (6) is limited to 90% of the amount of the increase in profits.
- (8) In subsections (5) and (6) (and this subsection)—
- “the relevant date” means the date on which the company's tax return can no longer be amended, and
- “the relevant period” means the period of 3 months beginning with the relevant date.
- (9) In this section “distribution” is to be read in accordance with section 530(6A) and (6B).”

24 In section 564 (breach of condition as to distribution of profits) omit subsections (5) to (8).

25 (1) Section 565 (which defines the amount to be charged to corporation tax where there is a breach of the condition in section 530) is amended as follows.

- (2) In subsections (2) and (3), in the definition of “D”—
- (a) for “on or before” substitute “ within ”,
  - (b) in paragraph (a) for “filing date referred to in” substitute “ deadline set by ”, and
  - (c) in paragraph (b) for “date specified” substitute “ deadline set ”.

(3) After subsection (3) insert—

“(4) The definition of “D” in subsections (2) and (3) needs to be read with section 530A (so far as applicable).”

26 (1) The amendment made by paragraph 22 has effect in relation to distributions made on or after the day on which this Act is passed.

(2) The amendments made by paragraphs 23 to 25 have effect for accounting periods beginning on or after the day on which this Act is passed.

*Being a UK REIT: conditions as to balance of business*

27 (1) Section 531 (conditions as to balance of business) is amended as follows.

(2) For subsection (5) substitute—

“(5) Condition B is that at the beginning of the accounting period the sum of—

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- (a) the value of the assets relating to property rental business, and
    - (b) the value of the assets relating to residual business so far as consisting of cash,is at least 75% of the total value of assets held by the group or company (as the case may be).”
  - (3) In subsection (6)(b) after “business” insert “ (and the amount of the group's cash is to be determined accordingly) ”.
  - (4) After subsection (7) insert—
    - “(8) In this section “cash” means—
    - (a) money held on deposit (whether or not in sterling),
    - (b) stocks or bonds of any description included in Part 1 of Schedule 11 to FA 1942 (gilts), or
    - (c) money held in any other way, or any investment of any other form, specified in regulations made by the Commissioners for Her Majesty's Revenue and Customs.”
  - 28 In section 547 (funds awaiting reinvestment) omit subsection (3).
  - 29 (1) Section 566 (breach of condition B in section 531 in accounting period 1) is amended as follows.
    - (2) In subsection (2) omit the words from “but an amount of income” to the end.
    - (3) Omit subsections (3) to (6).
  - 30 Omit section 567 (breach of condition B in section 531 in accounting period 1: meaning of “the notional amount”).
  - 31 In section 568 (breach of balance of business conditions after accounting period 1) in subsection (2)(b) for “value of the assets involved in property rental business of the UK REIT in question” substitute “ sum of the values mentioned in section 531(5)(a) and (b) ”.
  - 32 (1) The amendments made by paragraphs 27, 28 and 31 have effect for accounting periods beginning on or after the day on which this Act is passed.
    - (2) The amendments made by paragraphs 29 and 30 have effect in relation to a breach of condition B in section 531 if accounting period 1 begins on or after the day on which this Act is passed.
- Abolition of entry charge*
- 33 (1) Omit sections 538 to 540 (entry charge).
    - (2) Sub-paragraph (1) does not affect the application of section 540 in relation to a company if the date of entry is before the day on which this Act is passed.
  - 34 (1) In section 545 (cancellation of tax advantage) in subsection (5) omit the words from “(and includes,” to “538)”.
    - (2) Sub-paragraph (1) does not affect the powers of an officer of Revenue and Customs under section 545 in cases in which a company which is, or is a member of, a UK REIT tries before the day on which this Act is passed to obtain a tax advantage.
  - 35 (1) In section 556 (disposal of assets) omit subsection (4).

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- (2) Sub-paragraph (1) does not affect the application of subsection (4) in relation to a company if entry is before the day on which this Act is passed.
- 36 (1) In section 558 (demergers: disposal of asset) in subsection (4) omit “and section 538 (entry charge)”.
- (2) Sub-paragraph (1) has no effect in relation to cases in which the date specified in the notice under section 523(1) is before the day on which this Act is passed.
- 37 In section 559 (demergers: company leaving group UK REIT) in subsection (8) omit “section 538 (entry charge)”.
- 38 In section 583 (overview of Chapter 10 relating to joint ventures) omit subsection (4)(b).
- 39 Omit sections 595 to 597 (additional entry charges in cases involving joint ventures) and the italic heading before section 595.

#### *Financing cost ratio*

- 40 (1) Section 543 (financing cost ratio) is amended as follows.
- (2) In subsection (1) after “period” insert “ (unless it is nil or a negative amount) ”.
- (3) For subsection (3) substitute—
- “(3) The excess is charged to corporation tax in relation to the accounting period under the charge to corporation tax on income.
- (3A) “The excess” means—
- (a) the amount equal to—
- (i) PFC, minus
- (ii) the property financing costs which would cause the calculation in subsection (2) to equal 1.25 for the accounting period, or
- (b) if less, the amount equal to 20% of PP.”
- 41 (1) Section 544 (meaning of “property financing costs” etc) is amended as follows.
- (2) In subsection (5) for “include” and paragraphs (a) to (e) substitute “are—
- (a) interest payable on borrowing,
- (b) amortisation of discounts relating to borrowing,
- (c) amortisation of premiums relating to borrowing,
- (d) the financing expense implicit in payments made under finance leases, and
- (e) alternative finance return (as defined in sections 511 to 513 of CTA 2009).”
- (3) After subsection (5) insert—
- “(6) The Treasury may by regulations amend the list of matters in subsection (5) by inserting, omitting or amending a description of a matter.”
- 42 The amendments made by paragraphs 40 and 41 have effect for accounting periods beginning on or after the day on which this Act is passed.

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### *Disposal of assets*

- 43 (1) Section 556 (disposal of assets) is amended as follows.
- (2) In subsection (1)—
- (a) omit the “and” after paragraph (a), and
  - (b) after paragraph (b) insert “, and
  - (c) if the company is a member of a UK REIT, the disposal is not to another member of the UK REIT.”
- (3) In subsection (3)—
- (a) omit the “and” after paragraph (b), and
  - (b) after paragraph (c) insert “, and
  - (d) if the company is a member of a UK REIT, the disposal is not to another member of the UK REIT.”
- 44 The amendments made by paragraph 43 have effect in relation to disposals occurring on or after the day on which this Act is passed.

## F47 SCHEDULE 5

Section 31

### Textual Amendments

F47 Sch. 5 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 11(2)(c)(i)

## SCHEDULE 6

Section 38

### SEED ENTERPRISE INVESTMENT SCHEME

#### PART 1

##### THE SCHEME

- 1 In ITA 2007, after Part 5 (enterprise investment scheme) insert—

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## “PART 5A

### SEED ENTERPRISE INVESTMENT SCHEME

#### CHAPTER 1

##### INTRODUCTION

##### *SEIS relief*

#### **Meaning of “SEIS relief” and commencement**

- 257A(1) This Part provides for SEIS income tax relief (“SEIS relief”), that is, entitlement to tax reductions in respect of amounts subscribed by individuals for shares in companies carrying on new businesses.
- (2) In this Part “SEIS” stands for the seed enterprise investment scheme.
- (3) This Part has effect only in relation to shares issued—
- (a) on or after 6 April 2012, but
  - (b) before 6 April 2017.
- (4) The Treasury may by order substitute a later date for the date for the time being specified in subsection (3)(b).

#### **Eligibility for SEIS relief**

- 257AA An individual (“the investor”) is eligible for SEIS relief in respect of an amount subscribed by the investor on the investor's own behalf for an issue of shares in a company (“the issuing company”) if—
- (a) the shares (“the relevant shares”) are issued to the investor,
  - (b) the investor is a qualifying investor in relation to the relevant shares (see Chapter 2),
  - (c) the general requirements (including requirements as to the purpose of the issue of shares and the use of money raised) are met in respect of the relevant shares (see Chapter 3), and
  - (d) the issuing company is a qualifying company in relation to the relevant shares (see Chapter 4).

#### **Form and amount of SEIS relief**

- 257AB(1) If an individual—
- (a) is eligible for SEIS relief in respect of any amount subscribed for shares, and
  - (b) makes a claim in respect of all or some of the shares included in the issue,
- the individual is entitled to a tax reduction for the tax year in which the shares were issued (“the current tax year”).

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This is subject to the provisions of this Part.

- (2) The amount of the tax reduction to which the individual is entitled is the amount equal to tax at the SEIS rate for the current tax year on—
  - (a) the amount or, as the case may be, the sum of the amounts subscribed for shares issued in that year in respect of which the individual is eligible for and claims SEIS relief, or
  - (b) if less, £100,000.
- (3) In this Part “the SEIS rate” means 50%.
- (4) The tax reduction is given effect at Step 6 of the calculation in section 23.
- (5) If in the case of any issue of shares—
  - (a) which are issued in the current tax year, and
  - (b) in respect of the amount subscribed for which the individual is eligible for SEIS relief,the individual so claims, subsections (1) and (2) apply as if, in respect of such part of that issue as may be specified in the claim, the shares had been issued in the preceding tax year, and the individual's liability to tax for both tax years is determined accordingly.

#### *Miscellaneous*

#### **Meaning of “period A” and “period B”**

- 257A(1) This section applies for the purposes of this Part in relation to any shares issued by a company.
- (2) “Period A” means the period—
    - (a) beginning with the incorporation of the company, and
    - (b) ending immediately before the termination date relating to the shares.
  - (3) “Period B” means the period—
    - (a) beginning with the issue of the shares, and
    - (b) ending immediately before the termination date relating to the shares.
  - (4) In this section “the termination date”, in relation to the shares, means the third anniversary of the date on which the shares are issued.

#### **Overview of other Chapters of Part**

- 257AD In this Part—
- (a) Chapter 5 provides for the attribution of SEIS relief to shares and the making of claims for such relief,
  - (b) Chapter 6 provides for SEIS relief to be withdrawn or reduced in the circumstances mentioned in that Chapter,
  - (c) Chapter 7 makes provision with respect to the procedure for the withdrawal or reduction of SEIS relief, and
  - (d) Chapter 8 contains supplementary and general provisions.

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### **CGT reliefs relating to SEIS**

- 257A(1) Section 150E of TCGA 1992 makes provision about gains or losses on the disposal of shares to which SEIS relief is attributable.
- (2) Schedule 5BB to that Act provides relief in respect of the re-investment under SEIS of the proceeds of assets disposed of in circumstances where there would otherwise be a chargeable gain.

## **CHAPTER 2**

### THE INVESTOR

#### *Introduction*

#### **Overview of Chapter**

- 257B The investor is a qualifying investor in relation to the relevant shares if the requirements of this Chapter are met as to—
- (a) no employee investors (see section 257BA),
  - (b) no substantial interest in the issuing company (see section 257BB),
  - (c) no related investment arrangements (see section 257BC),
  - (d) no linked loans (see section 257BD), and
  - (e) no tax avoidance (see section 257BE).

#### *The requirements*

#### **The no employee investors requirement**

- 257B(1) Neither the investor nor an associate of the investor may, at any time during period B, be an employee of the issuing company or of any qualifying subsidiary of that company.
- (2) For this purpose a person is not to be treated as an employee of the issuing company, or of any qualifying subsidiary of that company, at any time when the person is a director of that company.

#### **The no substantial interest in the issuing company requirement**

- 257BB The investor must not have a substantial interest in the issuing company at any time during period A.

#### **The no related investment arrangements requirement**

- 257BC The investor (“P”) must not subscribe for the relevant shares as part of an arrangement which provides for another person to subscribe for shares in another company in which P, or any other individual who is party to the arrangement, has a substantial interest.



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### **The no linked loan requirement**

- 257BD(1) No linked loan is to be made by any person, at any time in period A, to the investor or an associate of the investor.
- (2) In this section “linked loan” means any loan which—
- (a) would not have been made, or
  - (b) would not have been made on the same terms,
- if the investor had not subscribed for the relevant shares, or had not been proposing to do so.
- (3) References in this section to the making by any person of a loan to the investor or an associate of the investor include a reference—
- (a) to the giving by that person of any credit to the investor or any associate of the investor, and
  - (b) to the assignment to that person of a debt due from the investor or any associate of the investor.

### **The no tax avoidance requirement**

- 257BE The relevant shares must be subscribed for by the investor for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

#### *Meaning of substantial interest in a company*

### **Persons with a substantial interest in a company**

- 257BF(1) An individual has a substantial interest in a company if the individual directly or indirectly possesses or is entitled to acquire more than 30% of—
- (a) the ordinary share capital of the company or any subsidiary of the company,
  - (b) the issued share capital of the company or any such subsidiary, or
  - (c) the voting power in the company or any such subsidiary.
- (2) An individual has a substantial interest in a company if the individual directly or indirectly possesses or is entitled to acquire such rights as would—
- (a) in the event of the winding up of the company or any subsidiary of the company, or
  - (b) in any other circumstances,
- entitle the individual to receive more than 30% of the assets of the company or subsidiary (“the company in question”) which would then be available for distribution to equity holders of the company in question.
- (3) For the purposes of subsection (2)—
- (a) the persons who are equity holders of the company in question, and
  - (b) the percentage of the assets of the company in question to which the individual would be entitled,
- are determined in accordance with Chapter 6 of Part 5 of CTA 2010.

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- (4) In making that determination—
- (a) references in section 166 of that Act to company A are to be read as references to an equity holder, and
  - (b) references in that section to a winding up are to be read as including a reference to any other circumstances in which assets of the company in question are available for distribution to its equity holders.
- (5) An individual does not have a substantial interest in a company merely because one or more shares in the company are held by the individual or by an associate of the individual, at a time when the company—
- (a) has not issued any shares other than subscriber shares, and
  - (b) has not begun to carry on, or make preparations for carrying on, any trade or business.
- (6) An individual has a substantial interest in a company if the individual has control of the company or any subsidiary of that company.
- (7) For the purposes of this section—
- (a) an individual is treated as entitled to acquire anything which the individual is entitled to acquire at a future date or will at a future date be entitled to acquire, and
  - (b) there is attributed to any individual any rights or powers of any other person who is an associate of the individual.
- (8) In this section “subsidiary”, in relation to a company, means a company which at any time in period A is a 51% subsidiary of the company, whether or not it is such a subsidiary while the individual concerned has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.

## CHAPTER 3

### GENERAL REQUIREMENTS

#### *Introduction*

#### **Overview of Chapter**

- 257C The general requirements are met in respect of the relevant shares if the requirements of this Chapter are met as to—
- (a) the shares (see section 257CA),
  - (b) the purpose of the issue (see section 257CB),
  - (c) the spending of the money raised (see section 257CC),
  - (d) no pre-arranged exits (see section 257CD),
  - (e) no tax avoidance (see section 257CE), and
  - (f) no disqualifying arrangements (see section 257CF).

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### *The requirements*

#### **The shares requirement**

- 257C(A) The relevant shares must meet—
- (a) the requirements of subsection (2), and
  - (b) unless they are bonus shares, the requirements of subsection (4).
- (2) Shares meet the requirements of this subsection if they are ordinary shares which do not, at any time during period B, carry—
- (a) any present or future preferential right to dividends that is within subsection (3),
  - (b) any present or future preferential right to a company's assets on its winding up, or
  - (c) any present or future right to be redeemed.
- (3) A preferential right to dividends carried by a share in a company is within this subsection if—
- (a) the amount of any dividends payable pursuant to the right, or the date or dates on which they are payable, depend to any extent on a decision of the company, the holder of the share or any other person, or
  - (b) the amount of any dividends that become payable at any time pursuant to the right includes any amount that became payable at any earlier time pursuant to the right but has not been paid.
- (4) Shares meet the requirements of this subsection if they—
- (a) are subscribed for wholly in cash, and
  - (b) are fully paid up at the time they are issued.
- (5) Shares are not fully paid up for the purposes of subsection (4)(b) if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.

#### **The purpose of the issue requirement**

257C(B) The relevant shares (other than any of them which are bonus shares) must be issued in order to raise money for the purposes of a qualifying business activity carried on, or to be carried on, by the issuing company or a qualifying 90% subsidiary of that company.

- (2) For the meaning of “qualifying business activity” see section 257HG.

#### **The spending of the money raised requirement**

257C(C) The requirement of this section is that before the end of period B all of the money raised by the issue of the relevant shares (other than any of them which are bonus shares) is spent for the purposes of the qualifying business activity for which it was raised.

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- (2) Spending money on the acquisition of shares or stock in a company does not of itself amount to spending the money for the purposes of a qualifying business activity.
- (3) This requirement does not fail to be met merely because an amount of money which is not significant is spent for another purpose or remains unspent at the end of period B.

### **The no pre-arranged exits requirement**

- 257CD) The issuing arrangements for the relevant shares must not include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the issuing company,
  - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the issuing company or a person connected with that company,
  - (c) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the issuing company or of a person connected with that company, or
  - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in the issuing company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in subsection (1)(a) do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 257HB(1).
  - (3) The arrangements referred to in subsection (1)(b) and (c) do not include any arrangements applicable only on the winding up of a company except in a case where—
    - (a) the issuing arrangements include arrangements for the company to be wound up, or
    - (b) the arrangements are applicable to the winding up of the company otherwise than for genuine commercial reasons.
  - (4) The arrangements referred to in subsection (1)(d) do not include any arrangements which are confined to the provision—
    - (a) for the issuing company itself, or
    - (b) if the issuing company is a parent company that meets the trading requirement in section 257DA(2)(b), for the issuing company itself, for the issuing company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
 of any such protection against risks arising in the course of carrying on its business as might reasonably be expected to be provided in normal commercial circumstances.
  - (5) In this section “the issuing arrangements” means—
    - (a) the arrangements under which the shares are issued to the individual,

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- (b) any arrangements made, before the shares were issued, in relation to or in connection with the issue, and
  - (c) if before the shares were issued information on pre-arranged exits was made available to any prospective subscribers for shares in the issuing company, any arrangements made during period B.
- (6) For the purposes of subsection (5)(c) “information on pre-arranged exits” means any information indicating the possibility of making, during period B, arrangements of the kind described in paragraph (a), (b), (c) or (d) of subsection (1).

### **The no tax avoidance requirement**

257CE The relevant shares must be issued for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### **The no disqualifying arrangements requirement**

257CF The relevant shares must not be issued, nor any money raised by the issue spent, in consequence or anticipation of, or otherwise in connection with, disqualifying arrangements.

- (2) Arrangements are “disqualifying arrangements” if—
- (a) the main purpose, or one of the main purposes, of the arrangements is to secure—
    - (i) that a qualifying business activity is or will be carried on by the issuing company or a qualifying 90% subsidiary of that company, and
    - (ii) that one or more persons (whether or not including any party to the arrangements) may obtain relevant tax relief in respect of shares issued by the issuing company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a VCT,
  - (b) that activity is the relevant qualifying business activity, and
  - (c) one or both of conditions A and B are met.
- (3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant shares being spent as required by section 257CC, an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a relevant person or relevant persons.
- (4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the whole or greater part of the component activities of the relevant qualifying business activity would have been carried on as part of another business by a relevant person or relevant persons.
- (5) For the purposes of this section it is immaterial whether the issuing company is a party to the arrangements.
- (6) In this section—  
“component activities” means—

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- (a) if the relevant qualifying business activity is activity A (see section 257HG(2)), the carrying on of a qualifying trade, or preparing to carry on such a trade, which constitutes that activity, and
- (b) if the relevant qualifying business activity is activity B (see section 257HG(4)), the carrying on of research and development which constitutes that activity;

“qualifying holdings”, in relation to the issuing company, is to be construed in accordance with section 286 (VCTs: qualifying holdings);

“relevant person” means a person who is a party to the arrangements or a person connected with such a party;

“relevant qualifying business activity” means the activity for the purposes of which the issue of the relevant shares raised money;

“relevant tax relief”, in respect of shares, means one or more of the following—

- (a) SEIS relief in respect of the shares;
- (b) EIS relief in respect of the shares;
- (c) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;
- (d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme) in respect of the shares;
- (e) relief under Schedule 5B to that Act (enterprise investment scheme: re-investment) in consequence of which deferral relief is attributable to the shares (see paragraph 19(2) of that Schedule);
- (f) relief under Schedule 5BB to that Act (seed enterprise investment scheme: re-investment) in consequence of which SEIS re-investment relief is attributable to the shares (see paragraph 4 of that Schedule).

## CHAPTER 4

### THE ISSUING COMPANY

#### *Introduction*

#### **Overview of Chapter**

257D The issuing company is a qualifying company in relation to the relevant shares if the requirements of this Chapter are met as to—

- (a) trading (see section 257DA),
- (b) the issuing company's carrying on of the qualifying business activity (see section 257DC),
- (c) UK permanent establishment (see section 257DD),
- (d) financial health (see section 257DE),
- (e) unquoted status (see section 257DF),
- (f) control and independence (see 257DG),

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- (g) no partnerships (see section 257DH),
- (h) gross assets (see section 257DI),
- (i) number of employees (see section 257DJ),
- (j) no previous other risk capital scheme investments (see section 257DK),
- (k) the amount raised through the SEIS (see section 257DL),
- (l) qualifying subsidiaries (see section 257DM), and
- (m) property managing subsidiaries (see section 257DN).

### *The requirements*

#### **The trading requirement**

257D(1) The issuing company must meet the trading requirement throughout period B.

- (2) The trading requirement is that—
  - (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more new qualifying trades (see section 257HF), or
  - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (3) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more new qualifying trades—
  - (a) the company is treated as a parent company for the purposes of subsection (2)(b), and
  - (b) the reference in subsection (2)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (4) For the purpose of subsection (2)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (5) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (6) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
  - (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company,
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or

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- (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
  - (i) that a qualifying trade to be carried on by a group company will be derived, or
  - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (7) Any reference in subsection (6)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (8) Where period B begins after the incorporation of the company, the requirement of subsection (2) must have been complied with since its incorporation; but for the purposes of that subsection any interval between the incorporation of the company and the time when it commenced business is to be ignored.
- (9) In this section—
  - “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question;
  - “mainly trading subsidiary” means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly;
  - “non-qualifying activities” means—
    - (a) excluded activities (within the meaning of sections 192 to 199), and
    - (b) activities (other than research and development) carried on otherwise than in the course of a trade;
  - “qualifying trade” has the same meaning as in Part 5 (see sections 189 and 192 to 200).

### **Ceasing to meet trading requirement: administration etc**

257D(1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This is subject to subsections (2) and (3).

- (2) Subsection (1) applies only if—
  - (a) the entry into administration or receivership, and
  - (b) everything done as a result of the company concerned being in administration or receivership,
 is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (3) A company ceases to meet the trading requirement if before the end of period B—



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- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or
- (b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

- (4) Subsection (3) does not apply if the winding up or dissolution is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### **The issuing company to carry on the qualifying business activity**

257D(1) The requirement of this section is met in relation to the issuing company if, at no time in period B, is any of the following—

- (a) the relevant new qualifying trade,
- (b) relevant preparation work (if any), and
- (c) relevant research and development (if any),

carried on by a person other than the issuing company or a qualifying 90% subsidiary of that company.

- (2) Subsection (3) has effect for the purpose of determining whether the requirement of this section is met in relation to the issuing company in a case where relevant preparation work is carried out by that company or a qualifying 90% subsidiary of that company.
- (3) The carrying on of the relevant new qualifying trade by a company other than the issuing company or a subsidiary of that company is to be ignored if it takes place at any time in period B before the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.
- (4) The requirement of this section is not regarded as failing to be met in relation to the issuing company if, merely because of any act or event within subsection (5), the relevant new qualifying trade—
  - (a) ceases to be carried on in period B by the issuing company or any qualifying 90% subsidiary of that company, and
  - (b) is subsequently carried on in that period by a person who is not at any time in period A connected with the issuing company.
- (5) The following are acts and events within this subsection—
  - (a) anything done as a consequence of the issuing company or any other company being in administration or receivership, and
  - (b) the issuing company or any other company being wound up, or dissolved without being wound up.
- (6) Subsection (4) applies only if—
  - (a) the entry into administration or receivership, and everything done as a consequence of the company concerned being in administration or receivership, or
  - (b) the winding up or dissolution,

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is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(7) In this section—

“the relevant new qualifying trade” means the new qualifying trade which is the subject of that qualifying business activity;

“relevant preparation work” means preparations within section 257HG(2)(b) which are the subject of the qualifying business activity mentioned in section 257CB;

“relevant research and development” means—

- (a) research and development within section 257HG(3) which is the subject of that qualifying business activity, and
- (b) any other preparations for the carrying on of the new qualifying trade which is the subject of that activity.

#### **The UK permanent establishment requirement**

257D(1) The issuing company must meet the UK permanent establishment requirement throughout period B.

- (2) The UK permanent establishment requirement is that the issuing company has a permanent establishment in the United Kingdom.

#### **The financial health requirement**

257D(2) The issuing company must meet the financial health requirement at the beginning of period B.

- (2) The financial health requirement is that the issuing company is not in difficulty.
- (3) The issuing company is “in difficulty” if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02).

#### **The unquoted status requirement**

257D(3) At the beginning of period B—

- (a) the issuing company must be an unquoted company,
  - (b) there must be no arrangements in existence for the issuing company to cease to be an unquoted company, and
  - (c) there must be no arrangements in existence for the issuing company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
    - (i) section 257HB applies in relation to the exchange, and
    - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.
- (2) In this section “unquoted company” means a company none of whose shares, stocks, debentures or other securities are marketed to the general public.

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- (3) For the purposes of subsection (2), shares, stock, debentures or other securities are marketed to the general public if they are—
  - (a) listed on a recognised stock exchange,
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in outside the United Kingdom by such means as may be designated.
- (4) In subsection (3)(b) and (c) “designated” means designated by an order made by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of that provision.
- (5) An order made for the purposes of subsection (3)(b) may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.
- (6) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company are at any subsequent time—
  - (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005(1)(b), or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (3)(b) or (c),if the order was made after the beginning of period B.

### **The control and independence requirement**

- 257D(1) The control element of the requirement is that—
- (a) the issuing company must not at any time in period A control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the issuing company, and
  - (b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).
- (2) The independence element of the requirement is that—
- (a) the issuing company must not at any time in period A be under the control of any other company (whether on its own or together with any person connected with it), and
  - (b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).
- (3) This section is subject to section 257HB(4) (exchange of shares).

### **The no partnerships requirement**

- 257D(1) Neither the issuing company nor any qualifying 90% subsidiary of that company may, at any time during period A, be a member of a partnership.

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- (2) “Partnership” includes—
- (a) a limited liability partnership, and
  - (b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,
- and “member”, in relation to a partnership, is to be read accordingly.

### **The gross assets requirement**

- 257D(1) In the case of relevant shares issued by a single company, the value of the company's assets must not exceed £200,000 immediately before the relevant shares are issued.
- (2) In the case of relevant shares issued by a parent company, the value of the group assets must not exceed £200,000 immediately before the relevant shares are issued.
- (3) For the purposes of this section the value of the group assets is the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.

### **The number of employees requirement**

- 257D(1) If the issuing company is a single company, the full-time equivalent employee number for it must be less than 25 when the relevant shares are issued.
- (2) If the issuing company is a parent company, the sum of—
- (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
- must be less than 25 when the relevant shares are issued.
- (3) The full-time equivalent employee number for a company is calculated as follows—
- Step 1* Find the number of full-time employees of the company.
- Step 2* Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable. The result is the full-time equivalent employee number.
- (4) In this section references to an employee—
- (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.

### **No previous other risk capital scheme investments**

- 257D(1) The requirement of this section is that—

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- (a) no EIS investment or VCT investment is or has been made in the issuing company on or before the day on which the relevant shares are issued, and
  - (b) no EIS investment or VCT investment has been made on or before that day in a company which at the time the relevant shares are issued is a qualifying subsidiary of the issuing company.
- (2) An “EIS investment” is made in the company if the company—
- (a) issues shares (money having been subscribed for them), and
  - (b) (at any time) provides a compliance statement under section 205 in respect of the shares;
- and the EIS investment is regarded as made when the shares are issued.
- (3) A “VCT investment” is made in the company if an investment (of any kind) in the company is made by a VCT.

### The amount raised through the SEIS

- 257D(1) The sum of the following amounts must not exceed £150,000—
- (a) the amount of the SEIS investment made in the issuing company which includes the relevant shares (“the current investment”),
  - (b) the amount of other SEIS investments made in the issuing company on the same day as the current investment,
  - (c) the amount of any SEIS investments made in the issuing company during the period of 3 years ending immediately before that day, and
  - (d) the total of any other aid which—
    - (i) is granted to the issuing company on the day the current investment is made or during that period, and
    - (ii) disregarding any SEIS investment within paragraph (a) or (b), would be de minimis aid.
- (2) An “SEIS investment” is made in a company if—
- (a) the company issues shares (money having been subscribed for them), and
  - (b) (at any time) the company provides a compliance statement under section 257ED in respect of the shares;
- and an SEIS investment is made on the day when the shares are issued, and the amount of the investment is the amount subscribed for the shares.
- (3) “De minimis aid” means de minimis aid within the meaning of Article 2 of Commission Regulation (EC) No 1998/2006 (de minimis aid).
- The amount of the aid is the amount of the grant, or if the aid is not in the form of a grant, the gross grant equivalent amount (within the meaning of that Regulation).
- (4) Subsection (5) applies where, in relation to the current investment—
- (a) the sum of the amounts mentioned in subsection (1) exceeds £150,000, but
  - (b) the sum of the amounts in paragraphs (c) and (d) of that subsection does not exceed £150,000.

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- (5) In the case of the current investment and each other SEIS investment made in the issuing company on the same day (if any)—
- (a) the appropriate proportion of the shares in the issue constituting the investment and the remainder are to be treated as two separate issues for the purposes of this Part, and
  - (b) the requirement in subsection (1) is to be treated as met in respect of the issue comprised of the appropriate proportion of the shares in the issue, but not in respect of the issue comprised of the remaining shares.
- (6) “The appropriate proportion” of the shares is—

$$\frac{A - B}{C}$$

where—

A is £150,000,

B is the sum of the amounts in paragraphs (c) and (d) of subsection (1), and

C is the sum of the amounts in paragraphs (a) and (b) of that subsection.

#### **The qualifying subsidiaries requirement**

257DM Any subsidiary that the issuing company has at any time in period B must be a qualifying subsidiary of the company.

#### **The property managing subsidiaries requirement**

257DN(1) Any property managing subsidiary that the issuing company has at any time in period B must be a qualifying 90% subsidiary of the company.

- (2) “Property managing subsidiary” means a subsidiary of the company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In subsection (2) references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any interest in settled property deriving its value directly or indirectly from land, and
  - (c) any option, consent or embargo affecting the disposition of land.

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## CHAPTER 5

### ATTRIBUTION AND CLAIMS FOR SEIS RELIEF

#### *Attribution*

#### **Attribution of SEIS relief to shares**

257E) References in this Part, in relation to any individual, to the SEIS relief attributable to any shares or issue of shares are to be read as references to any reduction made in the individual's liability to income tax that is attributed to those shares or that issue in accordance with this section.

This is subject to the provisions of Chapters 6 and 7 providing for the withdrawal or reduction of SEIS relief.

- (2) If an individual's liability to income tax is reduced in any tax year, then—
  - (a) if the reduction is obtained because of one issue of shares, the amount of the tax reduction is attributed to that issue, and
  - (b) if the reduction is obtained because of two or more issues of shares, the amount of the reduction—
    - (i) is apportioned between those issues in the same proportions as the amounts claimed by the individual in respect of each issue, and
    - (ii) is attributed to those issues accordingly.
- (3) If under this section an amount of any reduction of income tax is attributed to an issue of shares (“the original issue”), a proportionate part of that amount is attributed to each share in respect of which the claim is made.
- (4) If corresponding bonus shares are issued to the individual in respect of any shares (“the original shares”) to which SEIS relief is attributed—
  - (a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and the bonus shares, and
  - (b) after the issue of the bonus shares, this Part applies as if the original issue had included those shares.
- (5) In subsection (4) “corresponding bonus shares” means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.
- (6) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (7) If, at a time when SEIS relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under Chapters 6 and 7—

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- (a) if it falls to be withdrawn, the relief attributable to each of the shares in question is reduced to nil, and
- (b) if it falls to be reduced by any amount, the relief attributable to each of the shares in question is reduced by a proportionate part of that amount.

*Claims: general*

**Time for making claims for SEIS relief**

- 257E(1) A claim for SEIS relief in respect of shares issued by a company in any tax year may not be made later than the fifth anniversary of the normal self-assessment filing date for the tax year.
- (2) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

**Entitlement to claim**

- 257E(1) The investor is entitled to make a claim for SEIS relief in respect of the amount subscribed by the investor for the relevant shares if the investor has received from the issuing company a compliance certificate in respect of those shares.
- (2) For the purposes of PAYE regulations no regard is to be had to SEIS relief unless a claim for it has been duly made.
- (3) No application may be made under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that the investor is eligible for SEIS relief unless a claim for the relief has been duly made by the investor.

*Claims: supporting documents*

**Compliance certificates**

- 257E(1) A “compliance certificate” is a certificate which—
- (a) is issued by the issuing company in respect of the relevant shares,
  - (b) states that, except so far as they fall to be met by or in relation to the investor, the requirements for SEIS relief (see section 257AA) are for the time being met in relation to those shares, and
  - (c) is in such form as the Commissioners for Her Majesty's Revenue and Customs may direct.
- (2) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide an officer of Revenue and Customs with a compliance statement in respect of the issue of shares which includes the relevant shares.
- (3) The issuing company must not issue a compliance certificate without the authority of an officer of Revenue and Customs.



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- (4) If the issuing company, or a person connected with the issuing company, has given notice to an officer of Revenue and Customs under section 257GF, a compliance certificate must not be issued unless the authority is given or renewed after the receipt of the notice.
- (5) If an officer of Revenue and Customs—
  - (a) has been requested to give or renew an authority to issue a compliance certificate, and
  - (b) has decided whether or not to do so,the officer must give notice of the officer's decision to the issuing company.

### **Compliance statements**

- 257ED) A “compliance statement” is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be met by or in relation to the individuals to whom shares included in that issue have been issued, the requirements for SEIS relief (see section 257AA)—
- (a) are for the time being met in relation to the shares to which the statement relates, and
  - (b) have been so met at all times since the shares were issued.
- (2) In determining for the purposes of subsection (1) whether the requirements for SEIS relief are met at any time in relation to the issue of shares, references in this Part to the relevant shares are read as references to the shares included in the issue.
  - (3) A compliance statement must not be made in respect of an issue of shares before at least one of the following conditions is met—
    - (a) at least 70% of the money raised by the issue has been spent for the purposes of the qualifying business activity for which it was raised;
    - (b) the new qualifying trade which constitutes the qualifying business activity or to which that activity relates has been carried on by the issuing company or a qualifying 90% subsidiary of that company for at least 4 months.
  - (4) A compliance statement must be in such form as the Commissioners for Her Majesty's Revenue and Customs direct and must—
    - (a) state which of the conditions in subsection (3) is met at the time the statement is made,
    - (b) contain such additional information as the Commissioners reasonably require, including in particular information relating to the persons who have requested the issue of compliance certificates,
    - (c) contain a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and
    - (d) contain such other declarations as the Commissioners may reasonably require.

### **Appeal against refusal to authorise compliance certificate**

- 257EE For the purposes of the provisions of TMA 1970 relating to appeals, the refusal of an officer of Revenue and Customs to authorise the issue of a

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compliance certificate is taken to be a decision disallowing a claim by the issuing company.

### **Penalties for fraudulent certificate or statement etc**

- 257EF The issuing company is liable to a penalty not exceeding £3,000 if—
- (a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or
  - (b) it issues a compliance certificate in contravention of section 257EC(3) or (4).

### **Power to amend sections 257EC and 257ED**

- 257E(1) The Treasury may by order make such amendments of sections 257EC and 257ED as they consider appropriate.
- (2) An order under this section may include incidental, supplemental, consequential and transitional provision and savings.

## **CHAPTER 6**

### WITHDRAWAL OR REDUCTION OF SEIS RELIEF

#### *Introduction*

#### **Overview of Chapter**

- 257F This Chapter provides for SEIS relief to be withdrawn or reduced under—
- (a) section 257FA (disposal of shares),
  - (b) section 257FC (call options),
  - (c) section 257FD (put options),
  - (d) section 257FE (value received by the investor),
  - (e) section 257FP (acquisition of a trade or trading asset),
  - (f) section 257FQ (acquisition of share capital), and
  - (g) section 257FR (relief subsequently found not to have been due).

#### **Disposal of shares**

- 257F(1) This section applies if—
- (a) the investor disposes of any of the relevant shares,
  - (b) the disposal takes place before period B ends, and
  - (c) SEIS relief is attributable to the shares.
- (2) If the disposal is not made by way of a bargain made at arm's length, the SEIS relief attributable to the shares must be withdrawn.
  - (3) If the disposal is made by way of a bargain made at arm's length, the SEIS relief attributable to the shares must—
    - (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and

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- (b) in any other case, be withdrawn.  
The formula is—

$$R \times \text{SEISR}$$

where—

R is the amount or value of the consideration received by the investor for the shares, and

SEISR is the SEIS rate.

- (4) This section does not apply to a disposal of shares to which an amount of SEIS relief is attributable if—
- (a) the disposal was made by an individual (“A”) to another individual (“B”), and
  - (b) A and B were married to, or were civil partners of, each other and living together at the time of the disposal.
- (5) Section 257HA contains rules for determining which shares of any class are treated as disposed of for the purposes of this section if the investor disposes of some but not all of the shares of that class which are held by the investor.
- (6) Nothing in this section applies to a disposal of shares occurring as a result of the investor's death.

#### Cases where maximum SEIS relief not obtained

- 257F(1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
- (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to tax at the SEIS rate on the amount on which the investor claims SEIS relief in respect of the shares,
- section 257FA(3) has effect in relation to a disposal of any of the shares as if the amount or value referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

- (2) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, subsection (1) has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (3) If the amount of SEIS relief attributable to any of the relevant shares has been reduced before the SEIS relief was obtained, the amount referred to in subsection (1) as A is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.

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- (4) Subsection (3) does not apply to a reduction of SEIS relief by virtue of section 257E(4) (attribution of SEIS relief if there is a corresponding issue of bonus shares).

### Call options

- 257F(1) This section applies if the investor grants an option which, if exercised, would bind the investor to sell any of the relevant shares.
- (2) The grant of the option is treated for the purposes of section 257FA as a disposal of the shares to which the option relates.
- (3) Nothing in this section prejudices section 257CD (no pre-arranged exits).

### Put options

- 257F(1) This section applies if, at any time in period A, a person grants the investor an option which, if exercised, would bind the grantor to purchase any of the relevant shares.
- (2) Any SEIS relief attributable to the shares to which the option relates must be withdrawn.
- (3) For the purposes of subsection (2) the shares to which an option relates are those which, if—
- (a) the option were exercised immediately after the grant, and
  - (b) any shares in the issuing company acquired by the investor after the grant were disposed of immediately after being acquired,
- would be treated for the purposes of section 257FA as disposed of in pursuance of the option.

*Value received by investor*

### Value received by the investor

- 257F(1) This section applies if the investor receives any value from the issuing company at any time in period A relating to the relevant shares.
- (2) Any SEIS relief attributable to the shares must—
- (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- The formula is—

$$R \times \text{SEISR}$$

where—

R is the amount of the value received by the investor, and  
SEISR is the SEIS rate.

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- (3) This section is subject to the following sections—
- (a) section 257FF (value received: receipts of insignificant value),
  - (b) section 257FJ (value received where there is more than one issue of shares),
  - (c) section 257FK (value received where part of share issue treated as made in previous tax year),
  - (d) section 257FL (cases where maximum SEIS relief not obtained),
  - (e) section 257FM (receipts of value by and from connected persons etc), and
  - (f) section 257FN (receipt of replacement value).

Sections 257FJ to 257FL are to be applied in the order in which they appear in this Part.

- (4) Value received is to be ignored, for the purposes of this section, to the extent to which SEIS relief attributable to the shares has already been withdrawn or reduced on its account.
- (5) For the purposes of this section and sections 257FF to 257FO, an individual who acquires any relevant shares on such a transfer as is mentioned in section 257H (spouses or civil partners) is treated as the investor.

#### **Value received: receipts of insignificant value**

257F(1) Section 257FE(2) does not apply if the receipt of value is a receipt of insignificant value.

This is subject to subsection (2).

- (2) If—
- (a) value is received (“the relevant receipt”) by the investor from the issuing company at any time in period A relating to the relevant shares,
  - (b) the investor has received from the issuing company one or more receipts of insignificant value at a time or times—
    - (i) during that period, but
    - (ii) not later than the time of the relevant receipt, and
  - (c) the total value of the receipts within paragraphs (a) and (b) is not an amount of insignificant value,

the investor is treated for the purposes of this Chapter as if the relevant receipt had been a receipt of an amount of value equal to that total amount.

- (3) A receipt does not fall within subsection (2)(b) if it has previously formed part of a total amount falling within subsection (2)(c).

#### **Meaning of “a receipt of insignificant value”**

257F(1) This section applies for the purposes of section 257FF.

- (2) “A receipt of insignificant value” means a receipt of an amount of insignificant value, that is, an amount of value which—
- (a) is not more than £1,000, or

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- (b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the relevant shares.

This is subject to subsection (3).

- (3) If at any time in the period—
  - (a) beginning 12 months before the issue of the relevant shares, and
  - (b) ending at the end of the issue date,
 repayment arrangements are in existence, no amount of value received by the investor is treated as a receipt of insignificant value.
- (4) For this purpose “repayment arrangements” means arrangements which provide for the investor to receive, or to be entitled to receive, any value from the issuing company at any time in period A relating to the relevant shares.
- (5) For the purposes of this section—
  - (a) the references in this section to the investor include a reference to any person who at any time in period A relating to the relevant shares is an associate of the investor (whether or not that person is such an associate at the material time), and
  - (b) the reference in subsection (4) to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

#### **When value is received**

- 257FH(1) This section applies for the purposes of sections 257FE (value received by the investor) and 257FJ (value received where there is more than one issue).
- (2) The investor receives value from the issuing company at any time when the issuing company—
    - (a) repays, redeems or repurchases any of its share capital or securities which belong to the investor or makes any payment to the investor for giving up the investor's right to any of the issuing company's share capital or any security on its cancellation or extinguishment,
    - (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares in respect of which SEIS relief is claimed, any debt owed to the investor other than a debt which was incurred by the company—
      - (i) on or after the date of issue of those shares, and
      - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date,
    - (c) makes to the investor any payment for giving up on its extinguishment the investor's right to any debt, other than a debt in respect of a payment of the kind mentioned in subsection (3)(a) or (f) or an ordinary trade debt,
    - (d) releases or waives any liability of the investor to the issuing company or discharges or undertakes to discharge any liability of the investor to a third person,
    - (e) makes a loan or advance to the investor which has not been repaid in full before the issue of the shares in respect of which SEIS relief is claimed,

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- (f) provides a benefit or facility for the investor,
  - (g) transfers an asset to the investor for no consideration or for consideration less than its market value or acquires an asset from the investor for consideration greater than its market value, or
  - (h) makes to the investor any other payment except—
    - (i) an excluded payment, or
    - (ii) a payment in discharge of an ordinary trade debt.
- (3) “Excluded payment” means—
- (a) any payment or reimbursement of travelling or other expenses, exclusively and necessarily incurred by the investor or an associate of the investor in the performance of the investor's or associate's duties as a director,
  - (b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or any person connected with that company,
  - (c) any dividend or other distribution which does not exceed a normal return on the investment,
  - (d) any payment for the supply of goods which does not exceed their market value,
  - (e) any payment of rent for any property occupied by the issuing company or a person connected with that company which does not exceed a reasonable and commercial rent for the property, and
  - (f) any necessary and reasonable remuneration which meets the conditions in subsection (4).
- (4) The conditions are that the remuneration—
- (a) is paid for services rendered to the issuing company or a person connected with that company in the course of a trade or profession (not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and
  - (b) is taken into account in calculating for tax purposes the profits of that trade or profession.
- (5) For the purposes of subsection (2)(d) the issuing company is to be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (6) For the purposes of subsection (2)(e) the following is to be treated as if it were a loan made by the issuing company to the investor—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the investor to the issuing company, and
  - (b) the amount of any debt due from the investor to a third party which has been assigned to the issuing company.
- (7) The investor also receives value from the issuing company if—
- (a) in respect of ordinary shares held by the investor any payment or asset is received in a winding up or in connection with a dissolution of the company, and
  - (b) the winding up or dissolution falls within section 257DB(4) (no tax avoidance).

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- (8) The investor also receives value from the issuing company if a person within subsection (9)—
- (a) purchases any of its share capital or securities which belong to the investor, or
  - (b) makes any payment to the investor for giving up any right in relation to any of the company's share capital or securities.
- (9) Those persons are—
- (a) any person who has a substantial interest in the company within the meaning of section 257BB;
  - (b) any employee of the issuing company;
  - (c) any director of the issuing company.
- (10) If because of the investor's disposal of shares in a company any SEIS relief attributable to those shares is withdrawn or reduced under section 257FA, the investor is not to be treated as receiving value from the company in respect of the disposal.
- (11) The investor is not to be treated as receiving value from the issuing company merely because of the payment to the investor, or any associate of the investor, of any remuneration for services rendered to that company as a director if the remuneration is reasonable remuneration.
- (12) For the purposes of subsection (11)—
- (a) the reference in that subsection to the payment of remuneration includes a reference to the provision of any benefit or facility, and
  - (b) in the case of an individual who is both a director and an employee of a company, the reference in that subsection to services rendered to that company as a director includes a reference to services rendered to that company as an employee.
- (13) In this section—
- (a) “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—
    - (i) is for not more than 6 months, and
    - (ii) is not longer than that normally given to customers of the person carrying on the trade or business, and
  - (b) any reference to a payment to an individual includes a payment made to the individual indirectly or to the individual's order or for the individual's benefit.

### **The amount of value received**

257FI In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of sections 257FE and 257FJ is given by the corresponding entry in column 2 of the table.

### **Value received where there is more than one issue**

257F(II) This section applies if—



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- (a) two or more issues of shares in the issuing company have been made to the investor which include shares in respect of which the investor obtains SEIS relief, and
  - (b) value is received by the investor at any time in the applicable periods for two or more of those issues.
- (2) Section 257FE(2) has effect in relation to the shares included in each of the issues referred to in subsection (1)(b) as if the amount of value referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the amount on which the investor obtains SEIS relief in respect of the shares included in the issue in question, and

B is the sum of that amount and the corresponding amount or amounts in respect of the other issue or issues.

- (3) For the purposes of subsection (1) “the applicable period” for an issue of shares is period A in relation to those shares.

### **Value received where part of issue treated as made in previous tax year**

257FK(1) This section applies if—

- (a) section 257FE(2) applies to an issue of shares, and
  - (b) section 257AB(1) and (2) (form and amount of SEIS relief) applies in the case of that issue as if part of the issue had been issued in a previous tax year.
- (2) This subsection explains how the calculation under section 257FE(2) is to be made.

*Step 1* Apportion the amount referred to as “R” between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—

$$\frac{A}{B}$$

where—

A is the amount on which the investor obtains SEIS relief in respect of the shares treated as issued in the tax year in question, and

B is the sum of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.

*Step 2* In relation to each of the amounts (“R1” and “R2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if there were separate issues

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of shares in those tax years. In calculating amounts X1 and X2, apply section 257FL if appropriate but do not apply section 257FJ.

*Step 3* Add amounts X1 and X2 together. The result is the required amount.

### **Cases where maximum SEIS relief not obtained**

257F(1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—

- (a) the amount of the reduction (“A”), is less than
- (b) the amount (“B”) which is equal to income tax at the SEIS rate on the amount on which the investor claims SEIS relief in respect of the shares,

section 257FE(2) has effect in relation to any value received as if the amount referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

- (2) If the amount of SEIS relief attributable to any of the relevant shares has been reduced before the SEIS relief was obtained, the amount referred to in subsection (1) as A is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.
- (3) Subsection (2) does not apply to a reduction of SEIS relief by virtue of section 257E(4) (attribution of SEIS relief where there is a corresponding issue of bonus shares).

### **Receipts of value by and from connected persons etc**

257FM In sections 257FE, 257FF and 257FH to 257FJ—

- (a) any reference to a payment or transfer to the investor includes a reference to a payment or transfer made to the investor indirectly or to the investor's order or for the investor's benefit,
- (b) any reference to the investor includes a reference to an associate of the investor, and
- (c) any reference to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

### **Receipt of replacement value**

257FN(1) If—

- (a) any SEIS relief attributable to the relevant shares would, in the absence of this section, be reduced or withdrawn under section 257FE because of a receipt of value within section 257FH(2), (7) or (8) (“the original value”),
- (b) the original supplier receives value (“replacement value”) from the original recipient and the receipt is a qualifying receipt, and

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(c) the amount of the replacement value is at least the amount of the original value,

section 257FE does not, because of the receipt of value, have effect to reduce or withdraw the SEIS relief.

This is subject to section 257FO(1) and (2).

(2) For the purposes of this section—

“the original recipient” means the person who receives the original value;

“the original supplier” means the person from whom that value was received.

(3) If the amount of the original value is, by virtue of section 257FJ, treated as reduced for the purposes of section 257FE(2) as it applies in relation to the relevant shares in question, the reference in subsection (1)(c) to the amount of the original value is to be read as a reference to the amount of that value ignoring the reduction.

(4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) if it arises—

(a) because of the original recipient doing one or more of the following—

(i) making a payment to the original supplier, other than a payment within paragraph (c) or a payment to which subsection (5) applies,

(ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset,

(iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset,

(b) if the receipt of the original value was within section 257FH(2)(d), because of an event the effect of which is to reverse the event which constituted the receipt of the original value, or

(c) if the receipt of the original value was within section 257FH(8), because of the original recipient repurchasing the share capital or securities in question, or (as the case may be) re-acquiring the right in question, for a consideration the amount or value of which is at least the amount of the original value.

(5) This subsection applies to—

(a) any payment for any goods, services or facilities, provided (whether in the course of trade or otherwise) by—

(i) the original supplier, or

(ii) any other person who, at any time in period A relating to the relevant shares, is an associate of, or is connected with, that supplier (whether or not the other person is such an associate, or is so connected, at the material time),

which is reasonable in relation to the market value of those goods, services or facilities,

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- (b) any payment of any interest which represents no more than a reasonable commercial return on any money lent to—
    - (i) the original recipient, or
    - (ii) any person who, at any time in period A relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),
  - (c) any payment for the acquisition of an asset which does not exceed its market value,
  - (d) any payment, as rent for any property occupied by—
    - (i) the original recipient, or
    - (ii) any person who, at any time in period A relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),
 of an amount not exceeding a reasonable and commercial rent for the property,
  - (e) any payment in discharge of an ordinary trade debt, and
  - (f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii).
- (6) For the purposes of this section, the amount of the replacement value is—
- (a) in a case within paragraph (a) of subsection (4), the sum of—
    - (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
    - (ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,
  - (b) in a case within subsection (4)(b), the same as the amount of the original value, and
  - (c) in a case within subsection (4)(c), the amount or value of the consideration received by the original supplier.

Section 257FI applies for the purpose of determining the original value.

- (7) In this section—
- (a) any reference to a payment to a person (however expressed) includes a reference to a payment made to the person indirectly or to the person's order or for the person's benefit, and
  - (b) “ordinary trade debt” has the meaning given by section 257FH(13).

### **Section 257FN: supplementary**

- 257FQ(1) The receipt of the replacement value by the original supplier is ignored for the purposes of section 257FN(1) to the extent to which it has previously been set (under that section) against a receipt of value to prevent any reduction or withdrawal of SEIS relief under section 257FE.
- (2) The receipt of the replacement value by the original supplier (“the event”) is ignored for the purposes of section 257FN if—
- (a) the event occurs before period A relating to the relevant shares,

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- (b) if the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
- (c) if an appeal has been brought by the investor against an assessment to withdraw or reduce any SEIS relief attributable to the relevant shares because of the receipt of the original value, the event occurs more than 60 days after the day on which the amount of relief which falls to be withdrawn has been finally determined.

But nothing in section 257FN or this section requires the replacement value to be received after the original value.

- (3) This subsection applies if—
  - (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of section 257FN(1),
  - (b) in consequence of the receipt, any receipts of value are ignored for the purposes of section 257FE as that section applies in relation to the shares in question or any other shares subscribed for by the investor, and
  - (c) the event which gives rise to the receipt is (or includes) a subscription for shares by—
    - (i) the investor, or
    - (ii) any person who at any time in period A relating to the relevant shares is an associate of the investor (whether or not the person is such an associate at the material time).
- (4) If subsection (3) applies, the person who subscribes for the shares is not to be eligible for any SEIS relief in relation to those shares or any other shares in the same issue.
- (5) In this section “the original recipient”, “the original supplier” and “replacement value” have the same meaning as in section 257FN.

#### *Miscellaneous*

#### **Acquisition of trade or trading assets**

- 257F(1) Any SEIS relief attributable to any shares in a company held by an individual is withdrawn if—
- (a) at any time in period A, the company or any qualifying subsidiary—
    - (i) begins to carry on as its trade, or as part of its trade, a trade which was previously carried on at any time in that period otherwise than by the company or any qualifying subsidiary, or
    - (ii) acquires the whole, or the greater part, of the assets used for the purposes of a trade previously so carried on, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) or (3) applies.
- (2) This subsection applies to any person or group of persons—

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- (a) to whom an interest amounting in total to more than a half share in the trade (as previously carried on) belonged at any time in period A, and
  - (b) who is a person or group of persons to whom such an interest in the trade carried on by the company belongs or has, at any such time, belonged.
- (3) This subsection applies to any person or group of persons who—
- (a) controls or, at any time in period A, has controlled the company, and
  - (b) at any such time, controlled another company which previously carried on the trade.
- (4) For the purposes of subsection (2)—
- (a) for the purposes of determining the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in that trade—
    - (i) apply section 941(6) of CTA 2010, and
    - (ii) an interest in a trade belonging to a company may be treated in accordance with any of the options set out in section 942 of that Act, and
  - (b) any interest, rights or powers of a person who is an associate of another person are treated as those of that other person.
- (5) In this section “trade” includes any business or profession, and references to a trade previously carried on include references to part of such a trade.

### **Acquisition of share capital**

- 257FQ) Any SEIS relief attributable to any shares in a company held by an individual is withdrawn if—
- (a) the company comes to acquire all of the issued share capital of another company at any time in period A, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) applies.
- (2) This subsection applies to any person or group of persons who—
- (a) controls or, at any time in period A, has controlled the company, and
  - (b) at any such time, controlled the other company.

### **Relief subsequently found not to have been due**

- 257FR) Any SEIS relief obtained by the investor which is subsequently found not to have been due must be withdrawn.
- (2) SEIS relief obtained by the investor in respect of the relevant shares may not be withdrawn on the ground—
- (a) that the requirements of sections 257CB and 257CC (the purpose of the issue and use of money raised requirements) are not met in respect of the shares, or
  - (b) that the issuing company is not a qualifying company in relation to the shares (see Chapter 4),
- unless the requirements of subsection (3) are met.

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- (3) The requirements of this subsection are met if either—
- (a) the issuing company has given notice under section 257GF (information to be provided by issuing company etc) in relation to the relevant issue of shares, or
  - (b) an officer of Revenue and Customs has given notice to that company stating the officer's opinion that, because of the ground in question, the whole or any part of the SEIS relief obtained by any individual in respect of shares included in the relevant issue of shares was not due.
- (4) In this section “the relevant issue of shares” means the issue of shares in the issuing company which includes the relevant shares.

## CHAPTER 7

### WITHDRAWAL OR REDUCTION OF SEIS RELIEF: PROCEDURE

#### *Assessments and appeals*

#### **Assessments for the withdrawal or reduction of SEIS relief**

257G If any SEIS relief which has been obtained falls to be withdrawn or reduced under Chapter 6, it must be withdrawn or reduced by the making of an assessment to income tax for the tax year for which the relief was obtained.

#### **Appeals against section 257FR(3)(b) notices**

257GA For the purposes of the provisions of TMA 1970 relating to appeals, the giving of notice by an officer of Revenue and Customs under section 257FR(3)(b) is taken to be a decision disallowing a claim by the issuing company.

#### **Time limits for assessments**

- 257GB (1) An officer of Revenue and Customs may—
- (a) make an assessment for withdrawing or reducing the SEIS relief attributable to any of the relevant shares, or
  - (b) give a notice under section 257FR(3),
- at any time not more than 6 years after the end of the relevant tax year.
- (2) In subsection (1) “the relevant tax year” means—
- (a) the tax year in which period B ends, or
  - (b) the tax year in which the event which causes the SEIS relief to be withdrawn or reduced occurs,
- whichever is the later.
- (3) Subsection (1) is without prejudice to section 36(1A) of TMA 1970 (loss of tax brought about deliberately etc).

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### **Cases where assessments not to be made**

- 257GQ) No assessment for withdrawing or reducing SEIS relief in respect of shares issued to an individual may be made because of an event occurring after the individual's death.
- (2) Subsection (3) applies if an individual has, by a disposal or disposals to which section 257FA(3) applies, disposed of all shares which—
- (a) have been issued to the individual by the issuing company, and
  - (b) are shares—
    - (i) to which SEIS relief is attributable, or
    - (ii) in relation to which period A has not come to an end.
- (3) No assessment for withdrawing or reducing SEIS relief in respect of those shares may be made because of any subsequent event unless the event occurs at a time when the individual—
- (a) has a substantial interest in the company within the meaning of section 257BB,
  - (b) is an employee of the issuing company, or
  - (c) is a director of the issuing company.

### *Interest*

#### **Date from which interest is chargeable**

- 257GD) In its application to an assessment made by virtue of section 257G in the case of relief withdrawn or reduced by virtue of a provision listed in subsection (2), section 86 of TMA 1970 (interest on overdue income tax) has effect as if the relevant date were 31 January next following the tax year in which the assessment is made.
- (2) The provisions are—
- (a) section 257BB (no substantial interest in the issuing company),
  - (b) section 257BD (no linked loan requirement),
  - (c) sections 257DA to 257DN (Chapter 4 requirements),
  - (d) section 257FA (disposal of shares),
  - (e) section 257FD (put options),
  - (f) section 257FE (receipt of value by the investor),
  - (g) section 257FP (acquisition of a trade or trading asset),
  - (h) section 257FQ (acquisition of share capital).

### *Information*

#### **Information to be provided by the investor**

- 257GE) This section applies if the investor has obtained SEIS relief in respect of the relevant shares, and an event occurs as a result of which—
- (a) the investor is not a qualifying investor in relation to the shares,



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- (b) the SEIS relief falls to be withdrawn or reduced by virtue of section 257BD (no linked loans requirement),
  - (c) the SEIS relief falls to be withdrawn or reduced under—
    - (i) section 257FA (disposal of shares),
    - (ii) section 257FC (call options), or
    - (iii) section 257FD (put options), or
  - (d) the SEIS relief falls to be withdrawn or reduced under section 257FE (receipt of value by the investor), or would fall to be so withdrawn or reduced but for section 257FN (receipt of replacement value).
- (2) The investor must within 60 days of coming to know of the event give a notice to an officer of Revenue and Customs containing particulars of the event.
- (3) If the investor—
- (a) is required under this section to give notice of a receipt of value which is within section 257FE, or would be within that section but for section 257FN, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
- the notice must include particulars of that receipt of replacement value (or expected receipt).
- (4) In subsection (3) “qualifying receipt” and “replacement value” are to be read in accordance with section 257FN.

### **Information to be provided by the issuing company etc**

- 257G(1) This section applies if the issuing company has provided an officer of Revenue and Customs with a compliance statement in respect of an issue of shares and an event occurs as a result of which—
- (a) the requirement of section 257CC (spending of the money raised) is not met in respect of any of the shares included in the issue, or would not be met if SEIS relief had been obtained in respect of the shares in question,
  - (b) any provision of Chapter 4 has effect to prevent the issuing company being a qualifying company in relation to any of the shares included in the issue, or would have such an effect if SEIS relief had been obtained in respect of the shares in question, or
  - (c) any of the provisions of Chapter 6 mentioned in subsection (2) has effect to cause any SEIS relief attributable to any of the shares included in the issue to be withdrawn or reduced, or—
    - (i) would have such an effect if SEIS relief had been obtained in respect of the shares in question, or
    - (ii) in the case of section 257FE, would have such an effect but for section 257FN (receipt of replacement value).
- (2) The provision are—
- (a) section 257FE (value received by the investor),
  - (b) section 257FP (acquisition of a trade or trading asset), and
  - (c) section 257FQ (acquisition of share capital).

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- (3) If this section applies—
- (a) the issuing company, and
  - (b) any person connected with the issuing company who has knowledge of the matters mentioned in subsection (1),
- must give a notice to an officer of Revenue and Customs containing particulars of the event.
- (4) Any notice required to be given by the issuing company under subsection (3)
- (a) must be given—
    - (a) within 60 days of the event, or
    - (b) if the event is a receipt of value within section 257FH(2) from a person connected with the company (see section 257FM), within 60 days of the company coming to know of the event.
- (5) Any notice required to be given by a person under subsection (3)(b) must be given within 60 days of the person coming to know of the event.
- (6) If a person—
- (a) is required under this section to give notice of a receipt of value which is within section 257FE, or would be within that section but for section 257FN, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
- the notice must include particulars of that receipt of replacement value (or expected receipt).
- (7) In subsection (6) “qualifying receipt” and “replacement value” are to be read in accordance with section 257FN.

**Power to require information where section 257GE or 257GF applies or could have applied**

- 257G(1) This section applies if an officer of Revenue and Customs has reason to believe that a person—
- (a) has not given a notice which the person is required to give under section 257GE or 257GF in respect of any event, or
  - (b) has given or received value within the meaning of section 257FH(2) or (8) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice.
- (2) The officer may by notice require the person concerned to supply the officer, within such time as the officer may specify in the notice, with such information relating to the event as the officer may reasonably require for the purposes of this Part.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) In subsection (1)(b), the reference to an amount of insignificant value is construed in accordance with section 257FG(2).

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### **Power to require information in other cases**

257GHL) Subsection (2) applies if SEIS relief is claimed in respect of shares in a company, and an officer of Revenue and Customs has reason to believe that it may not be due because of any such arrangements or scheme as is mentioned in—

- (a) section 257BC (no related investment arrangements),
  - (b) section 257BE or 257DB(2) or (4) (no tax avoidance),
  - (c) section 257CD(1) (no pre-arranged exits),
  - (d) section 257CF (no disqualifying arrangements),
  - (e) section 257DB(4) (winding up, administration etc), or
  - (f) section 257DG(1) or (2) (conditions ceasing to be met).
- (2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—
- (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed, and
  - (b) such other information as the officer may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) For the purposes of subsection (2), in a case falling within a provision listed in column 1 of the following table, the person concerned is given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>The person concerned</i>
Subsection (1)(a)	The claimant, the company and any person controlling the company
Subsection (1)(b)	The claimant
Subsection (1)(c)	The claimant, the company and any person connected with the company
Subsection (1)(d)	The claimant, the company, any person controlling the company and any person who an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question
Subsection (1)(e)	The claimant, the company, any other company in question and any person controlling the company or any other company in question
Subsection (1)(f)	The company and any person controlling the company

References in this subsection to the claimant include references to any person to whom the claimant appears to have made such a transfer as is mentioned in section 257H (spouses or civil partners) of any of the shares in question.

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- (5) If SEIS relief has been obtained in respect of shares in a company—
- (a) any person who receives from the company any payment or asset which may constitute value received (by the person or another) for the purposes of section 257FE, and
  - (b) any person on whose behalf such a payment or asset is received, must, if so required by an officer of Revenue and Customs, state whether the payment or asset so received is received on behalf of any other person and, if so, the name and address of that other person.
- (6) If SEIS relief has been claimed in respect of shares in a company—
- (a) any person who holds or has held shares in the company, and
  - (b) any person on whose behalf any such shares are or were held, must, if so required by an officer of Revenue and Customs, state whether the shares so held are or were held on behalf of any other person and, if so, the name and address of that other person.

### **Obligations of secrecy**

257GI No obligation of secrecy imposed by statute or otherwise prevents an officer of Revenue and Customs from disclosing to a company that SEIS relief has been obtained or claimed in respect of a particular number or proportion of its shares.

## **CHAPTER 8**

### SUPPLEMENTARY AND GENERAL

#### *Disposals of shares*

### **Transfers between spouses or civil partners**

- 257HI) This section applies if—
- (a) shares to which an amount of SEIS relief is attributable were issued to an individual (“A”),
  - (b) A transferred the shares to another individual (“B”) during their lives,
  - (c) A was married to, or was the civil partner of, B at the time of the transfer, and
  - (d) section 257FA (disposal of shares) does not apply to the transfer.
- (2) This Part has effect, in relation to any subsequent disposal or other event, as if—
- (a) B were the individual who had subscribed for the shares,
  - (b) the amount that B had subscribed for the shares were the amount that A had subscribed for them,
  - (c) B's liability to income tax had been reduced in respect of the shares for the same tax year as that for which A's was so reduced,

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- (d) the amount by which B's liability to income tax had been reduced in respect of the shares were the same as that by which A's liability to income tax had been so reduced, and
  - (e) that amount of SEIS relief had continued to be attributable to the shares despite the transfer.
- (3) If the amount of SEIS relief attributable to the shares had been reduced before the relief was obtained by A—
- (a) this Part has effect, in relation to any subsequent disposal or other event, as if the amount of SEIS relief attributable to the shares transferred to B had been correspondingly reduced before the relief was obtained by B, and
  - (b) sections 257FB(3) and 257FL(2) apply in relation to B as they would have applied in relation to A.
- (4) If, because of any such disposal or other event, an assessment for reducing or withdrawing SEIS relief is to be made, the assessment is to be made on B.

#### **Identification of shares on a disposal**

- 257H(A) The rules in subsections (2) and (3) are for determining which shares of any class are treated as disposed of for the purposes of—
- (a) section 257FA (disposal of shares), or
  - (b) section 257H (spouses or civil partners),
- if the investor disposes of some but not all of the shares of that class which the investor holds in a company.
- (2) Shares acquired on an earlier day are treated as disposed of before shares acquired on a later day.
- (3) Shares acquired on the same day are treated as disposed of in the following order—
- (a) first any to which no SEIS relief is attributable,
  - (b) next any to which SEIS relief (but not SEIS re-investment relief) is attributable, and
  - (c) next any to which SEIS relief and SEIS re-investment relief are attributable.
- (4) Any shares to which SEIS relief is attributable and which were transferred to an individual as mentioned in section 257H are treated for the purposes of subsections (2) and (3) as acquired by the individual on the day on which they were issued.
- (5) In a case to which section 127 of TCGA 1992 applies (including the case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.
- (6) In this section—
- “new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned);

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“SEIS re-investment relief” means relief under Schedule 5BB to TCGA 1992.

### *Acquisition of issuing company*

#### **Continuity of SEIS relief where issuing company is acquired by new company**

257H(1) This section applies if—

- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”),
- (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
- (c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,
- (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings,
- (e) at some time before the issue of the new shares—
  - (i) the old company issued shares which meet the requirements of section 257CA(2), and
  - (ii) a compliance certificate in respect of those shares was issued by that company for the purposes of subsection (1) of section 257EB and in accordance with section 257EC, and
- (f) before the issue of the new shares the Commissioners for Her Majesty's Revenue and Customs have, on the application of the new company or the old company, notified that company that they are satisfied that the exchange of shares—
  - (i) will be effected for genuine commercial reasons, and
  - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of TCGA 1992 (schemes with avoidance purposes).

In this subsection references to shares, except in the expressions “subscriber shares” and “shares which meet the requirements of section 257CA(2)”, include securities.

- (2) Subsection (2) of section 138 of TCGA 1992 (procedure for advance clearance) applies for the purposes of subsection (1)(f) as it applies for the purposes of subsection (1) of that section.
- (3) For the purposes of this Part—
  - (a) the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares, and
  - (b) any SEIS relief which is attributable to any old shares is attributable instead to the new shares for which they are exchanged.
- (4) Nothing in section 257DG (the control and independence requirement) applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1), or arrangements with a view to such an exchange.

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- (5) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.
- (6) References in sections 257HC and 257HD to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

### **Carry over of obligations etc where SEIS relief attributed to new shares**

257HQ) This section applies if, under section 257HB, any SEIS relief which is attributable to any old shares becomes attributable instead to any new shares.

- (2) This Part has effect as if anything which under—
  - (a) section 257EB(1) (entitlement to claim),
  - (b) section 257FR(3) (relief subsequently found not to be due), or
  - (c) sections 257GF to 257GH (information to be provided),has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company.
- (3) Any appeal brought by the old company against a notice under section 257FR(3)(b) may be prosecuted by the new company as if it had been brought by that company.

### **Substitution of new shares for old shares**

257HQ) Subsection (2) applies if, in the case of any new shares held by an individual to which SEIS relief becomes attributable under section 257HB, the old shares for which they were exchanged were subscribed for by and issued to the individual.

- (2) This Part has effect as if—
  - (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for by the individual,
  - (b) the new shares had been issued to the individual by the new company at the time when the old shares were issued to the individual by the old company,
  - (c) the claim for SEIS relief made in respect of the old shares had been made in respect of the new shares, and
  - (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the individual's liability was so reduced in respect of the old shares.
- (3) Subsection (4) applies if, in the case of any new shares held by an individual to which SEIS relief becomes so attributable under section 257HB, the old shares for which they were exchanged were transferred to the individual as mentioned in section 257H.
- (4) This Part has effect in relation to any subsequent disposal or other event as if—

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- (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for,
- (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company,
- (c) the claim for SEIS relief made in respect of the old shares had been made in respect of the new shares, and
- (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.

#### *Nominees etc*

#### **Nominees and bare trustees**

- 257H(F) Shares subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by the individual.
- (2) If shares have been issued to a bare trust for two or more beneficiaries, this Part has effect (with the necessary modifications) as if—
- (a) each beneficiary had subscribed as an individual for all of those shares, and
  - (b) the amount subscribed by each beneficiary was equal to the total amount subscribed on the issue of those shares divided by the number of beneficiaries.
- (3) In subsection (2) “shares” means shares which meet the requirements of section 257CA(2).

#### *Interpretation*

#### **Meaning of “new qualifying trade”**

- 257H(F) For the purposes of this Part a qualifying trade carried on by the issuing company or a qualifying 90% subsidiary of that company (“the relevant company”) is a “new qualifying trade” if (and only if)—
- (a) the trade does not begin to be carried on (whether by the relevant company or any other person) before the two year pre-investment period, and
  - (b) at no time before the relevant company begins to carry on the trade was any other trade being carried on by the issuing company or by any company that was a 51% subsidiary of the issuing company at the time in question.
- (2) In this section—
- “qualifying trade” has the same meaning as in Part 5 (see sections 189 and 192 to 200);



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“two year pre-investment period” means the period of 2 years ending immediately before the day on which the relevant shares are issued.

### **Meaning of “qualifying business activity”**

257H(G) In this Part “qualifying business activity”, in relation to the issuing company, means—

- (a) activity A, or
- (b) activity B,

if it is carried on by the company or a qualifying 90% subsidiary of the company.

This is subject to subsection (3).

(2) Activity A is—

- (a) the carrying on of a new qualifying trade which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or
- (b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a new qualifying trade—
  - (i) which, on that date, is intended to be carried on by the company or such a subsidiary, and
  - (ii) which is begun to be carried on by the company or such a subsidiary.

(3) Activity B is the carrying on of research and development—

- (a) which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or which the company or such a subsidiary begins to carry on immediately afterwards, and
  - (b) from which, on that date, it is intended—
    - (i) that a new qualifying trade which the company or such a subsidiary will carry on will be derived, or
    - (ii) that a new qualifying trade which the company or such a subsidiary is carrying on, or will carry on, will benefit.
- (4) For the purposes of subsection (3)(a), when research and development is begun to be carried on by a qualifying 90% subsidiary of the issuing company, any carrying on of the research and development by it before it became such a subsidiary is ignored.
- (5) References in subsection (2)(b)(i) or (3)(b) to a qualifying 90% subsidiary of the issuing company include references to any existing or future company which will be such a subsidiary at any future time.

### **Meaning of “disposal of shares”**

257H(H) In this Part references to a disposal of shares include a reference to a disposal of an interest or right in or over shares.

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- (2) An individual is to be treated, for the purposes of this Part, as disposing of any shares which the individual is treated by virtue of section 136 of TCGA 1992 as exchanging for other shares.

### Meaning of “issue of shares”

257H(I) In this Part—

- (a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and issued on the same day, and
- (b) references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual in one capacity on the same day.
- (2) Subsection (1)(b) has effect subject to sections 257E(6), 257EA(2), 257FB(2) and 257FK(1).

### Minor definitions

257H(J) In this Part—

- “arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);
- “associate” has the same meaning as in Part 5 (see section 253);
- “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);
- “director” is read in accordance with section 452 of CTA 2010;
- “EIS relief” means relief under Part 5;
- “group” means a parent company and its qualifying subsidiaries;
- “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries;
- “ordinary shares” means shares forming part of a company’s ordinary share capital;
- “parent company” means a company that has one or more qualifying subsidiaries, and “single company” means a company that does not;
- “permanent establishment” has the same meaning as in Part 5 (see section 191A);
- “qualifying subsidiary” has the same meaning as in Part 5 (see section 191);
- “qualifying 90% subsidiary” has the same meaning as in Part 5 (see section 190);
- “research and development” has the meaning given by section 1006.
- (2) Section 252 (meaning of a company being “in administration” or “in receivership”) applies for the purposes of this Part.
- (3) Section 995 (control) does not apply for the purposes of the following provisions—

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- (a) section 257DG(1)(a),
  - (b) section 257FP,
  - (c) section 257FQ,
  - (d) section 257GH(4);
- and in those provisions “control” is to be read in accordance with sections 450 and 451 of CTA 2010.
- (4) In this Part—
- (a) references in any provision to the reduction of any SEIS relief attributable to any shares include a reference—
    - (i) to the reduction of the relief to nil, and
    - (ii) if no relief has yet been obtained, to the reduction of the amount which apart from that provision would be the SEIS relief, and
  - (b) references to the withdrawal of SEIS relief in respect of any shares are—
    - (i) to the withdrawal of the SEIS relief attributable to those shares, or
    - (ii) if no relief has yet been obtained, to ceasing to be eligible for SEIS relief in respect of those shares.
- (5) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if dealt in on a recognised stock exchange.
- (6) For the purposes of this Part the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.
- (7) In this Part—
- (a) references to SEIS relief obtained by an individual in respect of any shares include a reference to SEIS relief obtained by the individual in respect of those shares at any time after the individual has disposed of them, and
  - (b) references to the withdrawal or reduction of SEIS relief obtained by an individual in respect of any shares include a reference to the withdrawal or reduction of SEIS relief obtained by the individual in respect of those shares at any time.
- (8) In the case of requirements that cannot be met until a future date, references in this Part to requirements being met for the time being are to nothing having occurred to prevent their being met.”

## PART 2

### RELIEF FOR CAPITAL GAINS

#### *Introductory*

2 TCGA 1992 is amended as follows.

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*Disposal of shares to which SEIS relief is attributable*

3 Before section 151 insert—

**Seed enterprise investment scheme**

“150E) For the purpose of determining the gain or loss on any disposal of shares by an individual where—

- (a) an amount of SEIS relief is attributable to the shares, and
- (b) apart from this subsection there would be a loss,

the consideration given by the individual for the shares is to be treated as reduced by the amount of the relief.

(2) Where—

- (a) shares are disposed of by an individual after the end of the period referred to in section 257AC(2) of ITA 2007,
- (b) an amount of SEIS relief is attributable to the shares, and
- (c) (apart from this subsection) there would be a gain,

the gain is not a chargeable gain.

(3) Despite section 16(2), subsection (2) does not apply to a disposal on which a loss accrues.

(4) Subsection (5) applies where—

- (a) an individual's liability to income tax has been reduced (or treated by virtue of section 257H of ITA 2007 (spouses and civil partners) as reduced) for any tax year under section 257AB of that Act in respect of an issue of shares,
- (b) the amount of the reduction (“R”) is less than the amount (“T”) which is equal to tax at the SEIS rate on the amount subscribed for the issue, and
- (c) R is not within paragraph (b) solely by virtue of section 29(2) and (3) of ITA 2007.

(5) If there is a disposal of the shares on which there is a gain, subsection (2) applies only to so much of the gain as is found by multiplying it by the fraction—

$$\frac{R}{T}$$

(6) Any question as to—

- (a) which of any shares that—
  - (i) are acquired by an individual at different times, and
  - (ii) are shares to which SEIS relief is attributable,

a disposal relates to, or

- (b) whether a disposal relates to shares to which SEIS relief is attributable,

is to be determined for the purposes of capital gains tax as for the purposes of section 257HA of ITA 2007.

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Chapter 1 of this Part has effect subject to this subsection.

- (7) Sections 104, 105 and 106A do not apply to shares to which SEIS relief is attributable.
- (8) Where—
- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
  - (c) immediately following the reorganisation, SEIS relief is attributable to the existing holding or the allotted shares,
- sections 127 to 130 do not apply in relation to the existing holding.
- (9) Sections 135 and 136 do not apply in respect of shares to which SEIS relief is attributable.
- (10) Subsection (9) does not have effect to disapply section 135 or 136 where—
- (a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future right to be redeemed,
  - (b) the new shares are issued after the end of the relevant period, and
  - (c) the condition in subsection (11) is satisfied.
- (11) The condition is that at some time before the issue of the new shares—
- (a) the company issuing them issued eligible shares, and
  - (b) a certificate in relation to those eligible shares was issued by the company for the purposes of section 257EB(1) of ITA 2007 and in accordance with sections 257EC and 257ED of that Act.
- (12) All such adjustments of capital gains tax are to be made, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the SEIS relief being given or withdrawn.
- (13) Where shares to which SEIS relief is attributable are exchanged for other shares in circumstances such that section 257HB of ITA 2007 (acquisition of share capital by new company) applies—
- (a) subsection (9) above does not have effect to disapply section 135, and
  - (b) sections 257HB(3)(b), 257HC(2)(a) and 257HD of ITA 2007 apply for the purposes of this section as they apply for the purposes of Part 5A of that Act.
- (14) For the purposes of this section—
- “eligible shares” means shares that meet the requirements of section 257CA(2);
  - “new holding” is to be construed in accordance with sections 126, 127, 135 and 136;
  - “ordinary share capital” has the meaning given in section 989 of ITA 2007;

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“ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;

“relevant period” means the period found by applying section 257AC(2) of ITA 2007 by reference to the company issuing the shares referred to in subsection (9) and by reference to those shares;

“the SEIS rate” has the meaning given by section 257AB(3) of ITA 2007;

“SEIS relief” means relief under Part 5A of ITA 2007 (seed enterprise investment scheme);

and that Part applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable.

### **Seed enterprise investment scheme: reduction of relief**

150(F) This section has effect where—

- (a) section 150E(2) applies on a disposal of shares, and
  - (b) before the disposal, value is received in circumstances where SEIS relief attributable to the shares is reduced by an amount under section 257FE(2)(a) of ITA 2007.
- (2) If section 150E(2) applies on the disposal but section 150E(5) does not, section 150E(2) applies only to so much of the gain as remains after deducting so much of it as is found by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the amount by which the SEIS relief attributable to the shares is reduced as mentioned in subsection (1), and

B is the amount of the relief attributable to the shares.

- (3) If section 150E(2) and (5) apply on the disposal, section 150E(2) applies only to so much of the gain as is found by—
  - (a) taking the part of the gain found under section 150E(5), and
  - (b) deducting from that part so much of it as is found by multiplying it by the fraction mentioned in subsection (2) above.
- (4) Where the SEIS relief attributable to the shares is reduced as mentioned in subsection (1) by more than one amount, “A” in subsection (2) is to be taken to be equal to the aggregate of the amounts.
- (5) The amount which is “B” in subsection (2) is to be found without regard to any reduction mentioned in subsection (1).
- (6) For the purposes of this section, Part 5A of ITA 2007 (seed enterprise investment scheme) applies to determine whether SEIS relief is attributable to any shares and, if so, the amount of SEIS relief so attributable.”

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*Seed enterprise investment scheme: re-investment relief*

4 After section 150F (inserted by paragraph 3 of this Schedule) insert—

**“150G Seed enterprise investment scheme: re-investment**

Schedule 5BB to this Act (which provides relief in respect of re-investment under the seed enterprise investment scheme in the tax year 2012-13) has effect.”

5 After Schedule 5B insert—

“SCHEDULE  
5BB

SEED ENTERPRISE INVESTMENT SCHEME: RE-INVESTMENT

*SEIS re-investment relief*

- 1 (1) Sub-paragraph (5) applies where conditions A to C are met in relation to an individual (“the investor”).
- (2) Condition A is that—
- (a) there would (ignoring sub-paragraphs (5) and (6)) be a chargeable gain (“the original gain”) accruing to the investor at any time in the tax year 2012-13, and
  - (b) the original gain is one accruing on the disposal of an asset by the investor at any time (“the disposal time”) in that year.
- (3) Condition B is that—
- (a) the investor is eligible for SEIS relief for the tax year 2012-13 in respect of an amount subscribed for an issue of shares in a company made to the investor in that year,
  - (b) the investor makes a claim for and obtains SEIS relief for that year in respect of all or some of those shares (“the relevant SEIS shares”), and
  - (c) if the relevant SEIS shares, or any corresponding bonus shares in relation to those shares, were issued before the disposal time, they are still held by the investor at the disposal time.
- (4) Condition C is that—
- (a) the investor has made a claim under this paragraph for relief in relation to the original gain, and
  - (b) the claim is in respect of the amount on which SEIS relief is claimed by the investor in respect of the relevant SEIS shares (“the SEIS expenditure”) or part of that amount.
- (5) So much of the SEIS expenditure as—
- (a) is specified in the claim,
  - (b) is unused, and
  - (c) does not exceed so much of the original gain as is unmatched,
- is to be set against a corresponding amount of the original gain.

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- (6) Where an amount of the SEIS expenditure is set against the whole or part of the original gain under sub-paragraph (5), so much of that gain as is equal to that amount is to be treated as not being a chargeable gain.
- (7) For the purposes of this paragraph—
- (a) the SEIS expenditure is unused to the extent that it has not already been set under sub-paragraph (5) or paragraph 2(1) of Schedule 5B against the whole or any part of a chargeable gain, and
  - (b) the original gain is unmatched, in relation to the SEIS expenditure, to the extent that it has not had any other expenditure set against it under sub-paragraph (5) or paragraph 2(1) of Schedule 5B.

*Restrictions on relief under paragraph 1*

- 2 (1) Sub-paragraph (2) applies if the investor's tax reduction under section 257AB of ITA 2007 for the tax year 2012-13 is limited by subsection (2)(b) of that section (calculation of tax reduction where claim made for amounts subscribed for shares which exceed £100,000).
- (2) Paragraph 1(5) to (7) has effect as if references to the SEIS expenditure were references to so much of that expenditure as is given by the formula—

$$\frac{SA}{TSA} \times \pounds 100,000$$

where—

SA means the SEIS expenditure (ignoring this paragraph);

TSA means the total of the amounts subscribed for shares issued in the tax year 2012-13 in respect of which the investor is eligible for and claims SEIS relief for that tax year.

- (3) Sub-paragraph (4) applies if the amount of SEIS relief attributable to any of the relevant SEIS shares has been reduced under Chapter 6 of Part 5A of ITA 2007 before the SEIS relief was obtained (otherwise than by virtue of corresponding bonus shares being issued in respect of those shares).
- (4) Paragraph 1(5) to (7) has effect as if the SEIS expenditure were the amount found by multiplying that expenditure by the fraction—

$$\frac{R1}{R2}$$

where—

“R1” means the amount of SEIS relief attributable to the relevant SEIS shares when the relief is obtained;



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“R2” means the amount of SEIS relief which would have been so attributable in the absence of the reduction.

- (5) In a case where sub-paragraphs (2) and (4) both apply, sub-paragraph (2) is to be applied before sub-paragraph (4).

#### *Claims*

- 3 (1) Section 257EA of ITA 2007 (time for making claims for SEIS relief) applies in relation to a claim made by the investor for the purposes of paragraph 1 in relation to the SEIS expenditure as it applies in relation to a claim for SEIS relief in respect of that expenditure.
- (2) Nothing in paragraph 1(3) prevents a claim being made by the investor under paragraph 1 before SEIS relief has actually been obtained by the investor in relation to the SEIS relief.

#### *Attribution of SEIS re-investment relief to relevant SEIS shares*

- 4 (1) References in this Schedule to the SEIS re-investment relief attributable to any shares are to be read as references to the total amount attributed to those shares in accordance with this paragraph.
- (2) Sub-paragraph (3) applies where the whole or part of the SEIS expenditure is set off against a chargeable gain under paragraph 1(5).
- (3) A proportionate part of the expenditure which is so set off is attributed to each of the relevant SEIS shares.
- (4) Sub-paragraph (5) applies if corresponding bonus shares are issued in respect of all or some of the relevant SEIS shares (“the original shares”) to which relief is attributed under this paragraph.
- (5) A proportionate part of the total amount attributed to the original shares immediately before those bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and those bonus shares.

#### *Removal or reduction of the relief*

- 5 (1) This paragraph applies where in respect of shares issued to an individual—
- SEIS relief is attributable to the shares,
  - SEIS re-investment relief is also attributable to the shares, and
  - the SEIS relief which is attributable to the shares is withdrawn or reduced under Chapters 6 and 7 of Part 5A of ITA 2007.
- (2) A chargeable gain accrues to the individual in the tax year 2012-13 on a disposal made in that tax year.
- (3) The amount of that gain is—
- in a case where the SEIS relief is withdrawn, the amount of SEIS re-investment relief which is attributable to the shares immediately before the withdrawal, and
  - in a case where the SEIS relief is reduced, the appropriate fraction of that amount.

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- (4) In a case where the SEIS re-investment relief is withdrawn, the SEIS re-investment relief ceases to be attributable to the shares.
- (5) In a case where the SEIS relief is reduced, the appropriate fraction of the SEIS re-investment relief ceases to be attributable to the shares.
- (6) “The appropriate fraction” is—

$$\frac{R1 - R2}{R1}$$

where—

“R1” is the total amount of the SEIS relief attributable to those shares immediately before the reduction, and

“R2” is the total amount of the SEIS relief attributable to those shares immediately after the reduction.

#### *Transfers of shares to spouses and civil partners*

- 6 (1) This paragraph applies if—
- shares to which an amount of SEIS relief is attributable were issued to an individual (“A”),
  - A transferred the shares to another individual (“B”) during their lives,
  - A was married to, or was the civil partner of, B at the time of the transfer, and
  - subsection (4) of section 257FA of ITA 2007 (provision about disposals of shares disapplied where disposal between spouses or civil partners) prevented that section applying to the transfer.
- (2) Any chargeable gain which accrues by virtue of paragraph 5(2), as a result of SEIS relief attributable to the shares being withdrawn or reduced after the shares are transferred, is to accrue to B (instead of to A).

#### *Adjustment of capital gains tax liability*

- 7 (1) All such adjustments of capital gains tax are to be made, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of relief being obtained, or a gain accruing, under this Schedule.
- (2) In its application to an assessment made by virtue of this paragraph, section 86 of TMA 1970 (interest on overdue capital gains tax) has effect as if the relevant date were 31 January next following the tax year in which the assessment is made.

#### *Interpretation etc*

- 8 (1) In this Schedule—
- “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);

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“corresponding bonus shares”, in relation to any shares (“the original shares”), means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares;

“SEIS relief” has the same meaning as in Part 5A of ITA 2007.

- (2) In this Schedule, references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual in one capacity and on the same day.

This is subject to sub-paragraph (3).

- (3) If section 257AB(1) and (2) of ITA 2007 applies, in the case of any issue of shares made to an individual, as if part of the issue had been issued in a previous tax year, this Schedule has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (4) Part 5A of ITA 2007 applies, for the purposes of this Schedule, to determine whether SEIS relief is attributable to any shares and, if so, the amount of relief so attributable.”

### PART 3

#### CONSEQUENTIAL AMENDMENTS

##### ITA 2007

- 6 ITA 2007 is amended as follows.
- 7 In section 2 (overview of Act), after subsection (5) insert—
- “ (5A) Part 5A is about relief under the seed enterprise investment scheme.”
- 8 In section 26 (tax reductions), in subsection (1)(a), after the entry for Chapter 1 of Part 5, insert— “ Chapter 1 of Part 5A (SEIS relief), ”.
- 9 In section 27 (order of deducting tax reductions: individual), in subsection (5), after the entry for “Chapter 1 of Part 5 (EIS relief)” insert— “ Chapter 1 of Part 5A (SEIS relief), ”.
- 10 In section 169 (directors qualifying for relief despite connection), in subsection (4), for the words after “before” substitute “—
- (a) the termination date relating to the latest issue of shares which met that condition, or
  - (b) if that issue is an issue in respect of which the investor is eligible for SEIS relief (within the meaning of Part 5A), before the date specified in section 257AC(4) in relation to the shares.”

*Status: Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

**Textual Amendments**

**F48** Sch. 6 para. 11 omitted (with effect in accordance with Sch. 5 para. 21 of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **Sch. 5 para. 20(1)**

12 In section 173A (enterprise investment scheme: maximum amount raised annually through risk capital schemes requirement), in subsection (3)(b), after sub-paragraph (i) (and the “or” at the end of it) insert—  
“(ia) a compliance statement under section 257ED (seed enterprise investment scheme).”

<sup>F49</sup>13 .....

**Textual Amendments**

**F49** Sch. 6 para. 13 omitted (with effect in accordance with Sch. 5 para. 21 of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **Sch. 5 para. 20(1)**

14 (1) Section 246 (identification of shares on a disposal) is amended as follows.  
(2) In subsection (3)—  
(a) in paragraph (a) for “neither EIS relief nor deferral relief” substitute “no EIS relief, deferral relief or SEIS relief”, and  
(b) after that paragraph insert—  
“(aa) next any to which SEIS relief is attributable.”  
(3) In subsection (7), at the end insert—  
““SEIS relief” means relief under Part 5A (seed enterprise investment scheme).”

<sup>F50</sup>15 .....

**Textual Amendments**

**F50** Sch. 6 para. 15 omitted (with effect in accordance with Sch. 6 para. 23(2) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 22(1)**

16 In section 292A (venture capital trusts: maximum amount raised annually through risk capital schemes requirement), in subsection (3)(b), after sub-paragraph (i) (and the “or” at the end of it) insert—  
“(ia) a compliance statement under section 257ED (seed enterprise investment scheme).”

<sup>F51</sup>17 .....

**Textual Amendments**

**F51** Sch. 6 para. 17 omitted (with effect in accordance with Sch. 6 para. 23(2) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 22(1)**

18 (1) Schedule 4 (index of defined expressions) is amended as follows.

*Status: Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

(2) Insert the following entries at the appropriate places—

“arrangements (in Part 5A)	section 257HJ(1)”
“associate (in Part 5A)	section 257HJ(1)”
“bonus shares (in Part 5A)	section 257HJ(1)”
“compliance certificate (in Part 5A)	section 257EC(1)”
“compliance statement (in Part 5A)	section 257ED(1)”
“director (in Part 5A)	section 257HJ(1)”
“disposal of shares (in Part 5A)	section 257HH”
“EIS relief (in Part 5A)	section 257HJ(1)”
“group (in Part 5A)	section 257HJ(1)”
“group company (in Part 5A)	section 257HJ(1)”
“issue of shares (in Part 5A)	section 257HI”
“market value (in Part 5A)	section 257HJ(6)”
“new qualifying trade (in Part 5A)	section 257HF”
“ordinary shares (in Part 5A)	section 257HJ(1)”
“parent company (in Part 5A)	section 257HJ(1)”
“period A, period B (in Part 5A)	section 257AC”
“permanent establishment (in Part 5A)	section 257HJ(1)”
“qualifying business activity (in Part 5A)	section 257HG”
“qualifying subsidiary (in Part 5A)	section 257HJ(1)”
“qualifying 90% subsidiary (in Part 5A)	section 257HJ(1)”

*Status: Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.*

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“research and development (in Part 5A)	section 257HJ(1)”
“SEIS (in Part 5A)	section 257A(2)”
“single company (in Part 5A)	section 257HJ(1)”

(3) In the entry for “control”, in the second column, after “257(3),” insert “ 257HJ(3), ”.

#### TCGA 1992

19 TCGA 1992 is amended as follows.

20 (1) Section 150A (enterprise investment scheme) is amended as follows.

(2) For “relief”, in each place it occurs (except subsections (6)(c) and (10)), substitute “ EIS relief ”.

(3) In subsection (6)—

(a) omit the “and” at the end of paragraph (b) and after that paragraph insert—  
“(ba) shares to which SEIS relief is attributable; and”,

(b) in paragraph (c), for “relief is not” substitute “ neither EIS nor SEIS relief is ”, and

(c) after “paragraph (a), (b)” insert “ , (ba) ”.

(4) In subsection (10), for “the relief” substitute “ EIS relief ”.

(5) In subsection (10A), at the appropriate place, insert—

““EIS relief” means relief under Chapter 3 of Part 7 of the Taxes Act or Part 5 of ITA 2007;”, and

““SEIS relief” means relief under Part 5A of ITA 2007.”

21 (1) Section 150B (enterprise investment scheme: reduction of relief) is amended as follows.

(2) For “relief”, in each place it occurs, substitute “ EIS relief ”.

(3) After subsection (5) insert—

“(5A) In this section “EIS relief” means relief under Chapter 3 of Part 7 of the Taxes Act or Part 5 of ITA 2007.”

22 In Schedule 5B (enterprise investment scheme: re-investment), in paragraph 2 (postponement of original gain)—

(a) in sub-paragraph (3)(b), after “Schedule” insert “ or paragraph 1(5) of Schedule 5BB ”, and

(b) in sub-paragraph (4), after “this Schedule” insert “ or paragraph 1(5) of Schedule 5BB ”.

#### TMA 1970

23 In section 98 of TMA 1970 (special returns, etc)—

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- (a) in the first column of the Table, after the entry for “sections 242 and 243(1) and (2) of ITA 2007” insert—

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“sections 257GG and 257GH(1) and (2) of ITA 2007;”, and

- (b) in the second column of that Table, after the entry for “sections 240 and 241 of ITA 2007” insert—

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“sections 257GE and 257GF of ITA 2007;”.

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## PART 4

### COMMENCEMENT

- 24 (1) Subject to sub-paragraphs (2) and (3), the amendments made by this Schedule have effect in relation to shares issued on or after 6 April 2012.
- (2) The amendments made by paragraphs 15 to 17 have effect for the purpose of determining whether shares or securities issued on or after 6 April 2012 are to be regarded as comprised in a company's qualifying holdings.
- (3) Sub-paragraph (1) does not apply to the amendments made by paragraphs 4, 5 and 22.

## SCHEDULE 7

Section 39

### ENTERPRISE INVESTMENT SCHEME

## PART 1

### ENTERPRISE INVESTMENT SCHEME

#### *Introduction*

- 1 Part 5 of ITA 2007 (enterprise investment scheme) is amended as follows.

#### *Minimum subscription*

- 2 In section 157 (eligibility for EIS relief), omit subsections (2) and (3).

#### *Increase in amount of relief*

- 3 (1) In section 158 (form and amount of EIS relief), in subsection (2)(b) for “£500,000” substitute “£1 million”.
- (2) Accordingly, section 31 of FA 2008 is repealed.

#### *Loan capital*

- 4 In section 170 (person interested in capital etc of company)—
- (a) in subsection (1)(b), omit “loan capital and”, and

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*Status:* Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.

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- (b) omit subsections (8) and (10).

*Overview of Chapter 3*

- 5 In section 172 (overview of Chapter 3), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and  
(g) no disqualifying arrangements (see section 178A).”

*Relaxation of the shares requirement*

- 6 (1) Section 173 (the shares requirement) is amended as follows.
- (2) In subsection (2), for paragraph (a) (but not the “or” after it) substitute—
- “ (a) any present or future preferential right to dividends that is within subsection (2A),  
 (aa) any present or future preferential right to a company's assets on its winding up,”
- (3) After that subsection insert—
- “(2A) A preferential right to dividends carried by a share in a company is within this subsection if—
- (a) the amount of any dividends payable pursuant to the right, or the date or dates on which they are payable, depend to any extent on a decision of the company, the holder of the share or any other person, or
- (b) the amount of any dividends that become payable at any time pursuant to the right includes any amount that became payable at any earlier time pursuant to the right, but has not been paid.”

*Increase in the maximum amount permitted to be raised annually*

- 7 (1) Section 173A (the maximum amount raised annually through risk capital schemes requirement) is amended as follows.
- (2) In subsection (1) for “£2 million” substitute “ £5 million ”.
- (3) In subsection (3)—
- (a) in paragraph (b), omit sub-paragraph (ii), and
- (b) after that paragraph insert “, or
- (c) any other investment is made in the company which is aid received by it pursuant to a measure approved by the European Commission as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the Community Guidelines on Risk Capital Investments in Small and Medium-sized Enterprises (as those guidelines may be amended or replaced from time to time).”



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

### Commencement Information

- I3** Sch. 7 para. 7(2) in force at 19.7.2012 for the purposes of the amendment made by that sub-paragraph by S.I. 2012/1896, art. 2(a)

#### *Acquisition of shares or stock*

- 8 In section 175 (the use of the money raised requirement), after subsection (1) insert—

“(1A) Employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of a qualifying business activity.”

#### *No disqualifying arrangements requirement*

- 9 After section 178 insert—

#### **“178A The no disqualifying arrangements requirement**

- (1) The relevant shares must not be issued, nor any money raised by the issue employed, in consequence or anticipation of, or otherwise in connection with, disqualifying arrangements.
- (2) Arrangements are “disqualifying arrangements” if—
  - (a) the main purpose, or one of the main purposes, of the arrangements is to secure—
    - (i) that a qualifying business activity is or will be carried on by the issuing company or a qualifying 90% subsidiary of that company, and
    - (ii) that one or more persons (whether or not including any party to the arrangements) may obtain relevant tax relief in respect of shares issued by the issuing company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a VCT,
  - (b) that activity is the relevant qualifying business activity, and
  - (c) one or both of conditions A and B are met.
- (3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant shares being employed as required by section 175, an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a relevant person or relevant persons.
- (4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the whole or greater part of the component activities of the relevant qualifying business activity would have been carried on as part of another business by a relevant person or relevant persons.
- (5) For the purposes of this section it is immaterial whether the issuing company is a party to the arrangements.
- (6) In this section—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

“component activities” means—

- (a) if the relevant qualifying business activity is activity A (see section 179(2)), the carrying on of a qualifying trade or preparing to carry on such a trade, which constitutes that activity, and
- (b) if the relevant qualifying business activity is activity B (see section 179(4)), the carrying on of research and development which constitutes that activity;

“qualifying holdings”, in relation to the issuing company, is to be construed in accordance with section 286 (VCTs: qualifying holdings);

“relevant person” means a person who is a party to the arrangements or a person connected with such a party;

“relevant qualifying business activity” means the activity for the purposes of which the issue of the relevant shares raised money;

“relevant tax relief”, in respect of shares, means one or more of the following—

- (a) EIS relief in respect of the shares;
- (b) SEIS relief under Part 5A in respect of the shares;
- (c) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;
- (d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme) in respect of the shares;
- (e) relief under Schedule 5B to that Act (enterprise investment scheme: reinvestment) in consequence of which deferral relief is attributable to the shares (see paragraph 19(2) of that Schedule);
- (f) relief under Schedule 5BB to that Act (seed enterprise investment scheme: re-investment) in consequence of which SEIS re-investment relief is attributable to the shares (see paragraph 4 of that Schedule).”

*Meaning of “qualifying business activity”*

- 10 In section 179 (meaning of “qualifying business activity”), in subsection (1) omit “This is subject to subsections (3) and (5).”

*Increase in the gross assets limits*

- 11 In section 186 (the gross assets requirement)—
- (a) in subsections (1)(a) and (2)(a), for “£7 million” substitute “ £15 million ”, and
  - (b) in subsections (1)(b) and (2)(b), for “£8 million” substitute “ £16 million ”.

**Commencement Information**

- I4** Sch. 7 para. 11 in force at 19.7.2012 for the purposes of the amendments made by that paragraph by S.I. 2012/1896, art. 2(b)

*Status: Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

*Relaxation of restriction on number of employees*

F52 12 .....

**Textual Amendments**

**F52** Sch. 7 para. 12 omitted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **Sch. 5 para. 20(2)**

*Subsidised generation or export of electricity*

- 13 (1) Section 192 (meaning of “excluded activities”) is amended as follows.
- (2) In subsection (1), omit “and” at the end of paragraph (k) and after that paragraph insert—
- “(ka) the subsidised generation or export of electricity, and”.
- (3) In subsection (2), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and
- (g) section 198A (subsidised generation or export of electricity).”
- 14 After section 198 insert—

**“198A Excluded activities: subsidised generation or export of electricity**

- (1) This section supplements section 192(1)(ka).
- (2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).
- (3) The generation of electricity is “subsidised” if a person receives a FIT subsidy in respect of the electricity generated.
- (4) The export of electricity is “subsidised” if a person receives a FIT subsidy in respect of the electricity exported.
- (5) But the generation or export of electricity is not to be taken to fall within section 192(1)(ka) if Condition A, B or C is met.
- (6) Condition A is that the generation or export is carried on by—
- (a) a community interest company,
- (b) a co-operative society,
- (c) a community benefit society, or
- (d) a NI industrial and provident society.
- (7) Condition B is that the plant used for the generation of the electricity relies wholly or mainly on anaerobic digestion.
- (8) Condition C is that the electricity is hydroelectric power.
- (9) For the purposes of this section—
- “anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen (excluding anaerobic digestion of sewage or material in a landfill);

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

“community benefit society” means—

- (a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a community benefit society, or
- (b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(3) of that Act;

“co-operative society” means—

- (a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a co-operative society, or
- (b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(2) of that Act;

“FIT subsidy” means—

- (a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to encourage small-scale low-carbon generation of electricity, or
- (b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;

“NI industrial and provident society” means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

“small-scale low-carbon generation” has the meaning given by section 41(4) of the Energy Act 2008.”

- 15 In section 199 (excluded activities: provision of services or facilities for another business), in subsection (1)(a), for “(k)” substitute “ (ka) ”.

#### *Powers to amend*

<sup>F53</sup>16 .....

#### **Textual Amendments**

**F53** Sch. 7 para. 16 omitted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **Sch. 5 para. 20(2)**

#### *Disposal of shares*

- 17 In section 209 (disposal of shares), after subsection (5) insert—
- “(6) Nothing in this section applies to a disposal of shares occurring as a result of the investor's death.”

#### *Date from which interest is chargeable*

- 18 In section 239 (date from which interest is chargeable), in subsection (2) for “sections 181 to 188” substitute “ sections 180A to 188 ”.

*Status:* Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)

### Information

- 19 In section 243 (power to require information in other cases)—
- (a) in subsection (1), omit the “or” at the end of paragraph (d) and after that paragraph insert—
- “(da) section 178A (no disqualifying arrangements), or”, and”
- (b) in subsection (4), at the appropriate place in the table, insert—

“Subsection (1)(da)	The claimant, the company, any person controlling the company and any person whom an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question”
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### Approved investment fund as nominee

- 20 In section 251 (approved investment fund as nominee), omit subsection (3).

### Interpretation

- 21 In section 257 (minor definitions etc), in subsection (1), for the definition of “arrangements” substitute—
- ““arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);”.

### Commencement and transitional provision

- 22 (1) The amendments made by paragraphs 2 to 6, 7(1) and (3), 8, 9, 10 and 19 have effect in relation to shares issued on or after 6 April 2012.
- (2) But—
- (a) for the purposes of paragraphs 5, 9 and 19 it does not matter whether the disqualifying arrangements were entered into before or on or after 6 April 2012, and
- (b) nothing in sub-paragraph (1) prevents shares issued before that date constituting a “relevant investment” (by virtue of the amendment made by paragraph 7(3)(b) of this Schedule) for the purposes of determining whether the requirement of section 173A(1) of ITA 2007 is met in relation to shares issued on or after that date.

#### Modifications etc. (not altering text)

**C18** Sch. 7 para. 22 excluded (15.3.2018) by Finance Act 2018 (c. 3), s. 15

- 23 (1) The amendments made by paragraphs 7(2), 11 and 12 come into force on such day as the Treasury may by order appoint.
- (2) Those amendments have effect in relation to shares issued on or after 6 April 2012.
- 24 (1) Subject to sub-paragraph (2), the amendments made by paragraphs 13 to 15 have effect in relation to shares issued on or after 23 March 2011.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

- (2) Those amendments do not have effect in relation to shares issued before 6 April 2012 if the issuing company, or a qualifying 90% subsidiary of that company, first began to carry on activities of the kind mentioned in section 192(1)(ka) of ITA 2007 before that day.

<sup>F54</sup>(3) .....

#### Textual Amendments

**F54** Sch. 7 para. 24(3) repealed (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014](#) (c. 14), s. 154, [Sch. 7](#) (with [Sch. 5](#))

- 25 (1) The amendment made by paragraphs 18 and 21 are to be treated as having come into force on 6 April 2012.

## PART 2

### ENTERPRISE INVESTMENT SCHEME: CHARGEABLE GAINS

#### *Introduction*

- 26 TCGA 1992 is amended as follows.

#### *Disposal of shares to which EIS relief is attributable*

- 27 In section 150A (disposal of shares to which EIS relief is attributable)—
- (a) in subsection (3), in paragraph (b) for “basic rate” substitute “ EIS original rate ”, and
- (b) after that subsection insert—

“(3A) In subsection (3) “EIS original rate” has the meaning given by section 256A of ITA 2007, except that where the year mentioned in subsection (3)(b) is the tax year 2007-08 or an earlier year, it means 20%.”

- 28 Accordingly, in Schedule 1 to FA 2008, paragraph 48 is repealed.

#### *Maximum annual investment*

- 29 In paragraph 1 of Schedule 5B to the TCGA 1992 (EIS re-investment relief: application of Schedule), in sub-paragraph (2)(da), for “£2 million” substitute “ £5 million ”.

#### Commencement Information

**I5** Sch. 7 para. 29 in force at 19.7.2012 for the purposes of the amendment made by that paragraph by [S.I. 2012/1896](#), [art. 2\(d\)](#)

#### *No disqualifying arrangements*

- 30 After paragraph 11 insert—

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*Status: Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

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*“Disqualifying arrangements*

11A(1) Where an individual subscribes for eligible shares (“the shares”) in a company (“the company”), the shares are to be treated as not being eligible shares for the purposes of this Schedule if the shares are issued, nor any money raised by the issue employed, in consequence or anticipation of, or otherwise in connection with, disqualifying arrangements.

(2) Arrangements are “disqualifying arrangements” if—

(a) the main purpose, or one of the main purposes, of the arrangements is to secure—

(i) that a qualifying business activity is or will be carried on by the company or a qualifying 90% subsidiary of the company, and

(ii) that one or more persons (whether or not including any party to the arrangements) may obtain relevant tax relief in respect of shares issued by the company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a venture capital trust,

(aa) that activity is the relevant qualifying business activity, and

(b) one or both of conditions A and B are met.

(3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the shares being employed as required by paragraph 1(2)(g), an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a relevant person or relevant persons.

(4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the whole or greater part of the component activities of the relevant qualifying business activity would have been carried on as part of another business by a relevant person or relevant persons.

(5) For the purposes of this paragraph, it is immaterial whether the company is a party to the arrangements.

(6) In this paragraph—

“component activities” means—

(a) if the relevant qualifying business activity is activity A (see section 179(2) of ITA 2007), the carrying on of a qualifying trade, or preparing to carry on such a trade, which constitutes that activity, and

(b) if the relevant qualifying business activity is activity B (see section 179(4) of that Act), the carrying on of research and development which constitutes that activity;

“qualifying holdings”, in relation to the issuing company, is to be construed in accordance with section 286 of ITA 2007 (VCTs: qualifying holdings);

“qualifying 90% subsidiary” has the meaning given by section 190 of ITA 2007;

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)

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“relevant person” means a person who is a party to the arrangements or a person connected with such a party;

“relevant qualifying business activity” means the activity for the purposes of which the issue of the shares raised money;

“relevant tax relief”, in respect of shares, means one or more of the following—

- (a) relief under this Schedule in consequence of which deferral relief is attributable to the shares;
- (b) relief under section 150A or 150E (enterprise investment scheme or seed enterprise investment scheme) in respect of the shares;
- (c) relief under Schedule 5BB (seed enterprise investment scheme: re-investment) in consequence of which SEIS re-investment relief is attributable to the shares (see paragraph 4 of that Schedule);
- (d) relief under Chapter 6 of Part 4 of ITA 2007 (losses on disposal of shares) in respect of the shares;
- (e) EIS relief (within the meaning of Part 5 of that Act) in respect of the shares;
- (f) SEIS relief (within the meaning of Part 5A of that Act) in respect of the shares.”

#### *Information*

31 In paragraph 16 (information)—

- (a) in sub-paragraph (6), for “or 11(1)” substitute “, 11(1) or 11A ”,
- (b) in sub-paragraph (7), omit the “and” at the end of paragraph (b) and after that paragraph insert—
  - “(ba) in relation to paragraph 11A, the claimant, the company, any person controlling the company and any person whom an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question; and”, and
- (c) in that sub-paragraph, for “and (b)” substitute “, (b) and (ba) ”.

#### *Meaning of “arrangements”*

32 In paragraph 19 (interpretation), in sub-paragraph (1) for the definition of “arrangements” substitute—

““arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);”.

#### *Commencement*

- 33 (1) The amendment made by paragraph 29 comes into force on such day as the Treasury may by order appoint.
- (2) That amendment has effect in relation to shares issued on or after 6 April 2012.
- 34 (1) The amendments made by paragraphs 27, 28, 30 and 31 have effect in relation to shares issued on or after 6 April 2012.



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(2) For the purposes of those paragraphs it does not matter whether the disqualifying arrangements were entered into before or on or after that date.

35 The amendment made by paragraph 32 is treated as having come into force on 6 April 2012.

## SCHEDULE 8

Section 40

### VENTURE CAPITAL SCHEMES

#### *Introduction*

1 Part 6 of ITA 2007 (venture capital trusts) is amended in accordance with paragraphs 2 to 13.

#### *VCT approvals*

2 (1) Section 274 (requirements for the giving of approval) is amended as follows.

(2) In subsection (2), in the list of conditions, at the end insert—

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“The investment limits condition	The company has not made and will not make an investment, in the relevant period, in a company which breaches the permitted investment limits”
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(3) In subsection (3), omit the “and” at the end of paragraph (d), and after paragraph (e) insert “, and

(f) the investment limits condition by section 280B.”

3 After section 280A insert—

#### **“280B The investment limits condition**

(1) This section applies for the purposes of the investment limits condition.

(2) Where a company (“the investor”) makes an investment (“the current investment”) in another company (“the relevant company”), that investment breaches the permitted investment limits if the total annual investment in the relevant company exceeds the amount for the time being specified in section 292A(1).

(3) The total annual investment in the relevant company is the sum of—

- (a) the amount of the current investment, and
- (b) the total amount of other relevant investments made in the relevant company (whether or not by the investor) in the year ending with the day on which the current investment is made.

(4) A “relevant investment” is made in a company if—

- (a) an investment (of any kind) in the company is made by a VCT,

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- (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
  - (i) a compliance statement under section 205 (enterprise investment scheme), or
  - (ii) a compliance statement under section 257ED (seed enterprise investment scheme),
 in respect of the shares, or
- (c) any other investment is made in the company which is aid received by it pursuant to a measure approved by the European Commission as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the Community Guidelines on Risk Capital Investments in Small and Medium-sized Enterprises (as those guidelines may be amended or replaced from time to time).

(5) For the purposes of subsections (2) and (3), an investment within subsection (4)(b) is regarded as made when the shares are issued.”

*Qualifying holdings: introduction*

- 4 In section 286 (qualifying holdings: introduction), in subsection (3), omit the “and” at the end of paragraph (k) and after paragraph (l) insert “, and
- (m) no disqualifying arrangements (see section 299A).”

*Relaxation of maximum qualifying investment requirement*

- 5 (1) Section 287 (maximum qualifying investment requirement) is amended as follows.
- (2) In subsection (1), after “that” insert “, if the condition in subsection (1A) is met, ”.
- (3) After that subsection insert—
- “(1A) The condition is that—
- (a) at the time of the issue of the relevant holding the relevant company or any of its qualifying subsidiaries was a member of a partnership or a party to a joint venture,
  - (b) the trade which meets the requirement of section 291 was at that time being carried on, or to be carried on, by those partners in partnership or by the parties to the joint venture, and
  - (c) the other partners or parties to the joint venture include at least one other company.”
- (4) In subsection (2)—
- (a) for “Subject to subsection (7), the” substitute “ The ”, and
  - (b) after “exceeds” insert “ the relevant fraction of ”.
- (5) After that subsection insert—
- “(2A) The relevant fraction is—

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$$\frac{1}{N}$$

where “N” is the number of companies (including the relevant company) which, at the time when the relevant holding was issued were members of the partnership or, as the case may be, parties to the joint venture.”

(6) Omit subsections (6) and (7).

*Increase in the maximum amount permitted to be raised annually*

6 (1) Section 292A (the maximum amount raised annually through risk capital schemes requirement) is amended as follows.

(2) In subsection (1) for “£2 million” substitute “ £5 million ”.

(3) In subsection (3)—

(a) in paragraph (b), omit sub-paragraph (ii), and

(b) after that paragraph insert “, or

(c) any other investment is made in the company which is aid received by it pursuant to a measure approved by the European Commission as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the Community Guidelines on Risk Capital Investments in Small and Medium-sized Enterprises (as those guidelines may be amended or replaced from time to time).”

(4) In subsection (5) omit “or paragraph 42 of Schedule 15 to FA 2000”.

**Commencement Information**

**I6** Sch. 8 para. 6(2) in force at 19.7.2012 for the purposes of the amendment made by that sub-paragraph by S.I. 2012/1901, art. 2(a)

*Acquisition of shares*

7 In section 293 (the use of the money raised requirement), after subsection (5) insert—

“(5A) Employing money on the acquisition of shares in a company does not of itself amount to employing the money for the purposes of a relevant qualifying activity.”

*Increase in the gross assets limits*

8 In section 297 (the gross assets requirement)—

(a) in subsections (1)(a) and (2)(a), for “£7 million” substitute “ £15 million ”, and

(b) in subsections (1)(b) and (2)(b), for “£8 million” substitute “ £16 million ”.

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#### Commencement Information

- I7** Sch. 8 para. 8 in force at 19.7.2012 for the purposes of the amendments made by that paragraph by S.I. 2012/1901, art. 2(b)

#### *Relaxation of restriction on number of employees*

F559

#### Textual Amendments

- F55** Sch. 8 para. 9 omitted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 22(2)

#### *No disqualifying arrangements requirement*

10 After section 299 insert—

#### “299A The no disqualifying arrangements requirement

- (1) The relevant holding must not have been issued, nor any money raised by the issue employed, in consequence or anticipation of, or otherwise in connection with, disqualifying arrangements.
- (2) Arrangements are “disqualifying arrangements” if—
  - (a) the main purpose, or one of the main purposes, of the arrangements is to secure—
    - (i) that a qualifying activity is or will be carried on by the relevant company or a qualifying 90% subsidiary of that company, and
    - (ii) that shares or securities issued by the relevant company may be comprised in any company's qualifying holdings or that one or more persons may obtain relevant tax relief in respect of such shares which raise money for the purposes of that qualifying activity,
  - (b) that qualifying activity is the relevant qualifying activity by reference to which the requirement in section 293(1)(b) (money raised to be employed within two years for relevant qualifying activity) is met in relation to the relevant holding, and
  - (c) one or both of conditions A and B are met.
- (3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant holding being employed as required by section 293(1)(b), an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a relevant person or relevant persons.
- (4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the whole or greater part of the component activities of the relevant qualifying activity would have been carried on as part of another business by a relevant person or relevant persons.

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(5) For the purposes of this section it is immaterial whether the relevant company is a party to the arrangements.

(6) In this section—

“component activities” means—

- (a) if the relevant qualifying activity is within section 291(2), the carrying on of a qualifying trade which constitutes that activity, and
- (b) if the relevant qualifying activity is within section 291(3), the preparations to carry on a qualifying trade which constitute that activity;

“arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);

“relevant person” means a person who is a party to the arrangements or a person connected with such a party;

“qualifying activity” has the same meaning as in section 291;

“relevant tax relief”, in respect of shares, means one or more of the following—

- (a) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;
- (b) EIS relief (within the meaning of Part 5) in respect of the shares;
- (c) SEIS relief (within the meaning of Part 5A) in respect of the shares;
- (d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme and seed enterprise investment scheme) in respect of the shares;
- (e) relief under Schedule 5B to that Act in consequence of which deferral relief is attributable to the shares;
- (f) relief under Schedule 5BB to that Act (seed enterprise investment scheme: re-investment) in consequence of which SEIS re-investment relief is attributable to the shares (see paragraph 4 of that Schedule).”

#### *Subsidised generation or export of electricity*

11 (1) Section 303 (meaning of “excluded activities”) is amended as follows.

(2) In subsection (1), omit “and” at the end of paragraph (k) and after that paragraph insert—

“(ka) the subsidised generation or export of electricity, and”.

(3) In subsection (2), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and

(g) section 309A (subsidised generation or export of electricity).”

12 After section 309 insert—

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**“309A Excluded activities: subsidised generation or export of electricity**

- (1) This section supplements section 303(1)(ka).
- (2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).
- (3) The generation of electricity is “subsidised” if a person receives a FIT subsidy in respect of the electricity generated.
- (4) The export of electricity is “subsidised” if a person receives a FIT subsidy in respect of the electricity exported.
- (5) But the generation or export of electricity is not to be taken to fall within section 303(1)(ka) if Condition A, B or C is met.
- (6) Condition A is that the generation or export is carried on by—
  - (a) a community interest company,
  - (b) a co-operative society,
  - (c) a community benefit society, or
  - (d) a NI industrial and provident society.
- (7) Condition B is that the plant used to generate the electricity relies wholly or mainly on anaerobic digestion.
- (8) Condition C is that the electricity is hydroelectric power.
- (9) For the purposes of this section—
 

“anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen (excluding anaerobic digestion of sewage or material in a landfill);

“community benefit society” means—

  - (a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a community benefit society, or
  - (b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(3) of that Act;

“co-operative society” means—

    - (a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a co-operative society, or
    - (b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(2) of that Act;

“FIT subsidy” means—

      - (a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to encourage small-scale low-carbon generation of electricity, or
      - (b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;

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“NI industrial and provident society” means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

“small-scale low-carbon generation” has the meaning given by section 41(4) of the Energy Act 2008.”

- 13 In section 310 (excluded activities: provision of services or facilities for another business), in subsection (1)(a), for “(k)” substitute “ (ka) ”.

*Powers to amend*

F56 14 .....

**Textual Amendments**

F56 Sch. 8 para. 14 omitted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 22(3)

*Information*

- 15 After section 312 insert—

**“312A Power to require information relating to disqualifying arrangements**

- (1) Subsection (2) applies if an officer of Revenue and Customs has reason to believe that the relevant company has issued the relevant holding to the investing company in consequence of or, or otherwise in connection with, disqualifying arrangements (within the meaning of section 299A(2)).
- (2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—
  - (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, such arrangements exist or have existed, and
  - (b) such other information as the officer may reasonably require for the purposes of section 299A and as that person has or can reasonably obtain.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) A “person concerned” means—
  - (a) the relevant company,
  - (b) the investing company,
  - (c) any person connected with either of those companies, and
  - (d) any person whom the officer has reason to believe is or was a party to the arrangements in question.”

- 16 In section 313 (interpretation of Chapter 4), in subsection (5), after “Chapter” insert “ (other than section 312A) ”.

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### *Consequential amendment*

- 17 In section 98 of TMA 1970 (special returns, etc), in the first column of the Table, before the entry for “regulations under Chapter 5 of Part 6 of ITA 2007” insert—
- 
- “section 312A of ITA 2007;”.
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### *Commencement and transitional provision*

- 18 (1) The amendments made by paragraphs 2 and 3 have effect in relation to investments made on or after the day on which this Act is passed.
- (2) But nothing in sub-paragraph (1) prevents investments made before that day constituting a “relevant investment” for the purposes of section 280B of ITA 2007 (as inserted by paragraph 3) for the purposes of determining whether the investment limits condition in section 274 of that Act is breached by an investment made on or after that day.

#### **Modifications etc. (not altering text)**

**C19** Sch. 8 para. 18 excluded (15.3.2018) by [Finance Act 2018 \(c. 3\), s. 15](#)

- 19 (1) The amendments made by paragraphs 4, 5, 6(1) and (3), 10, 15 and 16 have effect for the purpose of determining whether shares or securities issued on or after 6 April 2012 are to be regarded as comprised in a company's qualifying holdings.
- (2) But for the purposes of paragraphs 4, 10, 15 and 16 it does not matter whether the disqualifying arrangements were entered into before or on or after 6 April 2012.

#### **Modifications etc. (not altering text)**

**C20** Sch. 8 para. 19 excluded (15.3.2018) by [Finance Act 2018 \(c. 3\), s. 15](#)

- 20 (1) The amendments made by paragraphs 6(2), 8 and 9 come into force on such day as the Treasury may by order appoint.
- (2) Those amendments have effect for the purpose of determining whether shares or securities issued on or after 6 April 2012 are to be regarded as comprised in a company's qualifying holdings.
- 21 (1) Paragraph 7 is to be treated as having come into force on 6 April 2012.
- <sup>F57</sup>(2) . . . . .
- <sup>F57</sup>(3) . . . . .

#### **Textual Amendments**

**F57** Sch. 8 para. 21(2)(3) repealed (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\), Sch. 6 para. 21](#)

- 22 (1) Subject to sub-paragraph (2), the amendments made by paragraphs 11 to 13 have effect in relation to a relevant holding issued on or after 23 March 2011.



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- (2) Those amendments do not have effect in relation to any relevant holding issued before 6 April 2012 if the relevant company, or a qualifying 90% subsidiary of that company, first began to carry on activities of the kind mentioned in section 303(1) (ka) of ITA 2007 before that day.

<sup>F58</sup>(3) .....

**Textual Amendments**

**F58** Sch. 8 para. 22(3) repealed (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014](#) (c. 14), s. 154, [Sch. 7](#) (with [Sch. 5](#))

SCHEDULE 9

Section 42

CAPITAL ALLOWANCES FOR PLANT AND MACHINERY: ANTI-AVOIDANCE

*Transactions to obtain allowances*

1 For section 215 of CAA 2001 substitute—

**“215 Transactions to obtain tax advantages**

- (1) Allowances under this Part are restricted under the applicable sections if B enters into a relevant transaction with S that either—
- (a) has an avoidance purpose, or
  - (b) is part of, or occurs as a result of, a scheme or arrangement that has an avoidance purpose.
- (2) Subsection (1)(b) may be satisfied—
- (a) whether the scheme or arrangement was made before or after the relevant transaction was entered into, and
  - (b) whether or not the scheme or arrangement is legally enforceable.
- (3) A transaction, scheme or arrangement has an “avoidance purpose” if the main purpose, or one of the main purposes, of a party in entering into the transaction, scheme or arrangement is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (4) The reference in subsection (3) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (5) If the tax advantage is of a kind described in subsection (7), “the applicable sections” are sections 217 and 218ZA(5).
- (6) Otherwise, “the applicable sections” are sections 217 and 218ZA(1) or, as the case may be, 218ZA(3).
- (7) The kinds of tax advantage are—

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- (a) that an allowance to which B is entitled for a chargeable period is calculated using a percentage rate that is higher than the one that would otherwise be used, or
  - (b) that B is entitled to an allowance in respect of an amount of capital expenditure sooner than B would otherwise be entitled to it.
- (8) If a transaction, scheme or arrangement involves—
- (a) a tax advantage of a kind described in subsection (7), and
  - (b) a tax advantage not of such a kind,
- subsections (5) and (6) have effect separately in relation to each tax advantage.”

*Restrictions on writing-down allowances*

- 2 In section 57(3) of CAA 2001 (available qualifying expenditure), after “section 218(1),” insert “ 218ZA(1) or (3), ”.
- 3 In section 214 of that Act (connected persons), after “218” insert “ (or, as the case may be, 218ZA(3)) ”.
- 4 In section 216 of that Act (sale and leaseback, etc), in subsection (1), after “218” insert “ (or, as the case may be, 218ZA(3)) ”.
- 5 (1) Section 218 of that Act (restriction on B's qualifying expenditure) is amended as follows.
- (2) In subsection (1), for “section 214, 215 or 216” substitute “ section 214 or 216 ”.
- (3) At the end insert—
- “(5) This section is subject to section 218ZA(3).”
- (4) Accordingly, in the heading of that section, insert at the end “ : **section 214 or 216** ”.
- 6 After section 218 of that Act insert—

**“218ZA Restrictions on writing-down allowances: section 215**

- (1) If this subsection applies as a result of section 215, all or part of B's expenditure under the relevant transaction is to be left out of account in determining B's available qualifying expenditure.
- (2) The amount of expenditure to be left out of account is—
- (a) such amount as would or would in effect cancel out the tax advantage mentioned in section 215 (whether that advantage is obtained by B or another person and whether it relates to the relevant transaction or something else), or
  - (b) if the amount found under paragraph (a) exceeds the whole of B's expenditure under the relevant transaction, the whole of that expenditure.
- (3) But if subsection (1) applies as a result of section 215 and—
- (a) section 218 also applies as a result of section 214 or 216, or
  - (b) section 228 also applies by virtue of an election under section 70I(11) or 227,

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the amount of expenditure to be left out of account is the greater of X and Y.

- (4) For the purposes of subsection (3)—
- “X” is the amount found under subsection (2), and
  - “Y” is the amount by which B's expenditure under the relevant transaction exceeds D (as defined in section 218 or, as the case may be, section 228).
- (5) If this subsection applies as a result of section 215—
- (a) the allowance mentioned in subsection (7)(a) of that section is to be calculated using the rate that would be used without the tax advantage, or (as the case may be)
  - (b) the entitlement mentioned in subsection (7)(b) of that section is to be available as and when it would be available without the tax advantage.
- (6) Subsection (5) applies whether or not section 218 also applies as a result of section 214 or 216, or section 228 also applies by virtue of an election under section 70I(11) or 227.”

*Restriction of exception for manufacturers and suppliers*

- 7 (1) Section 230 of CAA 2001 (exception for manufacturers and suppliers), as amended by section 41 of this Act, is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The restrictions in sections 217 and 218 do not apply in relation to any plant or machinery if—
- (a) the relevant transaction is within section 213(1)(a) or (b),
  - (b) the case does not fall within section 215, and
  - (c) the conditions in subsection (3) are met.”
- (3) Omit subsection (2).

*Relevant transactions*

- 8 After section 268D of CAA 2001 insert—

**“268E Meaning of “assigns”**

- (1) For the purposes of this Part—
- (a) a person (“A”) is taken to assign the benefit of a contract, or rights under a contract, to another person (“B”) whenever B becomes entitled, and A ceases to be entitled, to the benefit or rights (whether by assignment, novation, variation or replacement of the contract, by operation of law or otherwise), and
  - (b) references to an assignment are to be read accordingly.
- (2) Any reference in this Part to the benefit of a contract or to rights under a contract includes a reference to part of the benefit of a contract or to part of the rights under a contract.”

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### Commencement

- 9 (1) The amendments made by paragraphs 1 to 7 of this Schedule have effect in relation to expenditure of B's that is incurred on or after the start date (regardless of when the relevant transaction was entered into).
- (2) The amendment made by paragraph 8 of this Schedule has effect in relation to expenditure that is incurred on or after the start date.
- (3) The start date is—
- (a) 1 April 2012, for corporation tax purposes, and
  - (b) 6 April 2012, for income tax purposes.

## SCHEDULE 10

Section 43

### PLANT AND MACHINERY ALLOWANCES: FIXTURES

#### Introductory

- 1 CAA 2001 is amended as follows.

#### Changes in ownership

- 2 After section 187 insert—

#### “187A Effect of changes in ownership of a fixture

- (1) This section applies if—
- (a) a person (“the current owner”) is treated as the owner of a fixture as a result of incurring capital expenditure (“new expenditure”) on its provision for the purposes of a qualifying activity carried on by the current owner,
  - (b) the plant or machinery is treated as having been owned at a relevant earlier time by a person as a result of incurring other capital expenditure (“historic expenditure”) on its provision for the purposes of a qualifying activity carried on by that person,
  - (c) the plant or machinery is within paragraph (b) otherwise than as a result of section 538 (contribution allowances for plant and machinery), and
  - (d) a person mentioned in paragraph (b) was entitled to claim an allowance under this Part in respect of the historic expenditure.
- (2) In this section—
- “the past owner” means—
- (a) the person mentioned in paragraph (d) of subsection (1), or
  - (b) if there is more than one amount of historic expenditure in respect of which a person was entitled to claim as mentioned in that paragraph, the person by whom expenditure was incurred most recently;
- “relevant earlier time” has the meaning given by section 187B(4) and (5).

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- (3) In determining the current owner's qualifying expenditure, the new expenditure is to be treated as nil if—
  - (a) the pooling requirement is not satisfied,
  - (b) the fixed value requirement applies but is not satisfied, or
  - (c) the disposal value statement requirement applies but is not satisfied, in relation to the past owner.
- (4) The pooling requirement is that—
  - (a) the historic expenditure has been allocated to a pool in a chargeable period beginning on or before the day on which the past owner ceases to be treated as the owner of the fixture, or
  - (b) a first-year allowance has been claimed in respect of that expenditure (or any part of it).
- (5) The fixed value requirement applies if the past owner is or has been required (as a result of having made a claim in respect of the historic expenditure) to bring the disposal value of the plant or machinery into account in accordance with item 1, 5 or 9 of the Table in section 196.
- (6) The fixed value requirement is that either—
  - (a) a relevant apportionment of the apportionable sum has been made, or
  - (b) the current owner has obtained the statements mentioned in subsection (8), or copies of them, (directly or indirectly) from the persons who made them and the case is one where the purchaser from the past owner or, as the case may be, lessee was not entitled to claim an allowance under this Part in respect of capital expenditure incurred on the fixture.
- (7) For the purposes of subsection (6)(a) a relevant apportionment of the apportionable sum is made if—
  - (a) the tribunal determines the part of the apportionable sum that constitutes the disposal value, on an application made by one of the affected parties before the end of the relevant 2 year period, or
  - (b) an election is made, in respect of the apportionable sum, by the affected parties jointly—
    - (i) before the end of the relevant 2 year period, or
    - (ii) if an application is made as mentioned in paragraph (a) and not determined or withdrawn by the end of that period, before that application is determined or withdrawn.
- (8) The statements referred to in subsection (6)(b) are—
  - (a) a written statement made by the purchaser from the past owner or, as the case may be, lessee, that the requirement of subsection (6)(a) has not been met and is no longer capable of being met, and
  - (b) a written statement made by the past owner of the amount of the disposal value that the past owner has in fact brought into account.
- (9) In subsections (6) to (8)—
  - (a) in a case falling within item 1 or 9 of the Table in section 196—

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“affected parties” means the past owner and the purchaser from the past owner;

“apportionable sum” means the sale price;

“election” means an election under section 198;

“relevant 2 year period” means the period of 2 years beginning with the date when the purchaser from the past owner acquires the qualifying interest;

(b) in a case falling within item 5 of that Table—

“affected parties” means the past owner and the lessee;

“apportionable sum” means the capital sum given by the lessee for the lease;

“election” means an election under section 199;

“relevant 2 year period” means the period of 2 years beginning with the date when the lessee is granted the lease.

(10) The disposal value statement requirement applies if the past owner is or has been required (as a result of having made a claim in respect of the historic expenditure) to bring the disposal value of the plant or machinery into account in accordance with item 2 or 3 of the Table in section 196 or in accordance with item 7 of the Table in section 61.

(11) The disposal value statement requirement is—

(a) that the past owner has, no later than 2 years after the date when the past owner ceased to own the plant or machinery, made a written statement of the amount of the disposal value that the past owner is or has been required to bring into account, and

(b) the current owner has obtained that statement or a copy of it (directly or indirectly) from the past owner.

### **187B Section 187A: supplementary provision**

(1) It is for the current owner to show—

(a) whether the fixed value requirement applies and, if so, is satisfied, and

(b) whether the disposal value statement requirement applies and, if so, is satisfied,

and, for this purpose, to provide an officer of Revenue and Customs, on request, with a copy of any tribunal decision, election or statement by reason of which a requirement mentioned in paragraph (a) or (b) is satisfied.

(2) Where—

(a) the fixed value requirement applies and is met by reason of section 187A(6)(b) being satisfied, or

(b) the disposal value requirement applies,

subsections (2) and (4) of section 200 apply in relation to the making of a statement within section 187A(8)(b) or (11)(a) and an amount specified in such a statement, as they apply in relation to an election and an amount specified in an election.

(3) For the purposes of section 187A, the current owner and the past owner may be the same person.

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- (4) In that section “relevant earlier time” means (subject to subsection (5)) any time which falls before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure.
- (5) If, before the earliest time when the current owner is treated as owning the plant or machinery as a result of incurring the new expenditure—
- (a) any person has ceased to own the plant or machinery as a result of a sale,
  - (b) the sale was not a sale of the plant or machinery as a fixture, and
  - (c) the buyer and seller were not connected persons at the time of the sale,
- the relevant earlier time does not include any time before the seller ceased to own the plant or machinery.
- (6) Nothing in section 187A(3) affects the disposal value (if any) which falls to be brought into account by the past owner (as a result of having made a claim in respect of the historic expenditure).
- (7) Expressions used in this section have the same meaning as in section 187A.”
- 3 In section 198 (election to apportion sale price on sale of qualifying interest)—
- (a) in subsection (1), after “item 1” insert “ or 9 ”, and
  - (b) in subsection (2)(a), after “item 1” insert “ or (as the case may be) 9 ”.
- 4 (1) Section 201 (elections under sections 198 and 199: procedure) is amended as follows.
- (2) In subsection (1), at the end insert—
- “But this is subject to subsection (1A).”
- (3) After that subsection insert—
- “(1A) Where—
- (a) the requirement of subsection (6) of section 187A (effect of changes in ownership of fixture: fixed value requirement) applies, or may in future apply by reason of a person being required to bring the disposal value of plant and machinery into account in accordance with item 1, 5 or 9 of the Table in section 196,
  - (b) an application is made to the tribunal for the purposes of section 187A(7)(a), and
  - (c) that application is not determined before the end of the period mentioned in subsection (1) of this section,
- subsection (1) does not apply and an election within section 187A(7)(b) may be made by notice to an officer of Revenue and Customs at any time before the tribunal determines the application or the application is withdrawn.”
- (4) For subsection (3)(f) substitute—
- “(f) in relation to each of the persons making the election—
    - (i) that person's Unique Taxpayer Reference, or
    - (ii) that the person does not have a Unique Taxpayer Reference.”
- 5 (1) In section 563 (procedure for determining certain questions affecting two or more persons), in subsection (1)(a) for “two” substitute “ one ”.

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- (2) Accordingly, in the heading for that section for “two” substitute “one”.

*Fixtures on which business premises renovation allowance has been made*

6 After section 186 insert—

**“186A Fixtures on which a business premises renovation allowance has been made**

- (1) This section applies if—
- (a) a person (“the past owner”) has at any time claimed an allowance to which that person was entitled under Part 3A (business premises renovation allowances) in respect of qualifying expenditure under that Part incurred in respect of a qualifying building (“Part 3A expenditure”),
  - (b) there has been a balancing event within section 360N(1) as a result of which an asset representing the whole or part of the Part 3A expenditure (“the Part 3A asset”) ceased to be owned by the past owner,
  - (c) the Part 3A asset was or included plant or machinery, and
  - (d) the current owner makes a claim under this Part in respect of expenditure (“new expenditure”) incurred—
    - (i) on the provision of the plant or machinery, and
    - (ii) at a time when it is a fixture.
- (2) If the new expenditure exceeds the maximum allowable amount, the excess is to be left out of account in determining the current owner's qualifying expenditure.
- (3) If the proceeds from the balancing event mentioned in subsection (1)(b) exceed R, the maximum allowance amount is—

$$\frac{F}{T} \times R$$

where—

F is so much of the proceeds from the balancing event as are attributable to the fixture,

T is the total amount of the proceeds from the balancing event, and

R is the qualifying expenditure incurred by the past owner on the Part 3A asset less the net Part 3A allowances in respect of that asset.

- (4) Where subsection (3) does not apply, the maximum allowable amount is so much of the proceeds from the balancing event as are attributable to the fixture.
- (5) For the purposes of subsection (3) the “net Part 3A allowances” in respect of the Part 3A asset means—



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- (a) the total of any allowances made under Part 3A in respect of the past owner's qualifying expenditure, less
  - (b) the total of any balancing charges made under that Part in respect of that expenditure.
- (6) For the purposes of this section, the current owner of the plant or machinery is—
  - (a) the person who acquired the Part 3A asset from the past owner, or
  - (b) any person who is subsequently treated as the owner of the plant or machinery.”
- 7 In section 9 (interaction between fixtures claims and other claims), in subsection (2)  
—
  - (a) in paragraph (a), after “Part 3” insert “ , 3A ”, and
  - (b) in paragraph (b), after “section 186(2)” insert “ , 186A(2) ”.
- 8 In section 57 (available qualifying expenditure), in subsection (3), after “section 186(2)” insert “ , 186A(2) ”.
- 9 In section 198 (election to apportion sale price on sale of qualifying interest), for subsection (5)(a) substitute—
  - “(a) sections 186, 186A and 187 (fixtures on which industrial buildings allowance, business premises renovation allowance or research and development allowance has been made),”.
- 10 In section 199 (election to apportion capital sum given by lessee on grant of lease), for subsection (5)(a) substitute—
  - “(a) sections 186, 186A and 187 (fixtures on which industrial buildings allowance, business premises renovation allowance or research and development allowance has been made),”.

#### *Commencement and transitionals*

- 11 The amendments made by paragraphs 2 to 5 have effect—
  - (a) for income tax purposes, in relation to new expenditure incurred on or after 6 April 2012, and
  - (b) for corporation tax purposes, in relation to new expenditure incurred on or after 1 April 2012.
- 12 The amendments made by paragraph 6 to 10 have effect—
  - (a) for income tax purposes, in relation to balancing events which occur on or after 6 April 2012, and
  - (b) for corporation tax purposes, in relation to balancing events which occur on or after 1 April 2012.
- 13 (1) Where (ignoring this sub-paragraph) plant or machinery would be treated for the purposes of subsection (1)(b) of section 187A of CAA 2001 as having been owned by a person for a period which began and ended before the commencement date, that period of ownership is, for those purposes, to be regarded as not occurring at a relevant earlier time.
- (2) Section 187A(3)(a) of CAA 2001 (imposition of the pooling requirement) does not apply if the period for which the plant or machinery is treated as having been owned

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by the past owner as a result of incurring the historic expenditure ends no later than the end of the period of 2 years beginning with the commencement date.

- (3) “The commencement date” means—
- (a) for income tax purposes, 6 April 2012, and
  - (b) for corporation tax purposes, 1 April 2012.

## SCHEDULE 11

Section 44

### EXPENDITURE ON PLANT AND MACHINERY FOR USE IN DESIGNATED ASSISTED AREAS

- 1 CAA 2001 is amended as follows.
- 2 In section 39 (first-year allowances available for certain types of qualifying expenditure only), at the appropriate place in the list insert—

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“section 45K expenditure on plant and machinery for use in designated assisted areas.”

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- 3 After section 45J insert—

#### “45K Expenditure on plant and machinery for use in designated assisted areas

- (1) Expenditure is first-year qualifying expenditure if—
  - (a) it is incurred by a company on the provision of plant or machinery for use primarily in an area which at the time the expenditure is incurred is a designated assisted area,
  - (b) it is incurred in the period of 5 years beginning with 1 April 2012,
  - (c) Conditions A to E are met.
- (2) “Designated assisted area” means an area which—
  - (a) is designated by an order made by the Treasury, and
  - (b) falls wholly within an assisted area.
- (3) An area may be designated by an order under subsection (2)(a) only if at the time the order is made—
  - (a) the area falls wholly within an enterprise zone, and
  - (b) a memorandum of understanding, in respect of the area, relating to the availability of allowances in respect of expenditure to which this section applies has been entered into by the Treasury and the responsible authority for the area.
- (4) An order made under subsection (2)(a) may provide that an area designated by the order is to be treated as having been so designated at times falling before the order is made.
- (5) But where an area has previously been designated by an order under subsection (2)(a), section 14 of the Interpretation Act 1978 does not apply, by virtue of subsection (4), so as to imply a power to make an order (“the new order”) treating that area (or any part of it) as if it were not so designated at times falling before the new order is made.

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- (6) Condition A is that the company is within the charge to corporation tax.
- (7) Condition B is that the expenditure is incurred for the purposes of a qualifying activity within section 15(1)(a) or (f).
- (8) Condition C is that the expenditure is incurred for the purposes of—
- (a) a business of a kind not previously carried on by the company,
  - (b) expanding a business carried on by the company, or
  - (c) starting up an activity which relates to a fundamental change in a product or production process of, or service provided by, a business carried on by the company.
- (9) Condition D is that the plant or machinery is unused and not second-hand.
- (10) Condition E is that the expenditure is not replacement expenditure.
- (11) “Replacement expenditure” means expenditure incurred on the provision of plant or machinery (“new plant or machinery”) intended to perform the same or a similar function, for the purposes of the qualifying activity of the company, as other plant or machinery (“replaced plant or machinery”)—
- (a) on which the company has previously incurred qualifying expenditure, and
  - (b) which has been superseded by the new plant or machinery.
- (12) But if and to the extent that—
- (a) the expenditure is incurred on the provision of new plant or machinery that is capable of and intended to perform a significant additional function, when compared to the replaced plant or machinery, and
  - (b) the additional function enhances the capacity or productivity of the qualifying activity in question,
- so much of the expenditure as is attributable to the additional function is not to be regarded as replacement expenditure.
- (13) The part of the expenditure attributable to the additional function is to be determined on a just and reasonable basis.
- (14) In this section—
- “assisted area” means—
- (a) an area specified as a development area under section 1 of the Industrial Development Act 1982, or
  - (b) Northern Ireland;
- “enterprise zone” means an area recognised by the Treasury as an area in respect of which there is a special focus on economic development and identified on a map published by the Treasury for the purposes of this section;
- “the responsible authority”, for an area, means—
- (a) if the area is in England, a local authority for all or part of the area or two or more such local authorities,
  - (b) if the area is in Scotland, the Scottish Ministers,
  - (c) if the area is in Wales, the Welsh Ministers, and

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- (d) if the area is in Northern Ireland, the Department of Enterprise, Trade and Investment in Northern Ireland.
- (15) The Treasury may by order amend the definition of “assisted area” in subsection (14) in consequence of any changes made to the areas in the United Kingdom granted assisted area status by virtue of Article 107(3) of the Treaty on the Functioning of the European Union.
- (16) This section is subject to—
- section 45L (plant or machinery partly for use outside designated assisted areas),
  - section 45M (exclusions from section 45K allowances),
  - section 45N (effect of plant or machinery subsequently being primarily used in an area other than a designated assisted area), and
  - section 46 (general exclusions).

#### **45L Exclusion of plant or machinery partly for use outside designated assisted areas**

- (1) Expenditure on plant or machinery is not first-year qualifying expenditure under section 45K if—
- (a) at the time when it is incurred, the company incurring it intends the plant or machinery to be used partly in a non-designated area, and
  - (b) the main purpose, or one of the main purposes, for which any person is a party to the relevant arrangements is the obtaining of a first-year allowance, or a greater first-year allowance, in respect of the part of the expenditure that is attributable to that intended use in a non-designated area.
- (2) For the purposes of subsection (1)(b), the part of the expenditure that is attributable to that intended use in a non-designated area is to be determined on a just and reasonable basis.
- (3) In this section—
- “non-designated area” means an area which is not a designated assisted area within the meaning of section 45K;
  - “the relevant arrangements” means—
    - (a) the transaction under which the expenditure is incurred, and
    - (b) any scheme or arrangements of which that transaction forms part.

#### **45M Exclusions from allowances under section 45K**

- (1) Expenditure incurred by a person is not first-year qualifying expenditure under section 45K if it is within subsection (2), (4), (6) or (7).
- (2) Expenditure is within this subsection if, at the time a claim is made under section 3 for a section 45K allowance in respect of the expenditure, the person who incurred the expenditure is, or forms part of, an undertaking within subsection (3).
- (3) An undertaking is within this subsection if one or both of the following conditions are met—

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- (a) it is reasonable to assume that the undertaking would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02);
  - (b) the undertaking is subject to an outstanding recovery order made by virtue of Article 108(2) of the Treaty on the Functioning of the European Union (Commission Decision declaring aid illegal and incompatible with the common market).
- (4) Expenditure is within this subsection if it is incurred for the purposes of a qualifying activity—
- (a) in the fishery or aquaculture sector, as covered by Council Regulation (EC) No 104/2000,
  - (b) in the coal sector, steel sector, shipbuilding sector or synthetic fibres sector,
  - (c) relating to the management of waste of undertakings, or
  - (d) relating to—
    - (i) the primary production of agricultural products,
    - (ii) on-farm activities necessary for preparing an animal or plant product for the first sale, or
    - (iii) the first sale of agricultural products by a primary producer to wholesalers, retailers or processors, in circumstances where that sale does not take place on separate premises reserved for that purpose.
- (5) In subsection (4)(c) the reference to waste of undertakings does not include waste of the person who incurred the expenditure or of any other person forming part of the same undertaking as that person.
- (6) Expenditure is within this subsection if it is incurred on a means of transport or transport equipment for the purposes of a qualifying activity in the road freight sector or the air transport sector.
- (7) Expenditure is within this subsection if a relevant grant or relevant payment is made towards—
- (a) that expenditure, or
  - (b) any other expenditure which is incurred by any person in respect of the same designated assisted area, and on the same single investment project, as that expenditure.
- (8) A section 45K allowance made in respect of first-year qualifying expenditure is to be withdrawn if—
- (a) after it is made, a relevant grant or relevant payment is made towards that expenditure, or
  - (b) within the period of 3 years beginning when that expenditure was incurred, a relevant grant or relevant payment is made towards any other expenditure which is incurred by any person in respect of the same designated assisted area, and on the same single investment project, as that expenditure.
- (9) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (8).

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- (10) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.
- (11) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.
- (12) In this section—
- “agricultural product”, “coal sector”, “steel sector”, “shipbuilding sector” and “synthetic fibres sector” have the same meaning as in the General Block Exemption Regulation;
- “General Block Exemption Regulation” means Commission Regulation (EC) No 800/2008 (General block exemption Regulation);
- “management” and “waste” have the meaning given by Article 1 of Directive 2006/12/EC of the European Parliament and of the Council;
- “relevant grant or relevant payment” means a grant or payment which is—
- (a) a State aid, other than an allowance under this Part, or
- (b) a grant or subsidy, other than a State aid, which the Treasury by order declares to be relevant for the purposes of the withholding of a section 45K allowance;
- “section 45K allowance” means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45K;
- “single investment project” has the same meaning as in the General Block Exemption Regulation;
- “undertaking” means—
- (a) an autonomous enterprise, or
- (b) an enterprise (not within paragraph (a)) and its partner enterprises (if any) and its linked enterprises (if any),
- and for this purpose “enterprise”, “autonomous enterprise”, “partner enterprises” and “linked enterprises” have the meaning given by Annex 1 to the General Block Exemption Regulation.
- (13) Nothing in this section limits references to “State aid” to State aid which is required to be notified to and approved by the European Commission.
- (14) For the purposes of this section references to expenditure incurred in respect of a designated assisted area includes expenditure incurred on the provision of things for use primarily in that area or on services to be provided primarily in that area.
- (15) The Treasury may by order make such provision amending this section as appears to them appropriate for the purpose of giving effect to any future amendments of or instruments replacing—
- (a) the General Block Exemption Regulation,

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- (b) the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02),
- (c) Council Regulation (EC) No 104/2000,
- (d) Directive 2006/12/EC of the European Parliament and of the Council, or
- (e) the Treaty on the Functioning of the European Union.

#### **45N Effect of plant or machinery subsequently being primarily for use outside designated assisted areas**

- (1) Expenditure on the provision of plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45K if, at any relevant time—
  - (a) the primary use to which the plant and machinery is put is other than in an area which was a designated assisted area within the meaning of section 45K at the time the expenditure was incurred, or
  - (b) the plant or machinery is held for use otherwise than primarily in an area which was such a designated assisted area at that time.
- (2) “Relevant time” means a time which—
  - (a) falls within the relevant period, and
  - (b) is a time when the plant or machinery is owned by—
    - (i) the person who incurred the expenditure, or
    - (ii) a person who is, or at any time in that period has been, connected with that person.
- (3) “The relevant period” means the period of 5 years beginning with—
  - (a) the day on which the plant or machinery in question is first brought into use for the purposes of a qualifying activity carried on by the company, or
  - (b) if earlier, the day on which it is first held for such use.
- (4) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).
- (5) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, that person must give notice to an officer of Revenue and Customs specifying how the return needs to be amended.
- (6) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.”

4 In section 46 (general exclusions applying to first-year qualifying expenditure), in subsection (1), at the appropriate place in the list insert—

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“section 45K (expenditure on plant and machinery for use in designated assisted areas).”

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5 (1) Section 52 (first-year allowances) is amended as follows.

(2) In subsection (3), at the appropriate place in the Table insert—

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“Expenditure qualifying 100%”  
 under section 45K  
 (expenditure on plant and  
 machinery for use in  
 designated assisted areas)

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- (3) In subsection (5)—
- (a) omit the “and” at the end of the entry for section 212T, and
  - (b) after that entry insert— “ section 212U (cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas), and ”.
- 6 In section 52A (prevention of double relief) for the words after “not” substitute “claim—
- (a) an annual investment allowance and a first-year allowance in respect of the same expenditure, or
  - (b) first-year allowances under two or more of the provisions listed in section 39 in respect of the same expenditure.”
- 7 (1) In Chapter 16B (cap on first-year allowances: zero-emission goods vehicles), after section 212T insert—

**“212U Cap on first-year allowances: expenditure on plant and machinery for use in designated assisted areas**

- (1) A section 45K allowance is not available in respect of expenditure (“the current expenditure”) incurred by a person (“the investor”) in respect of a particular designated assisted area—
  - (a) if section 45K allowances have previously been made to any person in respect of P&M expenditure of 125 million euros incurred in respect of that area and on the same single investment project as the current expenditure, or
  - (b) (where paragraph (a) does not apply) if, and to the extent that, the aggregate of—
    - (i) the P&M expenditure incurred by any person in respect of that area, and on the same single investment project as the current expenditure, in respect of which section 45K allowances have previously been made, and
    - (ii) the current expenditure,
 exceeds 125 million euros.
- (2) For the purposes of subsection (1), any reference to P&M expenditure incurred in respect of a designated assisted area is a reference to expenditure incurred on the provision of plant or machinery for use primarily in that area.
- (3) For the purposes of subsection (1), expenditure incurred in a currency other than the euro is to be converted into its equivalent in euros using the spot rate of exchange for the day on which the expenditure is incurred.
- (4) The Treasury may by regulations increase the amount specified in subsection (1)(a) and (b).



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(5) In this section—

“designated assisted area” has the meaning given by section 45K;

“section 45K allowance” means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45K;

“single investment project” has the same meaning as in Commission Regulation (EC) No 800/2008 (General block exemption Regulation).”

(2) Accordingly, in the heading for that Chapter omit “: **zero-emission goods vehicles**”.

8 The amendments made by this Schedule have effect for chargeable periods ending on or after 1 April 2012.

## SCHEDULE 12

Section 47

### FOREIGN INCOME AND GAINS

#### PART 1

##### INCREASED REMITTANCE BASIS CHARGE

###### *Increased charge*

1 Chapter A1 of Part 14 of ITA 2007 (remittance basis) is amended as follows.

2 (1) Section 809C (claim for remittance basis by long-term UK resident: nomination of foreign income and gains to which section 809H(2) is to apply) is amended as follows.

(2) In subsection (1), for paragraph (b) substitute—

“(b) meets the 12-year residence test or the 7-year residence test for that year.”

(3) After that subsection insert—

“(1A) An individual meets the 12-year residence test for a tax year if the individual has been UK resident in at least 12 of the 14 tax years immediately preceding that year.

(1B) An individual meets the 7-year residence test for a tax year if the individual—

(a) does not meet the 12-year residence test for that year, but

(b) has been UK resident in at least 7 of the 9 tax years immediately preceding that year.”

(4) In subsection (4), for “£30,000” substitute “—

(a) for an individual who meets the 12-year residence test for that year, £50,000;

(b) for an individual who meets the 7-year residence test for that year, £30,000.”

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- 3 (1) Section 809H (claim for remittance basis by long-term UK resident: charge) is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute—  
“(c) the individual meets the 12-year residence test or the 7-year residence test for the relevant tax year.”
- (3) After that subsection insert—  
“(1A) See section 809C(1A) and (1B) for when an individual meets the 12-year residence test or the 7-year residence test for a tax year.”
- (4) In subsection (4), for “£30,000”, in each place it occurs, substitute “ the applicable amount ”.
- (5) After subsection (5A) insert—  
“(5B) The applicable amount” is—  
(a) if the individual meets the 12-year residence test for the relevant tax year, £50,000;  
(b) if the individual meets the 7-year residence test for the relevant tax year, £30,000.”
- 4 For section 809V substitute—

**“809V Money paid to the Commissioners**

- (1) Subsection (2) applies to income or chargeable gains of an individual if—  
(a) the income or gains would (but for subsection (2)) be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom,  
(b) the money is brought to the United Kingdom by way of one or more direct payments to the Commissioners, and  
(c) the payments are made in relation to a tax year to which section 809H applies as regards the individual.
- (2) The income or chargeable gains are to be treated as not remitted to the United Kingdom to the extent that the payments do not exceed the applicable amount (as defined in section 809H).
- (3) Subsection (2) does not apply to payments if or to the extent that they are repaid by the Commissioners.”

*Application of Part 1*

- 5 The amendments made by this Part of this Schedule have effect for the tax year 2012-13 and subsequent tax years.

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## PART 2

### REMITTANCE FOR INVESTMENT PURPOSES

#### *Relief for investments*

6 For the italic heading preceding section 809V substitute “ *Relief for money used to pay tax etc* ”.

7 After section 809V insert—

#### *“Business investment relief*

#### **809VA Money or other property used to make investments**

- (1) Subsection (2) applies if—
  - (a) a relevant event occurs,
  - (b) but for subsection (2), income or chargeable gains of an individual would be regarded as remitted to the United Kingdom by virtue of that event, and
  - (c) the individual makes a claim for relief under this section.
- (2) The income or gains are to be treated as not remitted to the United Kingdom.
- (3) A “relevant event” occurs if money or other property—
  - (a) is used by a relevant person to make a qualifying investment, or
  - (b) is brought to or received in the United Kingdom in order to be used by a relevant person to make a qualifying investment.
- (4) Subsection (1)(b) includes a case where income or gains would be treated under section 809Y as remitted to the United Kingdom by virtue of the relevant event.
- (5) Subsection (2) applies by virtue of subsection (3)(b) to the extent only that the investment is made within the period of 45 days beginning with the day on which the money or other property is brought to or received in the United Kingdom.
- (6) Where some but not all of the money or other property is used to make the investment within that 45-day period, the part of the income or gains to which subsection (2) applies is to be determined on a just and reasonable basis.
- (7) Subsection (2) does not apply if the relevant event occurs, or the investment is made, as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (8) A claim for relief under this section must be made on or before the first anniversary of the 31 January following the tax year in which the income or gains would, but for subsection (2), be regarded as remitted to the United Kingdom by virtue of the relevant event.

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### **809VB Failure to invest within 45 days**

- (1) This section applies to any portion of the income or gains to which section 809VA(2) does not apply because the investment was not made within the period mentioned in section 809VA(5) (“the 45-day period”).
- (2) That portion is to be treated as not remitted to the United Kingdom to the extent that the remaining money or other property is taken offshore within the 45-day period.
- (3) Where some but not all of the remaining money or other property is taken offshore within the 45-day period, the part of the income or gains to which subsection (2) applies is to be determined on a just and reasonable basis.
- (4) If any remaining money or other property is taken offshore within the 45-day period, nothing in subsection (2) prevents anything subsequently done in relation to it (or anything deriving from it) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is subsequently done.
- (5) A reference to the “remaining” money or other property is to so much of the money or other property brought to or received in the United Kingdom as is not used within the 45-day period to make the investment (which may in some cases be all of it).

### **809VC Qualifying investments**

- (1) For the purposes of section 809VA, a person makes an investment if—
  - (a) shares in a company are issued to the person, or
  - (b) the person makes a loan (secured or unsecured) to a company.
- (2) The company is referred to as “the target company”.
- (3) The shares or the person's rights under the loan (or both) forming the subject of the investment are referred to as “the holding”.
- (4) The investment counts as a “qualifying investment” if conditions A and B are met when the investment is made.
- (5) Conditions A and B are defined in sections 809VD and 809VF.
- (6) A reference in this section to “shares” includes any securities.
- (7) If a loan agreement authorises a company to draw down amounts of a loan over a period of time—
  - (a) entry into the agreement does not count for the purposes of this section as the making of a loan, but
  - (b) a separate loan is to be treated as made each time an amount is drawn down under the agreement.
- (8) Accordingly—
  - (a) a separate investment is treated as made each time an amount is drawn down under the agreement, and

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- (b) the reference in subsection (3) to the person's rights under the loan applies only to so much of the person's rights as relate to the drawdown of that particular amount.

#### **809VD Condition A**

- (1) Condition A is that the target company is—
  - (a) an eligible trading company,
  - (b) an eligible stakeholder company, or
  - (c) an eligible holding company.
- (2) A company is an “eligible trading company” if—
  - (a) it is a private limited company,
  - (b) it carries on one or more commercial trades or is preparing to do so within the next 2 years, and
  - (c) carrying on commercial trades is all or substantially all of what it does (or of what it is reasonably expected to do once it begins trading).
- (3) A company is an “eligible stakeholder company” if—
  - (a) it is a private limited company,
  - (b) it exists wholly for the purpose of making investments in eligible trading companies (ignoring any minor or incidental purposes), and
  - (c) it holds one or more such investments or is preparing to do so within the next 2 years.
- (4) The reference in subsection (3) to making investments is to be read in accordance with section 809VC.
- (5) A company is an “eligible holding company” if—
  - (a) it is a member of an eligible trading group or of an eligible group that is reasonably expected to become an eligible trading group within the next 2 years,
  - (b) an eligible trading company in the group is a 51% subsidiary of it, and
  - (c) if the ordinary share capital that it owns in the eligible trading company is owned indirectly, each intermediary in the series is also a member of the group.
- (6) “Group” means a parent company and its 51% subsidiaries.
- (7) “Parent company” means a company that—
  - (a) has one or more 51% subsidiaries, but
  - (b) is not itself a 51% subsidiary of any company.
- (8) A group is an “eligible group” if the parent company and each of its 51% subsidiaries are private limited companies.
- (9) A group is an “eligible trading group” if—
  - (a) it is an eligible group, and
  - (b) carrying on commercial trades is all or substantially all of what the group does (taking the activities of its members as a whole).

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- (10) The reference in subsection (5) to owning ordinary share capital indirectly is to be read in accordance with section 1155 of CTA 2010.
- (11) A company is a “private limited company” if—
  - (a) it is a body corporate whose liability is limited,
  - (b) it is not a limited liability partnership, and
  - (c) none of its shares are listed on a recognised stock exchange.

### **809VE Commercial trades**

- (1) Section 809VD is to be read in accordance with this section.
- (2) A reference to a “trade” also includes—
  - (a) anything that is treated for corporation tax purposes as if it were a trade, and
  - (b) a business carried on for generating income from land (as defined in section 207 of CTA 2009).
- (3) A trade is a “commercial trade” if it is conducted on a commercial basis and with a view to the realisation of profits.
- (4) The carrying on of activities of research and development from which it is intended that a commercial trade will be derived, or will benefit, is to be treated as the carrying on of a commercial trade.
- (5) But preparing to carry on activities within subsection (4) is not to be treated as the carrying on of a commercial trade.

### **809VF Condition B**

- (1) Condition B is that no relevant person has (directly or indirectly) obtained or become entitled to obtain any related benefit, and no relevant person expects to obtain any such benefit.
- (2) A “benefit”—
  - (a) includes the provision of anything that would not be provided to the relevant person in the ordinary course of business, or would be provided but on less favourable terms, but
  - (b) does not include the provision of anything provided to the relevant person in the ordinary course of business and on arm's length terms.
- (3) A benefit is “related” if—
  - (a) it is directly or indirectly attributable to the making of the investment (whether it is obtained before or after the investment is made), or
  - (b) it is reasonable to assume that the benefit would not be available in the absence of the investment.
- (4) For the purposes of subsection (2)—
  - (a) a reference to the provision of anything is to the provision of anything in money or money's worth, including property, capital, goods or services of any kind, and

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- (b) “provision” includes any arrangement that allows a person to enjoy or benefit from the thing in question (whether temporarily or permanently).

### **809VG Income or gains treated as remitted following certain events**

- (1) Subsection (2) applies if—
  - (a) income or chargeable gains are treated under section 809VA(2) as not remitted to the United Kingdom as a result of a qualifying investment,
  - (b) a potentially chargeable event occurs after the investment is made, and
  - (c) the appropriate mitigation steps are not taken within the grace period allowed for each step.
- (2) The affected income or gains are to be treated as having been remitted to the United Kingdom immediately after the end of the relevant grace period.
- (3) Where the step required by section 809VI(2)(a) is not taken within the grace period allowed for that step, “the relevant grace period” is the grace period allowed for that step.
- (4) Otherwise, “the relevant grace period” is the grace period allowed for the step required by section 809VI(1) or (2)(b).
- (5) “The affected income or gains” means such portion of the income or gains mentioned in subsection (1)(a) as reflects the portion of the investment affected by the potentially chargeable event.
- (6) The portion of the investment affected is—
  - (a) if the potentially chargeable event is a disposal of a part of the holding (or a part of the remaining holding), a portion equal to the portion of the holding (or remaining holding) being disposed of, and
  - (b) otherwise, the whole of the investment.
- (7) Sections 809VN (order of disposals etc) and 809VO (investments made from mixed funds) make further provision for the purposes of this section.
- (8) If a qualifying investment is made using the money or other property mentioned in section 809VA(3) together with other funds—
  - (a) that investment is to be treated as two separate investments, one made using the money or other property mentioned in section 809VA(3) and one made using the other funds, and
  - (b) references in the business investment provisions to “the investment” and “the holding” relate only to the investment made using the money or other property mentioned in section 809VA(3).
- (9) If the potentially chargeable event mentioned in subsection (1)(b) is not the first such event to affect the investment, the income or gains mentioned in subsection (1)(a) do not include, as respects that investment—
  - (a) any part already treated under subsection (2) as remitted to the United Kingdom as a result of an earlier event,
  - (b) any part contained in amounts already taken offshore or re-invested by way of appropriate mitigation steps following an earlier event, or

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- (c) any part contained in amounts already used to make a tax deposit without which an amount mentioned in paragraph (b) would not have been enough to satisfy section 809VI(1) or (2)(b) (see section 809VK).

### **809VH Meaning of “potentially chargeable event”**

- (1) For the purposes of section 809VG, a “potentially chargeable event” occurs if—
  - (a) the target company is for the first time neither an eligible trading company nor an eligible stakeholder company nor an eligible holding company,
  - (b) the relevant person who made the investment (“P”) disposes of all or part of the holding,
  - (c) the extraction of value rule is breached, or
  - (d) the 2-year start-up rule is breached.
- (2) The extraction of value rule is breached if—
  - (a) value (in money or money's worth) is received by or for the benefit of P or another relevant person,
  - (b) the value is received—
    - (i) from an involved company, or
    - (ii) from anyone else but in circumstances that are directly or indirectly attributable to the investment or to any other investment made by a relevant person in an involved company, and
  - (c) the value is received other than by virtue of a disposal that is itself a potentially chargeable event.
- (3) But the extraction of value rule is not breached merely because a relevant person receives value that—
  - (a) is treated for income tax or corporation tax purposes as the receipt of income or would be so treated if that person were liable to such tax, and
  - (b) is paid or provided to the person in the ordinary course of business and on arm's length terms.
- (4) Each of the following is an “involved company”—
  - (a) the target company,
  - (b) if the target company is an eligible stakeholder company, any eligible trading company in which it has made or intends to make an investment,
  - (c) if the target company is an eligible holding company, any eligible trading company that is a 51% subsidiary of it, and
  - (d) any company that is connected with a company within paragraph (a), (b) or (c).
- (5) The 2-year start-up rule is breached if—
  - (a) immediately after the end of the period of 2 years beginning with the day on which the investment was made, the target company is non-operational, or



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- (b) at any time after the end of that period, the target company becomes non-operational.
- (6) The target company is “non-operational” at any time when—
- (a) it is an eligible trading company but is not trading,
  - (b) it is an eligible stakeholder company but—
    - (i) it holds no investments in eligible trading companies, or
    - (ii) none of the eligible trading companies in which it holds investments is trading, or
  - (c) it is an eligible holding company but—
    - (i) the group of which it is a member is not an eligible trading group, or
    - (ii) none of its 51% subsidiaries in the eligible trading group of which it is a member is an eligible trading company that is trading.
- (7) In subsection (6), “trading” means carrying on one or more commercial trades (including the carrying on of any activities treated under section 809VE(4) as the carrying on of a commercial trade).
- (8) If consideration for a disposal of all or part of the holding is or is to be paid in instalments, the disposal is to be treated for the purposes of this section as if it were separate disposals, one for each instalment (and each giving rise to a separate potentially chargeable event).
- (9) An event listed in subsection (1) does not count as a potentially chargeable event if it is due to an insolvency step taken for genuine commercial reasons (but this does not prevent the extraction of any value in connection with the insolvency step from counting as a potentially chargeable event).
- (10) For the purposes of subsection (9), an insolvency step is taken if—
- (a) the target company enters into administration or receivership or is wound up or dissolved,
  - (b) the target company is an eligible stakeholder company and any eligible trading company in which it holds an investment enters into administration or receivership or is wound up or dissolved,
  - (c) the target company is an eligible holding company and any eligible trading company in the group that is a 51% subsidiary of it enters into administration or receivership or is wound up or dissolved, or
  - (d) a similar step is taken in relation to a company mentioned in paragraph (a), (b) or (c) under the law of a country or territory outside the United Kingdom.

#### **809VI The appropriate mitigation steps**

- (1) If the potentially chargeable event is a disposal of all or part of the holding, the appropriate mitigation steps are regarded as taken if the whole of the disposal proceeds have been taken offshore or re-invested.
- (2) For any other case, the appropriate mitigation steps are regarded as taken if—
  - (a) P has disposed of the entire holding (or so much of it as P retains when the potentially chargeable event occurs), and

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- (b) the whole of the disposal proceeds have been taken offshore or re-invested.
- (3) But if the disposal proceeds exceed X, subsections (1) and (2)(b) apply only to so much of the proceeds as is equal to X.
- (4) “X” is—
  - (a) the sum originally invested, less
  - (b) so much of that sum as has, on previous occasions involving the same investment—
    - (i) been taken into account in determining the affected income or gains under section 809VG(2),
    - (ii) been taken offshore or re-invested in order to avoid the application of that section, or
    - (iii) been used to make a tax deposit without which the amount actually taken offshore or re-invested would not have been enough to satisfy subsection (1) or (2)(b) (see section 809VK).
- (5) “The sum originally invested” means the amount of the money, or the market value of the other property, used to make the investment.
- (6) Market value is to be assessed for these purposes as at the date of the relevant event (see section 809VA).
- (7) Proceeds are “re-invested” if a relevant person uses them to make another qualifying investment (or the proceeds are themselves a qualifying investment) whether in the same or a different company.
- (8) In cases where a breach of the extraction of value rule occurs in connection with the winding-up or dissolution of the target company—
  - (a) subsection (2)(a) does not apply,
  - (b) the reference in subsection (2)(b) to the disposal proceeds is to the value received, and
  - (c) references in this section and in succeeding provisions of the business investment provisions to the disposal proceeds are to be read as references to the value received.

#### **809VJ The grace period allowed for the appropriate mitigation steps**

- (1) The grace period allowed for the step mentioned in section 809VI(2)(a) is the period of 90 days beginning—
  - (a) if the potentially chargeable event is a breach of the extraction of value rule, with the day on which the value is received, and
  - (b) otherwise, with the day on which a relevant person first became aware or ought reasonably to have become aware of the potentially chargeable event.
- (2) The grace period allowed for the step mentioned in section 809VI(1) and (2) (b) is the period of 45 days beginning with the day on which the disposal proceeds first became available for use by or for the benefit of P or any other relevant person.

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- (3) An officer of Revenue and Customs may agree in a particular case to extend the grace period allowed for an appropriate mitigation step in exceptional circumstances.
- (4) An officer of Revenue and Customs may agree in a particular case to extend the grace period allowed for an appropriate mitigation step in circumstances specified in regulations made by the Commissioners.
- (5) Regulations under subsection (4) may have effect in relation to investments made before the day on which the regulations are made.
- (6) Nothing in subsection (4) or in regulations made under it limits the power conferred by subsection (3).
- (7) The powers conferred on officers of Revenue and Customs by subsections (3) and (4) include power to agree to extend a grace period for a length of time that is indefinite but is capable of becoming definite by means identified in the agreement (such as the satisfaction of conditions).

#### **809VK Retention of funds to meet CGT liabilities**

- (1) This section applies if—
  - (a) there is a disposal of all or part of the holding,
  - (b) the disposal counts as a potentially chargeable event or is part of the appropriate mitigation steps taken in consequence of a potentially chargeable event,
  - (c) a chargeable gain (but not a loss) accrues to P on the disposal,
  - (d) P is chargeable to capital gains tax (but not corporation tax) in respect of that gain, and
  - (e) the actual disposal proceeds are less than Y.
- (2) The difference between the actual disposal proceeds and Y is referred to in this section as “the shortfall”.
- (3) “The actual disposal proceeds” means the disposal proceeds but disregarding section 809Z8(4).
- (4) “Y” is the sum of—
  - (a) the amount (if any) that would, but for this section, be required to be taken offshore or re-invested in order to satisfy section 809VI(1) or (2)(b), and
  - (b) the amount found by applying the highest potential CGT rate to the amount (computed in accordance with TCGA 1992) of the chargeable gain accruing to P on the disposal.
- (5) The highest potential CGT rate is—
  - (a) if the chargeable gain accrues to P as the trustees of a settlement or accrues to the personal representatives of P, the rate specified in section 4(3) of TCGA 1992, and
  - (b) otherwise, the rate specified in section 4(4) of that Act (regardless of the rate at which income tax is chargeable in respect of P's income).

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- (6) If this section applies, the amount that is required to be taken offshore or re-invested in order to satisfy section 809VI(1) or (2)(b) is reduced by the permitted amount.
- (7) “The permitted amount” is so much of the shortfall as is used, within the grace period allowed for taking the disposal proceeds offshore or re-investing them, to make a deposit in respect of which a certificate of tax deposit is issued to P under section 12 of the National Loans Act 1968.
- (8) A reduction may not be made under subsection (6) unless—
  - (a) when details of the deposit are confirmed to Her Majesty's Revenue and Customs, the confirmation letter states that this section is intended to apply to the deposit, and
  - (b) the amount of the deposit is no greater than the shortfall.

### **809VL Effect of taking appropriate mitigation steps within grace period**

- (1) This section explains the effect for the purposes of this Chapter in cases where section 809VG(2) does not apply because the appropriate mitigation steps were taken within the grace period allowed for each step.
- (2) If disposal proceeds were taken offshore as part of those steps, nothing in section 809VA(2) prevents anything subsequently done in relation to those proceeds (or anything deriving from them) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is subsequently done.
- (3) If disposal proceeds were re-invested as part of those steps—
  - (a) the underlying income or gains continue to be treated under section 809VA(2) as not remitted to the United Kingdom, and
  - (b) the business investment provisions apply to the re-investment as they apply to the original investment.
- (4) In the application of the business investment provisions to the re-investment—
  - (a) treat the potentially chargeable event mentioned in section 809VG(1)(b) as the relevant event,
  - (b) treat the underlying income or gains as the income or gains treated under section 809VA(2) as not remitted to the United Kingdom as a result of the re-investment, and
  - (c) treat the amount used to make the re-investment as the sum originally invested.
- (5) If the re-investment is made using more than the minimum amount of disposal proceeds required to satisfy section 809VI(1) or (2)(b)—
  - (a) that investment is to be treated as two separate investments, one made using the minimum amount of disposal proceeds and one made using the excess, and
  - (b) references in the business investment provisions to “the investment” and “the holding” relate only to the investment made using the minimum amount of disposal proceeds.

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- (6) “The underlying income or gains” means the affected income or gains (within the meaning of section 809VG) or, if one part of the disposal proceeds is taken offshore and the other part re-invested, a corresponding proportion of the affected income or gains.
- (7) A further claim must be made in accordance with section 809VA in respect of the re-investment and, if no such claim is made on or before the first anniversary of the 31 January following the tax year in which the re-investment was made, section 809VG(2) applies, as respects the original investment, as if the appropriate mitigation steps had not been taken within the grace period allowed for each step.
- (8) Section 809VM makes further provision in cases involving a tax deposit.

### **809VM Cases involving tax deposits**

- (1) This section applies in cases where—
  - (a) section 809VG(2) did not apply because the appropriate mitigation steps were taken within the grace period allowed for each step,
  - (b) the amount required to be taken offshore or re-invested in order to satisfy section 809VI(1) or (2)(b) had been reduced under section 809VK, and
  - (c) but for that reduction, the amount that was actually taken offshore or re-invested would not have been enough to satisfy section 809VI(1) or (2)(b).
- (2) The tax deposit that gave rise to the reduction is referred to in this section as “the tax deposit”.
- (3) Use of the tax deposit to pay the relevant tax liability does not count as remitting the underlying income or gains to the United Kingdom (and, accordingly, section 809VA(2) continues to apply to the income or gains).
- (4) If any of the CTD conditions is breached, the underlying income or gains are to be treated as having been remitted to the United Kingdom immediately after the day on which the breach occurs.
- (5) “The underlying income or gains” means such portion of the affected income or gains (within the meaning of section 809VG) as is—
  - (a) represented by the payment, in the case of subsection (3), or
  - (b) affected by the breach, in the case of subsection (4).
- (6) The CTD conditions are as follows—
  - (a) the tax deposit must not be used to pay a tax liability other than the relevant tax liability,
  - (b) if any of the tax deposit is withdrawn by the depositor, the amount withdrawn must be taken offshore or re-invested within the period of 45 days beginning with the day on which the withdrawal was made, and
  - (c) any part of the tax deposit that has been neither used to pay a tax liability nor withdrawn by the due date must be withdrawn by the depositor and taken offshore or re-invested within the period of 45 days beginning with that date.

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- (7) Where the CTD conditions were not breached because the requisite amount was taken offshore or re-invested within the 45-day period mentioned in subsection (6)(b) or (c)—
- (a) section 809VL applies to the amount taken offshore or re-invested as it applies to disposal proceeds, but
  - (b) read the reference in section 809VL(4)(a) to the potentially chargeable event as a reference to—
    - (i) the withdrawal, in a case within subsection (6)(b), and
    - (ii) the due date, in a case within subsection (6)(c).
- (8) For the purposes of this section—
- (a) “the relevant tax liability” means P’s liability to capital gains tax for the tax year in which the disposal took place,
  - (b) “the due date” means the date by which the relevant tax liability is required to be paid,
  - (c) “re-invested” has the meaning given in section 809VI(7), and
  - (d) references to withdrawal include repayment for whatever reason.

#### **809VN Order of disposals etc**

- (1) Subsection (2) applies if at any time income or chargeable gains of an individual are treated under section 809VA as not remitted to the United Kingdom as a result of—
- (a) more than one qualifying investment made in the same target company,
  - (b) more than one qualifying investment made in companies in the same eligible trading group, or
  - (c) qualifying investments made in an eligible trading company and in an eligible stakeholder company that holds investments in that trading company.
- (2) In the application of section 809VG at that time—
- (a) treat the investments and holdings as if they were a single qualifying investment and a single holding, and
  - (b) assume that a disposal of all or part of that deemed single holding affects the deemed single investment in the order in which the qualifying investments were made (that is to say, on a first in, first out basis).
- (3) Subsection (4) applies if at any time—
- (a) income or chargeable gains of an individual are treated under section 809VA as not remitted to the United Kingdom as a result of one or more qualifying investments,
  - (b) in addition to that investment or those investments, a relevant person holds at least one other investment in the same target company, the same eligible trading group or a related eligible company, and
  - (c) that other investment is not a qualifying investment.
- (4) In the application of section 809VG at that time—
- (a) treat the investments and holdings as if they were a single investment and a single holding, and

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- (b) assume that a disposal of all or part of that deemed single holding is a disposal of a holding from a qualifying investment until the holdings from all the qualifying investments have been disposed of.
- (5) The reference to a “related eligible company”—
- (a) in relation to an eligible trading company, is to an eligible stakeholder company that holds investments in that company, and
  - (b) in relation to an eligible stakeholder company, is to an eligible trading company in which that company holds investments.
- (6) Subsections (2) and (4) apply whether the investments in question are held by the same relevant person or different ones.

### **809VO Investments made from mixed funds**

- (1) This section applies if—
- (a) but for section 809VA(2), income or gains would have been remitted to the United Kingdom by virtue of a relevant event, and
  - (b) section 809Q (transfers from mixed funds) would have applied in determining the amount that would have been so remitted.
- (2) The relevant event counts as an offshore transfer for the purposes of section 809R(4).
- (3) The holding is to be treated as containing a proportion of each kind of income and capital contained in the invested property equal to the fixed proportion.
- (4) “The fixed proportion” is the proportion of that kind of income or capital contained in the invested property by virtue of subsection (2).
- (5) “The invested property” means the money or other property used to make the investment.
- (6) Subsection (7) applies in cases where—
- (a) section 809VG(2) does not apply because an amount is taken offshore, re-invested or used to make a tax deposit, or
  - (b) section 809VM(4) does not apply because an amount is taken offshore or re-invested.
- (7) The amount taken offshore, re-invested or used to make a tax deposit is treated, immediately after that step, as containing the fixed proportion of each kind of income and capital contained in the holding.
- (8) In cases where section 809VG(2) applies—
- (a) the affected income or gains are so much of the fixed amount of each kind of income or gain mentioned in subsection (1)(a) as reflects the portion of the investment affected by the potentially chargeable event (see section 809VG(6)),
  - (b) “the fixed amount” is the amount of that kind of income or gain that the holding is treated as containing by virtue of subsection (3), and
  - (c) section 809Q does not apply in determining the affected income or gains.

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(9) Section 809R(2) and (3) and section 809S apply for the purposes of this section.”

8 After the sections inserted by paragraph 7 insert the heading “ *Relief for certain UK services* ”.

9 Immediately before section 809X insert the heading “*Exempt property relief*”.

*Formerly exempt property used to make investment*

10 In section 809Y (property that ceases to be exempt property treated as remitted), after subsection (5) insert—

“(6) Subsection (1) does not apply to property that ceases to be exempt property if—

- (a) the property, or anything into which it is converted, is used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which it ceased to be exempt property, and
- (b) the remittance basis user makes a claim for relief under this subsection on or before the first anniversary of the 31 January following the tax year in which the property ceases to be exempt property.

(7) The reference in subsection (6)(a) to anything into which property is converted is—

- (a) if the property is disposed of, the disposal proceeds, and
- (b) if the property is converted into money in some other way, the money into which it is converted,

(including where the disposal or conversion occurs after the property ceases to be exempt property).

(8) If subsection (1) does not apply by virtue of subsection (6)—

- (a) the property (or thing into which it was converted) used to make the investment is to be treated as containing or deriving from an amount of each kind of income and gain mentioned in section 809Q(4)(a) to (h) equal to the fixed amount,
- (b) the income or gains treated under section 809X as not remitted to the United Kingdom continue to be treated as not remitted to the United Kingdom even though the property has ceased to be exempt property, and
- (c) the business investment provisions apply to the income and gains as they apply to income or gains treated under section 809VA(2) as not remitted to the United Kingdom.

(9) “The fixed amount” is the amount of that kind of income or gain contained in the property when it was brought to, or received or used in, the United Kingdom (as mentioned in section 809X).

(10) If the investment is made using more than just the property (or thing into which it was converted), treat only the part made using the property (or thing into which it was converted) as “the investment” for the purposes of the business investment provisions.”



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- 11 In section 809Z2 (personal use rule), in subsection (2), omit paragraph (a) (including the word “and” at the end of it).
- 12 In section 809Z4 (temporary importation rule), in subsection (3)—
- (a) omit “or” at the end of paragraph (b),
  - (b) insert “ or ” at the end of paragraph (c), and
  - (c) after that paragraph insert—
    - “(d) all or any part of the income or chargeable gains contained in the property (or from which the property derives) is treated, or continues to be treated, under section 809VA(2), 809Y(8)(b) or 809YC(2) as not remitted to the United Kingdom.”

*Interpretation provisions*

- 13 In section 809M (meaning of “relevant person”), in subsection (1), for “sections 809L, 809N and 809O” substitute “ this Chapter ”.
- 14 In section 809Z7 (interpretation of Chapter), omit subsection (7).
- 15 For the heading of that section substitute “ **Meaning of “foreign income and gains” etc** ”.
- 16 After that section insert—

**“809Z8 Meaning of “the disposal proceeds”**

- (1) In this Chapter, in relation to a sale or other disposal, “the disposal proceeds” means—
- (a) the consideration for the disposal, less
  - (b) any agency fees that are deducted before the consideration is paid or otherwise made available to or for the benefit of the person making the disposal (“the transferor”) or any other relevant person.
- (2) The following rules apply in determining the consideration for the disposal.
- (3) If the consideration is provided in the form of anything other than money, the amount of the consideration is the market value of the thing at the time of the disposal.
- (4) If the disposal is made other than by way of a bargain made at arm's length, the disposal is deemed to be made for a consideration equal to the market value, immediately before the disposal, of the thing being disposed of.
- (5) Without limiting the generality of subsection (4), a disposal made to another relevant person or to a person connected with a relevant person is treated in all cases as made other than by way of a bargain at arm's length.
- (6) In subsection (1), “agency fees” means fees and other incidental costs of the disposal that are charged to the transferor by any person by or through whom the disposal is effected, but excluding any such fees or costs that—
- (a) are charged to the transferor by another relevant person, or
  - (b) are to be passed on to or otherwise applied for the benefit of a relevant person.

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- (7) The exclusion mentioned in subsection (6) does not apply to the extent that the fees or costs—
- (a) relate to a service actually provided by the relevant person to the transferor in connection with effecting the disposal, and
  - (b) do not exceed the amount that would be charged for that service if it were provided in the ordinary course of business and on arm's length terms.

### **809Z9 Taking proceeds etc offshore or investing them**

- (1) This section applies to a provision of this Chapter that is satisfied if something (for example, disposal proceeds) is taken offshore or used by a relevant person to make a qualifying investment.
- (2) Things are to be regarded as “taken offshore” if (and only if) they are taken outside the United Kingdom such that, on leaving the United Kingdom, they cease to be available—
- (a) to be used or enjoyed in the United Kingdom by or for the benefit of a relevant person, or
  - (b) to be used or enjoyed in any other way that would count as remitting income or gains to the United Kingdom.
- (3) If—
- (a) the thing required to be taken offshore or invested is money, and
  - (b) it is paid temporarily into an account pending satisfaction of the provision,
- the provision is satisfied only if the money actually taken offshore or invested is taken from the same account.
- (4) If the thing required to be taken offshore or invested is something in money's worth, the provision may be satisfied—
- (a) by taking the thing offshore or investing it, or
  - (b) by taking offshore or investing money or other property of the equivalent value.
- (5) “The equivalent value” is the market value of the thing in money's worth, assessed as at the date of the sale or other disposal in relation to which the provision is triggered.
- (6) If the consideration for a disposal is deemed under section 809Z8(4), the provision may be satisfied by taking offshore or investing money or other property of a value equal to—
- (a) the amount of the deemed consideration, less
  - (b) any agency fees (within the meaning of section 809Z8) that are deducted before the actual consideration is paid or otherwise made available to or for the benefit of a relevant person.
- (7) Subsections (4)(b) and (6) do not apply in the case of other property of the equivalent value if the other property is—
- (a) exempt property under section 809X,
  - (b) consideration for the disposal of any such exempt property, or

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- (c) consideration for the disposal of all or part of the holding (see section 809VC) relating to a qualifying investment.
- (8) Money or other property taken offshore or invested in accordance with subsection (4)(b) or (6) is to be treated for the purposes of this Chapter—
  - (a) as deriving from the thing required to be taken offshore or invested, and
  - (b) as having the same composition of kinds of income and capital as that thing.
- (9) A provision to which this section applies may be satisfied—
  - (a) by taking the whole thing offshore or investing the whole thing, or
  - (b) by taking one part offshore and investing the other part.
- (10) References in this section to something being “invested” are to something being used by a relevant person to make a qualifying investment.
- (11) The provisions to which this section applies include section 809VB(2) but in that case—
  - (a) disregard references in this section to investment, and
  - (b) the assessment date for the purposes of subsection (5) is the date of the relevant event (see section 809VA(3)(b)).

### **809Z10 General interpretation**

In this Chapter—

“the business investment provisions” means sections 809VA to 809VO;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“market value” has the same meaning as in TCGA 1992 (see in particular sections 272 and 273 of that Act);

“qualifying investment” has the meaning given by section 809VC (and references to making a qualifying investment are to be read in accordance with that section);

“relevant person” has the meaning given by section 809M;

“the remittance basis user”, in relation to income or chargeable gains of an individual, means that individual.”

#### *Application of Part 2*

- 17 The amendments made by this Part of this Schedule have effect where the relevant event (as defined in section 809VA of ITA 2007) or the ceasing to be exempt property (as defined in section 809Y of that Act) occurs on or after 6 April 2012.

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### PART 3

#### SALES OF EXEMPT PROPERTY

##### *Relief from deemed remittance rule*

18 After section 809Y of ITA 2007 (property that ceases to be exempt property treated as remitted) insert—

**“809YA Exception to section 809Y: proceeds taken offshore or invested**

- (1) Section 809Y(1) does not apply to property if—
  - (a) it ceases to be exempt property because the whole of it is sold whilst it is in the United Kingdom, and
  - (b) conditions A to F are met.
- (2) Condition A is that the sale is to a person other than a relevant person.
- (3) Condition B is that the sale is by way of a bargain made at arm's length.
- (4) Condition C is that, once the sale is completed, no relevant person—
  - (a) has any interest in the property,
  - (b) is able or entitled to benefit from the property by virtue of any interest, right or arrangement, or
  - (c) has any right (whether conditional or unconditional) to acquire any interest mentioned in paragraph (a) or ability or entitlement mentioned in paragraph (b).
- (5) Condition D is that the whole of the disposal proceeds are released (whether in one go or in instalments) on or before the final deadline.
- (6) “The final deadline” is the first anniversary of the 5 January following the tax year in which the property ceases to be exempt property (within the meaning of section 809Y).
- (7) Condition E is that—
  - (a) the whole of the disposal proceeds are taken offshore or used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which the proceeds are released, or
  - (b) if the disposal proceeds are paid in instalments, each instalment is taken offshore or used by a relevant person to make a qualifying investment within the period of 45 days beginning with the day on which the instalment is released.
- (8) But if any of the disposal proceeds are released in the period of 45 days ending with the final deadline, Condition E is satisfied, as respects those proceeds, only if they are taken offshore or used by a relevant person to make a qualifying investment on or before the final deadline.
- (9) Condition F is that, if Condition E is satisfied wholly or in part by using disposal proceeds to make a qualifying investment, the remittance basis user makes a claim for relief under section 809YC(2) on or before the first

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anniversary of the 31 January following the tax year in which the property is sold.

- (10) For the purposes of this section, proceeds or instalments are “released” on the day on which they first become available for use by or for the benefit of any relevant person.
- (11) This section does not apply if the sale is made as part of or as a result of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### **809YB Condition E: supplementary**

- (1) An officer of Revenue and Customs may agree in a particular case to extend any period within which disposal proceeds (or instalments) must be taken offshore or used by a relevant person to make a qualifying investment in order to satisfy Condition E.
- (2) The power to agree to an extension is exercisable only in exceptional circumstances and only if the remittance basis user requests such an extension.

### **809YC Effect of disappling section 809Y**

- (1) This section has effect if section 809Y(1) does not apply to property by virtue of section 809YA.
- (2) The income and gains treated under section 809X as not remitted to the United Kingdom continue to be treated after the sale as not remitted to the United Kingdom even though the property has ceased to be exempt property.
- (3) But nothing in subsection (2) prevents anything done in relation to any part of the disposal proceeds after that part is taken offshore (or used to make a qualifying investment) from counting as a remittance of the underlying income or gains to the United Kingdom at the time when the thing is done.
- (4) Treat the disposal proceeds as containing or deriving from an amount of each kind of income and gain mentioned in section 809Q(4)(a) to (h) equal to the amount of that kind of income or gain contained in the exempt property when it was brought to, or received or used in, the United Kingdom (as mentioned in section 809X).
- (5) Where Condition E was met by using the disposal proceeds to make a qualifying investment—
  - (a) the business investment provisions apply to the income and gains that continue, by virtue of subsection (2), to be treated as not remitted as they apply to income or gains that are treated under section 809VA(2) as not remitted, and
  - (b) if the investment was made using more than just the disposal proceeds, treat only the part of the investment made using the disposal proceeds as “the investment” for the purposes of those provisions.

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### **809YD Chargeable gains accruing on sales of exempt property**

- (1) This section applies to an individual (“P”) if—
  - (a) a chargeable gain (but not a loss) accrues to a person on a sale of exempt property,
  - (b) but for section 809YA, section 809Y(1) would have applied to the property by virtue of the sale, and
  - (c) P is either—
    - (i) the person to whom the gain accrues, or
    - (ii) a person to whom a part of the gain is treated as accruing under section 13 of TCGA 1992 (members of non-resident companies).
- (2) The relevant UK gain is to be treated for the purposes of this Chapter as if—
  - (a) it were a foreign chargeable gain of P, and
  - (b) in the case of section 809E, it were not part of P's UK income and gains.
- (3) Accordingly, if section 809F applies to P for the applicable tax year and P is not domiciled in the United Kingdom in that year, the relevant UK gain is charged in accordance with section 12 of TCGA 1992 as if it were a foreign chargeable gain.
- (4) The relevant UK gain is—
  - (a) in a case falling within subsection (1)(c)(i), the gain accruing to P,
  - (b) in a case falling within subsection (1)(c)(ii), the part of the gain treated as accruing to P.
- (5) The applicable tax year is —
  - (a) if section 10A of TCGA 1992 (temporary non-residents) applies in P's case and the relevant UK gain is within subsection (2) of that section, the year of return as defined in that section,
  - (b) otherwise, the tax year in which the relevant UK gain accrues.
- (6) In applying this Chapter to the relevant UK gain—
  - (a) treat the amount of any gains mentioned in section 809Q(4)(e) contained in the disposal proceeds by virtue of section 809YC(4) as increased by the amount of the relevant UK gain,
  - (b) disregard section 809U, and
  - (c) anything done in relation to any part of the disposal proceeds before the part is taken offshore or used to make a qualifying investment (or both) does not count as a remittance to the United Kingdom of any of the relevant UK gain.
- (7) The relevant UK gain is to be treated for the purposes of the following provisions of TCGA 1992 as if it fell within the definition of foreign chargeable gains in section 12(4) of that Act—
  - (a) section 10A,
  - (b) section 12,
  - (c) section 14A, and
  - (d) sections 16ZB to 16ZD.

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- (8) This section has effect despite section 14A(2) of TCGA 1992.
- (9) This section does not apply with respect to a chargeable gain if P gives notice to Her Majesty's Revenue and Customs under this subsection.
- (10) A notice under subsection (9)—
  - (a) must be in writing and must identify the gain in question,
  - (b) must be given on or before the first anniversary of the 31 January following the applicable tax year, and
  - (c) may not be revoked after that first anniversary.”

### *Application of Part 3*

- 19 The amendment made by this Part of this Schedule has effect in relation to exempt property that is sold on or after 6 April 2012 (including property sold pursuant to a contract entered into before that date so long as the contract only becomes unconditional on or after that date).

## **PART 4**

### NOMINATED INCOME

#### *Disapplication of ordering rules*

- 20 (1) Section 809I of ITA 2007 (remittance basis charge: income and gains treated as remitted) is amended as follows.
- (2) In subsection (1)—
    - (a) omit “and” at the end of paragraph (a), and
    - (b) at the end of paragraph (b) insert “, and
    - (c) the £10 test is met for that year.”
  - (3) In subsection (3), after “earlier tax year” insert “ (each such year for which the individual has made a nomination under that section being referred to as a “nomination year”) ”.
  - (4) After subsection (4) insert—
    - “(5) The £10 test is met for the tax year mentioned in subsection (1)(a) (“year X”) if, taking each nomination year separately, the cumulative total as respects at least one nomination year exceeds £10.
  - (6) In relation to a nomination year—
    - (a) “the cumulative total” means the sum, for all the tax years in aggregate up to and including year X, of the amounts of relevant income and gains remitted to the United Kingdom in those tax years from that nomination year, and
    - (b) “relevant income and gains” means the income and chargeable gains nominated by the individual under section 809C for that nomination year.”

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### *Application of Part 4*

- 21 The amendments made by this Part of this Schedule have effect for determining whether section 809I of ITA 2007 applies for the tax year 2012-13 or any subsequent tax year.

## SCHEDULE 13

Section 48

### EMPLOYER ASSET-BACKED PENSION CONTRIBUTIONS ETC

#### PART 1

##### DENIAL OF RELIEF FOR CONTRIBUTIONS PAID DURING PERIOD 29 NOVEMBER 2011 TO 21 FEBRUARY 2012

- 1 In Chapter 4 of Part 4 of FA 2004 (registered pension schemes: tax reliefs and exemptions) after section 196A insert—

#### **“196B Employer asset-backed contributions: denial of relief (1)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A, B and C are met.
- (2) Condition A is that—
- (a) under an arrangement (“the asset-backed arrangement”)—
    - (i) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
    - (ii) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
    - (iii) the lender, or a person connected with the lender, is entitled to payments in respect of the security,
  - (b) the borrower is E or a person connected with E, and
  - (c) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),
- and the case is not one in relation to which either condition A in section 196C or condition A in section 196D is met.
- (3) For the purposes of subsection (2)(a)(iii) it does not matter if an entitlement of the lender, or a person connected with the lender, is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.
- (5) Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned in subsection (2)(a)(iii) has been, or is to be, determined (wholly or partly) on the basis that, in essence, the whole or a



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part of the advance represents a loan which is (wholly or partly) to be repaid by way of one or more of those payments.

- (6) For the purposes of subsection (5) it does not matter—
- (a) that the repayment of the loan might be subject to any condition, or
  - (b) that the accounts of any person do not record a financial liability in respect of the whole or a part of the advance or that the whole or a part of the advance is not otherwise treated as representing a loan for the purposes of the accounts of any person,
- but, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (7) For the purposes of this section—
- (a) the borrower and the lender are not connected with one another if that would otherwise be the case,
  - (b) if the borrower is not E, references to a person connected with the borrower include a person connected with E who would not otherwise be connected with the borrower, and
  - (c) “loan” includes any advance of money.

### **196C Employer asset-backed contributions: denial of relief (2)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
- (a) under an arrangement (“the asset-backed arrangement”) a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
  - (b) the transferor is E or a person connected with E,
  - (c) the transferor, or a person connected with the transferor, is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  - (d) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from a person (“the lender”) other than the transferor,
  - (e) the advance is (wholly or partly) paid or provided by the lender out of E’s contribution (directly or indirectly),
  - (f) there is a relevant change in relation to the partnership (see section 196E), and
  - (g) under the asset-backed arrangement the share in the partnership’s profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) If the transferor is not E, for the purposes of this section references to a person connected with the transferor include a person connected with E who would not otherwise be connected with the transferor.

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- (4) For the purposes of subsection (2)(g) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.
- (5) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

### **196D Employer asset-backed contributions: denial of relief (3)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E's contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
  - (a) a partnership holds an asset (“the security”) at any time before an arrangement (“the asset-backed arrangement”) is made,
  - (b) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
  - (c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),
  - (d) there is a relevant change in relation to the partnership (see section 196E), and
  - (e) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196E) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not a structured finance arrangement.

### **196E What is a “relevant change in relation to the partnership” etc?**

- (1) For the purposes of sections 196C and 196D there is a relevant change in relation to the partnership if condition X or Y is met.
- (2) Condition X is that, in connection with the asset-backed arrangement, the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition Y is that—
  - (a) in connection with the asset-backed arrangement, there is at any time a change in a member's share in the partnership's profits, and
  - (b) the member is the lender or a person connected with the lender or a person who in connection with the asset-backed arrangement becomes at any time connected with the lender.
- (4) For the purposes of subsections (2) and (3) an event occurs in connection with the asset-backed arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.

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- (5) For the purposes of sections 196C and 196D references to the person involved in the relevant change are—
- (a) if it is condition X that is met, to the lender or the person connected with the lender (as the case may be), and
  - (b) if it is condition Y that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

### **196F Employer asset-backed contributions: anti-avoidance**

- (1) This section applies if—
- (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met,
  - (d) at any time (“the relevant time”) E, or a person connected with E, enters into an arrangement (“the avoidance arrangement”), and
  - (e) the main purpose, or one of the main purposes, of E or the person connected with E in entering into the avoidance arrangement is to secure that the total amount of the relevant payments will be less than the amount of E’s contribution.
- (2) If the relevant time is the same as the time at which the advance is received or earlier, section 196B, 196C or 196D (as the case may be) applies in relation to E’s contribution as if condition B in that section were met.
- (3) Otherwise, the amount of the relevant financial liability as at the relevant time is treated as follows as relevant—
- (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the relevant time falls, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant time falls.
- (4) The amount treated as profit or income by subsection (3)(a) or (b) is not to exceed the total amount of relief given in respect of E’s contribution.
- (5) For the purposes of this section—
- (a) “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be),
  - (b) “the relevant financial liability” means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,
  - (c) “the relevant payments” means the payments which reduce that liability as so mentioned, and

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- (d) the amount of the relevant financial liability as at the relevant time is to be determined in accordance with generally accepted accounting practice.

**196G Employer asset-backed contributions: reduction of financial liability under structured finance arrangement**

- (1) This section applies if—
  - (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
  - (d) there occurs an event (“the relevant event”)—
    - (i) which is not the making of a relevant payment, but
    - (ii) by virtue of which, in accordance with generally accepted accounting practice, the amount of the relevant financial liability is reduced to nil or in part.
- (2) If the relevant financial liability is reduced to nil, Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (as the case may be) is no longer to apply in relation to the asset-backed arrangement from when the relevant event occurs.
- (3) But no person is, by virtue of subsection (2), to be placed in a position which is more advantageous than the position in which the person would have been had this section never applied; and, in order to give effect to this principle, such assessments to tax or adjustments to any assessment to tax as are just and reasonable are to be made.
- (4) In any case, the amount of the reduction of the relevant financial liability mentioned in subsection (1)(d) is treated as follows as relevant—
  - (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E’s loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E’s accounting period in which the relevant event occurs, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant event occurs.
- (5) The amount treated as profit or income by subsection (4)(a) or (b) is not to exceed the total amount of relief given in respect of E’s contribution.
- (6) For the purposes of this section—
  - (a) “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be),
  - (b) “the relevant financial liability” means the financial liability mentioned in section 809BZA(3), 809BZF(3) or 809BZJ(3) of ITA 2007 or section 758(3), 763(3) or 767(3) of CTA 2010 (as the case may be) in respect of the advance,

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- (c) “relevant payment” means a payment which reduces that liability as so mentioned, and
- (d) the amount of the relevant financial liability before its reduction by virtue of the relevant event and the amount of the reduction are to be determined in accordance with generally accepted accounting practice.

### **196H Employer asset-backed contributions: extension of section 196G**

- (1) This section applies if—
  - (a) an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
  - (d) after the beginning of 21 March 2012, an event (“the relevant event”) listed in subsection (4) occurs.
- (2) Section 196G applies as if the relevant event were an event (other than the making of a relevant payment) by virtue of which, in accordance with generally accepted accounting practice, the amount of the relevant financial liability is reduced to nil.
- (3) For this purpose, in section 196G(4) references to E’s accounting period, or the tax year, in which the relevant event occurs are to be read as references to E’s accounting period, or the tax year, in which falls the time immediately before the occurrence of the relevant event.
- (4) The events are—
  - (a) if E is a company within the charge to corporation tax when E’s contribution is paid, E ceases to be within that charge;
  - (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E’s contribution is paid, that provision ceases to apply in relation to E;
  - (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E’s contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
  - (d) in any case—
    - (i) if E is a company, E enters administration or the winding up of E starts;
    - (ii) if E is a partnership, the partnership is dissolved;
    - (iii) if E is an individual, E dies.
- (5) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of subsection (4)(d)(i).

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### **196I Employer asset-backed contributions: “advances” under structured finance arrangements**

- (1) This section applies if—
  - (a) an employer pays a contribution under a registered pension scheme,
  - (b) condition A in section 196B, 196C or 196D is met,
  - (c) the asset-backed arrangement is a structured finance arrangement and, accordingly, condition B in section 196B, 196C or 196D (as the case may be) is not met, and
  - (d) the advance gives rise to a loan within the meaning of Chapter 3 (see section 162).
- (2) Section 180(4) does not prevent the advance from being a scheme administration employer payment (if it would otherwise do so).
- (3) For the purposes of this section “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196C or 196D (as the case may be).

### **196J Employer asset-backed contributions: supplementary**

- (1) This section applies for the purposes of sections 196B to 196I.
- (2) References to relief being given in respect of a contribution paid by an employer under a registered pension scheme are references to relief being given by way of—
  - (a) the contribution being deducted in computing the amount of the employer's profits for the purposes of Part 2 of ITTOIA 2005 or Part 3 of CTA 2009 (trading income),
  - (b) the contribution being treated as an expense of management of the employer for the purposes of Chapter 2 of Part 16 of CTA 2009 (expenses of management: companies with investment business), or
  - (c) the contribution being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) Whether a person is connected with another person is determined in accordance with section 1122 of CTA 2010.
- (4) “Structured finance arrangement” means an arrangement which is a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (structured finance arrangements).
- (5) Sections 774 to 776 of CTA 2010 apply as they apply for the purposes of Chapter 2 of Part 16 of that Act.”

2 In section 280(1) of FA 2004 (abbreviations)—

- (a) omit the “and” after the definition of “ITA 2007”, and
- (b) after the definition of “CTA 2009” insert “, and

“CTA 2010” means the Corporation Tax Act 2010”.

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- 3
- (1) The amendment made by paragraph 1 above has effect in accordance with sub-paragraphs (2) to (6); and the amendments made by paragraph 2 above have effect accordingly.
  - (2) Sections 196B to 196J of FA 2004 have effect in relation to contributions paid by employers on or after 29 November 2011 but before 22 February 2012.
  - (3) Section 196G of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 where the event mentioned in section 196G(1)(d) occurs on or after that date (and, for the purpose of applying section 196G in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).
  - (4) In cases where the relevant event occurs before 21 March 2012, section 196G has effect as if subsection (3) were omitted.
  - (5) Section 196H of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 (and, for the purpose of applying section 196H in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).
  - (6) Section 196I of FA 2004 also has effect in relation to contributions paid by employers before 29 November 2011 (and, for the purpose of applying section 196I in relation to such contributions, assume that sections 196B to 196D also have effect in relation to such contributions).

## PART 2

### TRANSITIONAL PROVISION RELATING TO PART 1

#### *Application and interpretation*

- 4
- (1) This Part of this Schedule applies if—
    - (a) before 29 November 2011, an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme (“the relevant scheme”),
    - (b) at any time, relief is given in respect of E’s contribution,
    - (c) if the reference in paragraph 3(2) above to 29 November 2011 were instead a reference to the date on which E’s contribution is paid, E would have no entitlement to relief in respect of E’s contribution by virtue of section 196B, 196C or 196D of FA 2004, and
    - (d) the asset-backed arrangement is not completed before 29 November 2011.
  - (2) For the purposes of sub-paragraph (1)(c) section 196F of FA 2004 is to be ignored.
- 5
- For the purposes of this Part of this Schedule—
- (a) terms used in section 196B, 196C or 196D of FA 2004 (as the case may be) have the same meaning as in that section, and
  - (b) as necessary, assume that section 196B, 196C or 196D of FA 2004 (as the case may be) has effect in relation to E’s contribution.
- 6
- (1) This paragraph applies for the purposes of this Part of this Schedule.
  - (2) Sub-paragraph (3) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.

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- (3) The asset-backed arrangement is “completed” when neither the lender nor any person connected with the lender is any longer entitled under the asset-backed arrangement (conditionally or unconditionally) to payments in respect of the security.
- (4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.
- (5) The asset-backed arrangement is “completed”—
- (a) when the share in the partnership's profits of the person involved in the relevant change is no longer to be determined under the asset-backed arrangement (conditionally or unconditionally) by reference (wholly or partly) to payments in respect of the security, or
  - (b) if earlier, when no responsible authority is any longer entitled (conditionally or unconditionally) to any payments in connection with the asset-backed arrangement.
- (6) In sub-paragraph (5)(b) the reference to payments are to payments of any type including drawings or distributions from a partnership, payments in respect of the security and other payments in respect of an asset (as read in accordance with section 776(4)(b) of CTA 2010).
- (7) “Responsible authority” means—
- (a) the persons who from time to time are the trustees of the relevant scheme, or
  - (b) the persons who from time to time are the persons controlling the management of the relevant scheme,
- in their capacity as such.
- (8) A responsible authority is entitled to a payment “in connection with” the asset-backed arrangement if it is entitled to the payment directly or indirectly in consequence of the arrangement or otherwise in connection with the arrangement.
- 7 (1) In this Part of this Schedule “the completion day” means the earliest of the following—
- (a) the day on which the asset-backed arrangement is to be completed determined as at the beginning of 29 November 2011;
  - (b) the day on which the asset-backed arrangement is actually completed;
  - (c) the day on which a completion event occurs (see sub-paragraphs (2) to (5));
  - (d) if an event falling within paragraph 8 occurs, the day on which falls the time immediately before the occurrence of the event.
- (2) To determine if a completion event occurs for the purposes of sub-paragraph (1)(c) first determine, as at the beginning of 22 February 2012, the following—
- (a) the number of payments to be made after the beginning of 22 February 2012 to which a responsible authority is entitled in connection with the asset-backed arrangement,
  - (b) what the amounts of those payments are to be, and
  - (c) the times at which those payments are to be made.
- (3) A completion event occurs for the purposes of sub-paragraph (1)(c) if, after the beginning of 22 February 2012—
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise—



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- (i) there is a change in the number of payments to be made from that determined under sub-paragraph (2),
      - (ii) there is a significant change in the amount of a payment to be made from that so determined, or
      - (iii) there is a significant change in the time at which a payment is to be made from that so determined,
    - (b) a payment determined under sub-paragraph (2) is not made,
    - (c) a payment determined under sub-paragraph (2) is made but its amount is significantly different from the amount so determined for the payment, or
    - (d) a payment determined under sub-paragraph (2) is made but is made at a time significantly different from the time so determined for the payment.
  - (4) In sub-paragraphs (2) and (3) references to payments are to payments of any type including drawings or distributions from a partnership, payments in respect of the security and other payments in respect of an asset (as read in accordance with section 776(4)(b) of CTA 2010).
  - (5) For the purposes of sub-paragraph (3)(b) to (d) it does not matter if the event in question is authorised by a term of the asset-backed arrangement or any other arrangement or results from the occurrence or non-occurrence of another event which is so authorised.
- 8 (1) The events falling within this paragraph are those listed in sub-paragraph (2).
- But an event falls within this paragraph only if it occurs after the beginning of 21 March 2012.
- (2) The events are—
- (a) if E is a company within the charge to corporation tax when E's contribution is paid, E ceases to be within that charge;
  - (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E's contribution is paid, that provision ceases to apply in relation to E;
  - (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E's contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
  - (d) in any case—
    - (i) if E is a company, E enters administration or the winding up of E starts;
    - (ii) if E is a partnership, the partnership is dissolved;
    - (iii) if E is an individual, E dies.
- (3) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of sub-paragraph (2)(d)(i).

*Certain tax consequences not to have effect*

- 9 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004, and

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- (b) the asset-backed arrangement would have the relevant effect (ignoring this paragraph).
- (2) The asset-backed arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
- (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
  - (c) the borrower or a person connected with the borrower becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).
- (4) But if the borrower is a partnership the relevant effect is that—
- (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
  - (c) a member of the partnership becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).
- (5) In sub-paragraphs (3) and (4) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- 10 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C of FA 2004, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) In such a case—
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to the transferor, or any person connected with the transferor, as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
- (a) an amount of income on which the transferor, or the person connected with the transferor, would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the transferor, or the person connected with the transferor, is not so brought into account, or
  - (c) the transferor, or the person connected with the transferor, becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).

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- (4) In sub-paragraph (3) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- (5) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196C(2)(g) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 11 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196D of FA 2004, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) The relevant effect is that—
- (a) an amount of income on which a relevant member would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member is not so brought into account, or
  - (c) a relevant member becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).
- (3) A relevant member is a person who—
- (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.
- (4) In sub-paragraph (2) “amount” means an amount which arises on or after 29 November 2011 but on or before the completion day.
- (5) If this paragraph applies—
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (6) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196D(2)(e) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.

#### *Adjustments*

- 12 (1) For the purposes of paragraphs 13 and 14—
- (a) amount A is the total amount of relief given in respect of E's contribution,
  - (b) amount B is the total of the following amounts—
    - (i) any amounts of income which are charged to tax by virtue of paragraph 9, 10 or 11 above (as the case may be),
    - (ii) any amounts brought into account in calculating income for tax purposes by virtue of paragraph 9, 10 or 11 above (as the case may be) (so far as not reflected in sub-paragraph (i)), and

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- (iii) any amounts stopped from being the subject of an income deduction by virtue of paragraph 9, 10 or 11 above (as the case may be) (so far as not reflected in sub-paragraph (i) or (ii)), and
  - (c) subject to sub-paragraph (7), amount C is the amount of the payment mentioned in sub-paragraph (4) or (6) (as the case may be) so far as the payment—
    - (i) is made under the asset-backed arrangement on the completion day,
    - (ii) is not reflected in amount B,
    - (iii) is not the subject of an income deduction, and
    - (iv) is not a contribution paid by E under the relevant scheme but nevertheless becomes (directly or indirectly) part of the sums held for the purposes of the relevant scheme.
- (2) In sub-paragraph (1) “income deduction” means a deduction to which any person is entitled—
  - (a) in calculating income for tax purposes, or
  - (b) from total income or total profits.
- (3) Sub-paragraph (4) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196B of FA 2004.
- (4) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which the borrower, or a person connected with the borrower, makes to the lender, or a person connected with the lender, in order to acquire—
  - (a) the security, or
  - (b) any asset substituted for the security under the asset-backed arrangement.
- (5) Sub-paragraph (6) applies if the section which would have applied as mentioned in paragraph 4(1)(c) above is section 196C or 196D of FA 2004.
- (6) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which E, or a person connected with E, makes—
  - (a) to the lender, or a person connected with the lender, in order to reverse the relevant change in relation to the partnership, or
  - (b) otherwise to a responsible authority in order to buy out the authority's interest in any partnership involved in the asset-backed arrangement.
- (7) Amount C is to be taken to be nil if—
  - (a) the completion day is on or after 22 February 2012,
  - (b) on or before the completion day, a commitment (whether or not legally enforceable and whether or not subject to any conditions) is given (directly or indirectly) to a relevant person, and
  - (c) the commitment—
    - (i) is a commitment to secure that a person receives money or another asset, and
    - (ii) is linked (directly or indirectly) to the making of the payment covered by amount C.
- (8) In sub-paragraph (7)(b) “relevant person” means—
  - (a) E;
  - (b) a person connected with E;

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- (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership.
- (9) But “relevant person” does not include a responsible authority.
- 13 (1) This paragraph applies if amount A exceeds the sum of amounts B and C.
- (2) The amount of the excess is treated as follows as relevant—
- (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the beginning of the completion day falls, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the beginning of the completion day falls.
- 14 If the sum of amounts B and C exceeds amount A—
- (a) E is to be treated as having paid a contribution under the relevant scheme in respect of any individual of an amount equal to the excess,
  - (b) the contribution is to be treated as having been paid at the beginning of the completion day, and
  - (c) E is to be given relief as provided for by section 196 of FA 2004 accordingly.

### PART 3

#### DENIAL OF RELIEF FOR CONTRIBUTIONS PAID ON OR AFTER 22 FEBRUARY 2012

- 15 In Chapter 4 of Part 4 of FA 2004 (registered pension schemes: tax reliefs and exemptions) after section 196A insert—

#### “196B Employer asset-backed contributions: denial of relief (1)

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E's contribution”) paid by E under a registered pension scheme if conditions A, B and C are met.
- (2) Condition A is that—
  - (a) under an arrangement (“the asset-backed arrangement”)—
    - (i) a person (“the borrower”) receives money or another asset (“the advance”) from another person (“the lender”),
    - (ii) the borrower, or a person connected with the borrower, makes a disposal of an asset (“the security”) to or for the benefit of the lender or a person connected with the lender, and
    - (iii) the lender, or a person connected with the lender, is entitled to payments in respect of the security,
  - (b) the borrower is E or a person connected with E, and

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- (c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),  
and the case is not one in relation to which either condition A in section 196D or condition A in section 196F is met.
- (3) For the purposes of subsection (2)(a)(iii) it does not matter if an entitlement of the lender, or a person connected with the lender, is subject to any condition.
- (4) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196C).
- (5) Condition C is that it is reasonable to suppose that the amount of one or more of the payments mentioned in subsection (2)(a)(iii) has been, or is to be, determined (wholly or partly) on the basis that, in essence, the whole or a part of the advance represents a loan which is (wholly or partly) to be repaid by way of one or more of those payments.
- (6) For the purposes of subsection (5) it does not matter—
  - (a) that the repayment of the loan might be subject to any condition, or
  - (b) that the accounts of any person do not record a financial liability in respect of the whole or a part of the advance or that the whole or a part of the advance is not otherwise treated as representing a loan for the purposes of the accounts of any person,
 but, subject to that, all relevant circumstances are to be taken into account in order to get to the essence of the matter.
- (7) For the purposes of this section—
  - (a) the borrower and the lender are not connected with one another if that would otherwise be the case,
  - (b) if the borrower is not E, references to a person connected with the borrower include a person connected with E who would not otherwise be connected with the borrower, and
  - (c) “loan” includes any advance of money.

**196C Employer asset-backed contributions: “acceptable structured finance arrangement” (1)**

- (1) For the purposes of section 196B the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—
  - (a) in accordance with generally accepted accounting practice, the borrower's accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
  - (b) the asset-backed arrangement is a type 1 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
  - (a) the lender is a responsible authority,

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- (b) the advance is money which is paid by the lender directly to the borrower wholly and directly out of E's contribution, and
  - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
- (a) it is the lender (and not any person connected with the lender) who is entitled to the payments mentioned in section 196B(2)(a)(iii),
  - (b) those payments are to arise at times which have been fixed and fall at intervals of no more than one year (but allowing for payments otherwise due to arise on a non-working day to arise on the next working day),
  - (c) the lender is to receive each payment no later than 3 months after the day on which the payment arises (but allowing for payments otherwise due to be received on a non-working day to be received on the next working day),
  - (d) on receipt by the lender, each payment is directly to become part of the sums held for the purposes of the registered pension scheme,
  - (e) the payments are all to be of the same amount,
  - (f) the total amount of the payments is not to be less than the amount of E's contribution, and
  - (g) all the payments are to be received by the lender within a period (“the payment period”) ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (5) For the purposes of subsection (4)(b) the first payment is to arise no later than one year after the day on which the advance is paid.
- (6) For the purposes of subsection (4)(e) the following are to be ignored—
- (a) negligible differences in the amounts of payments;
  - (b) differences in the amounts of payments which would be caused by a term of the asset-backed arrangement that requires the amounts of all outstanding payments to be increased periodically by a percentage which cannot be higher than the highest of the following—
    - (i) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the term of the asset-backed arrangement in question;
    - (ii) the percentage increase in the retail prices index for the reference period;
    - (iii) the percentage for the reference period which corresponds to 5% per annum.
- (7) For the purposes of subsection (4), in determining the lender's position, regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement.
- (8) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to

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be reduced to nil by the end of the payment period by (and only by) the payments mentioned in section 196B(2)(a)(iii).

- (9) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (10) applies has been given.
- (10) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if—
- (a) it is given (directly or indirectly) to a relevant person,
  - (b) it is a commitment to secure that a person receives money or another asset, and
  - (c) it is linked (directly or indirectly) to the receipt by the lender of a payment mentioned in section 196B(2)(a)(iii).
- (11) In subsection (10)(a) “relevant person” means—
- (a) E;
  - (b) a person connected with E;
  - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership;
- but does not include a responsible authority.
- (12) In this section “responsible authority” means—
- (a) the persons who from time to time are the trustees of the registered pension scheme, or
  - (b) the persons who from time to time are the persons controlling the management of the registered pension scheme,
- in their capacity as such.

### **196D Employer asset-backed contributions: denial of relief (2)**

- (1) An employer (“E”) is not to be given relief in respect of a contribution (“E’s contribution”) paid by E under a registered pension scheme if conditions A and B are met.
- (2) Condition A is that—
- (a) under an arrangement (“the asset-backed arrangement”) a person (“the transferor”) makes a disposal of an asset (“the security”) to a partnership,
  - (b) the transferor is E or a person connected with E,
  - (c) the transferor, or a person connected with the transferor, is a member of the partnership immediately after the disposal (whether or not a member immediately before it),
  - (d) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from a person (“the lender”) other than the transferor,



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- (e) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),
  - (f) there is a relevant change in relation to the partnership (see section 196H), and
  - (g) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196H) is determined by reference (wholly or partly) to payments in respect of the security.
- (3) If the transferor is not E, for the purposes of this section references to a person connected with the transferor include a person connected with E who would not otherwise be connected with the transferor.
- (4) For the purposes of subsection (2)(g) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.
- (5) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196E).

#### **196E Employer asset-backed contributions: “acceptable structured finance arrangement” (2)**

- (1) For the purposes of section 196D the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—
- (a) in accordance with generally accepted accounting practice, the partnership's accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
  - (b) the asset-backed arrangement is a type 2 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
- (a) the lender is a responsible authority,
  - (b) the advance is money which is paid by the lender directly to the partnership wholly and directly out of E's contribution, and
  - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
- (a) it is the lender (and not any person connected with the lender) who is or is to be the person involved in the relevant change in relation to the partnership,
  - (b) the lender's share in the partnership's profits is to be determined wholly by reference to the payments mentioned in section 196D(2)(g),
  - (c) determinations of the lender's share in the partnership's profits are to be made at times which have been fixed and fall at intervals of no

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- more than one year (but allowing for determinations otherwise due to be made on a non-working day to be made on the next working day),
- (d) no later than 3 months after the day on which a determination of the lender's share in the partnership's profits is made, the lender is to make a drawing from the partnership on account of its determined share (but allowing for drawings otherwise due to be made on a non-working day to be made on the next working day),
  - (e) on its making, each drawing is directly to become part of the sums held for the purposes of the registered pension scheme,
  - (f) the drawings are all to be of the same amount,
  - (g) the total amount of the drawings is not to be less than the amount of E's contribution, and
  - (h) all of the lender's share in the partnership's profits is to be drawn by the lender from the partnership within a period (“the drawing period”) ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (5) For the purposes of subsection (4)(c) the first determination is to be made no later than one year after the day on which the advance is paid.
- (6) For the purposes of subsection (4)(f) the following are to be ignored—
- (a) negligible differences in the amounts of drawings;
  - (b) differences in the amounts of drawings which would be caused by a term of the asset-backed arrangement that requires the amounts of all outstanding drawings to be increased periodically by a percentage which cannot be higher than the highest of the following—
    - (i) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the term of the asset-backed arrangement in question;
    - (ii) the percentage increase in the retail prices index for the reference period;
    - (iii) the percentage for the reference period which corresponds to 5% per annum.
- (7) In determining the lender's position for the purposes of subsection (4), regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement.
- (8) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to be reduced to nil by the end of the drawing period by (and only by) the payments mentioned in section 196D(2)(g).
- (9) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (10) applies has been given.
- (10) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if—
- (a) it is given (directly or indirectly) to a relevant person,
  - (b) it is a commitment to secure that a person receives money or another asset, and

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- (c) it is linked (directly or indirectly) to any determination of the lender's share in the partnership's profits or any drawing from the partnership on account of that share.

(11) In subsection (10)(a) “relevant person” means—

- (a) E;
- (b) a person connected with E;
- (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
- (d) a person chosen (directly or indirectly) by E or a person connected with E;
- (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
- (f) a partnership;

but does not include a responsible authority.

(12) In this section—

- (a) “responsible authority” means—
  - (i) the persons who from time to time are the trustees of the registered pension scheme, or
  - (ii) the persons who from time to time are the persons controlling the management of the registered pension scheme,in their capacity as such, and
- (b) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.

### **196F Employer asset-backed contributions: denial of relief (3)**

(1) An employer (“E”) is not to be given relief in respect of a contribution (“E's contribution”) paid by E under a registered pension scheme if conditions A and B are met.

(2) Condition A is that—

- (a) a partnership holds an asset (“the security”) at any time before an arrangement (“the asset-backed arrangement”) is made,
- (b) under the asset-backed arrangement the partnership receives money or another asset (“the advance”) from another person (“the lender”),
- (c) the advance is (wholly or partly) paid or provided by the lender out of E's contribution (directly or indirectly),
- (d) there is a relevant change in relation to the partnership (see section 196H), and
- (e) under the asset-backed arrangement the share in the partnership's profits of the person involved in the relevant change (see section 196H) is determined by reference (wholly or partly) to payments in respect of the security.

(3) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.

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- (4) Condition B is that the asset-backed arrangement is not an acceptable structured finance arrangement (see section 196G).

**196G Employer asset-backed contributions: “acceptable structured finance arrangement” (3)**

- (1) For the purposes of section 196F the asset-backed arrangement is an “acceptable structured finance arrangement” if conditions M to Q are met.
- (2) Condition M is that—
- (a) in accordance with generally accepted accounting practice, the partnership's accounts for the period in which the advance is received record a financial liability (“the recorded financial liability”) in respect of the advance, and
  - (b) the asset-backed arrangement is a type 3 finance arrangement for the purposes of Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (finance arrangements).
- (3) Condition N is that—
- (a) the lender is a responsible authority,
  - (b) the advance is money which is paid by the lender directly to the partnership wholly and directly out of E's contribution, and
  - (c) the advance and the recorded financial liability (as originally recorded) are both of an amount equal to the amount of E's contribution.
- (4) Condition O is that, as at the time the advance is paid, the position of the lender is as follows—
- (a) it is the lender (and not any person connected with the lender) who is or is to be the person involved in the relevant change in relation to the partnership,
  - (b) the lender's share in the partnership's profits is to be determined wholly by reference to the payments mentioned in section 196F(2) (e),
  - (c) determinations of the lender's share in the partnership's profits are to be made at times which have been fixed and fall at intervals of no more than one year (but allowing for determinations otherwise due to be made on a non-working day to be made on the next working day),
  - (d) no later than 3 months after the day on which a determination of the lender's share in the partnership's profits is made, the lender is to make a drawing from the partnership on account of its determined share (but allowing for drawings otherwise due to be made on a non-working day to be made on the next working day),
  - (e) on its making, each drawing is directly to become part of the sums held for the purposes of the registered pension scheme,
  - (f) the drawings are all to be of the same amount,
  - (g) the total amount of the drawings is not to be less than the amount of E's contribution, and
  - (h) all of the lender's share in the partnership's profits is to be drawn by the lender from the partnership within a period (“the drawing

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- period”) ending no later than the end of the period of 25 years beginning with the day on which E's contribution is paid.
- (5) For the purposes of subsection (4)(c) the first determination is to be made no later than one year after the day on which the advance is paid.
- (6) For the purposes of subsection (4)(f) the following are to be ignored—
- (a) negligible differences in the amounts of drawings;
  - (b) differences in the amounts of drawings which would be caused by a term of the asset-backed arrangement that requires the amounts of all outstanding drawings to be increased periodically by a percentage which cannot be higher than the highest of the following—
    - (i) the percentage increase in the consumer prices index for the reference period, being a period determined, in relation to each periodic increase, under the term of the asset-backed arrangement in question;
    - (ii) the percentage increase in the retail prices index for the reference period;
    - (iii) the percentage for the reference period which corresponds to 5% per annum.
- (7) In determining the lender's position for the purposes of subsection (4), regard must be had (in particular) to any arrangements connected (directly or indirectly) to the asset-backed arrangement.
- (8) Condition P is that, as at the time the advance is paid, in accordance with generally accepted accounting practice the recorded financial liability is to be reduced to nil by the end of the drawing period by (and only by) the payments mentioned in section 196F(2)(e).
- (9) Condition Q is that, as at the time the advance is paid, no commitment to which subsection (10) applies has been given.
- (10) This subsection applies to a commitment (whether or not legally enforceable and whether or not subject to any conditions) if—
- (a) it is given (directly or indirectly) to a relevant person,
  - (b) it is a commitment to secure that a person receives money or another asset, and
  - (c) it is linked (directly or indirectly) to any determination of the lender's share in the partnership's profits or any drawing from the partnership on account of that share.
- (11) In subsection (10)(a) “relevant person” means—
- (a) E;
  - (b) a person connected with E;
  - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership;
- but does not include a responsible authority.

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(12) In this section—

- (a) “responsible authority” means—
  - (i) the persons who from time to time are the trustees of the registered pension scheme, or
  - (ii) the persons who from time to time are the persons controlling the management of the registered pension scheme,
 in their capacity as such, and
- (b) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.

**196H Employer asset-backed contributions: “relevant change in relation to the partnership” and “person involved in the relevant change”**

- (1) For the purposes of sections 196D and 196F there is a relevant change in relation to the partnership if condition X or Y is met.
- (2) Condition X is that, in connection with the asset-backed arrangement, the lender or a person connected with the lender becomes a member of the partnership at any time.
- (3) Condition Y is that—
  - (a) in connection with the asset-backed arrangement, there is at any time a change in a member's share in the partnership's profits, and
  - (b) the member is the lender or a person connected with the lender or a person who in connection with the asset-backed arrangement becomes at any time connected with the lender.
- (4) For the purposes of subsections (2) and (3) an event occurs in connection with the asset-backed arrangement if it occurs directly or indirectly in consequence of it or otherwise in connection with it.
- (5) For the purposes of sections 196D to 196G references to the person involved in the relevant change in relation to the partnership are—
  - (a) if it is condition X that is met, to the lender or the person connected with the lender (as the case may be), and
  - (b) if it is condition Y that is met, to the member of the partnership in whose share in the partnership's profits there is a change.

**196I Employer asset-backed contributions: change in lender's original position under acceptable structured finance arrangement etc**

- (1) This section applies if—
  - (a) an employer (“E”) pays a contribution (“E's contribution”) under a registered pension scheme,
  - (b) conditions A and C in section 196B are met or condition A in section 196D or 196F is met,
  - (c) the asset-backed arrangement is an acceptable structured finance arrangement for the purposes of section 196B, 196D or 196F (as the case may be) and, accordingly, condition B in that section is not met, and

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- (d) at any time (“the relevant time”) after the advance is paid—
  - (i) the lender's position changes from the lender's original position in any respect (whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise),
  - (ii) an event occurs or does not occur and the occurrence or non-occurrence of the event does not accord with the lender's original position in any respect,
  - (iii) in accordance with generally accepted accounting practice, the recorded financial liability is reduced to nil other than by a payment mentioned in section 196B(2)(a)(iii), 196D(2)(g) or section 196F(2)(e) (as the case may be),
  - (iv) a commitment to which section 196C(10), 196E(10) or 196G(10) (as the case may be) applies is given, or
  - (v) an event falling within section 196J occurs.
- (2) This section also applies if—
  - (a) the requirements of subsection (1)(a) to (c) are met, and
  - (b) at any time (“the relevant time”) after the advance is paid, in accordance with generally accepted accounting practice, the recorded financial liability is reduced in part other than by a payment mentioned in section 196B(2)(a)(iii), 196D(2)(g) or section 196F(2)(e) (as the case may be).
- (3) Subject to subsection (4), the relevant amount is treated as follows as relevant—
  - (a) for corporation tax purposes, the relevant amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the relevant time falls, or
  - (b) for income tax purposes, the relevant amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the relevant time falls.
- (4) The amount treated as profit or income by subsection (3)(a) or (b), together with any amounts so treated on any previous applications of this section in relation to the asset-backed arrangement, is not to exceed the total amount of relief given in respect of E's contribution.
- (5) If this section applies by virtue of subsection (1), from the relevant time Chapter 5B of Part 13 of ITA 2007 or Chapter 2 of Part 16 of CTA 2010 (as relevant) is no longer to apply in relation to the asset-backed arrangement.
- (6) But no person is, by virtue of subsection (5), to be placed in a position which is more advantageous than the position in which the person would have been had this section never applied; and, in order to give effect to this principle, such assessments to tax or adjustments to any assessment to tax as are just and reasonable are to be made.
- (7) Subsection (1)(d)(i) and (ii) does not cover—
  - (a) cases in which the lender's change in position, or the occurrence or non-occurrence of the event, is the direct result of a mere

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- administrative error, so long as the consequences of the error are remedied promptly, or
- (b) mere changes in the persons who are the trustees of the registered pension scheme or in the persons who control the management of the registered pension scheme.
- (8) For the purposes of subsection (1)(d)(ii) it does not matter if the occurrence or non-occurrence of the event is authorised by a term of the asset-backed arrangement or results from the occurrence or non-occurrence of another event which is so authorised.
- (9) If this section applies by virtue of subsection (1)(d)(v), in subsection (3) references to the relevant time are to be read as references to the time immediately before the relevant time.
- (10) In this section—
- “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196D or 196F (as the case may be),
- “the lender's original position” means the lender's position as at the time the advance is paid set out in the paragraphs of section 196C(4), 196E(4) or 196G(4) (as the case may be),
- “the recorded financial liability” has the same meaning as in section 196C, 196E or 196G (as the case may be), and
- “the relevant amount” means—
- (a) if this section applies by virtue of subsection (1), the outstanding amount of the recorded financial liability immediately before the relevant time determined in accordance with generally accepted accounting practice, or
- (b) if this section applies by virtue of subsection (2), the amount of the reduction of the recorded financial liability.

**196J Employer asset-backed contributions: further events which cause section 196I to apply**

- (1) The events falling within this section are those listed in subsection (2).
- (2) The events are—
- (a) if E is a company within the charge to corporation tax when E's contribution is paid, E ceases to be within that charge;
- (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E's contribution is paid, that provision ceases to apply in relation to E;
- (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E's contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
- (d) in any case—
- (i) if E is a company, E enters administration or the winding up of E starts;
- (ii) if E is a partnership, the partnership is dissolved;
- (iii) if E is an individual, E dies.



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- (3) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of subsection (2)(d)(i).

### **196K Employer asset-backed contributions: “advances” under acceptable structured finance arrangements**

- (1) This section applies if—
- (a) an employer pays a contribution under a registered pension scheme,
  - (b) condition A in section 196B, 196D or 196F is met,
  - (c) the asset-backed arrangement is an acceptable structured finance arrangement for the purposes of section 196B, 196D or 196F (as the case may be) and, accordingly, condition B in that section is not met, and
  - (d) the advance gives rise to a loan within the meaning of Chapter 3 (see section 162).
- (2) Section 180(4) does not prevent the advance from being a scheme administration employer payment (if it would otherwise do so).
- (3) In this section “the advance” and “the asset-backed arrangement” have the same meaning as in section 196B, 196D or 196F (as the case may be).

### **196L Employer asset-backed contributions: supplementary**

- (1) This section applies for the purposes of sections 196B to 196K.
- (2) References to relief being given in respect of a contribution paid by an employer under a registered pension scheme are references to relief being given by way of—
- (a) the contribution being deducted in computing the amount of the employer's profits for the purposes of Part 2 of ITTOIA 2005 or Part 3 of CTA 2009 (trading income),
  - (b) the contribution being treated as an expense of management of the employer for the purposes of Chapter 2 of Part 16 of CTA 2009 (expenses of management: companies with investment business), or
  - (c) the contribution being brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer.
- (3) Whether a person is connected with another person is determined in accordance with section 1122 of CTA 2010.
- (4) Sections 774, 775 and 776(2) and (4) of CTA 2010 apply as they apply for the purposes of Chapter 2 of Part 16 of that Act.
- (5) A reference to a disposal of an asset includes—
- (a) anything constituting a disposal of an asset for the purposes of TCGA 1992, and
  - (b) so far as not covered by paragraph (a), the taking of any step by virtue of which a person receives an asset.
- (6) Section 776(2) of CTA 2010 applies for the purposes of subsection (5)(b).

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- (7) “Non-working day” means—
- (a) a Saturday or Sunday,
  - (b) a Christmas Eve, Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom,
- and “working day” is to be read accordingly.”
- 16 In section 280(1) of FA 2004 (abbreviations)—
- (a) omit the “and” after the definition of “ITA 2007”, and
  - (b) after the definition of “CTA 2009” insert “, and  
CTA 2010” means the Corporation Tax Act 2010”.
- 17 (1) Subject to what follows, the amendments made by paragraphs 15 and 16 above have effect in relation to contributions paid by employers on or after 22 February 2012.
- (2) In cases where the relevant time falls before 21 March 2012, section 196I of FA 2004 has effect as if subsection (6) were omitted.
- (3) An event falls within section 196J of FA 2004 only if it occurs after the beginning of 21 March 2012.

#### PART 4

##### TRANSITIONAL PROVISION RELATING TO PART 3

##### *Application and interpretation*

- 18 (1) This Part of this Schedule applies if—
- (a) before 22 February 2012, an employer (“E”) pays a contribution (“E’s contribution”) under a registered pension scheme (“the relevant scheme”),
  - (b) Part 2 of this Schedule does not apply in relation to E’s contribution,
  - (c) at any time, relief is given in respect of E’s contribution,
  - (d) if the reference in paragraph 17 above to 22 February 2012 were instead a reference to the date on which E’s contribution is paid, E would have no entitlement to relief in respect of E’s contribution by virtue of section 196B, 196D or 196F of FA 2004, and
  - (e) the asset-backed arrangement is not completed before 22 February 2012.
- (2) For the purposes of sub-paragraph (1)(d) assume that Parts 1 and 2 of this Schedule were never enacted.
- (3) For the purposes of sub-paragraph (1)(d), in sections 196C(5), 196E(5) and 196G(5) the reference to one year is to be read as a reference to 18 months.
- 19 For the purposes of this Part of this Schedule—
- (a) terms used in section 196B, 196D or 196F of FA 2004 (as the case may be) have the same meaning as in that section, and
  - (b) as necessary, assume that section 196B, 196D or 196F of FA 2004 (as the case may be) has effect in relation to E’s contribution.
- 20 (1) This paragraph applies for the purposes of this Part of this Schedule.

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- (2) Sub-paragraph (3) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004.
  - (3) The asset-backed arrangement is “completed” when neither the lender nor any person connected with the lender is any longer entitled under the asset-backed arrangement (conditionally or unconditionally) to payments in respect of the security.
  - (4) Sub-paragraph (5) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D or 196F of FA 2004.
  - (5) The asset-backed arrangement is “completed” when the share in the partnership's profits of the person involved in the relevant change is no longer to be determined under the asset-backed arrangement (conditionally or unconditionally) by reference (wholly or partly) to payments in respect of the security.
- 21 (1) In this Part of this Schedule “the completion day” means the earliest of the following—
- (a) the day on which the asset-backed arrangement is to be completed determined as at the beginning of 22 February 2012;
  - (b) the day on which the asset-backed arrangement is actually completed;
  - (c) the day which is the last day of the period of 25 years beginning with the day on which E's contribution is paid;
  - (d) the day on which a completion event occurs (see sub-paragraphs (2) to (11));
  - (e) if an event falling within paragraph 22 occurs, the day on which falls the time immediately before the occurrence of the event.
- (2) Sub-paragraphs (3) and (4) apply if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004.
- (3) To determine if a completion event occurs for the purposes of sub-paragraph (1)(d) first determine, as at the beginning of 22 February 2012, the following—
- (a) the number of payments to be made after the beginning of 22 February 2012 to which the lender or a person connected with the lender is entitled in connection with the asset-backed arrangement,
  - (b) what the amounts of those payments are to be, and
  - (c) the times at which those payments are to be made.
- (4) A completion event occurs for the purposes of sub-paragraph (1)(d) if, after the beginning of 22 February 2012—
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise—
    - (i) there is a change in the number of payments to be made from that determined under sub-paragraph (3),
    - (ii) there is a significant change in the amount of a payment to be made from that so determined, or
    - (iii) there is a significant change in the time at which a payment is to be made from that so determined,
  - (b) a payment determined under sub-paragraph (3) is not made,
  - (c) a payment determined under sub-paragraph (3) is made but its amount is significantly different from the amount so determined for the payment, or
  - (d) a payment determined under sub-paragraph (3) is made but is made at a time significantly different from the time so determined for the payment.

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- (5) Sub-paragraphs (6) and (7) apply if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D or 196F of FA 2004.
- (6) To determine if a completion event occurs for the purposes of sub-paragraph (1)(d) first determine, as at the beginning of 22 February 2012, the following—
- (a) what the amount of the share in the partnership's profits of the person involved in the relevant change is to be so far as the share is to be determined under the asset-backed arrangement by reference to payments made after the beginning of 22 February 2012,
  - (b) the number of drawings to be made from the partnership on account of the amount determined under paragraph (a) and the number of any other payments to be made after the beginning of 22 February 2012 to which the person involved in the relevant change, the lender or any other person connected with the lender is entitled in connection with the asset-backed arrangement,
  - (c) what the amounts of those drawings or other payments are to be, and
  - (d) the times at which those drawings or other payments are to be made.
- (7) A completion event occurs for the purposes of sub-paragraph (1)(d) if, after the beginning of 22 February 2012—
- (a) whether as a result of a term of the asset-backed arrangement or another arrangement or otherwise—
    - (i) there is a change in the number of drawings or other payments to be made from that determined under sub-paragraph (6),
    - (ii) there is a significant change in the amount of a drawing or other payment to be made from that so determined, or
    - (iii) there is a significant change in the time at which a drawing or other payment is to be made from that so determined,
  - (b) a drawing or other payment determined under sub-paragraph (6) is not made,
  - (c) a drawing or other payment determined under sub-paragraph (6) is made but its amount is significantly different from the amount so determined for the drawing or other payment, or
  - (d) a drawing or other payment determined under sub-paragraph (6) is made but is made at a time significantly different from the time so determined for the drawing or other payment.
- (8) In sub-paragraphs (3) and (4) and (6) and (7) references to payments are to payments of any type including drawings or distributions from a partnership, payments in respect of the security and other payments in respect of an asset (as read in accordance with section 776(4)(b) of CTA 2010).
- (9) In sub-paragraphs (6) and (7) references to the making of drawings from the partnership include references to the receiving of distributions from the partnership.
- (10) For the purposes of sub-paragraphs (3)(a) and (6)(b) a person is entitled to a payment “in connection with” the asset-backed arrangement if the person is entitled to the payment directly or indirectly in consequence of the arrangement or otherwise in connection with the arrangement.
- (11) For the purposes of sub-paragraphs (4)(b) to (d) and (7)(b) to (d) it does not matter if the event in question is authorised by a term of the asset-backed arrangement or

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any other arrangement or results from the occurrence or non-occurrence of another event which is so authorised.

22 (1) The events falling within this paragraph are those listed in sub-paragraph (2).

But an event falls within this paragraph only if it occurs after the beginning of 21 March 2012.

(2) The events are—

- (a) if E is a company within the charge to corporation tax when E's contribution is paid, E ceases to be within that charge;
- (b) if E is a limited liability partnership in relation to which section 863(1) of ITTOIA 2005 or section 1273(1) of CTA 2009 applies when E's contribution is paid, that provision ceases to apply in relation to E;
- (c) if E is a firm for the purposes of ITTOIA 2005 (see section 847) or CTA 2009 (see section 1257) (other than a limited liability partnership) when E's contribution is paid, the partnership ceases to carry on the trade, profession or business in question;
- (d) in any case—
  - (i) if E is a company, E enters administration or the winding up of E starts;
  - (ii) if E is a partnership, the partnership is dissolved;
  - (iii) if E is an individual, E dies.

(3) Sections 10(3) and 12(7) of CTA 2009 apply for the purposes of sub-paragraph (2) (d)(i).

*Certain tax consequences not to have effect*

23 (1) This paragraph applies if—

- (a) the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004, and
- (b) the asset-backed arrangement would have the relevant effect (ignoring this paragraph).

(2) The asset-backed arrangement is not to have the relevant effect.

(3) The relevant effect is that—

- (a) an amount of income on which the borrower or a person connected with the borrower would otherwise have been charged to tax is not so charged,
- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower or of a person connected with the borrower is not so brought into account, or
- (c) the borrower or a person connected with the borrower becomes entitled to deduct an amount—
  - (i) in calculating income for tax purposes, or
  - (ii) from total income or total profits (as the case may be).

(4) But if the borrower is a partnership the relevant effect is that—

- (a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,

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- (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or
  - (c) a member of the partnership becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).
- (5) In sub-paragraphs (3) and (4) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- 24 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D of FA 2004, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) In such a case—
- (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to the transferor, or any person connected with the transferor, as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (3) The relevant effect is that—
- (a) an amount of income on which the transferor, or the person connected with the transferor, would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the transferor, or the person connected with the transferor, is not so brought into account, or
  - (c) the transferor, or the person connected with the transferor, becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).
- (4) In sub-paragraph (3) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- (5) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196D(2)(g) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 25 (1) This paragraph applies if—
- (a) the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196F of FA 2004, and
  - (b) any relevant change in relation to the partnership would have the relevant effect (ignoring this paragraph).
- (2) The relevant effect is that—
- (a) an amount of income on which a relevant member would otherwise have been charged to tax is not so charged,
  - (b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member is not so brought into account, or

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- (c) a relevant member becomes entitled to deduct an amount—
    - (i) in calculating income for tax purposes, or
    - (ii) from total income or total profits (as the case may be).
- (3) A relevant member is a person who—
  - (a) was a member of the partnership immediately before the relevant change in relation to it occurred, and
  - (b) is not the lender.
- (4) In sub-paragraph (2) “amount” means an amount which arises on or after 22 February 2012 but on or before the completion day.
- (5) If this paragraph applies—
  - (a) Part 9 of ITTOIA 2005 or sections 1259 to 1265 of CTA 2009 (as the case may be) is or are to have effect in relation to any relevant member as if the relevant change in relation to the partnership had not occurred, and
  - (b) accordingly, the asset-backed arrangement is not to have the relevant effect.
- (6) In deciding whether sub-paragraph (1)(b) is met assume that amounts of income equal to the payments mentioned in section 196F(2)(e) of FA 2004 were payable to the partnership before the relevant change in relation to it occurred.
- 26 (1) This paragraph applies if, apart from this Part of this Schedule, a relevant charging provision applies in relation to the asset-backed arrangement.
- (2) The relevant charging provision is to apply in relation to the asset-backed arrangement instead of paragraph 23, 24 or 25 above (as the case may be) to the extent of any overlap.
- (3) In this paragraph “relevant charging provision” means—
  - (a) section 809BZB, 809BZC, 809BZH or 809BZK of ITA 2007, or
  - (b) section 759, 760, 765 or 768 of CTA 2010.
- 27 (1) This paragraph applies if, apart from this Part of this Schedule—
  - (a) a relevant interest provision applies in relation to the asset-backed arrangement, and
  - (b) as a result of the application of the relevant interest provision in relation to the asset-backed arrangement, an amount is or may be treated as interest under that provision.
- (2) Without prejudice to the generality of paragraphs 23(3) and (4), 24(3) and 25(2), the amount is not to be treated as interest if the amount arises on or after 22 February 2012 but on or before the completion day.
- (3) In this paragraph “relevant interest provision” means—
  - (a) section 809BZD, 809BZE, 809BZI or 809BZL of ITA 2007, or
  - (b) section 761, 762, 766 or 769 of CTA 2010.
- 28 (1) Section 196G of FA 2004 (as inserted by paragraph 1 above) does not apply in relation to E's contribution (if it would otherwise do so) if the relevant event occurs on or after 22 February 2012.
- (2) Section 196H of FA 2004 (as inserted by paragraph 1 above) does not apply in relation to E's contribution at all (if it would otherwise do so).

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### *Adjustments*

- 29 (1) For the purposes of paragraphs 30 and 31—
- (a) amount A is the total amount of relief given in respect of E's contribution,
  - (b) amount B is the total of the following amounts—
    - (i) any amounts of income which are charged to tax by virtue of a relevant provision,
    - (ii) any amounts brought into account in calculating income for tax purposes by virtue of a relevant provision (so far as not reflected in sub-paragraph (i)), and
    - (iii) any amounts stopped from being the subject of an income deduction by virtue of a relevant provision (so far as not reflected in sub-paragraph (i) or (ii)), and
  - (c) subject to sub-paragraph (9), amount C is the amount of the payment mentioned in sub-paragraph (6) or (8) (as the case may be) so far as the payment—
    - (i) is made under the asset-backed arrangement on the completion day,
    - (ii) is not reflected in amount B,
    - (iii) is not the subject of an income deduction, and
    - (iv) is not a contribution paid by E under the relevant scheme but nevertheless becomes (directly or indirectly) part of the sums held for the purposes of the relevant scheme.
- (2) In sub-paragraph (1)(b) “relevant provision” means—
- (a) paragraph 23, 24 or 25 above (as the case may be);
  - (b) a relevant charging provision (as defined in paragraph 26 above) as applied in relation to the asset-backed arrangement for amounts arising on or before the completion day;
  - (c) paragraph 27 above (if applicable).
- (3) No amount is to be included in amount B by virtue of sub-paragraph (2)(c) so far as it is reflected in an amount included in amount B by virtue of sub-paragraph (2) (a) or (b).
- (4) In sub-paragraph (1) “income deduction” means a deduction to which any person is entitled—
- (a) in calculating income for tax purposes, or
  - (b) from total income or total profits.
- (5) Sub-paragraph (6) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196B of FA 2004.
- (6) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which the borrower, or a person connected with the borrower, makes to the lender, or a person connected with the lender, in order to acquire—
- (a) the security, or
  - (b) any asset substituted for the security under the asset-backed arrangement.
- (7) Sub-paragraph (8) applies if the section which would have applied as mentioned in paragraph 18(1)(d) above is section 196D or 196F of FA 2004.



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- (8) The payment referred to in sub-paragraph (1)(c) is the payment (if any) which E, or a person connected with E, makes to the lender, or a person connected with the lender, in order to reverse the relevant change in relation to the partnership.
- (9) Amount C is to be taken to be nil if—
- (a) on or before the completion day, a commitment (whether or not legally enforceable and whether or not subject to any conditions) is given (directly or indirectly) to a relevant person, and
  - (b) the commitment—
    - (i) is a commitment to secure that a person receives money or another asset, and
    - (ii) is linked (directly or indirectly) to the making of the payment covered by amount C.
- (10) In sub-paragraph (9)(a) “relevant person” means—
- (a) E;
  - (b) a person connected with E;
  - (c) a person acting (directly or indirectly) at the direction or request, or with the agreement, of E or a person connected with E;
  - (d) a person chosen (directly or indirectly) by E or a person connected with E;
  - (e) a person within a class of person chosen (directly or indirectly) by E or a person connected with E;
  - (f) a partnership.
- (11) But “relevant person” does not include—
- (a) the persons who from time to time are the trustees of the relevant scheme, or
  - (b) the persons who from time to time are the persons controlling the management of the relevant scheme,
- in their capacity as such.
- 30 (1) This paragraph applies if amount A exceeds the sum of amounts B and C.
- (2) The amount of the excess is treated as follows as relevant—
- (a) for corporation tax purposes, the amount is treated as if it were a profit which E has in respect of E's loan relationships chargeable to corporation tax under section 299 of CTA 2009 for E's accounting period in which the beginning of the completion day falls, or
  - (b) for income tax purposes, the amount is treated as if it were an amount of income of E chargeable to income tax under Chapter 8 of Part 5 of ITTOIA 2005 for the tax year in which the beginning of the completion day falls.
- 31 If the sum of amounts B and C exceeds amount A—
- (a) E is to be treated as having paid a contribution under the relevant scheme in respect of any individual of an amount equal to the excess,
  - (b) the contribution is to be treated as having been paid at the beginning of the completion day, and
  - (c) E is to be given relief as provided for by section 196 of FA 2004 accordingly.

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## PART 5

### OTHER PROVISION RELATING TO FINANCE ARRANGEMENTS

#### *Chapter 5B of Part 13 of ITA 2007*

- 32 Chapter 5B of Part 13 of ITA 2007 (finance arrangements) is amended as follows.
- 33 In section 809BZA (type 1 finance arrangements: definition) after subsection (2) insert—
- “(2A) For the purposes of subsection (2)(c) it does not matter if an entitlement of the lender or a person connected with the lender is subject to any condition.”
- 34 (1) Section 809BZF (type 2 finance arrangements: definition) is amended as follows.
- (2) In subsection (2)(b) after “transferor” insert “ or a person connected with the transferor ”.
- (3) After subsection (2) insert—
- “(2A) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”
- 35 In section 809BZH (type 2 finance arrangements: certain tax consequences not to have effect) after “transferor” (wherever occurring) insert “ or the person connected with the transferor ”.
- 36 In section 809BZJ (type 3 finance arrangements: definition) after subsection (2) insert—
- “(2A) For the purposes of subsection (2)(d) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”

#### *Chapter 2 of Part 16 of CTA 2010*

- 37 Chapter 2 of Part 16 of CTA 2010 (finance arrangements) is amended as follows.
- 38 In section 758 (type 1 finance arrangements: definition) after subsection (2) insert—
- “(2A) For the purposes of subsection (2)(c) it does not matter if an entitlement of the lender or a person connected with the lender is subject to any condition.”
- 39 (1) Section 763 (type 2 finance arrangements: definition) is amended as follows.
- (2) In subsection (2)(b) after “transferor” insert “ or a person connected with the transferor ”.
- (3) After subsection (2) insert—
- “(2A) For the purposes of subsection (2)(e) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”
- 40 In section 765 (type 2 finance arrangements: certain tax consequences not to have effect) after “transferor” (wherever occurring) insert “ or the person connected with the transferor ”.

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- 41 In section 767 (type 3 finance arrangements: definition) after subsection (2) insert—
- “(2A) For the purposes of subsection (2)(d) it does not matter if any determination of the share in the partnership's profits of the person involved in the relevant change as mentioned is subject to any condition.”

#### *Commencement*

- 42 (1) Subject to what follows, the amendments made by paragraphs 32 to 41 above have effect in relation to arrangements whenever made.
- (2) In relation to arrangements made before 21 March 2012, an amount is by virtue of the amendments—
- (a) to be charged to tax, or
  - (b) to be brought into account in calculating any income for tax purposes or deducted from any income for tax purposes,
- only if the amount arises on or after 21 March 2012.
- (3) The amendments have no effect for the purposes of section 196J(4) of FA 2004 inserted by paragraph 1 above.
- (4) The amendments have no effect for the purposes of section 196C(2)(b), 196E(2)(b) or 196G(2)(b) of FA 2004 inserted by paragraph 15 above if the asset-backed arrangement is made before 21 March 2012.

## SCHEDULE 14

Section 49

### GIFTS TO THE NATION

#### **PART 1**

#### INTRODUCTION

#### *Qualifying gifts*

- 1 (1) For the purposes of this Schedule, a person makes a “qualifying gift” if the person makes a gift in the circumstances described in sub-paragraph (2).
- (2) The circumstances are—
- (a) the person offers to give pre-eminent property to be held for the benefit of the public or the nation,
  - (b) the person is legally and beneficially entitled to the property and the property is not owned jointly (or in common) with others,
  - (c) the offer is made in accordance with a scheme set up by the Secretary of State for the purposes of this Schedule,
  - (d) the offer is registered in accordance with the scheme,
  - (e) the offer, or a part of the offer, is accepted in accordance with the scheme, and
  - (f) the gift is made pursuant to the offer, or the part of the offer, accepted.
- (3) In this Schedule—

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- (a) “the agreed terms” means the terms on which acceptance is agreed, as recorded in the manner prescribed by the scheme, and
- (b) “the offer registration date” means the date when the offer was registered in accordance with the scheme.

## PART 2

### INCOME TAX AND CAPITAL GAINS TAX

#### *Taxes affected*

- 2 (1) This Part applies to an individual's liability to income tax and capital gains tax.
- (2) It does not apply to any liability arising as a trustee or personal representative.
- (3) Subject to sub-paragraph (2)—
  - (a) a reference in this Part to an individual's “tax liability” is to the individual's liability to income tax and capital gains tax, and
  - (b) references to an amount of or on account of “tax” are to be read accordingly.

#### *The basic rule*

- 3 (1) If an individual (“N”) makes a qualifying gift, a portion of N's tax liability for each relevant tax year is to be treated as satisfied, as if N had paid that portion when it became due (or on the offer registration date, if the portion became due before that date).
- (2) A “relevant tax year” is a tax year identified in the agreed terms as a tax year to which this paragraph is to apply.
- (3) Up to 5 tax years may be identified in the agreed terms, but each one must be either—
  - (a) the tax year in which the offer registration date falls, or
  - (b) one of the 4 tax years following that tax year.

#### *The portion treated as satisfied*

- 4 (1) The portion of N's tax liability for a relevant tax year that is to be treated as satisfied is an amount equal to the smaller of—
  - (a) the tax reduction figure allocated to that tax year, and
  - (b) the amount of N's tax liability for that tax year less any portion of that amount that is treated as satisfied in consequence of any qualifying gift made by N on a previous occasion.
- (2) The amount determined under sub-paragraph (1) may be nil.
- (3) The tax reduction figure allocated to a tax year is such part of the total tax reduction figure as is expressed in the agreed terms to be allocated to that tax year.
- (4) The figures allocated to the relevant tax years must in total add up to no more than the total tax reduction figure.
- (5) “The total tax reduction figure” is 30% of the value set out in the agreed terms as the agreed value of the property forming the subject of the qualifying gift.

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- (6) The Treasury may by order substitute a different percentage for the percentage specified for the time being in sub-paragraph (5).

*Order in which benefit is applied*

- 5 (1) If the tax reduction figure allocated to a relevant tax year is less than the amount determined under paragraph 4(1)(b) for that tax year, the benefit of paragraph 3(1) is to be applied to N's tax liability in the order specified in the agreed terms.
- (2) If no order is specified, the order is—
- (a) first, to N's liability to income tax for that year, and
  - (b) then, to N's liability to capital gains tax for that year.

*Effect of basic rule on interest and penalties*

- 6 (1) This paragraph explains the effect of paragraph 3(1) as regards late payment interest and late payment penalties.
- (2) The effect is that liability to pay amounts specified in sub-paragraph (3) ceases when the qualifying gift is made, as if the liability had never arisen.
- (3) The amounts are—
- (a) any late payment interest that accrued on the relevant portion during the negotiation period, and
  - (b) any late payment penalty to which N became liable in the negotiation period for failing to pay the relevant portion (together with any interest on such a penalty).
- (4) “The relevant portion” is the portion of N's tax liability for a relevant tax year that is treated under paragraph 3 as satisfied.
- (5) In determining for the purposes of sub-paragraph (2) whether or to what extent—
- (a) late payment interest accruing on an amount of or on account of N's tax liability for the relevant tax year is attributable to the relevant portion, or
  - (b) a late payment penalty incurred for failing to pay an amount of or on account of N's tax liability for the relevant tax year is attributable to the relevant portion,
- any attribution or apportionment is to be done in the way that maximises the relief obtained by N by virtue of this paragraph.
- (6) “The negotiation period” is the period—
- (a) beginning with the offer registration date, and
  - (b) ending with the day on which the qualifying gift is made.
- (7) Nothing in this paragraph affects any late payment interest that accrued, or any late payment penalty to which N became liable, before the offer registration date.

*Changes to N's tax liability*

- 7 (1) If the amount of N's tax liability for a relevant tax year is revised at any time, the portion of that liability that is treated under paragraph 3(1) as satisfied is to be re-calculated.

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- (2) But nothing in this paragraph permits any revision of the agreed terms.

*Gifts set aside etc*

- 8 If a qualifying gift is set aside or declared void after it is made—
- (a) the portion of N's tax liability for each relevant tax year that is treated as satisfied ceases to be treated as satisfied,
  - (b) the effect described in paragraph 6 is negated, and
  - (c) N is required to pay the portion due for each relevant tax year, together with any late payment interest and late payment penalties in respect of it, by the later of—
    - (i) the end of the period of 30 days beginning with the day on which the gift was set aside or declared void, and
    - (ii) the day by which N would have been required to pay those amounts but for this Schedule.

*Suspension pending negotiations*

- 9 (1) An individual who makes an offer in the circumstances described in paragraph 1 (a “potential donor”) may make a request under this paragraph if—
- (a) the offer is registered in accordance with the scheme,
  - (b) the offer includes a proposal (“the donor proposal”) of what should be in the agreed terms,
  - (c) the potential donor will be required to pay an amount of or on account of tax for a relevant tax year by a certain date, and
  - (d) the negotiations are not expected to conclude before that date (referred to as “the due date”).
- (2) For the purposes of this paragraph, the negotiations “conclude” when—
- (a) a qualifying gift is made pursuant to the offer,
  - (b) the offer is withdrawn by the potential donor, or
  - (c) the offer is rejected.
- (3) A request under this paragraph is a request that the potential donor's obligation to pay the amount by the due date be suspended until the negotiations conclude.
- (4) But the running total of amounts for which suspension may be requested under this paragraph in respect of the same offer and the same relevant tax year must not exceed the proposed tax reduction figure for that tax year.
- (5) “The proposed tax reduction figure” for a tax year is the amount shown in the donor proposal as the proposed tax reduction figure for that year.
- (6) A request under this paragraph—
- (a) must be made in writing to HMRC at least 45 days before the due date, and
  - (b) must be accompanied by a copy of the donor proposal and such other information as an officer of Revenue and Customs may reasonably require.
- (7) In considering whether or to what extent to agree to a request, HMRC must have regard to all the circumstances of the case (including, for example, the creditworthiness of the potential donor).

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- (8) HMRC may impose conditions with respect to the suspension.
- 10 (1) Suspension under paragraph 9 of a potential donor's obligation to pay an amount of or on account of tax stops the donor from becoming liable to late payment penalties for or in connection with the failure to pay that amount by the due date.
- (2) But it does not stop late payment interest from accruing on that amount from the due date.
- (3) HMRC may by notice in writing to the potential donor withdraw its agreement to the suspension with effect from such date, before conclusion of the negotiations, as may be specified in the notice.
- (4) If it does so, the potential donor must pay the amount, together with any late payment interest that has accrued on it since the due date, by the end of the period of 30 days beginning with the date specified in the notice.
- (5) The last day of that 30-day period is to be treated for the purposes of any enactment relating to late payment penalties as the date on or before which the amount must be paid.
- (6) Paragraph 11 explains what happens once the negotiations conclude (depending on the outcome of the negotiations).

#### *Conclusion of negotiations*

- 11 (1) This paragraph applies if a potential donor's obligation to pay an amount of or on account of tax remains suspended under paragraph 9 when the negotiations conclude (within the meaning of that paragraph).
- (2) The potential donor must pay the amount, together with any late payment interest that has accrued on it since the due date, within the period of 30 days beginning with the day on which the negotiations concluded.
- (3) The last day of that 30-day period is to be treated for the purposes of any enactment relating to late payment penalties as the date on or before which the amount must be paid.
- (4) But if the negotiations conclude because a qualifying gift is made pursuant to the offer or a part of the offer—
- (a) sub-paragraph (2) is to be read subject to paragraph 3(1) (and its effect as described in paragraph 6), and
- (b) accordingly, the potential donor is only required to pay so much as is not treated as satisfied under paragraph 3(1).
- (5) If the negotiations conclude in relation to a part only of the offer—
- (a) this paragraph is to be given effect as far as reasonably practicable in relation to that part, and
- (b) on receipt of a revised copy of the donor proposal, HMRC may give effect to paragraph 9 in relation to the part of the offer that remains under negotiation.

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### PART 3

#### CORPORATION TAX

##### *Taxes affected*

- 12 (1) This Part applies to a company's liability to corporation tax.
- (2) A reference in this Part to a company's "tax liability" is to the company's liability to corporation tax.
- (3) References to an amount of or on account of "tax" are to be read accordingly.

##### *The basic rule*

- 13 (1) If a company ("C") makes a qualifying gift, a portion of C's tax liability for the relevant accounting period is to be treated as satisfied, as if C had paid that portion when it became due (or on the offer registration date, if the portion became due before that date).
- (2) "The relevant accounting period" is the accounting period of C's in which the offer registration date falls.

##### *The portion treated as satisfied*

- 14 (1) The portion of C's tax liability for the relevant accounting period that is to be treated as satisfied is an amount equal to the smaller of—
- (a) the tax reduction figure, and
  - (b) the amount of C's tax liability for that period less any portion of that amount that is treated as satisfied in consequence of any qualifying gift made by C on a previous occasion.
- (2) The amount determined under sub-paragraph (1) may be nil.
- (3) The tax reduction figure is—
- (a) 20% of the value set out in the agreed terms as the agreed value of the property forming the subject of the qualifying gift, or
  - (b) such lower figure as may be specified in the agreed terms as the tax reduction figure.
- (4) The Treasury may by order substitute a different percentage for the percentage specified for the time being in sub-paragraph (3)(a).

##### *Effect of basic rule on interest and penalties*

- 15 (1) This paragraph explains the effect of paragraph 13 as regards late payment interest and late payment penalties.
- (2) The effect is that liability to pay amounts specified in sub-paragraph (3) ceases when the qualifying gift is made, as if the liability had never arisen.
- (3) The amounts are—
- (a) any late payment interest that accrued on the relevant portion during the negotiation period, and



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- (b) any late payment penalty to which C became liable in the negotiation period for failing to pay the relevant portion (together with any interest on such a penalty).
- (4) “The relevant portion” is the portion of C's tax liability for the relevant accounting period that is treated under paragraph 13 as satisfied.
- (5) In determining for the purposes of sub-paragraph (2) whether or to what extent—
  - (a) late payment interest accruing on an amount of or on account of C's tax liability for the relevant accounting period is attributable to the relevant portion, or
  - (b) a late payment penalty incurred for failing to pay an amount of or on account of C's tax liability for the relevant accounting period is attributable to the relevant portion,any attribution or apportionment is to be done in the way that maximises the relief obtained by C by virtue of this paragraph.
- (6) “The negotiation period” is the period—
  - (a) beginning with the offer registration date, and
  - (b) ending with the day on which the qualifying gift is made.
- (7) Nothing in this paragraph affects any late payment interest that accrued, or any late payment penalty to which C became liable, before the offer registration date.

#### *Changes to C's tax liability*

- 16 (1) If the amount of C's tax liability for the relevant accounting period is revised at any time, the portion of that liability that is treated under paragraph 13 as satisfied is to be re-calculated.
- (2) But nothing in this paragraph permits any revision of the agreed terms.

#### *Gifts set aside etc*

- 17 If a qualifying gift is set aside or declared void after it is made—
  - (a) the portion of C's tax liability for the relevant accounting period treated as satisfied ceases to be treated as satisfied,
  - (b) the effect described in paragraph 15 is negated, and
  - (c) C is required to pay the portion due, together with any late payment interest and late payment penalties in respect of it, by the later of—
    - (i) the end of the period of 30 days beginning with the day on which the gift was set aside or declared void, and
    - (ii) the day by which C would have been required to pay those amounts but for this Schedule.

#### *Suspension pending negotiations*

- 18 (1) A company that makes an offer in the circumstances described in paragraph 1 (a “potential donor”) may make a request under this paragraph if—
  - (a) the offer is registered in accordance with the scheme,
  - (b) the offer includes a proposal (“the donor proposal”) of what should be in the agreed terms,

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- (c) the potential donor will be required to pay an amount of or on account of tax for the relevant accounting period by a certain date, and
  - (d) the negotiations are not expected to conclude before that date (referred to as “the due date”).
- (2) For the purposes of this paragraph, the negotiations “conclude” when—
- (a) a qualifying gift is made pursuant to the offer,
  - (b) the offer is withdrawn by the potential donor, or
  - (c) the offer is rejected.
- (3) A request under this paragraph is a request that the potential donor's obligation to pay the amount by the due date be suspended until the negotiations conclude.
- (4) But the running total of amounts for which suspension may be requested under this paragraph in respect of the same offer must not exceed the proposed tax reduction figure.
- (5) “The proposed tax reduction figure” is the amount shown in the donor proposal as the proposed tax reduction figure.
- (6) A request under this paragraph—
- (a) must be made in writing to HMRC at least 45 days before the due date, and
  - (b) must be accompanied by a copy of the donor proposal and such other information as an officer of Revenue and Customs may reasonably require.
- (7) In considering whether or to what extent to agree to a request, HMRC must have regard to all the circumstances of the case (including, for example, the creditworthiness of the potential donor).
- (8) HMRC may impose conditions with respect to the suspension.
- 19 (1) Suspension under paragraph 18 of a potential donor's obligation to pay an amount of or on account of tax stops the donor from becoming liable to late payment penalties for or in connection with the failure to pay that amount by the due date.
- (2) But it does not stop late payment interest from accruing on that amount from the due date.
- (3) HMRC may by notice in writing to the potential donor withdraw its agreement to the suspension with effect from such date, before conclusion of the negotiations, as may be specified in the notice.
- (4) If it does so, the potential donor must pay the amount, together with any late payment interest that has accrued on it since the due date, by the end of the period of 30 days beginning with the date specified in the notice.
- (5) The last day of that 30-day period is to be treated for the purposes of any enactment relating to late payment penalties as the date on or before which the amount must be paid.
- (6) Paragraph 20 explains what happens once the negotiations conclude (depending on the outcome of the negotiations).

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### *Conclusion of negotiations*

- 20 (1) This paragraph applies if a potential donor's obligation to pay an amount of or on account of tax remains suspended under paragraph 18 when the negotiations conclude (within the meaning of that paragraph).
- (2) The potential donor must pay the amount, together with any late payment interest that has accrued on it since the due date, within the period of 30 days beginning with the day on which the negotiations concluded.
- (3) The last day of that 30-day period is to be treated for the purposes of any enactment relating to late payment penalties as the date on or before which the amount must be paid.
- (4) But if the negotiations conclude because a qualifying gift is made pursuant to the offer or a part of the offer—
- (a) sub-paragraph (2) is to be read subject to paragraph 13 (and its effect as described in paragraph 15), and
  - (b) accordingly, the potential donor is only required to pay so much as is not treated as satisfied under paragraph 13.
- (5) If the negotiations conclude in relation to a part only of the offer—
- (a) this paragraph is to be given effect as far as reasonably practicable in relation to that part, and
  - (b) on receipt of a revised copy of the donor proposal, HMRC may give effect to paragraph 18 in relation to the part of the offer that remains under negotiation.

## **PART 4**

### GENERAL PROVISION

#### *Orders*

- 21 (1) An order under Part 2 or 3 of this Schedule is to be made by statutory instrument.
- (2) It may include transitional and saving provisions.
- (3) A statutory instrument containing an order under Part 2 or 3 of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

#### *Pre-eminent property*

- 22 (1) In this Schedule, “pre-eminent property” means—
- (a) any picture, print, book, manuscript, work of art, scientific object or other thing that the relevant Minister is satisfied is pre-eminent for its national, scientific, historic or artistic interest,
  - (b) any collection or group of pictures, prints, books, manuscripts, works of art, scientific objects or other things if the relevant Minister is satisfied that the collection or group, taken as a whole, is pre-eminent for its national, scientific, historic or artistic interest, or

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- (c) any object that is or has been kept in a significant building if it appears to the relevant Minister desirable for the object to remain associated with the building.
- (2) A “significant building” is any building falling within section 230(3)(a) to (d) of IHTA 1984 (acceptance of property in lieu of tax).
- (3) “National interest” includes interest within any part of the United Kingdom.
- (4) In determining whether an object or collection or group of objects is pre-eminent, regard is to be had to any significant association of the object, collection or group with a particular place.

*The relevant Minister*

- 23 (1) For the purposes of paragraph 22, “the relevant Minister” is—
- (a) for items with a purely Scottish interest, the Scottish Ministers,
  - (b) for items with some Scottish interest but with no Northern Irish interest and no Welsh interest, the Secretary of State and the Scottish Ministers concurrently,
  - (c) for items with a purely Northern Irish interest, the Northern Ireland Department of Culture, Arts and Leisure,
  - (d) for items with some Northern Irish interest but with no Scottish interest and no Welsh interest, the Secretary of State and the Northern Ireland Department of Culture, Arts and Leisure concurrently,
  - (e) for items with a purely Welsh interest, the Welsh Ministers,
  - (f) for items with some Welsh interest but with no Scottish interest and no Northern Irish interest, the Secretary of State and the Welsh Ministers concurrently, and
  - (g) for any other items, the Secretary of State.
- (2) If an item within sub-paragraph (1)(g) has more than one devolved interest, the Secretary of State must consult the appropriate Minister for each such interest before making a decision under paragraph 22 affecting the item.
- (3) An item has a purely Scottish interest if—
- (a) it is located in Scotland, and
  - (b) the offer contains—
    - (i) no wish about where the item is to be displayed, or
    - (ii) a wish that it is to be displayed in Scotland.
- (4) An item has some Scottish interest if it does not have a purely Scottish interest but—
- (a) it is located in Scotland, or
  - (b) the offer contains a wish that it is to be displayed in Scotland.
- (5) An item has no Scottish interest if it does not have a purely Scottish interest and it does not have some Scottish interest.
- (6) References to items with a purely Northern Irish or purely Welsh interest, to items with some Northern Irish or some Welsh interest and to items with no Northern Irish interest or no Welsh interest are to be read in accordance with sub-paragraphs (3) to (5), but replacing references to Scotland with references to Northern Ireland or, as the case may be, Wales.

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- (7) A “devolved interest” is some Scottish interest, some Northern Irish interest or some Welsh interest.
- (8) “The appropriate Minister” is—
- (a) if the item has some Scottish interest, the Scottish Ministers,
  - (b) if the item has some Northern Irish interest, the Northern Ireland Department of Culture, Arts and Leisure, and
  - (c) if the item has some Welsh interest, the Welsh Ministers.
- (9) “Item” means an object or collection or group of objects.

#### *General interpretation*

- 24 In this Schedule—
- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
  - “company” has the meaning given in section 992 of ITA 2007;
  - “corporation tax” includes any amount assessable or chargeable as if it were corporation tax;
  - “HMRC” means Her Majesty's Revenue and Customs;
  - “late payment interest” means interest under section 101 of FA 2009, or under or by virtue of Part 9 of TMA 1970, on amounts payable to HMRC;
  - “late payment penalty” means a penalty under Schedule 56 to FA 2009.
- 25 Nothing in this Schedule is to give rise to any right or expectation that an offer made as mentioned in paragraph 1 will be accepted.

### **PART 5**

#### RELATED CHANGES

##### *IHTA 1984*

- 26 IHTA 1984 is amended as follows.
- 27 In section 25 (gifts for national purposes etc), after subsection (2) insert—
- “(3) A transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to property that is being transferred in the circumstances described in paragraph 1 of Schedule 14 to the Finance Act 2012 (gifts to the nation).”
- 28 In section 26A (potentially exempt transfer of property subsequently held for national purposes etc), in paragraph (b), after “below” insert “ or in the circumstances described in paragraph 1 of Schedule 14 to the Finance Act 2012 (gifts to the nation) ”.
- 29 (1) Section 32 (conditionally exempt transfers: chargeable events) is amended as follows.
- (2) In subsection (3), for “subsections (4) and (5)” substitute “ subsections (4), (4A) and (5) ”.

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(3) After subsection (4) insert—

“(4A) A death or disposal is not a chargeable event with respect to any property if—

- (a) in the case of a death, a person who became beneficially entitled to the property on the death disposes of it in the circumstances described in paragraph 1 of Schedule 14 to the Finance Act 2012 (gifts to the nation) within 3 years of the death, or
- (b) in the case of a disposal, the disposal is made in the circumstances described in paragraph 1 of that Schedule,

and a death or disposal of the property after such a disposal as is mentioned in paragraph (a) or (b) is not a chargeable event with respect to the property unless there has again been a conditionally exempt transfer of it after that disposal.”

30 (1) Section 32A (associated properties) is amended as follows.

(2) After subsection (5) insert—

“(5A) The death of a person beneficially entitled to property, or the disposal of property, is not a chargeable event if—

- (a) in the case of a death, a person who became beneficially entitled to the property on the death disposes of it in the circumstances described in paragraph 1 of Schedule 14 to the Finance Act 2012 (gifts to the nation) within 3 years of the death, or
- (b) in the case of a disposal, the disposal is made in the circumstances described in paragraph 1 of that Schedule.”

(3) In subsection (7), after “(5)(a) or (b)” insert “ or (5A)(a) or (b) ”.

31 In section 33 (amount of charge under section 32), in subsection (6)—

- (a) for “section 32(4)” substitute “ section 32(4) or (4A) ”, and
- (b) for “section 32A(5)”, in both places it appears, substitute “ section 32A(5) or (5A) ”.

32 In section 34 (reinstatement of transferor's cumulative total), in subsection (4)—

- (a) for “section 32(4)” substitute “ section 32(4) or (4A) ”, and
- (b) for “section 32A(5)”, in both places it appears, substitute “ section 32A(5) or (5A) ”.

[<sup>F59</sup>32A(1) This paragraph applies where a person (“the donor”) makes a qualifying gift of an object in circumstances where, had the donor instead sold the object to an individual at market value, a charge to estate duty would have arisen under section 40 of FA 1930 on the proceeds of sale.

(2) At the time when the gift is made, estate duty becomes chargeable under that section as if the gift were such a sale (subject to any limitation imposed by paragraph 33(2)).

(3) In the application of this paragraph to Northern Ireland, the references to section 40 of FA 1930 are to be read as references to section 2 of the Finance Act (Northern Ireland) 1931.]

#### Textual Amendments

**F59** Sch. 14 para. 32A inserted (17.7.2014) by Finance Act 2014 (c. 26), s. 118(1)

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*Estate duty etc*

- 33 (1) This paragraph applies if a person makes a qualifying gift and as a result—
- (a) estate duty becomes chargeable under section 40 of FA 1930 (exemption from death duties of objects of national etc interest), or
  - (b) tax becomes chargeable under Schedule 5 to IHTA 1984 (conditional exemption: deaths before 7 April 1976).
- (2) Despite any other enactment, the amount of duty or tax that becomes so chargeable as a result of the gift is to be limited to the amount (if any) by which A exceeds B.
- (3) For these purposes—
- “A” is the amount of duty or tax that becomes so chargeable as a result of the gift (absent this paragraph), and
  - “B” is what that amount would be if the effective rate at which the duty or tax is charged were the highest rate specified in column 3 of the Table in Schedule 1 to IHTA 1984.
- (4) References in this paragraph to the amount of duty or tax that becomes so chargeable are to the amount before applying any credit allowable against it under section 33(7) of IHTA 1984.
- (5) Nothing in this paragraph entitles a person to any repayment of inheritance tax if the amount of any such credit exceeds the amount (if any) chargeable in accordance with sub-paragraph (2).
- (6) In the application of this paragraph to Northern Ireland, for the reference to section 40 of FA 1930 substitute a reference to section 2 of the Finance Act (Northern Ireland) 1931.

*TCGA 1992*

- 34 In section 258 of TCGA 1992 (works of art etc), before subsection (2) insert—
- “(1A) A gain is not a chargeable gain if it accrues on a disposal made in the circumstances described in paragraph 1 of Schedule 14 to the Finance Act 2012 (gifts to the nation).”

*ITA 2007*

- 35 In Chapter A1 of Part 14 of ITA 2007 (income tax: remittance basis), after section 809YD (inserted by Schedule 12 to this Act) insert—

**“809YE Exception to section 809Y: gifts to the nation**

- (1) Section 809Y(1) does not apply to property if—
- (a) it ceases to be exempt property in the second case mentioned in that section, and
  - (b) by no later than the time when it ceases to be exempt property, it has been donated in the circumstances described in paragraph 1 of Schedule 14 to FA 2012 (gifts to the nation).
- (2) Where section 809Y(1) does not apply to property by virtue of this section, the property is to continue to be treated as not remitted to the United Kingdom even though it no longer meets any of the relevant rules.”

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## PART 6

### COMMENCEMENT

- 36 (1) Parts 2 and 3 of this Schedule have effect in relation to liabilities for tax years and accounting periods beginning on or after such day as the Treasury may by order appoint.
- (2) The power of the Treasury under sub-paragraph (1) includes power to appoint a day that is earlier than the day on which the order is made, but no earlier than 1 April 2012.
- (3) An order under this paragraph is to be made by statutory instrument.

#### Subordinate Legislation Made

**P1** Sch. 14 para. 36(1) power exercised: 1.4.2012 appointed by [S.I. 2013/587](#), [art. 2](#)

## SCHEDULE 15

Section 51

### RELIEF IN RESPECT OF GIFT AID AND OTHER INCOME

#### *Claims by charitable trusts etc*

- 1 (1) In Part 10 of ITA 2007 (special rules about charitable trusts etc), section 538A (claims in relation to gift aid relief) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies to claims for—
- (a) repayment of income tax treated as having been paid by virtue of section 520(4) (gift aid relief: income tax treated as paid by trustees of charitable trust), or
- (b) repayment of income tax deducted at source from income to which any of the following applies—
- (i) section 532 (exemption for savings and investment income),
- (ii) section 533 (exemption for public revenue dividends),
- (iii) section 536 (exemption for certain miscellaneous income),
- or
- (iv) section 537 (exemption for income from estates in administration).”
- (3) In subsection (1)—
- (a) before “applies” insert “ also ”, and
- (b) for the words after “tax” substitute “by virtue of—
- (a) section 521(4) (gifts entitling donor to gift aid relief: charitable trusts), or
- (b) any of the provisions mentioned in subsection (A1)(b).”
- (4) Accordingly, in the heading, after “**relief**” insert “ **etc** ”.



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### *Claims by charitable companies etc*

- 2 Part 11 of CTA 2010 (charitable companies etc) is amended as follows.
- 3 (1) In Chapter 2 (gifts and other payments), section 477A (claims in relation to gift aid relief) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies to claims for repayment of income tax treated as having been paid by virtue of—
- (a) section 471 (gifts qualifying for gift aid relief: charitable companies), or
- (b) section 475 (gifts qualifying for gift aid relief: eligible bodies).”
- (3) In subsection (1), before “applies” insert “ also ”.
- 4 In Chapter 3 (other exemptions), after section 491 insert—

### *“Claims*

#### **491A Claims in relation to certain reliefs**

- (1) Subsections (2) to (5) of section 477A (claims in relation to gift aid relief) apply to—
- (a) claims for amounts to be exempt from tax by virtue of a provision listed in subsection (2), and
- (b) claims for repayment of income tax deducted at source from income which is exempt from tax by virtue of such a provision,
- as they apply to claims to which that section applies.
- (2) The provisions are—
- (a) section 486 (investment income and non-trading profits from loan relationships),
- (b) section 487 (public revenue dividends),
- (c) section 488 (certain miscellaneous income), and
- (d) section 489 (income from estates in administration).”

### *Community amateur sports clubs: gift aid and other income*

- 5 Chapter 9 of Part 13 of CTA 2010 (special types of company etc: community amateur sports clubs) is amended as follows.
- 6 After section 661C insert—

### *“Gifts qualifying for gift aid relief*

#### **661D Tax treatment of gifts qualifying for gift aid relief**

- (1) This section applies if a gift is made to a registered club by an individual and the gift is a qualifying donation for the purposes of Chapter 2 of Part 8 of ITA 2007 (gift aid).

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- (2) The club is treated as receiving, under deduction of income tax at the basic rate for the tax year in which the gift is made, a gift of an amount equal to the grossed up amount of the gift.
- (3) The income tax treated as deducted is treated as income tax paid by the club.
- (4) The grossed up amount of the gift is treated as an amount in respect of which the club is chargeable to corporation tax, under the charge to corporation tax on income.

But this is subject to section 664 (exemption for interest and gift aid income).

- (5) References in this section to the grossed up amount of the gift are to the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.”

7 After section 665 insert—

*“Claims*

**665A Claims in relation to interest and gift aid income**

- (1) This section applies to—
  - (a) claims for repayment of income tax treated as having been paid by virtue of section 661D (tax treatment of gifts qualifying for gift aid relief),
  - (b) claims for amounts to be exempt from tax by virtue of section 664 (exemption for interest and gift aid income), and
  - (c) claims for repayment of income tax deducted at source from interest income (within the meaning of that section) which is exempt from tax by virtue of that section.
- (2) A claim to which this section applies may be made—
  - (a) to an officer of Revenue and Customs, or
  - (b) by being included in the claimant's company tax return.
- (3) In this section—
  - “free-standing claim” means a claim made as mentioned in subsection (2)(a), and
  - “tax return claim” means a claim made as mentioned in subsection (2)(b).
- (4) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision—
  - (a) limiting the number of free-standing claims that may be made by a person in a tax year, or
  - (b) requiring a claim for an amount below an amount specified in the regulations to be made as a tax return claim.
- (5) The regulations may make different provision for different cases or purposes.”

8 In consequence of the provision made by paragraph 6, in section 413 of ITA 2007 (overview of gift aid relief), after subsection (5) insert—

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“(6) For related reliefs for community amateur sports clubs see Chapter 9 of Part 13 of CTA 2010.”

*Treatment of income tax deducted or repaid*

9 In section 59B of TMA 1970 (payment of income tax and capital gains tax), in subsection (7), at the end insert—

“But such a reference does not include income tax repaid on a claim for repayment of income tax which—

- (a) is treated as having been paid by virtue of section 520(4) of ITA 2007 (gift aid relief: income tax treated as paid by trustees of charitable trust), or
- (b) has been deducted at source from income to which section 532, 533, 536 or 537 of that Act (certain sources of income exempt from income tax) applies.”

10 (1) Section 967 of CTA 2010 (set-off of income tax deductions against corporation tax: payments received by UK resident companies) is amended as follows.

(2) After subsection (4) insert—

“(5) The reference in subsection (1) to a payment received by a company does not include a reference to a payment which is exempt from tax by virtue of any of the following—

- section 472 (gifts qualifying for gift aid relief: charitable companies);
- section 475 (gifts qualifying for gift aid relief: eligible bodies);
- section 664 (exemption for interest and gift aid income: community amateur sports clubs).”

(3) In subsection (5) (as inserted by sub-paragraph (2)), after the entry for section 475 insert—

“section 486 (investment income and non-trading profits from loan relationships);

section 487 (public revenue dividends);

section 488 (certain miscellaneous income);

section 489 (income from estates in administration);”.

*Administration of claims under ITA 2007*

11 (1) Section 42 of TMA 1970 (procedure for making claims etc) is amended as follows.

(2) In subsection (2), for “and (3ZA)” substitute “to (3ZB) ”.

(3) In subsection (3ZA), for the words from “by virtue of” to the end substitute “by virtue of—

- (a) section 521(4) of ITA 2007 (gifts entitling donor to gift aid relief: charitable trusts),
- (b) section 532 of that Act (exemption for savings and investment income),
- (c) section 533 of that Act (exemption for public revenue dividends),

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- (d) section 536 of that Act (exemption for certain miscellaneous income), or
- (e) section 537 of that Act (exemption for income from estates in administration).”

(4) After subsection (3ZA) insert—

“(3ZB) Subsection (2) also does not apply in relation to any claim for repayment of an amount of income tax which—

- (a) is treated as having been paid by virtue of section 520(4) of ITA 2007 (gift aid relief: income tax treated as paid by trustees of charitable trust), or
- (b) has been deducted at source from income to which any of the provisions mentioned in paragraphs (b) to (e) of subsection (3ZA) applies.”

12 In consequence of the amendments made by paragraph 11, in Schedule 8 to FA 2010 omit paragraph 4(2).

*Administration of claims under CTA 2010*

13 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.

14 (1) Paragraph 9 (claims that cannot be made without a return) is amended as follows.

(2) In sub-paragraph (2), at the end insert—

“This is subject to sub-paragraphs (2A) and (2B).”

(3) For sub-paragraph (2A) substitute—

“(2A) This paragraph does not apply to a claim by a company for repayment of income tax treated as having been paid by virtue of—

- (a) section 471 of the Corporation Tax Act 2010 (gifts qualifying for gift aid relief: charitable companies),
- (b) section 475 of that Act (gifts qualifying for gift aid relief: eligible bodies), or
- (c) section 661D of that Act (gifts qualifying for gift aid relief: community amateur sports clubs).

(2B) This paragraph also does not apply to a claim by a company for repayment of income tax deducted at source from income which is exempt from tax by virtue of—

- (a) section 486 of the Corporation Tax Act 2010 (investment income and non-trading profits from loan relationships),
- (b) section 487 of that Act (public revenue dividends),
- (c) section 488 of that Act (certain miscellaneous income),
- (d) section 489 of that Act (income from estates in administration), or
- (e) section 664 of that Act (interest and gift aid income: community amateur sports clubs).”

15 (1) Paragraph 57 (claims or elections affecting a single accounting period) is amended as follows.

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(2) In sub-paragraph (1), at the end insert—

“This is subject to sub-paragraphs (1A) to (1C).”

(3) For sub-paragraph (1A) substitute—

“(1A) This paragraph does not apply to a claim by a company for repayment of income tax treated as having been paid by virtue of—

- (a) section 471 of the Corporation Tax Act 2010 (gifts qualifying for gift aid relief: charitable companies),
- (b) section 475 of that Act (gifts qualifying for gift aid relief: eligible bodies), or
- (c) section 661D of that Act (gifts qualifying for gift aid relief: community amateur sports clubs).

(1B) This paragraph also does not apply to a claim by a company for repayment of income tax deducted at source from income which is exempt from tax by virtue of—

- (a) section 486 of the Corporation Tax Act 2010 (investment income and non-trading profits from loan relationships),
- (b) section 487 of that Act (public revenue dividends),
- (c) section 488 of that Act (certain miscellaneous income),
- (d) section 489 of that Act (income from estates in administration), or
- (e) section 664 of that Act (interest and gift aid income: community amateur sports clubs).

(1C) This paragraph also does not apply to a claim by a company for an amount to be exempt from tax by virtue of—

- (a) section 472 of the Corporation Tax Act 2010 (gifts qualifying for gift aid relief: charitable companies),
- (b) section 475 of that Act (gifts qualifying for gift aid relief: eligible bodies), or
- (c) any of the provisions mentioned in sub-paragraph (1B).”

16 In consequence of the amendments made by paragraphs 14 and 15, in Schedule 8 to FA 2010 omit paragraph 6.

#### *Application*

17 (1) The amendments made by paragraphs 1 to 4 and 7 are treated as having come into force on 8 April 2010.

(2) The amendments made by paragraphs 6, 8 and 10 are treated as having effect—

- (a) for corporation tax purposes, for accounting periods ending on or after 1 April 2010, and
- (b) for income tax purposes, for the tax year 2010-11 and subsequent tax years.

(3) The amendment made by paragraph 9 has effect in relation to income tax repaid on gifts made or income received on or after 6 April 2006.

Accordingly, any reference in that amendment to a provision of ITA 2007 is to be read as including a reference to any corresponding earlier enactment which was rewritten in that provision.

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- (4) An amendment corresponding to that made by paragraph 10(2) is to be treated as having been made in ICTA and having had effect in relation to—
- (a) gifts made by individuals to charitable companies and eligible bodies on or after 6 April 2000 which were not covenanted payments,
  - (b) covenanted payments falling to be made by individuals to charitable companies and eligible bodies on or after that date, and
  - (c) payments made to community amateur sports clubs on or after 6 April 2002.
- (5) An amendment corresponding to that made by paragraph 10(3) is to be treated as having been made in ICTA and having had effect in relation to payments of income made on or after 1 April 2006.
- (6) The amendments made by paragraphs 11 to 16 have effect in relation to claims whenever made.

## SCHEDULE 16

Section 146

### PART 2: MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

##### AMENDMENTS OF ICTA

- 1 ICTA is amended as follows.
- 2 Omit section 76 (expenses of insurance companies).
- 3 Omit section 76ZA (payments for restrictive undertakings).
- 4 Omit section 76ZB (seconded employees).
- 5 Omit sections 76ZC to 76ZE (counselling and retraining expenses).
- 6 Omit sections 76ZF to 76ZJ (redundancy payments etc).
- 7 Omit section 76ZK (contributions to local enterprise organisations or urban regeneration companies).
- 8 Omit sections 76ZL and 76ZM (unpaid remuneration).
- 9 Omit section 76ZN (car hire).
- 10 In section 95ZA(3) (taxation of UK distributions received by insurance companies), for “life assurance business” substitute “business in relation to which section 111 of the Finance Act 2012 applies”.
- 11 Omit section 431 (interpretative provisions relating to insurance companies).
- 12 Omit section 431ZA (election for assets not be foreign business assets).
- 13 Omit section 431A (amendment of Chapter etc).
- 14 Omit section 431B (meaning of “pension business”).
- 15 Omit section 431BA (meaning of “child trust fund business”).
- 16 Omit section 431BB (meaning of “individual savings account business”).

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- 17 Omit section 431C (meaning of “life reinsurance business”).
- 18 Omit sections 431D and 431E (meaning of “overseas life assurance business” etc).
- 19 Omit section 431EA (meaning of “gross roll-up business”).
- 20 Omit section 431F (meaning of “basic life assurance and general annuity business”).
- 21 Omit section 431G (company carrying on life assurance business).
- 22 Omit section 431H (company carrying on life assurance business and other insurance business).
- 23 Omit section 432YA (PHI business — adjustment consequent of change in Insurance Prudential Sourcebook).
- 24 Omit section 432ZA (linked assets).
- 25 Omit section 432A (apportionment of income and gains).
- 26 Omit section 432AA (property businesses).
- 27 Omit section 432AB (losses from property businesses).
- 28 Omit sections 432B to 432G (apportionment of receipts brought into account).
- 29 Omit section 434 (franked investment income etc).
- 30 Omit section 434A (computation of losses and limitation on relief).
- 31 Omit sections 434AZA to 434AZC (reduced loss relief for additions to non-profit funds).
- 32 Omit section 436A (gross roll-up business: separate charge on profits).
- 33 Omit section 436B (gains referable to gross-roll up business not to be chargeable gains).
- 34 Omit sections 437 and 437A (general annuity business).
- 35 Omit section 438 (pension business: exemption from tax).
- 36 Omit section 440 (transfers of assets etc).
- 37 Omit section 440A (securities).
- 38 Omit section 440B (modifications where tax charged under s.35 of CTA 2009).
- 39 Omit section 440C (modifications for change of tax basis).
- 40 Omit section 440D (modifications in relation to BLAGAB group reinsurers).
- 41 Omit section 442 (overseas business of UK companies).
- 42 Omit section 442A (taxation of investment return where risk reinsured).
- 43 Omit sections 444A to 444AED (transfers of business).
- 44 Omit sections 444AF to 444AL (surpluses of mutual and former mutual businesses).
- 45 In Schedule 15 (qualifying policies), in paragraph 24(3)(a), for “section 431(2)” substitute “ section 56 of the Finance Act 2012 ”.
- 46 Omit Schedule 19ABA (modifications in relation to BLAGAB group reinsurers).

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## PART 2

### AMENDMENTS OF FA 1989

- 47 FA 1989 is amended as follows.
- 48 In section 67(2) (employee share ownership trusts), for paragraph (b) (and the “or” before that paragraph) substitute—
- “(b) if the company is an investment company, shall be treated as expenses of management, or
- (c) if the company is a company in relation to which the I - E rules apply and the sum is referable, in accordance with Chapter 4 of Part 2 of the Finance Act 2012, to the company's basic life assurance and general annuity business, shall be treated for the purposes of section 76 of that Act as ordinary BLAGAB management expenses of the company.”
- 49 Omit section 82 (calculation of profits: bonuses etc).
- 50 Omit section 82A (calculation of profits: policy holders' tax).
- 51 Omit section 82B (unappropriated surplus on valuation).
- 52 Omit sections 82D to 82F (treatment of profits: life assurance — adjustment consequent on change in Insurance Prudential Sourcebook).
- 53 Omit section 83 (receipts to be taken into account).
- 54 Omit section 83XA (structural assets).
- 55 Omit sections 83YA and 83YB (changes in value of assets brought into account: non-profit companies).
- 56 Omit sections 83YC to 83YF (FAFTS).
- 57 Omit section 83A (meaning of “brought into account”).
- 58 Omit section 83B (changes in recognised accounts: attribution of amounts carried forward under s.432F of ICTA).
- 59 Omit section 85 (charge of certain receipts of basic life assurance business).
- 60 Omit section 85A (excess adjusted life assurance trade profits).
- 61 Omit section 86 (spreading of relief for acquisition expenses).
- 62 Omit section 88 (corporation tax: policy holders' share of profits).
- 63 Omit section 89 (policy holders' share of profits).

## PART 3

### AMENDMENTS OF OTHER ACTS

#### *Finance Act 1950*

- 64 FA 1950 is amended as follows.
- 65 In section 39(3)(b)(ii) (treatment for taxation purposes of enemy debts etc written off during the war), for “an expenses deduction for the purposes of Step 1 of



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section 76(7) of the Income and Corporation Taxes Act 1988” substitute “ ordinary BLAGAB management expenses for the purposes of section 76 of the Finance Act 2012 ”.

#### *Taxes Management Act 1970*

66 TMA 1970 is amended as follows.

67 (1) Section 98 (special returns) is amended as follows.

(2) In the first column of the Table—

- (a) omit the entry relating to regulations under section 431E(1) of ICTA, and
- (b) at the end insert—

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“regulations under section 61(5) of the Finance Act 2012”.

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(3) In the second column of the Table—

- (a) omit the entry relating to section 76ZE(4) of ICTA,
- (b) omit the entry relating to regulations under section 431E(1) of ICTA, and
- (c) at the end insert—

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“regulations under section 61(5) of the Finance Act 2012”.

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#### *Inheritance Tax Act 1984*

68 IHTA 1984 is amended as follows.

69 In section 59(3)(b) (qualifying interest in possession), for “Chapter I of Part XII of the Taxes Act 1988” substitute “ Part 2 of the Finance Act 2012 ”.

#### *Finance Act 1991*

70 FA 1991 is amended as follows.

71 In paragraph 16(1) of Schedule 7 (transitional relief for old general annuity contracts), for the words from “computation” to “1988” substitute “ application of the I - E rules in relation to an accounting period of an insurance company, an amount equal to the lesser of the following amounts is to be treated (if it is not nil) for the purposes of section 76 of the Finance Act 2012 as a deemed BLAGAB management expense for the accounting period ”.

#### *Taxation of Chargeable Gains Act 1992*

72 TCGA 1992 is amended as follows.

73 In section 10B (non-resident company with United Kingdom permanent establishment), after subsection (3) insert—

“(3A) This section applies to an overseas life insurance company in the case of its long-term business with the omission from subsection (1)(b) of the words “situated in the United Kingdom and”.”

74 In section 100(2B)(a) (exemption for authorised unit trusts etc), for “section 431 of the Taxes Act” substitute “ section 65 of the Finance Act 2012 ”.

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- 75 In section 140C (transfer or division of non-UK business), omit subsection (8).
- 76 In section 151I(1) (meaning of “financial institution”)—
- (a) in paragraph (g), for “section 431(2) of ICTA” substitute “ section 65 of the Finance Act 2012 ”, and
  - (b) in paragraph (h), for “section 431(2) of ICTA” substitute “ section 139(1) of the Finance Act 2012 ”.
- 77 (1) Section 171C (elections under s.171A: insurance companies) is amended as follows.
- (2) In subsection (2), for “section 440(3) of the Taxes Act” substitute “ section 118 of the Finance Act 2012 ”.
  - (3) In subsection (3)(b), for “part of that company's long-term insurance fund” substitute “ held for the purposes of the company's long-term business ”.
  - (4) In subsection (4), for the words from “as arising” to the end substitute “ for the purposes of section 210A (ring-fencing of losses) as a non-BLAGAB chargeable gain or (as the case may be) a non-BLAGAB allowable loss ”.
  - (5) Omit subsection (5).
- 78 In section 185 (deemed disposal of assets on company ceasing to be UK resident), after subsection (4) insert—
- “(4A) Subsection (4) applies to an overseas life insurance company in the case of its long-term business with—
- (a) the omission from paragraph (a) of the words “are situated in the United Kingdom and”; and
  - (b) the omission from paragraph (b) of the words “are so situated and”.”
- 79 In section 204(10)(a) (policies of insurance and non-deferred annuities), for “Chapter 1 of Part 12 of the Taxes Act” substitute “ section 56(3) of the Finance Act 2012 ”.
- 80 (1) Section 210A (ring-fencing of losses) is amended as follows.
- (2) For subsection (2) substitute—
 

“(2) Non-BLAGAB allowable losses accruing to an insurance company are allowable as a deduction from the shareholders' share (if any) of the BLAGAB chargeable gains accruing to the company (but are not otherwise allowable as a deduction from the BLAGAB chargeable gains accruing to the company).”
  - (3) For subsections (10) and (10A) substitute—
 

“(10) For the purposes of this section the “shareholders' share” of BLAGAB chargeable gains or BLAGAB allowable losses accruing to an insurance company in an accounting period is determined as follows.

(10A) If the company has an I - E profit for the accounting period—

    - (a) find the percentage (including, if applicable, nil) of the I - E profit that is not represented by the policyholders' share of that profit as determined in accordance with section 103 of the Finance Act 2012, and
    - (b) then multiply that percentage by the amount of the BLAGAB chargeable gains or BLAGAB allowable losses.

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The result is the shareholder's share of the BLAGAB chargeable gains or BLAGAB allowable losses.

(10B) If the company does not have an I - E profit for the accounting period, the shareholders' share of the BLAGAB chargeable gains or BLAGAB allowable losses is nil.

(10C) In determining for the purposes of subsections (10A) and (10B) whether or not the company has an I - E profit for an accounting period, assume that non-BLAGAB allowable losses cannot be deducted to any extent from BLAGAB chargeable gains (and, accordingly, assume that section 95 is not included in the Finance Act 2012)."

(4) In subsection (11)—

- (a) for "the policy holders' share" substitute "the shareholders' share", and
- (b) for "subsection (10)" substitute " subsections (10) to (10C) ".

(5) Omit subsection (12).

(6) In subsection (13)—

- (a) in the definitions of "BLAGAB allowable losses" and "BLAGAB chargeable gains", for "(in accordance with section 432A of the Taxes Act)" substitute " , in accordance with Chapter 4 of Part 2 of the Finance Act 2012, ", and
- (b) omit the definitions of "the relevant profits" and "the policy holders' share of the relevant profits" (together with the "and" before the definition of "the relevant profits").

81 (1) Section 210B (disposal and acquisition of section 440A securities) is amended as follows.

(2) In subsection (1)—

- (a) in the opening words, for "section 440A securities" (in both places) substitute " section 119 or 120 securities ", and
- (b) in paragraphs (a) and (b), for "chargeable section 440A holding" substitute " chargeable section 119 or 120 holding ".

(3) In subsection (7)(a), for "linked assets" substitute " assets wholly matched to BLAGAB liabilities and the assets are ".

(4) For subsection (8) substitute—

“(8) In this section—

“BLAGAB internal linked fund” means an internal linked fund all the assets appropriated to which are matched wholly to BLAGAB liabilities,

“chargeable section 119 or 120 holding” means a holding which is a separate holding as a result of section 119(1)(a), (c) or (d) or section 120(1)(a), (c) or (d) of the Finance Act 2012 (and section 121(1) and (2) of that Act),

“internal linked fund”, in relation to an insurance company, means an account—

- (a) to which assets matched to the company's life assurance liabilities are appropriated by the company, and

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- (b) which may be divided into units the value of which is determined by the company by reference to the value of those assets, and  
“section 119 or 120 securities” means securities within the meaning of section 119 or 120 of the Finance Act 2012 (see section 121(6)).”
- (5) In the heading, for “**section 440A securities**” substitute “ **section 119 or 120 securities** ”.
- 82 In section 210C(2) (losses on disposal of authorised investment fund assets to connected manager), in the definition of “authorised investment fund assets”, for “of the company's long-term insurance fund consisting of” substitute “ held by the company for the purposes of its long-term business that consist of ”.
- 83 (1) Section 211 (transfers of business) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a), for “of the transferor's long-term insurance fund” substitute “ held by the transferor for the purposes of its long-term business ”, and
- (b) in paragraph (b), for “of the transferee's long-term insurance fund” substitute “ held by the transferee for the purposes of its long-term business ”.
- (3) In subsection (2A), for “structural assets within the meaning of section 83XA of the Finance Act 1989” substitute “ assets which formed part of the long-term business fixed capital of the company in question ”.
- (4) After subsection (3) insert—
- “(4) Subsection (2) does not apply in relation to assets which are referable to the long-term business of the transferor if all the income of the transferor's long-term business is chargeable to corporation tax on income under section 35 of CTA 2009.”
- 84 In section 211ZA(10) (transfers of business: transfer of unused losses), for “(in accordance with section 432A of the Taxes Act)” substitute “ , in accordance with Chapter 4 of Part 2 of the Finance Act 2012, ”.
- 85 (1) Section 212 (annual deemed disposal of holdings of unit trusts etc) is amended as follows.
- (2) In subsection (1), for “of an insurance company's long-term insurance fund” substitute “ held by an insurance company for the purposes of its long-term business ”.
- (3) Omit subsection (2).
- (4) At the end insert—
- “(9) This section applies to an overseas life insurance company as if references in subsection (1) to assets were to such of the assets concerned as are UK assets.
- (10) Assets (whether situated in the United Kingdom or elsewhere) are “UK assets” if, in accordance with the provision made by or under Chapter 4 of Part 2 of CTA 2009, they fall to be attributed to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”

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- 86 (1) Section 213 (spreading of gains and losses under section 212) is amended as follows.
- (2) In subsection (1A), for “(in accordance with section 432A of the Taxes Act)” substitute “, in accordance with Chapter 4 of Part 2 of the Finance Act 2012, ”.

- (3) After subsection (4) insert—

“(4ZA) Subsection (4) applies in relation to an overseas life insurance company with the insertion after “long-term business” of the words “in the United Kingdom through a permanent establishment”.”

- 87 After section 213 insert—

**“213A Power to modify ss.212 and 213 etc in case of CFCs that are offshore funds**

- (1) The Treasury may make regulations for the purpose mentioned in subsection (2) in any case where—

- (a) an insurance company to which the I - E rules apply is deemed to make a disposal under section 212 of an interest in an offshore fund,
- (b) the offshore fund is a CFC, and
- (c) there is (or, but for the regulations, would be) a CFC charge on the insurance company referable to its relevant interest in the CFC for the accounting period in which the disposal is deemed to have been made.

- (2) The regulations are to be made for the purpose of modifying the operation of—

- (a) section 212 or 213,
- (b) the CFC rules, or
- (c) the I - E rules,

in relation to any accounting period of the insurance company so as to reduce the charge to tax.

- (3) The regulations may—

- (a) make different provision for different cases or circumstances, and
- (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

- (4) The provision that may be made as a result of subsection (3)(b) includes provision modifying any other provision of the Corporation Tax Acts.

- (5) In this section—

“CFC” and “CFC charge” have the same meanings as in Part 9A of TIOPA 2010 (see section 371VA),

“the CFC rules” means the rules contained in that Part, and

“offshore fund” has the meaning given by section 355 of TIOPA 2010.”

- 88 (1) Schedule 7AC (exemptions for disposals by companies with substantial shareholdings) is amended as follows.

- (2) In paragraph 6(1)(c), for “section 440(1) or (2) of the Taxes Act” substitute “ any of sections 116 to 118 of the Finance Act 2012 ”.

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- (3) Paragraph 17 is amended as follows.
- (4) In sub-paragraph (2), for “of its long-term insurance fund” substitute “ held by it for the purposes of its long-term business ”.
- (5) In sub-paragraph (3)(b), for “of its long-term insurance fund” substitute “ for the purposes of its long-term business ”.
- (6) In sub-paragraph (4), for “as assets of its long-term insurance fund” substitute “ for the purposes of its long-term business ”.
- (7) In sub-paragraph (4A)—
- (a) for “of the investing company's long-term insurance fund” substitute “ held by the investing company for the purposes of its long-term business ”,
  - (b) for “as assets of its long-term insurance fund” substitute “ for the purposes of its long-term business ”, and
  - (c) for “a structural asset, or structural assets, within the meaning of section 83XA of the Finance Act 1989” substitute “ an asset or assets which formed part of the long-term business fixed capital of the company in question ”.
- (8) In the italic heading before that paragraph, for “*insurance company's long-term insurance fund*” substitute “ *insurance company held for the purposes of its long-term business* ”.

89 In paragraph 1 of Schedule 7AD (gains of insurance company from venture capital investment partnership), for “the assets of the long-term insurance fund of an insurance company (“the company”)” substitute “ the assets held by an insurance company (“the company”) for the purposes of its long-term business ”.

#### *Finance Act 1993*

90 FA 1993 is amended as follows.

91 In section 91 (deemed disposals of unit trusts by insurance companies), omit subsection (2).

#### *Finance Act 1999*

92 FA 1999 is amended as follows.

93 In section 81(8) (acquisitions disregarded under insurance companies concession), in the definition of “insurance company”, for “meaning of Chapter I of Part XII of the Taxes Act 1988” substitute “ meaning given by section 65 of the Finance Act 2012 ”.

#### *Capital Allowances Act 2001*

94 CAA 2001 is amended as follows.

95 In section 19(5) (special leasing of plant or machinery), for “life assurance business” substitute “ long-term business ”.

96 In the italic heading before section 254, for “*Life assurance*” substitute “ *Long-term* ”.

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97 In section 254(1) (introductory), for “life assurance business” substitute “ long-term business ”.

98 For section 255 substitute—

**“255 Apportionment of allowances and charges**

(1) This section applies if the long-term business of the company consists of—

- (a) basic life assurance and general annuity business, and
- (b) non-BLAGAB long-term business.

(2) In that case—

- (a) any allowance to which the company is entitled for a chargeable period in respect of a management asset, and
- (b) any charge to which it is liable for a chargeable period in respect of a management asset,

must be apportioned between the businesses in accordance with Chapter 7 of Part 2 of FA 2012.”

99 (1) Section 256 (different giving effect rules for different categories of business) is amended as follows.

(2) In subsection (1)(b)—

- (a) for “under the I minus E basis” substitute “ in accordance with the I - E rules ”, and
- (b) for “its life assurance business” substitute “ that business ”.

(3) In subsection (2)(a), for the words from “as expenses payable” to “section 76(7) of ICTA” substitute “ for the purposes of section 76 of FA 2012 as deemed BLAGAB management expenses for the chargeable period in question ”.

(4) Omit subsections (3) and (4).

(5) In the heading, for “**different categories of business**” substitute “ **BLAGAB** ”.

100 In section 257(2) (supplementary), for paragraphs (a) and (b) substitute—

- “(a) section 93(5) of FA 2012 (minimum profits test), or
- (b) section 103 of FA 2012 (rules for determining policyholders' share of I - E profit).”

101 (1) Section 261 (special leasing: life assurance business) is amended as follows.

(2) For “life assurance business” substitute “ long-term business ”.

(3) In the heading, for “**life assurance business**” substitute “ **long-term business** ”.

102 In the heading for Chapter 1 of Part 12, for “LIFE ASSURANCE” substitute “ LONG-TERM ”.

103 (1) Section 544 (management assets) is amended as follows.

(2) In subsections (1) and (2), for “life assurance business” substitute “ long-term business ”.

(3) Omit subsection (3).

104 (1) Section 545 (investment assets) is amended as follows.

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- (2) In subsection (1), for “life assurance business” substitute “ long-term business ”.
- (3) For subsections (3) to (5) substitute—
- “(3) No allowance in respect of an investment asset is to be taken into account in calculating for corporation tax purposes the profits of any non-BLAGAB long-term business carried on by the company.”
- 105 (1) Section 560 (transfer of insurance company business) is amended as follows.
- (2) In subsection (1)(b)(ii), omit the words from “within” to the end.
- (3) In subsection (5), after paragraph (d) insert—
- “(e) qualifying overseas transfer” means so much of a transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 14 of the Council Directive of 5 November 2002 concerning life assurance (2002/83/EC).”
- 106 (1) Schedule A1 (first-year tax credits) is amended as follows.
- (2) In paragraph 7—
- (a) in sub-paragraph (2), for the words from “which is treated” to the end substitute “ which, as a result of section 87(3) of FA 2012, is treated for the purposes of section 76 of that Act as a deemed BLAGAB management expense for an accounting period ”, and
- (b) in sub-paragraph (3), for “section 432AA” substitute “ section 86 ” and for “section 432AB(4)” substitute “ section 87(4) ”.
- (3) In paragraph 9—
- (a) in sub-paragraph (1), for “life assurance business” substitute “ basic life assurance and general annuity business ” and for “under the I minus E basis” substitute “ in accordance with the I - E rules ”, and
- (b) in sub-paragraph (2), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 ”.
- (4) In paragraph 14—
- (a) in sub-paragraph (2), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 ”,
- (b) in sub-paragraph (3), for “section 76(12)” substitute “ section 73 ”,
- (c) in sub-paragraph (5), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 ”, and
- (d) for sub-paragraph (6) substitute—
- “(6) Disregard any amounts brought forward from an earlier chargeable period which fall to be taken into account in calculating for the purposes of section 73 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the period in question as a result of—
- (a) the previous application of section 73 or 93 of FA 2012, or



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- (b) the carry forward to the period in question of an amount under section 391(3) of CTA 2009 (loan relationship deficit carried forward).”

(5) In paragraph 16—

- (a) in sub-paragraph (1), for “life assurance business” substitute “ basic life assurance and general annuity business ” and for “under the I minus E basis” substitute “ in accordance with the I - E rules ”, and
- (b) for sub-paragraph (3) substitute—

“(3) For this purpose, no account is to be taken of any amounts brought forward from an earlier chargeable period which fall to be taken into account in calculating for the purposes of section 73 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the period in question as a result of—

- (a) the previous application of section 73 or 93 of FA 2012, or
- (b) the carry forward to the period in question of an amount under section 391(3) of CTA 2009 (loan relationship deficit carried forward).”

(6) In paragraph 21—

- (a) in sub-paragraph (1)(a), for the words from “treated” to the end substitute “ which, as a result of section 87(3) of FA 2012, is treated for the purposes of section 76 of that Act as a deemed BLAGAB management expense for the chargeable period ”,
- (b) in sub-paragraph (1)(b), for “section 76(12) of that Act” substitute “ section 73 of FA 2012 ”, and
- (c) in sub-paragraph (2), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 ”.

(7) In paragraph 22—

- (a) in sub-paragraph (1), for “life assurance business” substitute “ basic life assurance and general annuity business ” and for “under the I minus E basis” substitute “ in accordance with the I - E rules ”, and
- (b) for sub-paragraph (2) substitute—

“(2) For the purposes of those rules, the total amount which may—

- (a) be carried forward under section 73 of FA 2012 from a chargeable period in which the company claims a first-year tax credit, and
- (b) be brought into account for the next chargeable period in accordance with step 5 in section 76 of FA 2012,

is treated as reduced by the amount of the loss surrendered.”

107 (1) Part 2 of Schedule 1 (index of defined expressions) is amended as follows.

(2) Omit the entry for “life assurance business”.

(3) Insert the following entries at the appropriate places—

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“basic life assurance and general annuity business sections 57 and 67(5) of FA 2012 (as applied by section 141(2) of that Act)”

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“I - E rules	section 70(1) and (2) of FA 2012 (as applied by section 141(2) of that Act)”
“insurance company	section 65 of FA 2012 (as applied by section 141(2) of that Act)”
“long-term business	section 63(1) of FA 2012 (as applied by section 141(2) of that Act)”
“non-BLAGAB long-term business	sections 66 and 67 of FA 2012 (as applied by section 141(2) of that Act)”

*Finance Act 2003*

108 FA 2003 is amended as follows.

109 Omit section 156 (overseas life insurance companies).

*Income Tax (Earnings and Pensions) Act 2003*

110 ITEPA 2003 is amended as follows.

111 In section 357(3) (business entertainment and gifts: exception where employer's expenses disallowed), for paragraph (b) substitute—

“(b) the ordinary BLAGAB management expenses of the employer for the purposes of section 76 of FA 2012.”

*Finance Act 2004*

112 FA 2004 is amended as follows.

113 In section 196(4) (relief for employers in respect of contributions paid)—

(a) in the opening words, for “section 76 of ICTA” substitute “ section 76 of FA 2012 ”, and

(b) in paragraph (a), for “brought into account at Step 1 in subsection (7) of that section to the extent that they otherwise would not be” substitute “ treated as meeting the conditions in section 77(2)(a) and (c) of that Act to the extent that they would otherwise not meet them ”.

114 In section 196A(4)(c) (power to restrict relief), for “brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer” substitute “ ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012 ”.

115 In section 196L(2) (employer asset-backed contributions: supplementary), as inserted by Part 3 of Schedule 13 to this Act, for paragraph (c) substitute—

“(c) the contribution being ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012.”

116 In section 197(10)(b) (spreading of relief), for “section 76 of ICTA” substitute “ section 76 of FA 2012 ”.

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- 117 In section 199 (deemed contributions), for subsection (5) substitute—  
“(5) And, for the purposes of section 76 of FA 2012, it is to be treated as meeting the conditions in section 77(2)(a) and (c) of that Act to the extent that it would otherwise not meet them.”
- 118 In section 199A(10)(c) (indirect contributions), for “brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of E” substitute “ordinary BLAGAB management expenses of E for an accounting period for the purposes of section 76 of FA 2012 ”.
- 119 In section 200 (no other relief for employers in connection with contributions), for paragraph (c) substitute—  
“(c) are to count as ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012.”
- 120 (1) Section 246 (restriction of deduction for non-contributory provision) is amended as follows.  
(2) In subsection (2), for paragraph (c) substitute—  
“(c) are not to count as ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012.”  
(3) In subsection (3)(b), for “section 76 of ICTA” substitute “ section 76 of FA 2012 ”.
- 121 In section 246A(4)(c) (case where no relief for provision by an employer), for “brought into account at Step 1 in section 76(7) of ICTA (expenses of insurance companies) in respect of the employer” substitute “ ordinary BLAGAB management expenses of the employer for an accounting period for the purposes of section 76 of FA 2012 ”.
- 122 In section 280(1) (abbreviations)—  
(a) omit the “and” before the definition of “CTA 2009”, and  
(b) after that definition insert—  
““FA 2012” means the Finance Act 2012.”
- Finance (No.2) Act 2005*
- 123 F(No.2)A 2005 is amended as follows.
- 124 In section 18(3)(b) (specific powers relating to authorised unit trusts and open-ended investment companies), for sub-paragraph (iii) (but not the “or” at the end of it) substitute—  
“(iii) by an insurance company (within the meaning of section 65 of FA 2012) as assets for the purposes of its long-term business (within the meaning of section 63 of that Act),”.
- Income Tax (Trading and Other Income) Act 2005*
- 125 ITTOIA 2005 is amended as follows.
- 126 In section 48(4A) (car hire)—  
(a) at the end of paragraph (a) insert “ or ”,

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- (b) in paragraph (b), after “management),” insert “ including as applied by section 82(4) of FA 2012. ”, and
  - (c) omit paragraph (c) (together with the “or” before that paragraph).
- 127 In section 473(2) (policies and contracts to which Chapter 9 of Part 4 applies: general), in the definition of “capital redemption policy”, for “within the meaning of Chapter 1 of Part 12 of ICTA” substitute “ within the meaning given by section 56(3) of FA 2012 ”.
- 128 In section 476(3) (special rules: foreign policies), in the definition of “overseas life assurance business”, for “same meaning as in Part 12 of ICTA (see section 431D of that Act)” substitute “ meaning given by section 61 of FA 2012 ”.
- 129 In section 504(7) (part surrenders: payments under guaranteed income bonds etc), in the definition of “pension business”, for “section 431B of ICTA” substitute “ section 58 of FA 2012 ”.
- 130 (1) Section 531 (gains from contracts for life insurance etc: cases where income tax not treated as paid) is amended as follows.
- (2) In subsection (3), after paragraph (b) insert—
- “(ba) a contract the effecting or carrying out of which constitutes protection business within the meaning of section 62 of FA 2012,
  - (bb) a contract which is not within paragraph (ba) but which, as a result of subsection (4) of that section, is treated for the purposes of that section as being made at any time.”.
- (3) In subsection (4), in the definition of “basic life assurance and general annuity business”, for “Chapter 1 of Part 12 of ICTA (see section 431F)” substitute “ Part 2 of FA 2012 (see sections 57 and 67(5)) ”.
- 131 In paragraph 118(2) of Schedule 2 (pre-1 January 2005 contracts for immediate needs annuities: income tax treated as paid), for the words from “means” to the end substitute “ means the application of section 57(2)(d) of FA 2012 ”.

#### *Income Tax Act 2007*

- 132 ITA 2007 is amended as follows.
- 133 In section 564B(1) (meaning of “financial institution”)—
- (a) in paragraph (g), for “section 431(2) of ICTA” substitute “ section 65 of FA 2012 ”, and
  - (b) in paragraph (h), for “section 431(2) of ICTA” substitute “ section 139(1) of FA 2012 ”.
- 134 In section 681DP (relevant tax relief), for paragraph (c) substitute—
- “(c) a deduction of an amount which for the purposes of section 73 of FA 2012 is adjusted BLAGAB management expenses of an insurance company for an accounting period.”.

#### *Corporation Tax Act 2009*

- 135 CTA 2009 is amended as follows.
- 136 In section A1(2) (overview of the Corporation Tax Acts)—
- (a) omit paragraph (a), and

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- (b) omit the “and” before paragraph (j) and after that paragraph insert—  
“(k) Part 2 of FA 2012 (insurance companies carrying on long-term business),”.
- 137 (1) Section 18Q (UK resident insurance companies: profits of foreign permanent establishments) is amended as follows.

(2) In subsection (1), omit “(as defined in section 431(2) of ICTA)”.

(3) Omit subsections (2) and (3).

138 For section 24 substitute—

#### “24 Application to insurance companies

- (1) This section makes provision in a case where the non-UK resident company mentioned in subsection (1) of section 21 is an insurance company.
- (2) In accordance with the principle in that subsection, the permanent establishment is treated as holding—  
(a) the same or a similar quantity of assets, and  
(b) assets of the same or similar description,  
as would have been held by a distinct and separate enterprise acting as mentioned in paragraphs (a) and (b) of that subsection.
- (3) The assets which the permanent establishment is treated as holding in accordance with the principle in that subsection may include a proportion of assets held by the company.
- (4) Nothing in subsection (2) or (3) is to be read as preventing the application of similar principles to those provided for by that subsection in a case where the non-UK resident company mentioned in section 21(1) is not an insurance company.
- (5) The Commissioners for Her Majesty's Revenue and Customs may by regulations make other provision about the application of section 21(1) in a case where the non-UK resident company mentioned there is an insurance company.
- (6) The regulations may, in particular, make provision in place of section 21(2) (b) as to the basis on which, in the case of an insurance company, capital is to be attributed to a permanent establishment in the United Kingdom.”
- 139 In section 36(3) (farming and market gardening), for “of the company's long-term insurance fund” substitute “ held by the company for the purposes of its long-term business ”.
- 140 In section 38(3)(d) (commercial occupation of land other than woodlands), for “of the company's long-term insurance fund” substitute “ held by the company for the purposes of its long-term business ”.
- 141 In section 39(5)(a) (profits of mines, quarries and other concerns), for “of the company's long-term insurance fund” substitute “ held by the company for the purposes of its long-term business ”.
- 142 In section 46(3)(a) (generally accepted accounting practice), omit subparagraph (ii) (together with the “or” before it).

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- 143 In section 56(5) (car hire)—
- (a) at the end of paragraph (a), insert “ including as applied by section 82(4) of FA 2012, or ”, and
  - (b) omit paragraph (c) (together with the “or” before that paragraph).
- 144 In section 130(1)(a) (insurers receiving distributions etc), for “life assurance business” substitute “business in relation to which section 111 of FA 2012 applies”.
- 145 In section 201 (priority rules: provisions which must be given priority over Part 3 of Act), after subsection (1) insert—
- “(1A) Subsection (1) does not apply in the case of the long-term business of an insurance company.”
- 146 In section 203(4) (property businesses)—
- (a) for “section 432AA of ICTA” substitute “ section 86 of FA 2012 ”, and
  - (b) for “in the case of” substitute “ for the purpose of applying the I - E rules in relation to ”.
- 147 (1) Section 298 (meaning of trade and purposes of trade) is amended as follows.
- (2) In subsection (3)—
    - (a) at the end of paragraph (a), insert “ or ”, and
    - (b) omit paragraph (c) (together with the “or” before it).
  - (3) After subsection (5) insert—
 

“(6) In the case of activities carried on by a company in the course of any basic life assurance and general annuity business, provision corresponding to that made by subsection (3) is made by section 88 of FA 2012 for the purpose of applying the I - E rules.”
- 148 (1) Section 336 (transfers of loans on group transactions) is amended as follows.
- (2) In subsection (4), for “is within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA (assets held for certain categories of long-term business)” substitute “ is held for the purposes of a company's long-term business ”.
  - (3) After that subsection insert—
 

“(4A) For the purposes of subsection (4)—

    - (a) in the case of an overseas life insurance company, ignore transfers in relation to assets which are not UK assets (within the meaning of section 117 of FA 2012), and
    - (b) section 122 of that Act applies as it applies for the purposes of Chapter 8 of Part 2 of that Act.”

149 (1) Section 337 (transfers of loans on insurance business transfers) is amended as follows.

    - (2) After subsection (3) insert—
 

“(3A) In subsection (3)(b) “qualifying overseas transfer” means so much of a transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with an authorisation granted

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outside the United Kingdom for the purposes of Article 14 of the Council Directive of 5 November 2002 concerning life assurance (2002/83/EC).”

- (3) In subsection (4)(a), for “the categories set out in section 440(4) of ICTA” substitute “the applicable categories”.
- (4) After subsection (4) insert—
- “(4A) For the purposes of subsection (4)(a) “the applicable categories” means—
- (a) in the case of a UK life insurance company, the long-term business categories or a category of assets which are not held for the purposes of its long-term business, and
  - (b) in the case of an overseas life insurance company, the UK long-term business categories, a category of UK assets which are not held for the purposes of its long-term business or a category of assets which are held by it but which are not UK assets.
- (4B) For the purposes of subsection (4A)—
- (a) “the long-term business categories” has the same meaning as in section 116 of FA 2012,
  - (b) “the UK long-term business categories” and “UK assets” have the same meanings as in section 117 of that Act, and
  - (c) section 122 of that Act applies as it applies for the purposes of Chapter 8 of Part 2 of that Act.”
- 150 (1) Section 386 (overview of Chapter 10 of Part 5 (insurance companies)) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a), after “apply” insert “ for the purposes of the I - E rules ” and at the end insert “ and ”, and
  - (b) omit paragraph (c) (together with the “and” before it).
- (3) In subsection (3)—
- (a) in paragraph (a), omit “or of BLAGAB”,
  - (b) in paragraph (a), after “trade)” insert “ and section 88 of FA 2012 (equivalent rule for activities carried on in the course of BLAGAB) ”, and
  - (c) in paragraph (f), for “as expenses of insurance companies at Step 1 of section 76(7) of ICTA” substitute “ as ordinary BLAGAB management expenses ”.
- 151 In section 387(1) (treatment of deficit on BLAGAB: introduction), after “apply” insert “ for the purposes of the I - E rules ”.
- 152 In section 388(3) (basic rule: deficit set off against income and gains of deficit period), for “before any expenses deduction under section 76 of ICTA (expenses of insurance companies)” substitute “ in accordance with step 4 in section 73 of FA 2012 (that is to say, before any deduction for the adjusted BLAGAB management expenses of the company for the deficit period) ”.
- 153 In section 389 (claim to carry back deficit), after subsection (2) insert—
- “(2A) If any of the claim amount is carried back in accordance with this section to an accounting period, the amount which is so carried back is to be left out

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of account for the purpose of applying section 93 of FA 2012 in the case of that period.”

- 154 (1) Section 390 (meaning of “available profits”) is amended as follows.
- (2) In subsection (4), for the words from “which is” to the end substitute “ of the BLAGAB credits in respect of the company's loan relationships that count as income for the purposes of the I - E rules for that period (as determined by section 88(3) and (4) of FA 2012) ”.
- (3) In subsection (5)—
- (a) in step 1(a), for “so much of the expenses deduction for the period given by Step 8 in section 76(7) of ICTA (expenses of insurance companies) as is referable to BLAGAB” substitute “ the amount for the purposes of section 73 of FA 2012 of the adjusted BLAGAB management expenses of the company for the period ”,
- (b) in step 1(b), for “so referable” substitute “ referable to BLAGAB ”,
- (c) in step 2, for paragraph (a) (together with the “and” at the end of it) substitute—
- “(a) so much of the amount for the purposes of section 73 of FA 2012 of the adjusted BLAGAB management expenses of the company for the period as, on the assumption that the company had no BLAGAB non-trading loan relationships profits for the period, could be subtracted at step 6 under that section without producing a negative amount, and”, and
- (d) in step 2(b), for “so referable” substitute “ referable to BLAGAB ”.
- (4) For subsection (6) substitute—
- “(6) In the case of any claim under section 389, references in subsection (5) to the amount for the purposes of section 73 of FA 2012 of the adjusted BLAGAB management expenses of the company for the period are references to that amount as determined on the assumptions in subsections (7) and (8).”
- 155 In section 391 (carry forward of surplus deficit to next accounting period), for subsection (3) substitute—
- “(3) Any deficit so carried forward is treated for the purposes of section 76 of FA 2012 as a deemed BLAGAB management expense for the next period.”
- 156 Omit sections 393 and 394 (insurance companies: determination of questions requiring apportionments) and the italic heading before those sections.
- 157 In section 399 (index-linked gilt-edged securities), at the end insert—
- “(6) In the case of insurance companies, the application of sections 400 to 400C is subject to section 112 of FA 2012.”
- 158 In section 464(3) (list of exceptions to general rule that Part 5 (loan relationships) has priority for corporation tax purposes), omit paragraph (h) (but not the “and” at the end of that paragraph).
- 159 In section 471(3) (connections between persons: creditors who are insurance companies carrying on BLAGAB), for “is linked for that period to that business” substitute “ is matched for that period to a BLAGAB liability ”.



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- 160 In section 472(4)(b) (meaning of “control”), for “of an insurance company's long-term insurance fund” substitute “ held by an insurance company for the purposes of its long-term business ”.
- 161 In section 473(3)(b) (meaning of “major interest”), for “of an insurance company's long-term insurance fund” substitute “ held by an insurance company for the purposes of its long-term business ”.
- 162 In section 486(4) (exclusion of exchange gains and losses in respect of tax debts etc), for paragraph (c) substitute—  
“(c) as ordinary BLAGAB management expenses within the meaning of section 77 of FA 2012 (insurance companies carrying on basic life assurance and general annuity business).”
- 163 In section 502(1) (meaning of “financial institution”)—  
(a) in paragraph (g), for “section 431(2) of ICTA” substitute “ section 65 of FA 2012 ”, and  
(b) in paragraph (h), for “section 431(2) of ICTA” substitute “ section 139(1) of FA 2012 ”.
- 164 In section 560(4) (investment life insurance contracts: introduction)—  
(a) in paragraph (a), for “section 431(2) of ICTA” substitute “ section 65 of FA 2012 ” and for “that section” substitute “ section 63 of that Act ”, and  
(b) in paragraph (b), for the words from “but” to the end substitute “ if subsection (3)(a) were omitted from section 65 of that Act. ”
- 165 In section 561(2) (meaning of “investment life insurance contract”), in the definition of “capital redemption policy”, for “section 431(2ZF) of ICTA” substitute “ section 56(3) of FA 2012 ”.
- 166 In section 563(6)(a) (increased non-trading credits for BLAGAB and EEA taxed contracts), for “section 88(1) of FA 1989” substitute “ section 102(3) of FA 2012 ”.
- 167 (1) Section 591 (conditions A to E mentioned in section 589(5)) is amended as follows.  
(2) In subsection (2)(a), for “life assurance business” substitute “ long-term business ”.  
(3) In subsection (2)(b), after “Sourcebook” insert “ (within the meaning given by section 139(4) of FA 2012) ”.
- 168 (1) Section 634 (insurance companies) is amended as follows.  
(2) The existing text becomes subsection (1) of that section.  
(3) In that subsection, omit paragraph (b) (together with the “or” before it).  
(4) After that subsection insert—  
“(2) In the case of activities carried on by a company in the course of any basic life assurance and general annuity business, provision corresponding to that made by subsection (1) is made by section 88 of FA 2012 for the purpose of applying the I - E rules.”
- 169 (1) Section 635 (creditor relationships of insurance companies: embedded derivatives which are options) is amended as follows.  
(2) In subsection (1)(a), for “life assurance business” substitute “ basic life assurance and general annuity business ”.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

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- (3) In subsection (2), for “This Part” substitute “ For the purpose of applying the I - E rules, this Part ”.
- 170 (1) Section 636 (insurance companies: modifications of Chapter 5 (continuity of treatment on transfers within groups)) is amended as follows.
- (2) In subsection (3), after the subsection (2B) which is treated as if it were inserted in section 626 insert—
- “(2C) In subsection (2B) “qualifying overseas transfer” means so much of a transfer of the whole or any part of the business of an overseas life insurance company carried on through a permanent establishment in the United Kingdom as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 14 of the Council Directive of 5 November 2002 concerning life assurance (No. 2002/83/EC).”
- (3) In subsection (4), for the words from “the asset was within one of the categories set out in section 440(4)(a), (d) and (e) of ICTA” to the end substitute “ , immediately before or after the transfer, the asset was held for the purposes of a company's long-term business (but, in the case of an overseas life insurance company, ignoring assets which are not UK assets (within the meaning of section 117 of FA 2012)). ”
- (4) In subsection (5)(a), for “the categories set out in section 440(4) of ICTA (transfers of assets etc)” substitute “ the applicable categories ”.
- (5) After subsection (5) insert—
- “(5A) For the purposes of subsection (5)(a) “the applicable categories” means—
- (a) in the case of a UK life insurance company, the long-term business categories or a category of assets which are not held for the purposes of its long-term business, and
- (b) in the case of an overseas life insurance company, the UK long-term business categories, a category of UK assets which are not held for the purposes of its long-term business or a category of assets which are held by it but which are not UK assets.”
- (6) After subsection (7) insert—
- “(8) For the purposes of this section—
- (a) “the long-term business categories” has the same meaning as in section 116 of FA 2012, and “the UK long-term business categories” and “UK assets” have the same meanings as in section 117 of FA 2012, and
- (b) section 122 of FA 2012 applies as it applies for the purposes of Chapter 8 of Part 2 of that Act.”
- 171 In section 699(3) (list of exceptions to general rule that Part 7 (derivative contracts) has priority for corporation tax purposes)—
- (a) at the end of paragraph (a) insert “ and ”, and
- (b) omit paragraph (c) (together with the “and” before it).
- 172 In section 710 (derivative contracts: other definitions)—
- (a) in the definition of “capital redemption policy”, for “section 431(2ZF) of ICTA” substitute “ section 56(3) of FA 2012 ”,

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- (b) in the definition of “contract of insurance”, for “section 431(2) of ICTA” substitute “ section 64 of FA 2012 ”, and
  - (c) in the definition of “contract of long-term insurance”, for “section 431(2) of ICTA” substitute “ section 64 of FA 2012 ”.
- 173 In section 746(2)(c) (“non-trading credits” and “non-trading debits”), for “section 901(3)” substitute “ section 901 ”.
- 174 In section 800(3) (excluded assets: introduction), omit paragraph (b) (together with the “and” before it).
- 175 In section 806(3) (assets excluded from Part 8 (intangible fixed assets): financial assets), after paragraph (c) (but before the “and” at the end of that paragraph) insert—
- “(ca) assets so far as they are derived from, or are referable to, contracts or policies of insurance or capital redemption policies,”.
- 176 In section 810 (mutual trade or business), omit subsection (2).
- 177 In section 815 (election to exclude capital expenditure on software), omit subsection (8).
- 178 In section 855(4) (further provision about regulations under section 854), omit “or section 902”.
- 179 For section 901 substitute—

**“901 Effect of application of the I - E basis: non-trading amounts**

In the application of the I - E rules in relation to a company's basic life assurance and general annuity business, the provisions of this Part need to be read with section 88 of FA 2012 (which provides for the activities carried on by the company in the course of that business not to constitute the whole or any part of a trade or of a property business).”

- 180 Omit sections 902 (excluded assets) and 903 (elections to exclude capital expenditure on computer software) and the italic heading before those sections.
- 181 Omit section 904 (transfers of life assurance business: transfers of assets treated as tax-neutral).
- 182 In section 906(3) (list of exceptions to general rule that Part 8 has priority for corporation tax purposes), omit paragraph (b) (but not the “and” at the end of that paragraph).
- 183 In section 931S(3) (company distributions: meaning of “small company”), in the definition of “insurance company”, for “section 431 of ICTA” substitute “ section 65 of FA 2012 ”.
- 184 In section 931W (provisions which must be given priority over Part 9A), omit subsection (3).
- 185 In section 985 (references to a deduction being allowed to a company), for subsection (4) substitute—
- “(4) If—
    - (a) the company is a company in relation to which the I - E rules apply, and

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- (b) the expenses are referable, in accordance with Chapter 4 of Part 2 of FA 2012, to the company's basic life assurance and general annuity business,  
the expenses are treated for the purposes of section 76 of that Act as ordinary BLAGAB management expenses of the company.”
- 186 In section 999 (deduction for costs of setting up SAYE option scheme or CSOP scheme), for subsection (5) substitute—  
“(5) If—  
(a) the company is a company in relation to which the I - E rules apply, and  
(b) the expenses are referable, in accordance with Chapter 4 of Part 2 of FA 2012, to the company's basic life assurance and general annuity business,  
the expenses are treated for the purposes of section 76 of that Act as ordinary BLAGAB management expenses of the company.”
- 187 (1) Section 1000 (deduction for costs of setting up employee share ownership trust) is amended as follows.  
(2) In subsection (2), for “subsections (3) and (4)” substitute “ subsection (3) ”.  
(3) Omit subsection (4).
- 188 In section 1013 (relief if shares acquired by employee or other person: how relief is given), for subsection (4) substitute—  
“(4) If—  
(a) the employing company is a company in relation to which the I - E rules apply, and  
(b) the relief is referable, in accordance with Chapter 4 of Part 2 of FA 2012, to the employing company's basic life assurance and general annuity business,  
the amount of relief is treated for the purposes of section 76 of that Act as ordinary BLAGAB management expenses of the company referable to the accounting period.”
- 189 In section 1021 (relief if employee or other person obtains option to acquire shares: how relief is given), for subsection (4) substitute—  
“(4) If—  
(a) the employing company is a company in relation to which the I - E rules apply, and  
(b) the relief is referable, in accordance with Chapter 4 of Part 2 of FA 2012, to the employing company's basic life assurance and general annuity business,  
the amount of relief is treated for the purposes of section 76 of that Act as ordinary BLAGAB management expenses of the company referable to the accounting period.”

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### Textual Amendments

**F60** Sch. 16 para. 190 omitted (with effect in accordance with Sch. 15 paras. 28, 29 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 15 para. 26\(3\)](#)

- 191 In section 1083 (refunds of expenditure treated as income chargeable to tax), omit subsections (4) and (5).
- 192 In section 1143(4) (overview of Part 14)—
- (a) in paragraph (a), for “life assurance business” substitute “ basic life assurance and general annuity business ”, and
  - (b) in paragraph (b), for “ “life assurance company tax credits” ” substitute “ “BLAGAB tax credits” ”.
- 193 (1) Section 1153 (land remediation tax credit: amount of a loss which is “unrelieved”) is amended as follows.
- (2) In subsection (3), for the words from “, as a result of section 432AB(3) of ICTA,” to the end substitute “, as a result of section 87(3) of FA 2012, the loss is treated for the purposes of section 76 of that Act as a deemed BLAGAB management expense for the relevant accounting period.”
  - (3) In subsections (4) to (6), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 ”.
  - (4) In subsection (7), for paragraph (b) substitute—
    - “(b) taken into account in calculating for the purposes of section 73 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the relevant accounting period as a result of—
      - (i) the previous application of section 73 or 93 of FA 2012, or
      - (ii) the carry forward to the relevant accounting period of an amount under section 391 of this Act (surplus deficit).”
  - (5) In subsection (8)—
    - (a) in paragraph (b), for “section 432AA of ICTA” substitute “ section 86 of FA 2012 ”, and
    - (b) in the words after that paragraph, for “section 432AB(4) of ICTA” substitute “ section 87(4) of FA 2012 ”.
- 194 (1) Section 1158 (restriction on losses carried forward where tax credit claimed) is amended as follows.
- (2) In subsection (3)—
    - (a) for paragraph (a) substitute—
      - “(a) as a result of section 87(3) of FA 2012, a company's UK property business loss is treated for the purposes of section 76 of that Act as a deemed BLAGAB management expense for the accounting period,” and
    - (b) in paragraph (b), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 ”.
  - (3) In subsection (4), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 ”.

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- 195 In the heading for Chapter 4 of Part 14, for “LIFE ASSURANCE BUSINESS” substitute “BLAGAB”.
- 196 Omit section 1159 (limitation on relief under Chapter 2 of Part 14: insurance companies) and the italic heading before that section.
- 197 In section 1160 (provision in respect of I minus E basis)—
- (a) for “The remaining provisions of this Chapter apply” substitute “ This Chapter applies ”, and
  - (b) for “under the I minus E basis in respect of its life assurance business” substitute “ in respect of its basic life assurance and general annuity business in accordance with the I - E rules ”.
- 198 (1) Section 1161 (relief in respect of I minus E basis: expenses payable) is amended as follows.
- (2) In subsection (6), for “section 76(7) of ICTA” substitute “ section 76 of FA 2012 ”.
  - (3) In subsection (7)(a), for “life assurance business” substitute “ basic life assurance and general annuity business ”.
- 199 (1) Section 1162 (additional relief) is amended as follows.
- (2) In subsection (3), for the words from “as expenses payable” to the end substitute “ for the purposes of section 76 of FA 2012 as deemed BLAGAB management expenses for the accounting period ”.
  - (3) In subsection (4)(b), for the words from “which” to the end substitute “ of the expenditure which, for the purposes of section 76 of FA 2012, is not an ordinary BLAGAB management expense of the company referable to the accounting period as a result of the application of section 77(2)(b) of that Act ”.
- 200 In the italic heading before section 1164, for “*Life assurance*” substitute “ *BLAGAB* ”.
- 201 (1) Section 1164 (entitlement to tax credit) is amended as follows.
- (2) In subsections (1) and (2)—
    - (a) for “a life assurance company tax credit” substitute “ a BLAGAB tax credit ”, and
    - (b) for “qualifying life assurance business loss” substitute “ qualifying BLAGAB loss ”.
  - (3) In subsections (3) and (4), for “a life assurance company tax credit” substitute “ a BLAGAB tax credit ”.
- 202 (1) Section 1165 (meaning of “qualifying life assurance business loss”) is amended as follows.
- (2) In subsection (1)—
    - (a) in the opening words, for “ “qualifying life assurance business loss”” substitute “ “qualifying BLAGAB loss” ”, and
    - (b) in paragraph (b), for “section 76(12) of ICTA (unrelieved expenses carried forward)” substitute “ section 73 of FA 2012 as excess BLAGAB expenses ”.
  - (3) In subsection (2), for “section 76(12) of ICTA” substitute “ section 73 of FA 2012 as excess BLAGAB expenses ”.

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- (4) In subsection (3), for paragraph (b) substitute—
- “(b) taken into account in calculating for the purposes of section 73 of FA 2012 the amount of adjusted BLAGAB management expenses of the company for the relevant accounting period as a result of—
- (i) the previous application of section 73 or 93 of FA 2012, or
- (ii) the carry forward to the relevant accounting period of an amount under section 391 of this Act (surplus deficit).”
- (5) In subsection (4), for “qualifying life assurance business loss” substitute “qualifying BLAGAB loss”.
- (6) In the heading, for “**“qualifying life assurance business loss”**” substitute “**“qualifying BLAGAB loss”**”.
- 203 In section 1166(1) (amount of tax credit)—
- (a) for “life assurance company tax credit” substitute “BLAGAB tax credit”, and
- (b) for “qualifying life assurance business loss” substitute “qualifying BLAGAB loss”.
- 204 In section 1167(1) and (3)(a) (payment of tax credit etc), for “a life assurance company tax credit” substitute “a BLAGAB tax credit”.
- 205 (1) Section 1168 (restriction on carrying forward expenses payable where tax credit claimed) is amended as follows.
- (2) In subsection (1), for “a life assurance company tax credit” substitute “a BLAGAB tax credit”.
- (3) In subsection (2)—
- (a) for “section 76 of ICTA” substitute “section 73 of FA 2012”,
- (b) for “subsection (12) of that section” substitute “that section as excess BLAGAB expenses”, and
- (c) for “Step 7 in subsection (7) of that section” substitute “step 5 in section 76 of FA 2012”.
- (4) In subsection (3), for “qualifying life assurance business loss” substitute “qualifying BLAGAB loss”.
- 206 In section 1169(2) (artificially inflated claims for relief or tax credit)—
- (a) in paragraph (c), for “life assurance business” substitute “basic life assurance and general annuity business”, and
- (b) in paragraph (d), for “life assurance company tax credits” substitute “BLAGAB tax credits”.
- 207 After section 1223 insert—
- “1223A Exception for basic life assurance and general annuity business**
- (1) Sections 1219 to 1223 do not apply in relation to an accounting period of an insurance company with investment business so far as the business consists of basic life assurance and general annuity business.
- (2) See instead the rules set out in Chapter 3 of Part 2 of FA 2012.”

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- 208 (1) Section 1251 (car hire) is amended as follows.
- (2) In subsection (3), after “subsection (2)” insert “ (including as applied by section 82(4) of FA 2012) ”.
- (3) In subsection (5)—
- (a) at the end of paragraph (a) insert “ or ”, and
  - (b) omit paragraph (c) (together with the “or” before that paragraph).
- 209 In section 1288(4) (unpaid remuneration)—
- (a) in paragraph (a), after “business,” insert “ including as applied by section 82 of FA 2012 ”, and
  - (b) omit paragraph (b) (together with the “and” before it).
- 210 (1) Section 1297 (life assurance business) is amended as follows.
- (2) In subsection (1), for “section 76 of ICTA applies (expenses of companies carrying on life assurance business)” substitute “ the I - E rules apply ”.
- (3) In subsection (2), for “section 86 of FA 1989” substitute “ section 79 of FA 2012 ”.
- (4) In subsection (4)—
- (a) for “purposes of section 86 of FA 1989” substitute “ purpose of calculating the adjusted BLAGAB management expenses of the company for the purposes of section 73 of FA 2012 ”, and
  - (b) for “payable for that period which fall to be included at Step 1 in section 76(7) of ICTA” substitute “ debited, in accordance with generally accepted accounting practice, in the accounts drawn up by the company for that period ”.
- (5) In subsection (5)(a), for “an amount being brought into account under section 76 of ICTA as expenses payable” substitute “ an amount constituting ordinary BLAGAB management expenses of the company for the purposes of section 76 of FA 2012 ”.
- (6) For the heading substitute “ **Basic life assurance and general annuity business** ”.
- 211 In section 1298(2) (business entertainment and gifts), for paragraph (c) substitute—
- “(c) expenses to which this section applies are not to be regarded as constituting ordinary BLAGAB management expenses of the company for the purposes of section 76 of FA 2012.”
- 212 In section 1304 (crime-related payments), for subsection (3) substitute—
- “(3) Expenses to which subsection (4) or (5) applies are not to be regarded as constituting ordinary BLAGAB management expenses of a company for the purposes of section 76 of FA 2012.”
- 213 (1) Schedule 2 (transitionals and savings) is amended as follows.
- (2) In paragraph 139—
- (a) in sub-paragraph (3), for the words from “Section 76ZE” to “section 75)” substitute “ Section 81(4) of FA 2012 (which, in the case of companies carrying on basic life assurance and general annuity business, applies section 75(2) to (4)) ”,
  - (b) in that sub-paragraph, for “condition in subsection (1) of that section” substitute “ conditions in paragraphs (a) and (b) of that subsection ”, and



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(c) in sub-paragraph (4), for “and section 76ZE of ICTA” substitute “ (including as applied by section 81(4) of FA 2012) ”.

(3) In paragraph 140(1)(b), for “section 76ZL of ICTA” substitute “ the application by section 82 of FA 2012 of section 1249(1) to (3) of this Act ”.

214 In Schedule 4 (index of defined expressions)—

- (a) in the entry for “basic life assurance and general annuity business”, for “section 431F of ICTA (as applied by section 431(2) of that Act)” substitute “ sections 57 and 67(5) of FA 2012 (as applied by section 141(2) of that Act) ”,
- (b) omit the entry for “deposit back arrangements”,
- (c) omit the entry for “gross roll-up business”,
- (d) in the entry for “the I minus E basis”, for “I minus E basis” substitute “ I - E rules ” and for “section 431(2) of ICTA” substitute “ section 70(1) and (2) of FA 2012 (as applied by section 141(2) of that Act) ”,
- (e) in the entry for “insurance business transfer scheme”, for “section 431(2) of ICTA” substitute “ section 139(1) of FA 2012 (as applied by section 141(2) of that Act) ”,
- (f) in the entry for “insurance company”, for “section 431(2) of ICTA” substitute “ section 65 of FA 2012 (as applied by section 141(2) of that Act) ”,
- (g) omit the entry for “the Insurance Prudential Sourcebook”,
- (h) in the entry for “life assurance business”, for “section 431(2) of ICTA” substitute “ section 56 of FA 2012 (as applied by section 141(2) of that Act) ”,
- (i) omit the entry for “linked assets”,
- (j) in the entry for “long-term business”, for “section 431(2) of ICTA” substitute “ section 63 of FA 2012 (as applied by section 141(2) of that Act) ”,
- (k) omit the entry for “long-term insurance fund”,
- (l) in the entry for “overseas life insurance company”, for “section 431(2) of ICTA” substitute “ section 139(1) of FA 2012 (as applied by section 141(2) of that Act) ”, and
- (m) omit the entry for “qualifying overseas transfer”.

#### *Corporation Tax Act 2010*

215 CTA 2010 is amended as follows.

216 In section 17(3) (interpretation of Chapter: meaning of “carried-forward amount”)

- (a) in paragraph (f), for “section 76(12) or (13) of ICTA (certain expenses of insurance companies)” substitute “ section 73 or 93 of FA 2012 for use at step 5 in section 76 of that Act (the I - E basis for insurance companies) ”, and
- (b) omit paragraph (g).

217 In section 54(2) (non-UK resident company: receipts of interest, dividends or royalties), for the words from “any of these provisions—” to the end substitute “ section 37 or 45 ”.

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218 In Chapter 4 of Part 4 (property losses), after section 67A insert—

*“Insurance companies*

**67B Exclusion in the case of property businesses of insurance companies**

(1) This Chapter does not apply for the purpose of applying the I - E rules in relation to a loss made by an insurance company in any of its separate UK property businesses or overseas property businesses within section 86(4) of FA 2012.

(2) But in the case of a loss which is referable, in accordance with Chapter 4 of Part 2 of that Act, to the company's basic life assurance and general annuity business, see section 87(3) and (4) of that Act.”

219 In section 606(5) (groups), in the definition of “insurance company”, for “section 431(2) of ICTA” substitute “ section 65 of FA 2012 ”.

F61220 .....

**Textual Amendments**  
F61 Sch. 16 paras. 220-223 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, Sch. 29 para. 50(4)

F61221 .....

**Textual Amendments**  
F61 Sch. 16 paras. 220-223 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, Sch. 29 para. 50(4)

F61222 .....

**Textual Amendments**  
F61 Sch. 16 paras. 220-223 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, Sch. 29 para. 50(4)

F61223 .....

**Textual Amendments**  
F61 Sch. 16 paras. 220-223 omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), Sch. 1 para. 52, Sch. 29 para. 50(4)

224 In section 835(2) (transferor or associate becomes liable for payment of rent), for paragraph (c) substitute—

“(c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 76 of FA 2012 (management

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- expenses of insurance companies carrying on basic life assurance and general annuity business).”
- 225 In section 836(2) (transferor or associate becomes liable for payment other than rent), for paragraph (c) substitute—
- “(c) a deduction is allowed for the payment by taking it into account in the calculation at step 1 of section 76 of FA 2012 (management expenses of insurance companies carrying on basic life assurance and general annuity business).”
- 226 (1) Section 839 (deduction under section 76 of ICTA not to exceed commercial rent) is amended as follows.
- (2) In subsection (1), for “the deduction under section 76 of ICTA allowed for” substitute “ the amount to be taken into account as mentioned in section 835(2)(c) or 836(2) (c) in respect of ”.
- (3) In subsection (3), for “The deduction” substitute “ The amount of the payment to be taken into account ”.
- (4) In the heading, omit “**under section 76 of ICTA**”.
- 227 (1) Section 840 (carrying forward parts of payments) is amended as follows.
- (2) In subsection (2), for “allowed as a deduction under section 76 of ICTA is not allowed” substitute “ taken into account as mentioned in section 835(2)(c) or 836(2) (c) is not taken into account ”.
- (3) In subsection (4), for “a deduction under section 76 of ICTA” substitute “ the calculation at step 1 of section 76 of FA 2012 ”.
- (4) In subsection (5), for “allowed as a deduction under section 76 of ICTA” substitute “ taken into account in the calculation at step 1 of section 76 of FA 2012 ”.
- 228 In section 860 (relevant corporation tax relief), for paragraph (d) (but not the “and” at the end of that paragraph) substitute—
- “(d) a deduction of an amount which for the purposes of section 73 of FA 2012 is an amount of adjusted BLAGAB management expenses of an insurance company for an accounting period.”.
- 229 In section 886 (relevant tax relief), for paragraph (c) substitute—
- “(c) a deduction of an amount which for the purposes of section 73 of FA 2012 is an amount of adjusted BLAGAB management expenses of an insurance company for an accounting period.”.
- 230 In section 1171(2) (powers under orders and regulations excluded from general provision)—
- (a) omit the “and” before paragraph (g), and
- (b) after that paragraph insert “, and
- (h) Parts 2 and 3 of FA 2012.”
- 231 In section 1173(2) (miscellaneous charges), in Part 3 of the table, omit—
- (a) the entry relating to section 436A(1) of ICTA,
- (b) the entry relating to section 442A(1) of ICTA,
- (c) the entry relating to section 85(1) of FA 1989, and
- (d) the entry relating to section 85A(1) of FA 1989.

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*Taxation (International and Other Provisions) Act 2010*

- 232 TIOPA 2010 is amended as follows.
- 233 In section 43(7) (profits attributable to permanent establishments for purposes of section 42(2)), omit “(within the meaning given by section 431(2) of ICTA)”.
- 234 In section 72(2) (application of section 73(1)), omit paragraph (b) (together with the “or” before it).
- 235 In section 96(1) (companies with overseas branches: restriction of credit)—
- (a) omit “or section 436A of ICTA”,
  - (b) omit “, calculated in accordance with the provisions applicable for the purposes of section 35 of CTA 2009,” and
  - (c) for “life assurance business or gross roll-up business” substitute “ non-BLAGAB long-term business ”.
- 236 For section 97 substitute—

**“97 Companies with more than one category of business: restriction of credit**

- (1) This section applies if—
  - (a) an insurance company carries on more than one category of long-term business in an accounting period, and
  - (b) there arises to the company in that period any income or gain (“the relevant income”) in respect of which credit for foreign tax is to be allowed under the arrangements.
- (2) The amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable, in accordance with Part 2 of FA 2012, to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with subsection (3), is attributable to that category of business.
- (3) The fraction of the foreign tax that is attributable to the category of business in question is the fraction given by—

$$\frac{\text{RPRI}}{\text{TRI}}$$

where—

RPRI is the amount of the relevant income referable to the category of business in question in accordance with section 97A, and

TRI is the total amount of the relevant income.

**97A Commercial allocation of relevant income to different categories of long-term business**

- (1) The amount of the relevant income that, for the purposes of section 97, is to be regarded as referable to a category of business is to be determined in accordance with an acceptable commercial method adopted by the company for the period of account in which the relevant income arises.

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- (2) A method is an “acceptable commercial method” if, in all the circumstances, it can reasonably be regarded as providing a fair method for the purposes of section 97 for determining for a period of account the amount of any income or gain arising in the period that is referable to a particular category of long-term business carried on by the company.
- (3) The Treasury may make regulations for the purposes of this section—
  - (a) prescribing cases in which a method is, or is not, to be regarded as an acceptable commercial method, and
  - (b) prescribing cases in which the only acceptable commercial method is to be a method prescribed, or of a description prescribed, in the regulations.
- (4) Subject to any provision made by regulations under subsection (3), the method adopted for the purposes of this section for a period of account must be consistent with the method adopted for the purposes of section 98 or 115 of FA 2012 for that period.”

237 Omit section 98 (attribution for section 97 purposes if category is gross roll-up business).

238 In section 99(7) (allocation of expense etc in calculations under section 35 of CTA 2009), for “98” substitute “ 97A ”.

239 Omit section 102 (interpreting sections 99 to 101 for life assurance or gross roll-up business).

240 (1) Section 103 (interpreting sections 99 to 101 for other insurance business) is amended as follows.

(2) In subsection (1), omit the words from “if” to the end.

(3) In the heading, omit “**for other insurance business**”.

241 In section 104(3) (interpreting sections 100 and 101: amounts referable to category of business), for “98” substitute “ 97A ”.

<sup>F62</sup>242 .....

**Textual Amendments**

**F62** Sch. 16 para. 242 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 11(2)(c)(ii)**

243 In section 310(2) (meaning of “carried-forward amount”)—

<sup>F63</sup>(a) .....

(b) omit paragraph (b).

**Textual Amendments**

**F63** Sch. 16 para. 243(a) repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 5 para. 11(2)(c)(ii)**

244 In Part 1 of Schedule 11 (index of defined expressions used in Parts 2 and 3 of Act), insert the following entries at the appropriate places—

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“insurance company	section 65 of FA 2012 (as applied by section 141(2) of that Act)”
“long-term business	section 63 of FA 2012 (as applied by section 141(2) of that Act)”

#### *Finance Act 2011*

- 245 FA 2011 is amended as follows.
- 246 In paragraph 73(2) of Schedule 19 (bank levy: meaning of “excluded entity”), for “meaning given by section 431(2) of ICTA” substitute “meanings given by sections 65 and 139 of FA 2012 respectively”.

### PART 4

#### CONSEQUENTIAL REPEALS

- 247 In consequence of the amendments made by Parts 1 to 3 of this Schedule (or previous amendments made by other enactments), omit the following provisions—
- (a) in FA 1989—
    - (i) section 84(4), and
    - (ii) Schedule 8,
  - (b) in FA 1990—
    - (i) sections 41 and 42,
    - (ii) section 45(1) to (7) and (9) to (11),
    - (iii) section 48,
    - (iv) paragraphs 1, 4 and 8 of Schedule 6,
    - (v) Schedule 7, and
    - (vi) paragraphs 4 and 7 of Schedule 9,
  - (c) in FA 1991—
    - (i) paragraphs 5 and 12 of Schedule 7, and
    - (ii) paragraph 15 of Schedule 15,
  - (d) in TCGA 1992, paragraph 14(22) to (24) of Schedule 10,
  - (e) in FA 1993, section 103(1) and (3),
  - (f) in FA 1995—
    - (i) section 51,
    - (ii) Schedule 8, and
    - (iii) paragraph 1 of Schedule 9,
  - (g) in FA 1996—
    - (i) section 163,
    - (ii) section 167(3) and (10),
    - (iii) section 168(2),
    - (iv) paragraph 23 of Schedule 14,
    - (v) Schedule 31, and
    - (vi) Schedule 33,

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- (h) in FA 1997, section 67,
- (i) in FA 1998—
  - (i) section 123(5)(a), and
  - (ii) paragraph 39 of Schedule 5,
- (j) in FA 2000, sections 108 and 109,
- (k) in FA 2003, paragraphs 1, 2, 5, 8, 10, 12, 20, 22 to 24 and 29 of Schedule 33,
- (l) in FA 2004—
  - (i) sections 40 and 41,
  - (ii) section 44,
  - (iii) Schedule 6,
  - (iv) paragraphs 5, 8 and 9(2) of Schedule 7, and
  - (v) paragraph 20 of Schedule 35,
- (m) in F(No.2)A 2005, paragraphs 1 to 3, 5, 10, 12 to 15, 17 and 18 of Schedule 9,
- (n) in ITTOIA 2005, paragraphs 176 and 178 of Schedule 1,
- (o) in FA 2006—
  - (i) section 86, and
  - (ii) Schedule 11,
- (p) in FA 2007—
  - (i) paragraphs 3, 6, 8 to 14, 16, 17, 19, 21 to 23, 25, 26, 31 to 33, 35 to 38, 57 to 59 and 80 to 84 of Schedule 7,
  - (ii) paragraphs 2 to 6, 8, 9, 11 to 16, 28 and 29 of Schedule 8,
  - (iii) paragraphs 1(1) and (3), 3(1) and (3), 4 to 8, 10, 11(3), 12, 15 and 16 of Schedule 9, and
  - (iv) paragraphs 2(1), 4, 11 to 13 and 15(1) to (3) of Schedule 10,
- (q) in FA 2008—
  - (i) paragraph 2 of Schedule 14, and
  - (ii) paragraphs 1, 2, 4 to 6, 8, 9(2) and (3), 10, 11, 17, 18, 20 to 22, 26, 28(3) and (4), 31 to 34 and 37 of Schedule 17,
- (r) in CTA 2009, paragraphs 30 to 44, 126 to 154, 282, 307(3)(a) and 341 to 351 of Schedule 1,
- (s) in FA 2009—
  - (i) section 46,
  - (ii) paragraph 24 of Schedule 7,
  - (iii) paragraph 60 of Schedule 11, and
  - (iv) paragraphs 1 to 7 of Schedule 23,
- (t) in CTA 2010, paragraphs 9, 10, 42 to 51, 213 and 214 of Schedule 1,
- (u) in FA 2010, section 47,
- (v) in F(No.2)A 2010, section 9,
- (w) in F(No.3)A 2010, section 15,
- (x) in TIOPA 2010, paragraph 34 of Schedule 8, and
- (y) in FA 2011, section 56.

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## SCHEDULE 17

Section 147

## PART 2: TRANSITIONAL PROVISION

## PART 1

## DEEMED RECEIPTS OR EXPENSES

*General outline of the provision of this Part of this Schedule*

- 1 (1) This Part of this Schedule makes provision, by reference to the 2012 balance sheet and the 2012 periodical return of an insurance company (see paragraphs 2 to 4), for deeming amounts to be receipts or expenses of basic life assurance and general annuity business, or non-BLAGAB long-term business, carried on by the company (see paragraphs 9(1) and (2) and 10(1) and (2)).
- (2) Those amounts are determined in accordance with provision made by or under paragraphs 5 to 8.
- (3) The deeming is to have effect for the purpose of calculating the BLAGAB trade profit or loss or (as the case may be) for the purpose of calculating for corporation tax purposes the profits of the non-BLAGAB long-term business (see paragraphs 9(3) and 10(3)).
- (4) The general rule is that, subject to exceptions, the receipts or expenses are treated as arising over a 10-year period (see paragraphs 11 to 15).
- (5) Special provision is made in relation to the operation of sections 83YC to 83YF of FA 1989 (see paragraph 16).
- (6) Anti-avoidance provision is made by paragraphs 17 to 19.
- (7) Provision in relation to overseas life insurance companies is made by paragraph 20.

*Basic concepts*

- 2 In this Part of this Schedule—
- “the 2012 balance sheet”, in relation to an insurance company, means—
- (a) an actual balance sheet of the company drawn up as at the end of 31 December 2012 in accordance with generally accepted accounting practice, or
- (b) a deemed balance sheet of the company under paragraph 3, and
- “the 2012 periodical return”, in relation to an insurance company, means—
- (a) an actual periodical return of the company covering a period ending immediately before 1 January 2013, or
- (b) a deemed periodical return of the company under paragraph 4.
- 3 (1) This paragraph applies if an insurance company does not have a balance sheet drawn up as at the end of 31 December 2012 in accordance with generally accepted accounting practice.



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- (2) For the purposes of this Part of this Schedule the company is deemed to have drawn up a balance sheet as at the end of 31 December 2012 in accordance with generally accepted accounting practice.
  - (3) For the purposes of this Part of this Schedule the entries shown in this deemed balance sheet are deemed to be those entries which would have been shown in an actual balance sheet of the company drawn up as mentioned in sub-paragraph (1).
  - (4) The generally accepted accounting practice that is to be applicable for the purposes of sub-paragraphs (2) and (3) is the practice that is actually adopted for the accounts of the company drawn up for the period in which 31 December 2012 falls.
- 4
- (1) This paragraph applies if an insurance company does not have a periodical return covering a period ending immediately before 1 January 2013.
  - (2) For corporation tax purposes the company is deemed to have a periodical return covering the period—
    - (a) beginning immediately after the last period ending before 1 January 2013 that is covered by a periodical return of the company, and
    - (b) ending immediately before 1 January 2013.
  - (3) This deemed periodical return is deemed to contain such entries as would be included in an actual periodical return of the company covering the period beginning and ending as mentioned in sub-paragraph (2)(a) and (b).
  - (4) For corporation tax purposes the period beginning and ending as mentioned in sub-paragraph (2)(a) and (b) is deemed to be a period of account of the company.

*The comparison etc*

- 5
- (1) In the case of an insurance company, a comparison must be made between—
    - (a) the amount attributed to shareholders as at 31 December 2012 (see sub-paragraphs (2) to (4)), and
    - (b) the cumulative taxed surplus as at 31 December 2012 (see sub-paragraph (5) and (6)).
  - (2) The amount attributed to shareholders as at 31 December 2012 is—
    - (a) the amount shown in line 75 of Form 14 of the 2012 periodical return in respect of the whole of the company's long-term business, less
    - (b) the amount (if any) shown in the 2012 balance sheet of the company in respect of the fund for future appropriations or unallocated divisible surplus.
  - (3) In prescribed cases the amount attributed to shareholders as at 31 December 2012 is to be found by making prescribed adjustments to the amount found by sub-paragraph (2)(a) and (b).
  - (4) In sub-paragraph (3) “prescribed” means prescribed, or of a description prescribed, by regulations made by the Treasury.

The regulations may be made so as to have effect in relation to any period beginning before but ending on or after the day on which the regulations are made (as well as in relation to periods no part of which falls before that day).
  - (5) The cumulative taxed surplus as at 31 December 2012 is found by adding together the amounts (if any) found by the following paragraphs—

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- (a) the amount shown in line 13 of Form 14 of the 2012 periodical return in respect of the whole of the company's long-term business but excluding the amount representing any undistributed demutualisation surplus of the company for the period of account ending immediately before 1 January 2013, and
  - (b) the total amount brought into account for any period of account of the company as a result of section 83YA(3) of FA 1989 less the total amount brought into account for any period of account as a result of section 83YA(4) of FA 1989 (changes in value of assets brought into account: non-profit companies).
- (6) In sub-paragraph (5)(a) “undistributed demutualisation surplus” means the undistributed demutualisation surplus of the company for the period of account in question for the purposes of section 444AF of ICTA.
- (7) The difference between the amount attributed to shareholders as at 31 December 2012 and the cumulative taxed surplus as at 31 December 2012 is referred to in this Part of this Schedule as “the total transitional difference”.
- (8) If the amount attributed to shareholders as at 31 December 2012 exceeds the cumulative taxed surplus as at 31 December 2012, the total transitional difference is a positive figure.
- (9) If the cumulative taxed surplus as at 31 December 2012 exceeds the amount attributed to shareholders as at 31 December 2012, the total transitional difference is a negative figure.
- 6 (1) The insurance company—
- (a) must, by comparing amounts shown in the 2012 periodical return with amounts shown in the 2012 balance sheet, determine the particular items that, when taken together, result in the total transitional difference, and
  - (b) must allocate a positive or negative amount to each of those items.
- (2) The positive or negative amounts allocated to those items in accordance with this paragraph must, when added together, equal the total transitional difference.
- (3) The Treasury may make regulations prescribing—
- (a) the way in which the comparison or determination under sub-paragraph (1) (a) must be done, and
  - (b) the method for making the allocation under sub-paragraph (1)(b).
- (4) The provision that may be made by regulations under sub-paragraph (3)(a) includes provision prescribing descriptions of amounts which are, or are not, to be compared with each other.
- 7 (1) Each of the items determined in accordance with paragraph 6(1)(a) is a “relevant computational item” for the purposes of this Part of this Schedule except in so far as it consists of an excluded item.
- (2) An item is “an excluded item” in so far as it—
- (a) represents an amount forming part of the company's deferred acquisition costs which is included in its 2012 balance sheet and which has been taken into account in calculating its life assurance trade profits,
  - (b) represents an amount which is included in the company's 2012 balance sheet as an asset in respect of the value of future profits arising from a

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- business (or part of a business) transferred to the company (but excluding an asset so far as it is regarded for accounting purposes as internally-generated),
- (c) represents an outstanding contingent loan or an outstanding re-insurance amount,
  - (d) represents an asset to which Part 8 of CTA 2009 (intangible fixed assets) applies for an accounting period of the company beginning on or after 1 January 2013, or
  - (e) falls within a description of item excluded for the purposes of this paragraph by regulations made by the Treasury.
- (3) In sub-paragraph (2)(c) “outstanding contingent loan” means the total amount of the credits brought into account by the company as part of total income—
- (a) for the period of account ending immediately before 1 January 2013, or
  - (b) for any earlier period of account,
- in respect of money debts so far as those debts have not been repaid before that date.
- (4) In sub-paragraph (2)(c) “outstanding re-insurance amount” means the total of the amounts which would (but for section 83YF(2) of FA 1989) have been taken into account in calculating the company's life assurance trade profits—
- (a) for the period of account ending immediately before 1 January 2013, or
  - (b) for any earlier period of account,
- in respect of the re-insurance of relevant liabilities (within the meaning of section 83YC of FA 1989) to the extent that they have not ceased to be re-insured before that date.
- (5) In this paragraph “life assurance trade profits” means profits arising from life assurance business calculated in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of CTA 2009 (charge on trade profits).
- (6) For any accounting period beginning on or after 1 January 2013, an amount is not to be taken into account—
- (a) in calculating the BLAGAB trade profit or loss of any basic life assurance and general annuity business, or
  - (b) in calculating for corporation tax purposes the profits of non-BLAGAB long-term business,
- in so far as the amount consists of an excluded item as a result of falling within sub-paragraph (2)(a) to (d) or, in a case where the regulations provide for the application of this sub-paragraph, within sub-paragraph (2)(e).
- 8 (1) Each relevant computational item must be apportioned between—
- (a) any basic life assurance and general annuity business carried on by the company as at 31 December 2012,
  - (b) any gross roll-up business carried on by the company as at that date, and
  - (c) any PHI business carried on by the company as at that date.
- (2) The Treasury may make regulations for apportioning for the purposes of this Part of this Schedule relevant computational items between those businesses (including provision for the whole amount of a relevant computational item to be apportioned to one of those businesses).

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- (3) A relevant computational item (or a part of a relevant computational item) allocated in accordance with this paragraph to the company's basic life assurance and general annuity business or gross roll-up business is dealt with in accordance with paragraph 9 or 10.
- (4) But a relevant computational item (or a part of a relevant computational item) allocated in accordance with this paragraph to the company's PHI business is ignored in the application of the remaining provisions of this Part of this Schedule.

*Deemed receipts or expenses of BLAGAB or non-BLAGAB long-term business*

- 9 (1) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's basic life assurance and general annuity business is a positive amount, the item (or part of the item) is to be treated as a receipt of that business.
- (2) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's basic life assurance and general annuity business is a negative amount, the item (or part of the item) is to be treated as an expense of that business.
- (3) Receipts and expenses within this paragraph are to be taken into account, in accordance with the provisions of this Part of this Schedule, in calculating the BLAGAB trade profit or loss of that business for accounting periods beginning on or after 1 January 2013.
- (4) Receipts within this paragraph are to count as excluded receipts for the purposes of section 92.
- 10 (1) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's gross roll-up business is a positive amount, the item (or part of the item) is to be treated as a receipt of the company's non-BLAGAB long-term business.
- (2) If a relevant computational item (or a part of a relevant computational item) allocated in accordance with paragraph 8 to the company's gross roll-up business is a negative amount, the item (or part of the item) is to be treated as an expense of the company's non-BLAGAB long-term business.
- (3) Receipts and expenses within this paragraph are to be taken into account, in accordance with the provisions of this Part of this Schedule, in calculating for corporation tax purposes the profits of the company's non-BLAGAB long-term business for accounting periods beginning on or after 1 January 2013.

*Period over which deemed receipts or expenses arise*

- 11 (1) A receipt or expense within paragraph 9 or 10 is to be treated as arising over the period of 10 years beginning with 1 January 2013.
- (2) The amount of the receipt or expense apportioned to (and treated as arising in) any accounting period falling wholly or partly in that 10-year period is to be determined in proportion to the number of days of the accounting period falling within that 10-year period.

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- (3) This paragraph does not apply to a receipt which consists of a relevant court-protected item within the meaning of paragraph 12.
- (4) This paragraph is subject to paragraphs 13 to 15 (transfers and cessation of business etc).
- 12 (1) For the purposes of this paragraph a “relevant court-protected item” means a relevant computational item that relates to an excess of assets over liabilities held in a non-profit fund in respect of which an order made by a court is in force preventing the distribution of the excess (in any circumstances whatever) before the end of a period specified in the order.
- (2) A receipt within paragraph 9 or 10 consisting of a relevant court-protected item is to be treated as arising over the period of 10 years beginning with the relevant day.
- (3) The relevant day is whichever of the following days occurs first—
- (a) the day on which the court order ceases to be in force, or
  - (b) 1 January 2015.
- (4) The amount of the receipt apportioned to (and treated as arising in) any accounting period falling wholly or partly in that 10-year period is to be determined in proportion to the number of days of the accounting period falling within that 10-year period.
- (5) This paragraph is subject to paragraphs 13 to 15 (transfers and cessation of business etc).
- 13 (1) This paragraph applies if—
- (a) under an insurance business transfer scheme, there is a transfer from one insurance company to another of basic life assurance and general annuity business (or any part of that business) or non-BLAGAB long-term business (or any part of that business),
  - (b) the transfer is a relevant intra-group transfer, and
  - (c) the transfer occurs at a time when the full amount of the receipts or expenses within paragraph 9 or 10 of the business the whole or part of which is transferred has not been treated as arising.
- (2) A transfer is a “relevant intra-group transfer” for the purposes of this paragraph if—
- (a) the transferor and the transferee are members of the same group of companies when the transfer occurs (as determined in accordance with section 170(2) to (11) of TCGA 1992), and
  - (b) the transferee is within the charge to corporation tax in relation to the transfer.
- (3) The receipts or expenses are to continue to be dealt with in accordance with the provisions of this Schedule, but are treated as arising to the transferee over so much of the 10-year period in question as falls on or after the date on which the transfer takes place.
- (4) If only part of a business is transferred—
- (a) the appropriate [<sup>F64</sup>amount] of the receipts or expenses is treated as arising to the transferee over so much of the 10-year period in question as falls on or after the date on which the transfer takes place, and
  - (b) the remainder of the receipts or expenses is treated as arising to the transferor over so much of that period.

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[<sup>F65</sup>(5) In sub-paragraph (4)(a), “the appropriate amount” means the amount which fairly represents the value of the receipts or expenses attributable to the part of the business transferred immediately before the transfer.]

(6) For the purposes of this paragraph and paragraphs 11 and 12 the accounting periods of the transferor and the transferee in which the transfer takes place are deemed to end immediately before the transfer takes place.

#### Textual Amendments

**F64** Word in Sch. 17 para. 13(4)(a) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Insurance Companies \(Amendment to Section 129 of, and Schedule 17 to, the Finance Act 2012\) Regulations 2015 \(S.I. 2015/1959\)](#), regs. 1, **3(2)**

**F65** Sch. 17 para. 13(5) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Insurance Companies \(Amendment to Section 129 of, and Schedule 17 to, the Finance Act 2012\) Regulations 2015 \(S.I. 2015/1959\)](#), regs. 1, **3(3)**

- 14 (1) This paragraph applies if—
- (a) under an insurance business transfer scheme, there is a transfer from one insurance company to another of basic life assurance and general annuity business (or any part of that business) or non-BLAGAB long-term business (or any part of that business),
  - (b) the transfer is not a relevant intra-group transfer for the purposes of paragraph 13, and
  - (c) the transfer occurs at a time when the full amount of the deemed receipts or expenses of the relevant business has not been treated as arising to the transferor.
- (2) The remaining amount of the deemed receipts or expenses of the relevant business is to be treated as arising to the transferor in the accounting period in which the transfer takes place.
- (3) In this paragraph references to the deemed receipts or expenses of the relevant business—
- (a) are references to the receipts or expenses within paragraph 9 or 10 of the business the whole or part of which is transferred, but
  - (b) do not include references to so much of those receipts or expenses as fall (or have fallen) to be treated as arising to a company other than the company which is the transferor for the purposes of this paragraph.
- 15 (1) This paragraph applies if—
- (a) an insurance company ceases at any time to carry on basic life assurance and general annuity business or non-BLAGAB long-term business otherwise than as a result of a transfer under an insurance business transfer scheme, and
  - (b) at that time the full amount of the deemed receipts or expenses of the business concerned has not been treated as arising to the company.
- (2) The remaining amount of the deemed receipts or expenses of the business concerned is to be treated as arising to the company in the accounting period in which it ceases to carry on the business concerned.

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- (3) For the purposes of this paragraph an insurance company is to be regarded as ceasing to carry on a business at any time if, at that time, it ceases to be within the charge to corporation tax in relation to the business.
- (4) In this paragraph references to the deemed receipts of the business concerned—
  - (a) are references to the receipts or expenses within paragraph 9 or 10 of the business concerned, but
  - (b) do not include references to so much of those receipts or expenses as fall (or have fallen) to be treated as arising to a company other than the company concerned.

*Financing-arrangement-funded transfers to shareholders in relation to non-profit funds*

- 16 (1) This paragraph applies if, as at 1 January 2013, an insurance company has an unrelieved charge under subsection (3) of section 83YC of FA 1989 (FAFTS: charge in relevant period of account).
- (2) An insurance company has, as at that date, an unrelieved charge under that subsection if either—
  - (a) that subsection has operated in the case of the company for the period of account ending immediately before that date (“the 2012 period of account”), or
  - (b) that subsection has operated in the case of the company for one or more earlier periods of account, and the total of the amounts which are the relevant amount for the 2012 period of account or those earlier periods under section 83YD of FA 1989 does not exceed the amount which is the taxed amount under that section.
- (3) The appropriate amount of the unrelieved charge is to be treated for the purposes of this Part of this Schedule as if it were a relevant computational item of a negative amount.
- (4) The appropriate amount of the unrelieved charge is whichever is the smaller of—
  - (a) in a case within sub-paragraph (2)(a), the amount brought into account under section 83YC(3) of FA 1989, or, in a case within sub-paragraph (2)(b), the amount by which the taxed amount mentioned there exceeds the relevant amount mentioned there, and
  - (b) the sum of the outstanding debt amount and the outstanding re-insurance amount.
- (5) “The outstanding debt amount” means the total amount of the credits brought into account by the company in relation to a non-profit fund for the purposes of section 83YC of FA 1989 as part of total income—
  - (a) for the 2012 period of account, or
  - (b) for any earlier period of account,in respect of relevant money debts to the extent that they have not been repaid before that date.
- (6) “The outstanding re-insurance amount” means the total of the amounts which would (but for section 83YF(2) of FA 1989) have been taken into account in calculating the profits of the company's life assurance business in accordance with the life assurance trade profits provisions—

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- (a) for the 2012 period of account, or
  - (b) for any earlier period of account,
- in respect of the re-insurance of relevant liabilities to the extent that they have not ceased to be re-insured before that date.
- (7) Any expression which is used in this paragraph and in section 83YC of FA 1989 has the same meaning in this paragraph as in that section.
- (8) In this paragraph references to sections 83YC and 83YD of FA 1989 include references to those sections as they have effect in accordance with paragraph 4(2) to (6) of Schedule 17 to FA 2008.

#### *Anti-avoidance*

- 17 (1) This paragraph applies if—
- (a) on or after 21 March 2012 an insurance company (“C”) enters into any arrangements or does any other thing directly or indirectly for the purposes of, or in connection with, the operation of the transitional rules, and
  - (b) the main purpose, or one of the main purposes, of C in entering into the arrangements or doing the other thing is an unallowable purpose.
- (2) A purpose is an “unallowable purpose” if—
- (a) it consists of securing a tax advantage for C or any other company which is connected to the operation of the transitional rules, or
  - (b) it is not amongst C's business or other commercial purposes.
- (3) If a tax advantage connected to the operation of the transitional rules arises to C, an officer of Revenue and Customs may make such adjustments as are required to negate the tax advantage so far as referable to the unallowable purpose on a just and reasonable apportionment.
- (4) If a tax advantage connected to the operation of the transitional rules arises to a company other than C, an officer of Revenue and Customs may make such adjustments as are required to negate the tax advantage.
- (5) The power to make adjustments under this paragraph includes power to make adjustments by any of the following means—
- (a) an amendment of the company's tax return under paragraph 34(2) or (2A) of Schedule 18 to FA 1998 (amendment after enquiry),
  - (b) an assessment,
  - (c) the nullifying of a right to repayment,
  - (d) the requiring of the return of a repayment already made, and
  - (e) the calculation or recalculation of profits or gains or liability to corporation tax.
- (6) Nothing in this paragraph authorises the making of an assessment later than 6 years after the accounting period to which the tax advantage relates.
- (7) For the purposes of this paragraph—
- (a) “arrangement” includes any agreement, scheme, transaction or understanding (whether or not legally enforceable),
  - (b) the reference to the operation of the transitional rules is a reference to the operation of any provision made by or under this Part of this Schedule,



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- (c) one example (among others) of entering into arrangements or otherwise doing something for the purposes of, or in connection with, the operation of those rules is entering into the arrangements or otherwise doing the thing to secure that an item is, or is not, taken into account in calculating the total transitional difference, and
    - (d) section 1139 of CTA 2010 (meaning of “tax advantage”) applies, but reading references to tax as references to corporation tax.
  - (8) If C is not within the charge to corporation tax in respect of a part of its activities, C's business or other commercial purposes for the purposes of this paragraph do not include the purposes of that part of its activities.
  - (9) This paragraph does not apply in any case if section 132 applies in that case.
- 18 (1) Paragraph 17 does not apply if, on an application by C, HMRC Commissioners give a notice under this paragraph stating that they are satisfied that the doing of the relevant things is or will be such that no action ought to be taken by an officer of Revenue and Customs under that paragraph.
- (2) The reference here to the doing of the relevant things is a reference to the entering into of any arrangements, or the doing of any other thing, directly or indirectly for the purposes of, or in connection with, the operation of the transitional rules (within the meaning of paragraph 17).
- 19 (1) An application under paragraph 18 must—
  - (a) be in writing, and
  - (b) contain particulars of the arrangements or the thing done or proposed to be done.
- (2) HMRC Commissioners may by notice require C to provide further particulars in order to enable them to determine the application.
  - (3) A requirement may be imposed under sub-paragraph (2) within 30 days of the receipt of the application or of any further particulars required under that sub-paragraph.
  - (4) If a notice under that sub-paragraph is not complied with within 30 days or such longer period as HMRC Commissioners may allow, they need not proceed further on the application.
  - (5) HMRC Commissioners must give notice to C of their decision on an application under paragraph 18—
    - (a) within 30 days of receiving the application, or
    - (b) if they give a notice under sub-paragraph (2), within 30 days of that notice being complied with or within such longer period as may be agreed with C.
  - (6) If any particulars provided under this paragraph do not fully and accurately disclose all facts and considerations material for the decision of HMRC Commissioners, any resulting notice under paragraph 18 is void.

*Overseas life insurance companies*

- 20 Receipts or expenses are not to be treated as arising under this Part of this Schedule in a case where—
  - (a) an overseas life insurance company has, in accordance with international accounting standards <sup>F66</sup> or the Council Directive of 19<sup>th</sup> December 1991 on

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the annual accounts and consolidated accounts of insurance undertakings (No 91/674/EEC)], prepared accounts for a period which includes 31 December 2012, and

- (b) parts of the income statements [<sup>F67</sup>or the technical accounts (or part of the technical accounts)] included in those accounts are recognised for the purposes of sections 82A to 83ZA of FA 1989 as a result of provision made by regulation 24 of the Overseas Life Insurance Companies Regulations 2006.

#### Textual Amendments

- F66** Words in Sch. 17 para. 20(a) inserted (31.12.2012) by [The Insurance Companies \(Transitional Provisions\) Regulations 2012 \(S.I. 2012/3009\)](#), regs. 1(1), **16(a)**
- F67** Words in Sch. 17 para. 20(b) inserted (31.12.2012) by [The Insurance Companies \(Transitional Provisions\) Regulations 2012 \(S.I. 2012/3009\)](#), regs. 1(1), **16(b)**

## PART 2

### SPECIFIC TRANSITIONAL PROVISIONS

#### *Insurance company with BLAGAB consisting wholly of protection business*

- 21 (1) This paragraph applies if—
- (a) in its first accounting period to which this Part applies an insurance company carries on business which, under the old law, would have been basic life assurance and general annuity business,
  - (b) the business in question consists wholly of the effecting or carrying out of contracts of long-term insurance in relation to which the condition in section 62(2)(a) is met, and
  - (c) some or all of the contracts are made before 1 January 2013.
- (2) On or before the filing date for that accounting period, the company may make an election for the contracts made before that date to be treated for the purposes of section 62 as if they were made on or after that date.
- (3) Accordingly, no relief is available for any amount that, but for the election, would have constituted excess BLAGAB expenses for that accounting period.
- (4) The election has effect for the first accounting period of the company to which this Part applies and all subsequent accounting periods.
- (5) The election is irrevocable.
- (6) In this paragraph—
- “the filing date”, in relation to an accounting period of an insurance company, means the date which, for the purposes of paragraph 14 of Schedule 18 to FA 1998, is the filing date for the company's tax return for that period, and
- “the old law” means the law as it had effect immediately before the day on which this Act is passed.

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*Disregard of amounts previously taken into account for tax purposes*

- 22 (1) This paragraph applies if, for an accounting period ending before 1 January 2013, an amount is taken into account in calculating the profits of an insurance company arising from life assurance business in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of CTA 2009 (charge on trade profits).
- (2) For any accounting period beginning on or after 1 January 2013—
- (a) the amount is not to be taken into account in calculating the BLAGAB trade profit or loss of any basic life assurance and general annuity business carried on by the company, and
  - (b) the amount is not to be taken into account in calculating for corporation tax purposes the profits of any non-BLAGAB long-term business carried on by the company.
- [<sup>F68</sup>(3) If the business mentioned in sub-paragraph (1) (or any part of that business) is transferred under an insurance business transfer scheme to another insurance company—
- (a) references in sub-paragraph (2) to the company include the transferee, and
  - (b) references in sub-paragraph (2) to the amount include an amount that derives from the amount mentioned in sub-paragraph (1) and include so much of an amount as is taken into account in any calculation required under section 129(6)(a) or (b) and as is referable to the amount mentioned in sub-paragraph (1) (and, accordingly, section 129(7) is subject to the operation of this paragraph).]

**Textual Amendments**

**F68** Sch. 17 para. 22(3) inserted (30.9.2013) by [The Insurance Companies \(Amendment to Schedule 17 to the Finance Act 2012 \(Transitional Provision\)\) Regulations 2013 \(S.I. 2013/2244\)](#), regs. 1(1), **2(2)** (with reg. 1(2))

- 23 For the purposes of section 76 an expense is to be treated as deductible under another relevant rule so far as it was brought into account at Step 1 in section 76(7) of ICTA as an expense referable to an accounting period ending before 1 January 2013.

*Intangible fixed assets*

- 24 (1) This paragraph applies to assets—
- (a) which, under the old law, were assets excluded from Part 8 of CTA 2009 (intangible fixed assets), and
  - (b) which, as a result of provision made by this Part of this Act, become assets which are not excluded from Part 8 of that Act.
- (2) Any expenditure incurred before 1 January 2013 on an asset to which this paragraph applies is to be left out of account in determining any amount to be brought into account under Part 8 of CTA 2009.
- (3) Section 780 of CTA 2009 (company ceasing to be member of group: deemed realisation and re-acquisition at market value) is not to apply in relation to any asset to which this paragraph applies.

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- (4) For the purposes of this paragraph references to an asset's exclusion from Part 8 of CTA 2009 includes its exclusion from that Part except as respects royalties.
- (5) In this paragraph “the old law” means the law as it had effect immediately before the day on which this Act is passed.

*Assets held for purposes of long-term business*

- 25 (1) The rules in sections 116 to 118 apply in relation to anything occurring on or after 1 January 2013 (and the rules in section 440 of ICTA, including as modified, apply in relation to anything occurring before that date).
- (2) Accordingly, the replacement of the rules in section 440 of ICTA with the different rules in sections 116 to 118 is not by itself sufficient to give rise to a deemed disposal and re-acquisition for the purposes of corporation tax on chargeable gains.
- 26 (1) The rules in sections 119 to 121 apply in relation to securities held on or after 1 January 2013 (and the rules in section 440A of ICTA, including as modified, apply in relation to securities held before that date).
- (2) The replacement of the separate holdings given by section 440A of ICTA (including as modified) with the separate holdings given by sections 119 to 121 is, for the purposes of corporation tax on chargeable gains, not to be treated as involving a disposal or acquisition that gives rise to a chargeable gain or allowable loss.
- (3) But see paragraph 27 for provision for carrying forward the base cost of the old holdings into the base cost of the new holdings.
- 27 (1) This paragraph applies if—
  - (a) immediately before 1 January 2013 securities are treated, as a result of section 440A of ICTA (including as modified), as separate holdings of a company for the purposes of corporation tax, and
  - (b) the securities that are comprised in those separate holdings (the “old holdings”) are, as at 1 January 2013, comprised in separate holdings of the company as determined by the rules in sections 119 to 121 (the “new holdings”).
- (2) Each new holding is treated for the purposes of corporation tax on chargeable gains as if it were a holding of the company with a base cost and an indexation allowance as at 1 January 2013 equal to the total of the base costs and indexation allowances of the old holdings that are carried into the new holding.
- (3) In the case of securities (“new securities”) comprised in a new holding, the amount of the base cost or indexation allowance of an old holding that is carried into the new holding is equal to the proportion which the new securities derived from the old holding bear to all of the securities comprised in the old holding.
- (4) For the purpose of calculating the indexation allowance of a new holding in respect of any period falling on or after 1 January 2013, it is to be assumed that, on that date, there had been a disposal of the holding for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the company.
- (5) For the purposes of this paragraph—
  - (a) references to a base cost are—

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- (i) in the case of a section 104 holding, references to the amount of qualifying expenditure within the meaning of section 110 of TCGA 1992, and
    - (ii) in the case of a 1982 holding, references to the amount of expenditure that would fall to be deducted if the holding were disposed of,
  - (b) references to an indexation allowance are—
    - (i) in the case of a section 104 holding, references to the indexation allowance as found in accordance with section 110 of TCGA 1992, and
    - (ii) in the case of a 1982 holding, references to the indexation allowance within the meaning of Chapter 4 of Part 2 of that Act,
  - (c) the base cost and the indexation allowance of an old holding are calculated on the assumption that the holding is disposed of immediately before 1 January 2013,
  - (d) “section 104 holding” has the same meaning as in section 104(3) of TCGA 1992, and
  - (e) “1982 holding” has the same meaning as in section 109 of that Act.
- 28 (1) This paragraph applies in a case where—
  - (a) section 210B(2) to (4) of TCGA 1992 would, but for this Part of this Act, have applied in relation to a disposal and acquisition of section 440A securities, and
  - (b) the identification in accordance with those subsections of the section 440A securities disposed of with the section 440A securities acquired would have involved—
    - (i) identifying securities disposed of before 1 January 2013 with securities acquired on or after that date, or
    - (ii) identifying securities acquired before 1 January 2013 with securities disposed of on or after that date.
- (2) The securities disposed of are to be identified with the securities acquired (if necessary applying the rules in section 210B(3) and (4) of TCGA 1992 and subject to section 105(1) of that Act), and—
  - (a) in a case within sub-paragraph (1)(b)(i), the securities acquired are not therefore to be comprised in a separate holding of securities within any of sections 119 to 121 of this Act, and
  - (b) in a case within sub-paragraph (1)(b)(ii), the securities acquired are not therefore to be regarded as comprised in a separate holding of securities within section 440A of ICTA (including as applied).
- (3) In this paragraph “section 440A securities” has the same meaning as in section 210B of TCGA 1992.

*Carry-forward of trading losses and excess management expenses*

- 29 (1) Any unused losses arising to an insurance company in an accounting period ending before 1 January 2013 from gross roll-up business may be relieved in subsequent accounting periods in accordance with section 45 of CTA 2010 (carry forward of trade loss against subsequent trade profits) as if they were losses that had arisen from non-BLAGAB long-term business.

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- (2) For this purpose a loss is “unused” so far as no relief has been given for it under—
- (a) section 436A of ICTA (including as applied by any provision of Part 2 of Schedule 7 to FA 2007), or
  - (b) any other provision of the Corporation Tax Acts.
- 30 (1) Any unused losses arising to an insurance company in an accounting period ending before 1 January 2013 from PHI business may be relieved in subsequent accounting periods in accordance with section 45 of CTA 2010 as if they were losses that had arisen from non-BLAGAB long-term business.
- (2) For this purpose a loss is “unused” so far as, but for this Part of this Act, it would have been available for carry forward under section 45 of CTA 2010 for use in relation to profits of the PHI business for subsequent accounting periods.
- 31 (1) The appropriate part of any unused life assurance trade losses arising to an insurance company in an accounting period ending before 1 January 2013 is to be treated for the purposes of section 124 as if it were the unrelieved loss available for relief in subsequent accounting periods in accordance with that section.
- (2) A “life assurance trade loss” means a loss arising to an insurance company from life assurance business which is calculated in accordance with the life assurance trade profits provisions.
- (3) A life assurance trade loss is “unused” so far as no relief is given for it under—
- (a) section 85A or 89 of FA 1989, or
  - (b) any other provision of the Corporation Tax Acts.
- (4) The “appropriate” part of any unused life assurance trade losses is the amount (if any) by which—
- (a) the amount of the unused life assurance trade losses, exceeds
  - (b) the amount of unused losses arising to an insurance company in an accounting period ending before 1 January 2013 from gross roll-up business (with the definition of “unused” in paragraph 29(2) applying here).
- 32 (1) This paragraph applies if, but for this Part of this Act, an amount would have been carried forward to an accounting period of an insurance company under section 76(12) or (13) of ICTA (expenses of insurance companies).
- (2) The amount is to be treated for the purposes of step 5 of section 76 as an expense from a previous accounting period carried forward as a result of section 73 to the accounting period of the company beginning on 1 January 2013.
- 33 (1) This paragraph applies if, but for this Part of this Act, any amount of expenses would, as a result of section 86(8) and (9) of FA 1989 (relief for fraction of acquisition expenses for earlier accounting periods), have been relieved in an accounting period of an insurance company beginning on or after 1 January 2013.
- (2) Relief is to continue to be given for the expenses in question as follows—
- (a) the amount of the relief for each accounting period is to be determined in accordance with section 86(8) and (9) of FA 1989 (despite their repeal by this Part of this Act), and
  - (b) the relief is to be given by treating the amount of the expenses as deemed BLAGAB management expenses for the accounting periods in question for the purposes of section 76.

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- (3) But relief is not to be given as a result of sub-paragraph (2) for any expenses for any accounting period (“the period concerned”) if the expenses are reversed in the period concerned or any preceding accounting period.

*Relief for BLAGAB trade losses for accounting period beginning on or after 1 January 2013*

- 34 (1) This paragraph applies if—
- (a) an insurance company carries on basic life assurance and general annuity business in an accounting period beginning on or after 1 January 2013, and
  - (b) the company has a BLAGAB trade loss for the accounting period.
- (2) For the purposes of section 37(6) of CTA 2010 (as applied by section 123) the company is to be treated as carrying on that business in a previous accounting period if the company carried on life assurance business in that period.

*Assets of the shareholder fund*

- 35 (1) This paragraph applies in relation to assets of an insurance company carrying on life assurance business which were assets of the shareholder fund of the company for the period of account ending immediately before 1 January 2013.
- (2) Those assets are, in relation to times on or after that date, to be regarded for the purposes of this Part as assets forming part of the long-term business fixed capital of the company (whether or not they would otherwise be so regarded).
- (3) An asset is an “asset of the shareholder fund of an insurance company for the period of account ending immediately before 1 January 2013” if it is shown in any of lines 11 to 102 of Form 13 in the company's periodical return ending immediately before that date in respect of assets other than those of its long-term business.
- (4) But an asset is not to be regarded as an asset of the shareholder fund for that period of account if for any accounting period ending before 1 January 2013—
- (a) income arising from the asset was, or chargeable gains or allowable losses accruing on any part disposal of the asset for the purposes of TCGA 1992 were, taken into account for the purposes of the charge to corporation tax on the I minus E basis, or
  - (b) income arising from the asset was taken into account in calculating the profits of the company in respect of its life assurance business in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of CTA 2009 (charge on trade profits).

[<sup>F69</sup>35A(1)] Sub-paragraph (2) applies to assets which by reason of paragraph 35 (or the previous application of this paragraph) are regarded for the purposes of this Part as assets forming part of the long-term business fixed capital of a company (“company A”).

- (2) Where—
- (a) company A transfers all of its basic life assurance and general annuity business and non-BLAGAB business to another company (“company B”), and
  - (b) the transfer is a relevant intra-group transfer,
- for the purposes of this Part the assets form part of the long-term business fixed capital of company B instead of company A.

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- (3) “Relevant intra-group transfer” has the same meaning for the purposes of this paragraph as it has for the purposes of paragraph 13.]

#### Textual Amendments

- F69** Sch. 17 para. 35A inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Insurance Companies \(Amendment to Section 129 of, and Schedule 17 to, the Finance Act 2012\) Regulations 2015](#) (S.I. 2015/1959), regs. 1, 4

### PART 3

#### SUPPLEMENTARY

##### *General transitional provision in relation to provisions re-enacted in Part 2 of this Act*

- 36 (1) This paragraph applies where any provision of this Part of this Act re-enacts (with or without modification) an enactment repealed by this Part of this Act.
- (2) The repeal and re-enactment does not affect the continuity of the law.
- (3) Any subordinate legislation or other thing which—
- (a) has been made or done, or has effect as if made or done, under or for the purposes of the repealed provision, and
  - (b) is in force or effective in relation to accounting periods of insurance companies ending on 31 December 2012,
- has effect in relation to subsequent accounting periods of insurance companies as if made or done under or for the purposes of the corresponding provision of this Part of this Act.
- (4) Any reference (express or implied) in any enactment, instrument or document to a provision of this Part of this Act is to be read as including, in relation to times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.
- This sub-paragraph applies only so far as the context permits.
- (5) Any reference (express or implied) in any enactment, instrument or document to a repealed provision is to be read, in relation to times, circumstances or purposes in relation to which the corresponding provision of this Part of this Act has effect, as a reference or (as the context may require) as including a reference to that corresponding provision.
- This sub-paragraph applies only so far as the context permits.
- (6) This paragraph is subject to any specific transitional, transitory or saving provision made by or under this Schedule.
- (7) The generality of this paragraph is not to be affected by specific transitional, transitory or saving provision made by or under this Schedule.
- (8) This paragraph has effect instead of section 17(2) of the Interpretation Act 1978.



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*Power to make supplementary transitional provision etc*

- 37 (1) The Treasury may by regulations make further transitional, transitory or saving provision in connection with the coming into force of any of the provisions of this Part of this Act.
- (2) The provision that may be made by the regulations includes provision (whether by way of textual amendment or otherwise) altering or supplementing the effect of any provision made by or under this Schedule.
- (3) The regulations may be made so as to have effect in relation to any period beginning before but ending on or after the day on which the regulations are made (as well as in relation to periods no part of which falls before that day).
- 38 Any regulations made by the Treasury under any provision of this Schedule may—
- (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

*Interpretation*

- 39 The following expressions have the same meaning in this Schedule as they have in Chapter 1 of Part 12 of ICTA—
- “brought into account” (except in paragraph 24),
  - “gross roll-up business”,
  - “the I minus E basis”,
  - “the life assurance trade profits provisions”,
  - “non-profit fund”,
  - “period of account”,
  - “periodical return”, and
  - “PHI business”.

SCHEDULE 18

Section 176

PART 3: CONSEQUENTIAL AMENDMENTS

*Income and Corporation Taxes Act 1988*

- 1 ICTA is amended as follows.
- 2 Omit section 459 (unregistered friendly societies: exemption from tax).
- 3 Omit section 460 (exemption from tax in respect of life or endowment business).
- 4 Omit section 461 (taxation in respect of other business).
- 5 Omit sections 461A to 461C (taxation in respect of other business: incorporated friendly societies qualifying for exemption).
- 6 Omit section 461D (transfers of business).
- 7 Omit section 462 (conditions for tax exempt business).

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- 8 Omit section 463 (long-term business of friendly societies: application of Corporation Tax Acts).
- 9 Omit section 464 (maximum benefits payable to members).
- 10 Omit section 465 (old societies).
- 11 Omit section 465A (assets of branch of registered friendly society to be treated as assets of society after incorporation).
- 12 Omit section 466 (interpretation of Chapter 2 of Part 12).
- 13 (1) Schedule 15 (qualifying policies) is amended as follows.
- (2) In paragraph 3—
- (a) in sub-paragraphs (1) and (4)(c), for “tax exempt life or endowment business” substitute “ exempt BLAGAB or eligible PHI business ”,
  - (b) in sub-paragraph (8)(b)(i), for “a new society” substitute “ a society other than an old society ”, and
  - (c) in sub-paragraph (8)(b)(ii), for “a society other than a new society” substitute “ an old society ”.
- (3) In paragraph 4(3)(b)(ii), for “a new society” substitute “ a society other than an old society ”.
- (4) Omit paragraph 5.
- (5) In paragraph 6—
- (a) in sub-paragraph (1)—
    - (i) omit “(as defined in section 466)” in both places, and
    - (ii) for “tax exempt life or endowment business” substitute “ exempt BLAGAB or eligible PHI business ”, and
  - (b) in sub-paragraph (2), for “section 464” substitute “ section 160 of the Finance Act 2012 ”.
- (6) After paragraph 6 insert—
- “6A Any expression—
- (a) which is used in any provision made by any of paragraphs 3 to 6, and
  - (b) which is used in Part 3 of the Finance Act 2012,
- has the same meaning in that provision as it has in that Part.”

*Taxation of Chargeable Gains Act 1992*

- 14 TCGA 1992 is amended as follows.
- 15 In section 100(2B)(b) (exemption for authorised unit trusts etc), for “section 466(2) of the Taxes Act” substitute “ section 172 of the Finance Act 2012 ”.
- 16 In section 171(5) (transfers within a group: general provisions), for “section 461B of the Taxes Act” substitute “ section 165 of the Finance Act 2012 ”.

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

- 17 ITTOIA 2005 is amended as follows.

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- 18 (1) Section 531 (gains from contracts for life insurance etc: cases where income tax not treated as paid) is amended as follows.
- (2) In subsection (3)(a), for “tax exempt life or endowment business” substitute “ exempt BLAGAB or eligible PHI business ”.
- (3) In subsection (4), for the definition of “tax exempt life or endowment business” substitute—
- ““exempt BLAGAB or eligible PHI business” has the same meaning as in Part 3 of FA 2012 (see sections 154 and 155).”

#### *Corporation Tax Act 2009*

- 19 CTA 2009 is amended as follows.
- 20 In section A1(2) (overview of the Corporation Tax Acts), after paragraph (k) (as inserted by paragraph 136(b) of Schedule 16 to this Act) insert “, and
- (l) Part 3 of that Act (friendly societies carrying on long-term business).”
- 21 In section 564(1) (section 563: interpretation), for “section 460 of ICTA” substitute “ section 158 of FA 2012 ”.
- 22 In section 931S(3) (company distributions: meaning of “small company”), in the definition of “friendly society”, for “section 466(2) of ICTA” substitute “ section 172 of FA 2012 ”.

#### *Consequential repeals*

- 23 In consequence of the amendments made by this Schedule, omit the following provisions—
- (a) in FA 1990—
- (i) section 49(1) to (4),
- (ii) section 50, and
- (iii) paragraph 6 of Schedule 9,
- (b) in FA 1991, paragraphs 1 to 3 of Schedule 9,
- (c) in FA 1995, paragraphs 1 and 2 of Schedule 10,
- (d) in FA 1996, section 171,
- (e) in FA 2007—
- (i) section 44,
- (ii) paragraphs 40 and 43 of Schedule 7, and
- (iii) Schedule 12, and
- (f) in FA 2008—
- (i) section 44, and
- (ii) Schedule 18.

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*Status: Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

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## SCHEDULE 19

Section 177

## PART 3: TRANSITIONAL PROVISION

*Approvals given for purposes of section 461 or 461C of ICTA*

- 1 Anything which, as a result of section 461(11) or 461A(4) of ICTA, is treated as having been done by HMRC Commissioners on a particular date under a provision of ICTA repealed by this Act is to continue to be treated as having been done by them on that date under the provision of this Part corresponding to that repealed provision, despite the fact that neither section 461(11) nor section 461A(4) of ICTA is rewritten in this Act.

*General transitional provision in relation to provisions re-enacted in Part 3 of this Act*

- 2 (1) This paragraph applies where any provision of this Part of this Act re-enacts (with or without modification) an enactment repealed by this Part of this Act.
- (2) The repeal and re-enactment does not affect the continuity of the law.
- (3) Any subordinate legislation or other thing which—
- (a) has been made or done, or has effect as if made or done, under or for the purposes of the repealed provision, and
  - (b) is in force or effective in relation to accounting periods of friendly societies ending on 31 December 2012,
- has effect in relation to subsequent accounting periods of friendly societies as if made or done under or for the purposes of the corresponding provision of this Part of this Act.
- (4) Any reference (express or implied) in any enactment, instrument or document to a provision of this Part of this Act is to be read as including, in relation to times, circumstances or purposes in relation to which the corresponding repealed provision had effect, a reference to that corresponding provision.
- This sub-paragraph applies only so far as the context permits.
- (5) Any reference (express or implied) in any enactment, instrument or document to a repealed provision is to be read, in relation to times, circumstances or purposes in relation to which the corresponding provision of this Part of this Act has effect, as a reference or (as the context may require) as including a reference to that corresponding provision.
- This sub-paragraph applies only so far as the context permits.
- (6) This paragraph is subject to any specific transitional, transitory or saving provision made by or under this Schedule.
- (7) The generality of this paragraph is not to be affected by specific transitional, transitory or saving provision made by or under this Schedule.
- (8) This paragraph has effect instead of section 17(2) of the Interpretation Act 1978.

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)

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## SCHEDULE 20

Section 180

### CONTROLLED FOREIGN COMPANIES AND FOREIGN PERMANENT ESTABLISHMENTS

#### PART 1

##### CONTROLLED FOREIGN COMPANIES

1 After Part 9 of TIOPA 2010 insert—

#### “PART 9A

##### CONTROLLED FOREIGN COMPANIES

#### CHAPTER 1

##### OVERVIEW

#### Overview of Part

- 371A(A) A charge (“the CFC charge”) is charged under this Part on UK resident companies which have certain interests in CFCs.
- (2) The CFC charge is charged by reference to the chargeable profits of CFCs.
  - (3) A “CFC” is a non-UK resident company which is controlled by a UK resident person or persons (but see subsection (6)).
  - (4) Chapter 2 sets out the basic details of the CFC charge, including—
    - (a) the CFC charge gateway (through which profits of a CFC must pass in order to be chargeable profits), and
    - (b) the steps to be taken for charging the CFC charge.
  - (5) Chapter 2 is supplemented by Chapters 3 to 17; in particular—
    - (a) Chapter 3 sets out how to determine which (if any) of Chapters 4 to 8 apply in relation to the profits of a CFC,
    - (b) so far as applicable, Chapters 4 to 8 set out how to determine which profits (if any) of a CFC pass through the CFC charge gateway, with—
      - (i) Chapter 4 dealing with profits attributable to UK activities,
      - (ii) Chapter 5 dealing with non-trading finance profits,
      - (iii) Chapter 6 dealing with trading finance profits,
      - (iv) Chapter 7 dealing with profits derived from captive insurance business, and
      - (v) Chapter 8 dealing with cases involving solo consolidation,
    - (c) Chapter 9 sets out exemptions for profits from qualifying loan relationships,
    - (d) Chapters 10 to 14 set out full exemptions from the CFC charge,
    - (e) Chapter 15 sets out how to determine the persons whose interests in a CFC are relevant to the charging of the CFC charge,

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- (f) Chapter 16 sets out how to determine the creditable tax of CFCs (for which credit is given against chargeable profits), and
  - (g) Chapter 17 sets out how to apportion a CFC's chargeable profits and creditable tax among the persons who have relevant interests in the CFC.
- (6) Chapter 18 explains the concept of “control” and also sets out certain cases in which a non-UK resident company is to be taken to be a CFC even though it is not controlled by a UK resident person or persons.
- (7) Chapter 19 explains the concepts of “assumed taxable total profits”, “assumed total profits” and “the corporation tax assumptions” which are referred to in this Part.
- (8) Chapter 20 contains rules for determining the territory in which a CFC is resident for the purposes of this Part.
- (9) Chapter 21 contains provision about the management of the CFC charge, including the collection of sums charged.
- (10) Chapter 22 contains supplementary provision, including definitions of terms used in this Part.
- (11) Nothing in this Part affects—
- (a) the liability to corporation tax of a non-UK resident company in accordance with section 5(2) and (3) of CTA 2009 (non-UK resident companies within the charge to corporation tax), or
  - (b) the determination of such a company's chargeable profits for corporation tax purposes in accordance with Chapter 4 of Part 2 of CTA 2009.
- (12) This Part is part of the Corporation Tax Acts.

## CHAPTER 2

### THE CFC CHARGE

#### **Introduction to the CFC charge**

- 371BA(1) The CFC charge is charged in relation to accounting periods of CFCs in accordance with section 371BC.
- (2) Section 371BC applies in relation to a CFC's accounting period if (and only if)—
- (a) the CFC has chargeable profits for the accounting period, and
  - (b) none of the exemptions set out in Chapters 10 to 14 applies for the accounting period.
- (3) A CFC's chargeable profits for an accounting period are its assumed taxable total profits for the accounting period determined on the basis—
- (a) that the CFC's assumed total profits for the accounting period are limited to only so much of those profits as pass through the CFC charge gateway, and

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- (b) that amounts are to be relieved against the assumed total profits at step 2 in section 4(2) of CTA 2010 only so far as it is just and reasonable for them to be so relieved having regard to paragraph (a).
- (4) “The CFC charge gateway” is explained in section 371BB.
- (5) Subsection (3) is subject to section 371SB(7) and (8) (which relates to settlement income included in a CFC's chargeable profits).

### **The CFC charge gateway**

371B(1) Take the following steps to determine the extent to which a CFC's assumed total profits for an accounting period pass through the CFC charge gateway.

*Step 1* In accordance with Chapter 3, determine which (if any) of Chapters 4 to 8 apply for the accounting period. If none of those Chapters applies, none of the CFC's assumed total profits pass through the CFC charge gateway and step 2 is not to be taken.

*Step 2* Determine the extent to which the CFC's assumed total profits fall within any of the Chapters which applies for the accounting period. The CFC's assumed total profits pass through the CFC charge gateway so far as they fall within any of those Chapters.

- (2) Subsection (1) is subject to—
  - (a) Chapter 9 (exemptions for profits from qualifying loan relationships), and
  - (b) section 371JE (which provides for adjustments of profits which would otherwise pass through the CFC charge gateway linked to the exemption set out in Chapter 10).

### **Charging the CFC charge**

371B(1) Take the following steps if, as provided for by section 371BA(2), this section applies in relation to a CFC's accounting period.

*Step 1* In accordance with Chapter 15, determine the persons (“the relevant persons”) who have relevant interests in the CFC at any time during the accounting period. If none of the relevant persons is a company which meets the UK residence condition (see subsection (2)), the CFC charge is not charged in relation to the accounting period and no further steps are to be taken.

*Step 2* In accordance with Chapter 16, determine the CFC's creditable tax for the accounting period.

*Step 3* In accordance with Chapter 17, apportion the CFC's chargeable profits and creditable tax among the relevant persons.

*Step 4* Take each relevant person which is a company meeting the UK residence condition and, in accordance with section 371BD, determine if the company is a chargeable company. If there are no chargeable companies, the CFC charge is not charged in relation to the accounting period and step 5 is not to be taken.

*Step 5* The CFC charge is charged on each chargeable company as follows. A sum equal to—

- (a) corporation tax at the appropriate rate on P% of the CFC's chargeable profits, less

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- (b) Q% of the CFC's creditable tax,  
 is charged on the chargeable company as if it were an amount of corporation tax charged on the company for the relevant corporation tax accounting period. This step is subject to sections 371BG and 371BH.
- (2) A company meets the UK residence condition if it is UK resident at a time during the accounting period when it has a relevant interest in the CFC.
- (3) For the purpose of taking step 5 in subsection (1) in relation to a chargeable company (“CC”)—  
 “the appropriate rate”, subject to section 371BH, means—  
 (a) the rate of corporation tax applicable to CC's profits of the relevant corporation tax accounting period on which corporation tax is chargeable (see section 4(1) and (2) of CTA 2010), or  
 (b) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period,  
 “P%” means the percentage of the CFC's chargeable profits apportioned to CC,  
 “Q%” means the percentage of the CFC's creditable tax apportioned to CC, and  
 “the relevant corporation tax accounting period” means CC's accounting period for corporation tax purposes during which the CFC's accounting period ends.

### Chargeable companies

- 371B(1) A company (“C”) which meets the UK residence condition is a chargeable company for the purposes of step 4 in section 371BC(1) if the total of the following percentages is at least 25%—  
 (a) the percentage of the CFC's chargeable profits apportioned to C at step 3 in section 371BC(1), and  
 (b) the percentages (if any) of those profits which are apportioned at that step to relevant persons who, at any time during the accounting period, are connected or associated with C.
- (2) Subsection (1) is subject to sections 371BE and 371BF.

### Companies which are managers of offshore funds etc

- 371B(1) A company (“C”) is not a chargeable company for the purposes of step 4 in section 371BC(1) if—  
 (a) the CFC is an offshore fund (as defined in section 355),  
 (b) the genuine diversity of ownership condition set out in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) is met in relation to the fund,  
 (c) C meets the fund management condition, and  
 (d) apart from this section, a sum of no more than £500,000 would be charged on C as a chargeable company at step 5 in section 371BC(1).



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- (2) In applying regulation 75 of the 2009 Regulations for the purposes of subsection (1)(b), the reference in paragraph (1) to the period of account is to be read as a reference to the accounting period.
- (3) C meets the fund management condition if at all times during the accounting period when C has relevant interests in the offshore fund—
  - (a) the assets of the offshore fund are managed by C or a person connected with C,
  - (b) C or the person connected with C receives out of those assets fees for managing those assets, and
  - (c) C holds its relevant interests only or mainly for the purpose of attracting participants (as defined in section 362) to the fund who are not connected with C.
- (4) If the accounting period is less than 12 months, the amount specified in subsection (1)(d) is to be reduced proportionately.

#### **Companies which are participants in offshore funds**

- 371B(F) A company (“C”) is not a chargeable company for the purposes of step 4 in section 371BC(1) if—
- (a) the CFC is an offshore fund (as defined in section 355),
  - (b) at the relevant time and at all subsequent relevant times, C reasonably believes that the requirement of section 371BD(1) will not be met in relation to it, and
  - (c) the meeting of that requirement in relation to C is in no way attributable to any step—
    - (i) which was taken by C or any person connected or associated with C, and
    - (ii) which, at the time it was taken, could reasonably have been expected to cause that requirement to be met.
- (2) “The relevant time” means—
- (a) the beginning of the accounting period, or
  - (b) if C has no relevant interests in the offshore fund at the beginning of the accounting period, the time when C first has a relevant interest during the accounting period.
- (3) “Subsequent relevant time” means any time during the accounting period at which there is an increase or some other change in the relevant interests in the offshore fund which C has.

#### **Companies holding shares as trading assets etc**

- 371B(G) Subsection (2) applies if conditions A to C are met in relation to a relevant interest, or a part of a relevant interest, which a chargeable company (“CC”) has in the CFC at all times during the CFC's accounting period.
- (2) Step 5 in section 371BC(1) is to be taken in relation to CC on the following basis.
  - (3) That basis is—

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- (a) so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period is to be left out of P%, and
  - (b) so much of Q% as is so attributable is to be left out of Q%.
- (4) Condition A is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares (“the relevant shares”) in the CFC (directly or indirectly).
- (5) Condition B is that any increase in the value of the relevant shares at any time during the relevant corporation tax accounting period is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.
- (6) Condition C is that any dividend or other distribution received at any time during the relevant corporation tax accounting period by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is (or would be) income, or brought into account in determining any income, of CC chargeable to corporation tax for that period.
- (7) Subsection (8) applies if—
- (a) CC has the relevant interest, or the part of a relevant interest, by virtue of section 371OB(3) or (4),
  - (b) the CFC is an offshore fund (as defined in section 355) which does not meet the qualifying investments test in section 493 of CTA 2009, and
  - (c) conditions B and C would be met but for the offshore fund not meeting that test.
- (8) Conditions B and C are to be taken to be met.
- (9) This section is subject to section 371BH.

### **Companies carrying on BLAGAB**

- 371B(1) Subsection (2) applies in relation to a chargeable company (“CC”) if—
- (a) CC carries on basic life assurance and general annuity business during the relevant corporation tax accounting period,
  - (b) the I-E rules apply to CC for the relevant corporation tax accounting period, and
  - (c) the following are met in relation to a relevant interest, or a part of a relevant interest, which CC has in the CFC at all times during the CFC's accounting period—
    - (i) condition D,
    - (ii) condition E or F (or both), and
    - (iii) condition G.
- (2) An additional sum is charged on CC at step 5 in section 371BC(1) and, for this purpose, step 5 is to be taken on the following basis.
- (3) That basis is—
- (a) in paragraph (a) at step 5, the reference to the appropriate rate is to be read as a reference to—

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- (i) the policyholders' rate of tax under section 102 of FA 2012 applicable to the I-E profit for the relevant corporation tax accounting period, or
    - (ii) if there is more than one such rate, the average rate over the whole of the relevant corporation tax accounting period, and
  - (b) any reduction of P% or Q% under section 371BG(3) by reference to any relevant interest of CC is to be ignored, but—
    - (i) P% is to be reduced so that it represents only the policyholders' share of the BLAGAB component of the apportioned profit (see subsections (10) to (12)), and
    - (ii) Q% is to be reduced by the same proportion as P% is reduced under sub-paragraph (i).
- (4) Condition D is that, at all times during the CFC's accounting period, CC has the relevant interest, or the part of a relevant interest, by virtue of its holding shares (“the relevant shares”) in the CFC (directly or indirectly).
- (5) Condition E is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (6) The requirement is that any increase (or any part of any increase) in the value of the relevant shares which occurs at that time is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (7) Condition F is met if the following requirement is met in relation to a time during the relevant corporation tax accounting period.
- (8) The requirement is that any dividend or other distribution (or any part of any dividend or other distribution) received at that time by CC from the CFC (directly or indirectly) by virtue of its holding the relevant shares is not (or would not be) brought into account at step 1 in section 73 of FA 2012 in determining whether CC has an I-E profit for the relevant corporation tax accounting period.
- (9) Condition G is that the assets which represent the relevant interest, or the part of a relevant interest, during the CFC's accounting period are (to any extent) assets held by CC for the purposes of CC's long-term business.
- (10) “The apportioned profit” means so much of P% as is attributable to CC having the relevant interest, or the part of a relevant interest, during the CFC's accounting period.
- (11) Take the following steps to determine the “BLAGAB component” of the apportioned profit.
  - Step 1* Assume that the apportioned profit is income falling within section 74(1)(j) of FA 2012 paid to CC at the end of the CFC's accounting period.
  - Step 2* Calculate how much of that income would be referable, in accordance with Chapter 4 of Part 2 of FA 2012, to CC's basic life assurance and general annuity business. That amount is the “BLAGAB component” of the apportioned profit.

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- (12) The “policyholders' share” of the BLAGAB component of the apportioned profit is equal to the policyholders' share of the I - E profit for the relevant corporation tax accounting period as determined in accordance with the rules contained in Chapter 5 of Part 2 of FA 2012.

### CHAPTER 3

#### THE CFC CHARGE GATEWAY: DETERMINING WHICH (IF ANY) OF CHAPTERS 4 TO 8 APPLIES

#### Does Chapter 4 apply?

- 371C(A) Chapter 4 (profits attributable to UK activities) applies for a CFC's accounting period unless condition A, B, C or D is met.
- (2) Condition A is that, at no time during the accounting period, does the CFC hold assets or bear risks under an arrangement to which both subsections (3) and (4) apply.
- (3) This subsection applies to an arrangement if—
- (a) the main purpose, or one of the main purposes, of the arrangement is to reduce or eliminate any liability of any person to tax or duty imposed under the law of the United Kingdom, and
  - (b) in consequence of the arrangement, at any time the CFC expects its business to be more profitable than it would otherwise be (other than negligibly so).
- (4) This subsection applies to an arrangement if—
- (a) there is an expectation that, as a consequence of the arrangement, one or more persons will have liabilities to tax or duty imposed under the law of any territory reduced or eliminated, and
  - (b) it is reasonable to suppose that, but for that expectation, the arrangement would not have been made.
- (5) Condition B is that, at no time during the accounting period, does the CFC have any UK managed assets or bear any UK managed risks (see subsection (9)).
- (6) Condition C is that, at all times during the accounting period, the CFC has itself the capability to ensure that the CFC's business would be commercially effective were—
- (a) the UK managed assets of the CFC, and
  - (b) the UK managed risks borne by the CFC,
- to stop being UK managed.
- (7) In subsection (6) the reference to the capability of the CFC includes (in particular) its capability to select persons not connected with it to provide it with goods or services and to manage the transactions it has with persons not connected with it.
- (8) In determining if the requirements of subsection (6) are met at any time (“the relevant time”) during the accounting period, assume—

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- (a) that the CFC would continue to carry on the same business as it is actually carrying on at the relevant time, and
  - (b) that no relevant UK activities (see subsection (10)) by which any asset or risk was UK managed would be replaced—
    - (i) by activities carried on by any person connected with the CFC at any time, or
    - (ii) in any other way which relies to any extent upon the CFC receiving (directly or indirectly) resources or other assistance from a person connected with it at any time.
- (9) An asset or risk is “UK managed” if—
- (a) the acquisition, creation, development or exploitation of the asset, or
  - (b) the taking on, or bearing, of the risk,
- is managed or controlled to any significant extent by way of relevant UK activities.
- (10) “Relevant UK activities” means activities carried on in the United Kingdom—
- (a) by the CFC, otherwise than through a UK permanent establishment, or
  - (b) by companies connected with the CFC under arrangements which would not, it is reasonable to suppose, be entered into by companies not connected with each other.
- (11) Condition D is that the CFC's assumed total profits consist only of one or both of the following—
- (a) non-trading finance profits;
  - (b) property business profits.

### **Does Chapter 5 apply?**

- 371C(1) Subject to sections 371CC and 371CD, Chapter 5 (non-trading finance profits) applies for a CFC's accounting period if (and only if) the CFC has non-trading finance profits.
- (2) In this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding any profits falling within subsection (3) or (4) or Chapter 8 (solo consolidation).
  - (3) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a trade—
    - (a) which is carried on by the CFC, and
    - (b) no trading profits of which pass through the CFC charge gateway for the accounting period.
  - (4) Profits fall within this subsection so far as they arise from the investment of funds held by the CFC for the purposes of a UK property business or overseas property business carried on by the CFC.
  - (5) Neither subsection (3) nor subsection (4) applies in relation to funds—
    - (a) held only or mainly because of a prohibition or restriction on the CFC paying dividends or making other distributions imposed under—

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- (i) the law of the territory in which the CFC is incorporated or formed,
  - (ii) the articles of association or other document regulating the CFC, or
  - (iii) any arrangement entered into by or in relation to the CFC,
  - (b) held with a view to paying dividends or making other distributions at a time after the end of the relevant 12 month period,
  - (c) held with a view to acquiring shares in any company or making any capital contribution to a person,
  - (d) held with a view to acquiring, developing or otherwise investing in land at a time after the end of the relevant 12 month period,
  - (e) held only or mainly for contingencies, or
  - (f) held only or mainly for the purpose of reducing or eliminating a liability of any person to tax or duty imposed under the law of any territory.
- (6) Subsection (5)(a) does not cover a prohibition or restriction which ceases to have effect before the end of the relevant 12 month period.
- (7) “The relevant 12 month period” means the period of 12 months after the end of the accounting period.
- (8) In the case of a chargeable company which makes a claim under Chapter 9, in this section and Chapter 5 references to the CFC's non-trading finance profits are to those profits excluding also the CFC's qualifying loan relationship profits (as defined in Chapter 9).

**Incidental non-trading finance profits: the 5% rule**

- 371C(1) This section applies in relation to a CFC's accounting period if one or both of the following requirements is met—
- (a) the CFC has trading profits or property business profits (or both);
  - (b) the CFC has exempt distribution income and, at all times during the accounting period, a substantial part of its business is the holding of shares or securities in companies which are its 51% subsidiaries.
- (2) Chapter 5 does not apply for the accounting period if the CFC's non-trading finance profits are no more than 5% of the relevant amount.
- (3) “The relevant amount” is—
- (a) if the requirement of subsection (1)(a) is met, the total of the CFC's trading profits and property business profits determined before deduction of interest or any tax or duty imposed under the law of any territory,
  - (b) if the requirement of subsection (1)(b) is met, the total of the CFC's exempt distribution income, or
  - (c) if both those requirements are met, the sum of the totals given by paragraphs (a) and (b).
- (4) Subsection (5) applies for the purposes of subsection (2) if—
- (a) the requirement of subsection (1)(b) is met (whether or not the requirement of subsection (1)(a) is also met),

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- (b) at any time during the accounting period, a 51% subsidiary of the CFC (“the CFC subsidiary”) is also a CFC, and
  - (c) the CFC subsidiary has relevant non-trading finance profits as determined in accordance with subsection (6) or (7).
- (5) The CFC subsidiary's relevant non-trading finance profits are to be added to the CFC's non-trading finance profits.
- (6) If—
- (a) the CFC subsidiary has an accounting period (“the relevant period”) which is the same as the CFC's accounting period or otherwise falls wholly within the CFC's accounting period, and
  - (b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,
- the CFC subsidiary's “relevant non-trading finance profits” are its non-trading finance profits for the relevant period.
- (7) If—
- (a) the CFC subsidiary has an accounting period (“the relevant period”) which otherwise overlaps with the CFC's accounting period, and
  - (b) by virtue of this section or section 371CD, Chapter 5 does not apply (in the case of the CFC subsidiary) for the relevant period,
- the CFC subsidiary's “relevant non-trading finance profits” are a just and reasonable proportion of its non-trading finance profits for the relevant period.
- (8) In this section references to the CFC's trading profits are to those profits excluding any of them which pass through the CFC charge gateway for the accounting period.
- (9) “Exempt distribution income” means any dividends or other distributions which are not brought into account in determining the CFC's assumed total profits on the basis that they would be exempt for the purposes of Part 9A of CTA 2009 (company distributions).
- (10) This section needs to be read with section 371CD.

**Incidental non-trading finance profits: the further 5% rule**

- 371CD) This section applies in relation to a CFC's accounting period if—
- (a) the requirements of section 371CC(1)(a) and (b) are both met, but
  - (b) the CFC's non-trading finance profits (as added to under section 371CC(5) if applicable) are more than 5% of the relevant amount for the purposes of section 371CC(2).
- (2) Chapter 5 does not apply for the accounting period if the CFC's adjusted non-trading finance profits are no more than 5% of the total of the CFC's exempt distribution income (as defined in section 371CC(9)).
- (3) The CFC's “adjusted non-trading finance profits” are its non-trading finance profits excluding any profits falling within section 371CB(3) or (4).

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- (4) Subsection (5) applies if any CFC subsidiary's relevant non-trading finance profits are added under section 371CC(5) to the CFC's non-trading finance profits for the purposes of section 371CC(2).
- (5) The CFC subsidiary's relevant non-trading finance profits are also to be added to the CFC's adjusted non-trading finance profits for the purposes of subsection (2) above.

### **Does Chapter 6 apply?**

- 371C(1) Subject to what follows, Chapter 6 (trading finance profits) applies for a CFC's accounting period if (and only if)—
- (a) the CFC has trading finance profits, and
  - (b) at any time during the accounting period, the CFC has funds or other assets which derive (directly or indirectly) from UK connected capital contributions.
- (2) The CFC's trading finance profits are to be treated for the purposes of this Part as if they were non-trading finance profits (and, accordingly, Chapter 6 cannot apply for the accounting period) if—
- (a) the CFC is a group treasury company in the accounting period, and
  - (b) a notice is given to an officer of Revenue and Customs requesting that the CFC's trading finance profits be treated as if they were non-trading finance profits.
- (3) Profits treated as non-trading finance profits under subsection (2) are not to be taken to fall within section 371CB(3) or (4).
- (4) Section 316(5) to (11) (group treasury companies) applies for the purpose of determining if a CFC is a “group treasury company” as if references to the relevant period were to the accounting period.
- (5) For this purpose, section 337(1) (definition of “the worldwide group”) applies with the omission of paragraph (a).
- (6) A notice under subsection (2)(b)—
- (a) may be given only by a company or companies determined under subsection (7) or (8), and
  - (b) must be given—
    - (i) within 20 months after the end of the accounting period, or
    - (ii) within such longer period as an officer of Revenue and Customs may allow.
- (7) A company may give a notice if—
- (a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (8) Two or more companies may together give a notice if—



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- (a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (9) In subsections (7) and (8) “X%” means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the accounting period.

### **Does Chapter 7 apply?**

371C(F) Chapter 7 (captive insurance business) applies for a CFC's accounting period if (and only if)—

- (a) at any time during the accounting period, the main part of the CFC's business is insurance business, and
  - (b) the CFC's assumed total profits include amounts falling within subsection (2).
- (2) An amount falls within this subsection if it derives (directly or indirectly) from—
- (a) a contract of insurance which is entered into with—
    - (i) a UK resident company connected with the CFC, or
    - (ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or
  - (b) a contract of insurance which—
    - (i) is entered into with a UK resident person, and
    - (ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.
- (3) In subsection (2)(b)(ii)—
- “services” does not include services provided as part of insurance business, and
- “UK connected company” means—
- (a) a UK resident company connected with the CFC, or
  - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

### **Does Chapter 8 apply?**

371C(G) Chapter 8 (solo consolidation) applies for a CFC's accounting period if (and only if) condition A or B is met.

- (2) Condition A is that, at any time during the accounting period—
- (a) the CFC is a subsidiary undertaking which is the subject of a solo consolidation waiver under section BIPRU 2.1 of the FSA Handbook, and

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- (b) the CFC's parent undertaking in relation to that waiver is a UK resident company.
- (3) Condition B is that, at any time during the accounting period—
  - (a) the CFC is controlled (either alone or with other persons) by a UK resident bank which holds shares in the CFC,
  - (b) the UK resident bank must meet requirements of the FSA Handbook in relation to its capital,
  - (c) any fall in the value of the shares held in the CFC would be (wholly or mainly) ignored for the purpose of determining if the UK resident bank meets those requirements of the FSA Handbook, and
  - (d) the main purpose, or one of the main purposes, of the UK resident bank in holding the shares in the CFC is to obtain a tax advantage for itself or any company connected with it.
- (4) In this section—
  - “the FSA Handbook” means the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time), and
  - “UK resident bank” means a UK resident person carrying on banking business.
- (5) The Treasury may by regulations amend this Chapter or Chapter 8 as they consider appropriate to take account of—
  - (a) any changes to the FSA Handbook, or
  - (b) any relevant document published by the Financial Services Authority from time to time.
- (6) “Relevant document” means—
  - (a) a document which replaces the FSA Handbook, or
  - (b) a document which changes or replaces a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

## CHAPTER 4

### THE CFC CHARGE GATEWAY: PROFITS ATTRIBUTABLE TO UK ACTIVITIES

#### Introduction to Chapter

- 371DA(1) Take the steps set out in section 371DB(1) to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).
- (2) In this Chapter references to the CFC's assumed total profits are to those profits excluding its non-trading finance profits and property business profits (if any).
- (3) For the purposes of this Chapter—
  - (a) “the OECD Report” means the Report on the Attribution of Profits to Permanent Establishments of the Organisation for Economic Co-operation and Development (“OECD”) dated 22 July 2010,

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- (b) terms used which are also used in the OECD Report have the same meaning as they have in the OECD Report,
  - (c) “the CFC group” means the CFC taken together with the companies with which it is connected as those companies may change from time to time,
  - (d) “the provisional Chapter 4 profits” has the meaning given at step 7 in section 371DB(1),
  - (e) “the relevant assets and risks” has the meaning given at step 1 in section 371DB(1), subject to any exclusions at step 2 or 6,
  - (f) “SPF” means a significant people function or a key entrepreneurial risk-taking function,
  - (g) an SPF is a “UK SPF” so far as the SPF is carried out in the United Kingdom—
    - (i) by the CFC, otherwise than through a UK permanent establishment, or
    - (ii) by a company connected with the CFC, and
  - (h) an SPF is a “non-UK SPF” so far as it is not a UK SPF.
- (4) The Treasury may by regulations amend this Chapter as they consider appropriate to take account of any relevant document published by OECD from time to time.
- (5) “Relevant document” means—
- (a) a document which replaces, updates or supplements the report mentioned in subsection (3)(a), or
  - (b) a document which replaces, updates or supplements a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

### The steps

371D(1) Here are the steps referred to in section 371DA(1).

The steps are to be taken in accordance with the principles set out in the OECD Report (so far as relevant).

*Step 1* Identify the assets which the CFC has or has had, and the risks which the CFC bears or has borne, and from which amounts included in the CFC's assumed total profits have arisen. The identified assets and risks are called “the relevant assets and risks”

*Step 2* Exclude from the relevant assets and risks any asset or risk to which subsection (2) applies (subject to subsections (3) and (4)).

*Step 3* Identify the SPFs carried out by the CFC group which are relevant to—

- (a) the economic ownership of the assets included in the relevant assets and risks, or
- (b) the assumption and management of the risks included in the relevant assets and risks.

For this purpose, assume that the CFC group is a single company.

*Step 4* Determine the extent to which the SPFs identified at step 3 are UK SPFs and the extent to which they are non-UK SPFs. If none of the

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SPFs is a UK SPF to any extent, then no profits fall within this Chapter and no further steps are to be taken.

*Step 5* Assume that the UK SPFs determined at step 4 are carried out by a permanent establishment which the CFC has in the United Kingdom and, accordingly, determine the extent to which the assets and risks included in the relevant assets and risks would be attributed to the permanent establishment. For this purpose, assume that the non-UK SPFs determined at step 4 are all carried out by the CFC itself (if that is not otherwise the case).

*Step 6* Exclude from the relevant assets and risks any asset or risk, or any assets or risks taken together, to which section 371DC applies.

*Step 7* Re-determine the CFC's assumed total profits on the basis that the CFC—

- (a) does not hold, or has not held, the assets included in the relevant assets and risks, and
- (b) does not bear, or has not borne, the risks included in the relevant assets and risks,

so far as they would be attributed to the permanent establishment mentioned at step 5. “The provisional Chapter 4 profits” are the CFC's assumed total profits so far as they are left out of the re-determined profits.

*Step 8* Exclude from the provisional Chapter 4 profits any amounts which are required to be excluded by section 371DD, 371DE or 371DF. The remaining profits (if any) fall within this Chapter.

- (2) This subsection applies to an asset or risk if the CFC's assumed total profits are only negligibly higher than what they would be if the CFC—
  - (a) did not hold, or had not held, the asset to any extent at all, or
  - (b) did not bear, or had not borne, the risk to any extent at all.
- (3) The total number of assets and risks which may be excluded at step 2 in subsection (1) is limited as follows.
- (4) As well as applying to each asset and risk separately, subsection (2) must also apply to all the assets and risks included in the total number taken together.

**Exclusion: UK activities a minority of total activities**

371D(1) For the purposes of step 6 in section 371DB(1), this section applies to an asset or risk included in the relevant assets and risks if amount A is no more than 50% of amount B.

- (2) Amount A is the total of—
  - (a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—
    - (i) not held the asset, or
    - (ii) not borne the risk,
 so far as it would be attributed to the permanent establishment mentioned at step 5 in section 371DB(1), and

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- (b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—
  - (i) not held the asset, or
  - (ii) not borne the risk,so far as it would be so attributed.
- (3) Amount B is the total of—
  - (a) the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of the CFC's income which would not have become receivable during the accounting period had the CFC—
    - (i) not held the asset to any extent at all, or
    - (ii) not borne the risk to any extent at all,
  - (b) the additional expenses which the CFC would have incurred during the accounting period had the CFC—
    - (i) not held the asset to any extent at all, or
    - (ii) not borne the risk to any extent at all.
- (4) Subsection (5) applies if it is not reasonably practicable to separate a number of assets or risks included in the relevant assets and risks for the purpose of determining amounts A and B in relation to each of those assets or risks separately.
- (5) In subsections (1) to (3) references to an asset or risk are to be read as references to those assets or risks taken together.

#### **Exclusion: economic value**

- 371D(1) Subsection (2) applies if—
  - (a) an asset or risk is included in the relevant assets and risks,
  - (b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1), and
  - (c) as a result of that determination, an amount is included in the provisional Chapter 4 profits.
- (2) The amount is to be excluded from the provisional Chapter 4 profits if—
  - (a) the net economic value to the CFC group which results from the holding of the asset, or the bearing of the risk, exceeds what that value would have been had the asset been held, or the risk been borne, solely by UK resident companies connected with the CFC, and
  - (b) the relevant non-tax value is a substantial proportion of the excess value mentioned in paragraph (a).
- (3) “Net economic value” does not include any value which derives (directly or indirectly) from the reduction or elimination of any liability of any person to tax or duty imposed under the law of any territory outside the United Kingdom.
- (4) “The relevant non-tax value” is the excess value mentioned in subsection (2)
  - (a) so far as it does not derive (directly or indirectly) from the reduction or

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elimination of any liability of any person to tax or duty imposed under the law of the United Kingdom.

- (5) Subsection (6) applies if—
- (a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and
  - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.
- (6) In subsections (1) and (2) references to an asset or risk are to be read as references to those assets or risks taken together.

**Exclusion: independent companies' arrangements**

- 371D(E) Subsection (2) applies if—
- (a) an asset or risk is included in the relevant assets and risks,
  - (b) the SPFs which are relevant to the economic ownership of the asset, or the assumption and management of the risk, are wholly or partly UK SPFs as determined at step 4 in section 371DB(1),
  - (c) as a result of that determination, an amount is included in the provisional Chapter 4 profits, and
  - (d) the UK SPFs are carried out by companies connected with the CFC under arrangements made between the CFC and those companies.
- (2) The amount is to be excluded from the provisional Chapter 4 profits if it is reasonable to suppose that, were the SPFs which are UK SPFs not to be carried out by companies connected with the CFC, the CFC would enter into arrangements with companies not connected with the CFC which—
- (a) would be structured in the same way as the arrangements mentioned in subsection (1)(d), and
  - (b) would, in relation to the CFC's business, have the same commercial effect as those arrangements.
- (3) Subsection (4) applies if—
- (a) there are SPFs which are relevant to the economic ownership of a number of assets, or the assumption and management of a number of risks, included in the relevant assets and risks, and
  - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the SPFs are relevant to the economic ownership of each of those assets, or the assumption and management of each of those risks, separately.
- (4) In subsection (1) references to an asset or risk are to be read as references to those assets or risks taken together.

**Exclusion: trading profits (the basic rule)**

- 371D(F) All trading profits are to be excluded from the provisional Chapter 4 profits if the following conditions are met—
- (a) the business premises condition (see section 371DG),

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- (b) the income condition (see section 371DH),
  - (c) the management expenditure condition (see section 371DI),
  - (d) the IP condition (see section 371DJ), and
  - (e) the export of goods condition (see section 371DK).
- (2) Trading profits are also to be excluded from the provisional Chapter 4 profits in accordance with section 371DI(7) and (8) (so far as applicable).
- (3) This section is subject to section 371DL (anti-avoidance).

**Exclusion: trading profits (business premises condition)**

371D(G) This section applies for the purposes of section 371DF(1)(a).

- (2) The business premises condition is met if, at all times during the accounting period, the CFC has in the territory in which it is resident for the accounting period premises—
- (a) which are, or are intended to be, occupied and used with a reasonable degree of permanence, and
  - (b) from which the CFC's activities in that territory are wholly or mainly carried on.
- (3) “Premises” means—
- (a) an office, shop, factory or other building or part of a building,
  - (b) a mine, an oil or gas well, a quarry or other place of extraction of natural resources, or
  - (c) a building site or the site of a construction or installation project, but only if the building work or project has a duration of at least 12 months.

**Exclusion: trading profits (income condition)**

371D(H) This section applies for the purposes of section 371DF(1)(b).

- (2) The income condition is met if no more than 20% of the CFC's relevant trading income derives (directly or indirectly) from—
- (a) UK resident persons, or
  - (b) UK permanent establishments of non-UK resident companies.
- (3) For the purposes of subsection (2) the CFC's “relevant trading income” is its trading income, excluding any income arising from the sale in the United Kingdom of goods produced by the CFC in the territory in which it is resident for the accounting period.
- (4) Subsection (5) applies instead of subsection (2) if, at any time during the accounting period, the CFC's main business is banking business in relation to which the CFC is regulated in the territory in which it is resident for the accounting period.
- (5) The income condition is met if the CFC's relevant UK trading income is no more than 10% of the CFC's trading income.
- (6) The CFC's “relevant UK trading income” is its trading income so far as it derives (directly or indirectly) from—

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- (a) UK resident persons, or
  - (b) UK permanent establishments of non-UK resident companies, but excluding interest received from UK resident companies which are connected or associated with the CFC.
- (7) Neither subsection (2)(a) nor subsection (6)(a) covers income deriving (directly or indirectly) from a UK resident company if—
- (a) the company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and
  - (b) an expense corresponding to the income is brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.

**Exclusion: trading profits (management expenditure condition)**

371D(1) This section applies for the purposes of section 371DF(1)(c).

- (2) The management expenditure condition is met if the UK related management expenditure is no more than 20% of the total related management expenditure.
- (3) “The total related management expenditure” is the total of the following expenditure incurred during the accounting period by the CFC—
  - (a) expenditure incurred in the employment of any member of the CFC's staff who carries out relevant management functions,
  - (b) expenditure incurred in the engagement (directly or indirectly) of any individual who is not a member of the CFC's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the CFC, and
  - (c) expenditure incurred in the engagement (directly or indirectly) of any company related to the CFC so far as the expenditure represents expenditure incurred by the related company in—
    - (i) the employment of any member of the related company's staff who carries out relevant management functions, or
    - (ii) the engagement by the related company (directly or indirectly) of any individual who is not a member of the related company's staff but who carries out relevant management functions in consequence of an arrangement between the individual and the related company.
- (4) “The UK related management expenditure” is the total related management expenditure so far as it relates to members of staff or other individuals who carry out relevant management functions in the United Kingdom.
- (5) A person carries out a “relevant management function” if the person manages or controls any assets or risks included in the relevant assets and risks.
- (6) This covers (for example) a person who formulates plans or makes decisions in relation to—
  - (a) the acquisition, creation, development or exploitation of such assets, or



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- (b) the taking on, or bearing, of such risks.
- (7) Subsection (8) applies if—
- (a) the conditions mentioned in section 371DF(1)(a), (b), (d) and (e) are met but the management expenditure condition is not met,
  - (b) there is an asset or risk which is included in the relevant assets and risks and to which any part of the total related management expenditure relates,
  - (c) the 50% condition is met in relation to that asset or risk, and
  - (d) trading profits arising from that asset or risk are included in the provisional Chapter 4 profits.
- (8) The trading profits are to be excluded from the provisional Chapter 4 profits.
- (9) The 50% condition is met in relation to an asset or risk if the UK related management expenditure so far as relating to the asset or risk is no more than 50% of the total related management expenditure so far as relating to the asset or risk.
- (10) Subsection (11) applies if—
- (a) any part of the total related management expenditure relates to a number of assets or risks included in the relevant assets and risks, and
  - (b) it is not reasonably practicable to separate those assets or risks for the purpose of determining the extent to which the total related management expenditure relates to each of those assets or risks separately.
- (11) Subsections (7) to (9) apply in relation to those assets or risks taken together and references to an asset or risk are to be read accordingly.

**Exclusion: trading profits (IP condition)**

371D(1) This section applies for the purposes of section 371DF(1)(d).

- (2) The IP condition is met unless—
- (a) the CFC's assumed total profits include amounts arising from intellectual property held by the CFC (“the exploited IP”),
  - (b) all or parts of the exploited IP were—
    - (i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or
    - (ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
  - (c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
  - (d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.
- (3) The significance condition is met if—

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- (a) the parts of the exploited IP (“the UK derived IP”) which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or
  - (b) as a result of the transfers or other derivations of the UK derived IP, the CFC’s assumed total profits are significantly higher than what they would otherwise have been.
- (4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—
- (a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or
  - (b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.
- (5) “The relevant period” means the period covering the accounting period and the 6 years before the accounting period.

**Exclusion: trading profits (export of goods condition)**

371D(1) This section applies for the purposes of section 371DF(1)(e).

- (2) The export of goods condition is met if no more than 20% of the CFC’s trading income arises from goods exported from the United Kingdom, excluding goods exported from the United Kingdom to the territory in which the CFC is resident for the accounting period.

**Exclusion: trading profits (anti-avoidance)**

371D(1) This section applies if—

- (a) a condition mentioned in section 371DF(1) is met, or
  - (b) the 50% condition mentioned in section 371DI is met in relation to an asset or risk (or a number of assets or risks taken together),
- but it is reasonable to suppose that that would not be the case apart from an arrangement falling within subsection (3).
- (2) The condition is to be taken not to be met or (as the case may be) not to be met in relation to the asset or risk (or the assets or risks taken together).
- (3) An arrangement falls within this subsection if—
- (a) the arrangement involves the CFC group organising (or reorganising) a significant part of its business in a particular way, and
  - (b) the main purpose, or one of the main purposes, of that organising (or reorganising) is to secure that—
    - (i) one or more of the conditions mentioned in section 371DF(1) are met, or
    - (ii) the 50% condition mentioned in section 371DI is met in relation to one or more assets or risks.

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## CHAPTER 5

### THE CFC CHARGE GATEWAY: NON-TRADING FINANCE PROFITS

#### The basic rule

- 371E(A) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are its non-trading finance profits so far as they fall within any of sections 371EB to 371EE.
- (2) In this Chapter references to the CFC's non-trading finance profits are to be read in accordance with section 371CB(2) and, so far as applicable, section 371CB(8).

#### UK activities

- 371E(B) To determine the extent to which the CFC's non-trading finance profits fall within this section, take steps 1 to 5 and 7 in section 371DB(1) as if references in section 371DB to the CFC's assumed total profits were references to its non-trading finance profits.
- (2) Non-trading finance profits fall within this section so far as they would be included in the provisional Chapter 4 profits as determined on the basis mentioned in subsection (1).

#### Capital investment from the UK

- 371E(C) Non-trading finance profits fall within this section so far as they arise from relevant UK funds or other assets.
- (2) Subsection (3) applies in relation to any profits which (apart from subsection (3)) would fall within this section if—
- (a) an amount of expenditure incurred by the CFC in managing the relevant UK funds or other assets itself was brought into account in calculating the profits, and
  - (b) it is reasonable to suppose that the amount of expenditure is less than the fee which a company not connected with the CFC would charge the CFC for carrying out the same management activities.
- (3) There is to be deducted from the profits an amount representing what it is reasonable to suppose the difference between the amount of expenditure and the fee would be.
- (4) “Relevant UK funds or other assets” means—
- (a) funds or other assets which represent, or derive (directly or indirectly) from, any capital contribution to the CFC made (directly or indirectly) by a UK connected company (whether in relation to an issue of shares in the CFC or otherwise),
  - (b) funds or other assets which represent, or derive (directly or indirectly) from, any amounts included in the CFC's chargeable profits for any earlier accounting period in relation to which the CFC charge is charged,

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- (c) funds or other assets which represent, or derive (directly or indirectly) from, any amounts which, by virtue of section 174 (transfer pricing: claims by disadvantaged person), are left out of account in determining the CFC's assumed total profits for the accounting period or any earlier accounting period, or
  - (d) funds or other assets—
    - (i) which represent, or derive (directly or indirectly) from, any funds or other assets received by the CFC (directly or indirectly) from a UK connected company, and
    - (ii) which are not covered by paragraphs (a) to (c).
- (5) In subsection (4)(d)(i) the reference to funds or other assets received by the CFC does not include funds or other assets received—
- (a) in exchange for goods or services provided by the CFC, or
  - (b) by way of a loan.
- (6) “UK connected company” means—
- (a) a UK resident company connected with the CFC, or
  - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.

#### **Arrangements in lieu of dividends etc to UK resident companies etc**

371E(1) Non-trading finance profits fall within this section so far as they arise from an arrangement (other than a relevant finance lease) in relation to which the following condition is met.

- (2) The condition is that—
- (a) the arrangement is made by the CFC (directly or indirectly)—
    - (i) with a UK resident company connected with the CFC, or
    - (ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and
  - (b) it is reasonable to suppose—
    - (i) that the arrangement is made as an alternative to the CFC paying dividends or making any other distribution to the other company (directly or indirectly), and
    - (ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

#### **Leases to UK resident companies etc**

371E(1) Non-trading finance profits fall within this section so far as they arise from a relevant finance lease in relation to which the following condition is met.

- (2) The condition is that—
- (a) the lease is made by the CFC (directly or indirectly)—
    - (i) with a UK resident company connected with the CFC, or

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- (ii) with a non-UK resident company connected with the CFC for the purposes of a UK permanent establishment of the non-UK resident company, and
- (b) it is reasonable to suppose—
  - (i) that the lease is made as an alternative to the other company purchasing (directly or indirectly) the asset which is the subject of the lease, and
  - (ii) that the main reason, or one of the main reasons, for that is a reason relating to a liability, or potential liability, of any person to tax or duty imposed under the law of any territory.

## CHAPTER 6

### THE CFC CHARGE GATEWAY: TRADING FINANCE PROFITS

#### The basic rule

371F(A) Take the following steps to determine the CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway).

This is subject to regulations under section 371FD or 371FE.

*Step 1* Determine if, during the accounting period, the CFC's free capital exceeds what it is reasonable to suppose its free capital would be were it a company which is not the 51% subsidiary of any other company. If there is excess free capital, “the step 1 amount” is—

- (a) the excess free capital, or
- (b) if less, the CFC's free capital so far as deriving (directly or indirectly) from UK connected capital contributions.

*Step 2* This step applies only if the CFC carries on insurance business during the accounting period; if it does not, go straight to step 3. Determine if, during the accounting period when the CFC is carrying on insurance business, the CFC's free assets exceeds what it is reasonable to suppose its free assets would be were it a company which is not the 51% subsidiary of any other company. If there is excess free assets, “the step 2 amount” is—

- (a) the excess free assets, or
- (b) if less, the CFC's free assets so far as deriving (directly or indirectly) from UK connected capital contributions.

*Step 3* If no excesses are determined at steps 1 and 2, no profits fall within this Chapter. Otherwise, the profits falling within this Chapter are the CFC's trading finance profits so far as it is reasonable to suppose that those profits arise from the investment or other use of the step 1 amount or the step 2 amount (or both

- (2) For the purposes of step 1 in subsection (1) the CFC's “free capital” is the funding it has for its business so far as the funding does not give rise to debits which are brought into account in determining the CFC's non-trading finance profits or trading finance profits.

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- (3) For the purposes of step 2 in subsection (1) the CFC's "free assets" is the amount by which the value of its assets exceeds its loan capital.
- (4) Subsections (2) and (3) are subject to sections 371FB and 371FC and subsection (3) is also subject to subsection (6).
- (5) Subsection (6) applies if—
  - (a) the CFC, acting outside its insurance business, gives a guarantee against losses of an insurance business of another company which is connected with the CFC,
  - (b) the guarantee is necessary for the purpose of meeting regulatory requirements applicable to the other company's insurance business,
  - (c) in consequence of having given the guarantee, the CFC is required by regulatory requirements applicable to its insurance business to hold more assets than it would otherwise be required to hold, and
  - (d) during the accounting period, the CFC holds assets solely for the purpose of meeting that requirement for more assets.
- (6) The value of the assets held by the CFC as mentioned in subsection (5)(d) is to be deducted from the CFC's free assets.
- (7) For the purposes of this section the "value" of an asset is the amount which it is reasonable to suppose the CFC would obtain for the transfer of all the CFC's rights in respect of the asset from a person not connected with the CFC.

### Qualifying loan relationships

- 371FB(1) Subsection (2) applies if, during the CFC's accounting period, the CFC is the ultimate debtor in relation to a qualifying loan relationship (within the meaning of Chapter 9) of another CFC ("the creditor CFC").
- (2) E% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).
- (3) "E%" is given by the following formula—

$$\frac{100\% \times EP}{P}$$

where—

EP is the total amount of the profits of the qualifying loan relationship which are exempt, and

P is the total amount of the profits of the qualifying loan relationship.

- (4) For the purposes of subsection (3)—
  - (a) references to the profits of the qualifying loan relationship are to the profits of the qualifying loan relationship for accounting periods of

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- the creditor CFC which fall wholly or partly in the CFC's accounting period,
- (b) the profits of the qualifying loan relationship for an accounting period of the creditor CFC are to be determined in accordance with Chapter 9,
  - (c) the steps in subsection (5) are to be taken to determine the amount of the profits of the qualifying loan relationship for an accounting period of the creditor CFC which are “exempt”, and
  - (d) the profits of the qualifying loan relationship for an accounting period of the creditor CFC which falls only partly in the CFC's accounting period, and the amount of those profits which are exempt, are to be apportioned between—
    - (i) the part of the creditor CFC's accounting period which falls in the CFC's accounting period, and
    - (ii) the part which does not,with only those profits, and the amount of exempt profits, apportioned to the part mentioned in sub-paragraph (i) being included in P or EP (as the case may be).
- (5) Here are the steps referred to in subsection (4)(c).

The steps are to be taken separately in relation to each chargeable company which makes a claim under Chapter 9 in relation to the creditor CFC's accounting period.

The amount of the profits of the qualifying loan relationship for the creditor CFC's accounting period which are exempt is the total of the amounts given by step 2.

*Step 1* Determine the amount of the profits of the qualifying loan relationship for the accounting period which, in the case of the chargeable company, are exempt under Chapter 9.

*Step 2* Multiply the amount determined at step 1 by P% (as defined in section 371BC(3), ignoring sections 371BG(3)(a) and 371BH(3)(b)).

### **Loans from foreign permanent establishments of UK resident companies**

371F(1) Subsection (2) applies if—

- (a) there is a company (“C”) which has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
- (b) during a relevant accounting period of C which begins on or after 1 January 2013, C has a creditor relationship which, applying the assumptions set out in section 18H(3) of CTA 2009 in relation to C for the relevant accounting period, would be a qualifying loan relationship (within the meaning of Chapter 9 of this Part) of C in relation to which the CFC would be the ultimate debtor,
- (c) in the application of section 18H(2) of CTA 2009 for the relevant accounting period, C makes a claim under Chapter 9 of this Part (as applied by section 18H(2)), and
- (d) the relevant accounting period falls wholly or partly in the CFC's accounting period.

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- (2) 75% of the principal outstanding during the CFC's accounting period on the loan which is the subject of the qualifying loan relationship is to be added to the CFC's free capital or free assets (as the case may be).
- (3) Terms used in this section which are defined in section 18A of CTA 2009 have the meaning given by that section.

**Exclusion: banking business**

- 371F(1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from banking business, or banking business of a specified description, carried on by the CFC.
- (2) Regulations under subsection (1) may (in particular) make provision by reference to—
    - (a) the territory in which a CFC is resident or any territory in which its banking business is regulated or carried on, or
    - (b) the regulatory requirements imposed from time to time in any territory in relation to banking business.

**Exclusion: insurance business**

- 371F(1) The HMRC Commissioners may by regulations provide that, if specified conditions are met, step 3 in section 371FA(1) is not to apply in relation to the CFC's trading finance profits so far as they arise from insurance business, or insurance business of a specified description, carried on by the CFC.
- (2) In subsection (1) “insurance business” does not include insurance business so far as consisting of the effecting or carrying out of contracts of insurance covered by section 371GA(2) (UK insurance contracts), including the investment of premiums received from such contracts.
  - (3) Regulations under subsection (1) may (in particular) make provision by reference to—
    - (a) the territory in which a CFC is resident or any territory in which its insurance business is regulated or carried on, or
    - (b) the regulatory requirements imposed from time to time in any territory in relation to insurance business.

## CHAPTER 7

### THE CFC CHARGE GATEWAY: CAPTIVE INSURANCE BUSINESS

**The basic rule**

- 371G(1) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits so far as they—
- (a) arise from the CFC's insurance business,
  - (b) fall within subsection (2), and



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- (c) fall within subsection (7) where applicable.
- (2) An amount falls within this subsection if it derives (directly or indirectly) from—
  - (a) a contract of insurance which is entered into with—
    - (i) a UK resident company connected with the CFC, or
    - (ii) a non-UK resident company connected with the CFC acting through a UK permanent establishment, or
  - (b) a contract of insurance which—
    - (i) is entered into with a UK resident person, and
    - (ii) is linked (directly or indirectly) to the provision of goods or services to the UK resident person by a UK connected company.
- (3) In subsection (2)(b)(ii)—
  - “services” does not include services provided as part of insurance business, and
  - “UK connected company” means—
    - (a) a UK resident company connected with the CFC, or
    - (b) a non-UK resident company connected with the CFC acting through a UK permanent establishment.
- (4) Subsection (2)(a)(i) does not cover a premium paid under a contract of insurance if—
  - (a) the UK resident company has made an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments), and
  - (b) the premium is wholly brought into account for the purpose of determining any exemption adjustment in relation to the company under that section.
- (5) Subsection (2)(a) covers a contract of reinsurance only so far as the original contract of insurance would fall within subsection (2)(a).
- (6) Subsection (7) applies in relation to an amount if—
  - (a) the CFC is resident in an EEA state for the accounting period, and
  - (b) the amount does not arise from the activities of a permanent establishment which the CFC has in a territory which is not an EEA state.
- (7) An amount falls within this subsection so far as it derives (directly or indirectly) from a contract of insurance if—
  - (a) the insured has no significant UK non-tax reason for entering into the contract of insurance, or
  - (b) if the contract of insurance is a contract of reinsurance, the original insured has no significant UK non-tax reason for entering into the original contract of insurance.
- (8) “UK non-tax reason” means a reason other than one relating to a liability, or potential liability, of any person to tax or duty imposed under the law of the United Kingdom.

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- (9) In this section “original contract of insurance”, in relation to a contract of reinsurance which is one in a chain of contracts of reinsurance, means the original contract of insurance reinsured by the first contract in the chain; and in subsection (7)(b) the reference to the original insured is to be read accordingly.

## CHAPTER 8

### THE CFC CHARGE GATEWAY: SOLO CONSOLIDATION

#### The basic rule

- 371H(A) The CFC's profits falling within this Chapter for the purposes of step 2 in section 371BB(1) (the CFC charge gateway) are any amounts included in its assumed total profits which are not also included in the CFC's relevant profits amount.
- (2) The CFC's “relevant profits amount” is what the relevant profits amount would be for the purposes of Chapter 3A of Part 2 of CTA 2009 (see section 18A(6) of that Act) in relation to the CFC were that amount to be determined as if—
- (a) the CFC were a permanent establishment in a territory outside the United Kingdom of the UK resident company mentioned in section 371CG(2)(b) or the UK resident bank mentioned in section 371CG(3), and
  - (b) the CFC's accounting period were a relevant accounting period of that UK resident company or UK resident bank for the purposes of that Chapter.

## CHAPTER 9

### EXEMPTIONS FOR PROFITS FROM QUALIFYING LOAN RELATIONSHIPS

#### The basic rule

- 371I(A) This Chapter applies if—
- (a) apart from this Chapter, Chapter 5 (non-trading finance profits) would apply for a CFC's accounting period,
  - (b) the CFC's non-trading finance profits include qualifying loan relationship profits, and
  - (c) the business premises condition set out in section 371DG is met.
- (2) A chargeable company (“company C”) in relation to the accounting period may make a claim to an officer of Revenue and Customs for step 2 in section 371BB(1) (the CFC charge gateway) to be taken, in the case of company C only, subject to this Chapter.
- (3) If company C makes a claim, in the case of company C only, the CFC's qualifying loan relationship profits pass through the CFC charge gateway so far as (and only so far as) they are not exempt under this Chapter.

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- (4) The CFC's "qualifying loan relationship profits" are the profits of all its qualifying loan relationships taken together.
- (5) The extent to which those profits are "exempt" is to be determined—
  - (a) firstly, by applying either section 371IB or section 371ID to each of the CFC's qualifying loan relationships, and
  - (b) secondly, by applying section 371IE (if relevant).
- (6) Section 371IF sets out how to determine the profits of a qualifying loan relationship.
- (7) Sections 371IG to 371II define "qualifying loan relationship" etc.
- (8) Section 371IJ contains provision about claims under this Chapter.
- (9) In this Chapter references to the CFC's non-trading finance profits are to those profits excluding any profits—
  - (a) falling within section 371CB(3) or (4) or Chapter 8 (solo consolidation), or
  - (b) arising from a relevant finance lease.
- (10) In this Chapter—
  - (a) "loan relationship" has the meaning given by section 302(1) of CTA 2009 (and does not include anything which, although not falling within section 302(1), is treated for any purpose as if it were a loan relationship), and
  - (b) other terms used which are defined in Part 5 of CTA 2009 are to be read accordingly.
- (11) See section 371CB(8) which deals with the interaction between this Chapter and section 371CB and Chapter 5 in the case of a chargeable company which makes a claim under this Chapter.

### **Loans funded out of qualifying resources**

371IB) This section applies to a qualifying loan relationship if company C's claim under this Chapter states that this section is to apply to the qualifying loan relationship.

- (2) X% of the profits of the qualifying loan relationship are exempt if company C's claim establishes—
  - (a) that, at all times during the relevant period, at least X% of the principal outstanding on the relevant loan (as that may vary from time to time during the relevant period) is funded by the CFC wholly out of qualifying resources, and
  - (b) that the ultimate debtor in relation to the qualifying loan relationship (see section 371IG(2) to (7)) is resident at all times during the relevant period in one territory only and that its territory of residence does not change at any time during the relevant period.
- (3) "X%" is the percentage specified in company C's claim for the purposes of this section in relation to the qualifying loan relationship (which may be 100%).

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- (4) “The relevant period” means—
- (a) the accounting period, or
  - (b) if for any part of the accounting period no principal is outstanding on the relevant loan, the part of the accounting period during which there is principal outstanding.
- (5) “The relevant loan” means the loan which is the subject of the qualifying loan relationship.
- (6) “Qualifying resources” means—
- (a) profits of the CFC's business so far as it consists of the making of loans to relevant members of the CFC group which are used solely for the purposes of the business of the CFC group in the relevant territory, or
  - (b) funds or other assets received by the CFC in relation to shares held by the CFC in, or issued by the CFC to, members of the CFC group.
- (7) Funds or other assets received by the CFC fall within subsection (6)(b) only so far as they derive (directly or indirectly) from—
- (a) profits of the business of the CFC group in the relevant territory,
  - (b) the qualifying value of relevant pre-acquisition funds or other assets (see section 371IC), or
  - (c) an issue of shares which meets the following requirements—
    - (i) the shares are shares in a member of the CFC group (“the parent member”) which is not the 75% subsidiary of any company,
    - (ii) the shares are ordinary shares which are not redeemable, and
    - (iii) the shares are issued to persons who are not members of the CFC group.
- (8) Subsection (9) applies if the qualifying loan relationship is made under, or is otherwise connected (directly or indirectly) with, an arrangement under which a member of the CFC group incurs a debt in the United Kingdom to—
- (a) a non-UK resident person, or
  - (b) a UK resident person who is not a member of the CFC group.
- (9) It is to be assumed for the purposes of subsection (2) that, at all times during the relevant period, the amount of funds or other assets—
- (a) out of which the principal outstanding on the relevant loan is funded by the CFC, and
  - (b) which are not qualifying resources,
- is no less than the amount of the debt mentioned in subsection (8).
- (10) For the purposes of this section and section 371IC—
- (a) subject to subsections (11) and (12), “the CFC group”, as at any time, means the CFC taken together with the companies with which it is connected at that time,
  - (b) a member of the CFC group is “relevant” if it is resident in the relevant territory and no other territory,
  - (c) “the relevant territory” means the territory of residence of the ultimate debtor mentioned in subsection (2)(b),

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- (d) references to the business of the CFC group in the relevant territory do not include the making of loans to persons resident outside the relevant territory,
  - (e) references to the profits of the business of the CFC group in the relevant territory do not include—
    - (i) profits arising (directly or indirectly) from funds or other assets received by relevant members of the CFC group in relation to shares held by them in members of the CFC group which are not relevant members, or
    - (ii) so far as not covered by sub-paragraph (i), profits arising (directly or indirectly) from the business of the CFC group in any territory outside the relevant territory, and
  - (f) section 931U of CTA 2009 (definitions of “ordinary share” and “redeemable”) applies as it applies for the purposes of Part 9A of CTA 2009 (company distributions).
- (11) If the CFC is controlled by one UK resident company only (“the controller”), in relation to any time before the CFC came to be controlled by the controller, except in subsection (6), references to the CFC group include references to the controller taken together with any companies with which it is connected at that time.
- (12) If the CFC is controlled by two or more UK resident companies which are all connected with each other (“the controllers”), in relation to any time—
  - (a) before which the CFC came to be controlled by the controllers, and
  - (b) at which the controllers (or those of the controllers which exist at that time) are all connected with each other,except in subsection (6), references to the CFC group include references to the controllers (or those of the controllers which exist) taken together with any other companies with which they are all connected at that time.

**What is the “qualifying value” of “relevant pre-acquisition funds or other assets”?**

3711Q) This section applies for the purposes of section 3711B(7)(b).

- (2) It applies if—
  - (a) a member of the CFC group acquires shares in a company (“the target company”) from persons who are not members of that group (“the unconnected persons”),
  - (b) in consideration for the acquisition of the shares, a member of the CFC group (“the parent member”) which is not the 51% subsidiary of any company issues shares to the unconnected persons, and
  - (c) the value of the consideration given for the acquisition of the shares by the parent member and any other members of the CFC group represents wholly or partly the value or a part of the value of any funds or other assets held by the target company.
- (3) Those funds or other assets are “relevant pre-acquisition funds or other assets” and, subject to what follows, their value or the part of their value represented by the value of the consideration is their “qualifying value”.

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- (4) The qualifying value is to be reduced by Y% if one or both of the following paragraphs applies—
- (a) the issue of shares by the parent member to the unconnected persons represents only part of the consideration given for the acquisition of the shares in the target company;
  - (b) in connection with the acquisition of the shares in the target company, an extraordinary distribution is made to persons holding shares in the parent member.
- (5) “Y%” is given by the following formula—

$$\frac{100\% \times B}{A + B}$$

where—

A is the value of the consideration which is in the form of the issue of shares by the parent member to the unconnected persons, and

B is, as the case may be—

- (a) the value of the consideration which is not in the form of the issue of shares by the parent member to the unconnected persons,
- (b) the value of the extraordinary distribution, or
- (c) the total of the values given by paragraphs (a) and (b).

### **The 75% exemption**

371I(1) This section applies to a qualifying loan relationship if section 371IB does not apply to the qualifying loan relationship.

- (2) 75% of the profits of the qualifying loan relationship are exempt.

### **Matched interest**

371I(2) This section applies if—

- (a) there are profits of qualifying loan relationships (“the leftover profits”) which are not exempt after either section 371IB or section 371ID has been applied to each qualifying loan relationship,
- (b) the relevant corporation tax accounting period (as defined in section 371BC(3)) in relation to company C is a relevant accounting period of company C in relation to a period of account of the worldwide group,
- (c) the CFC's accounting period ends in that period of account, and
- (d) apart from this section—
  - (i) the charging of a sum on company C at step 5 in section 371BC(1) would cause section 314A (financing income amounts of chargeable companies) to apply in the case of company C, and

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- (ii) the relevant finance profits (see section 314A(1)(d)) would include the leftover profits.
- (2) All the leftover profits are exempt if, ignoring the relevant amounts, the tested income amount for the period of account is equal to or exceeds the tested expense amount for that period.
- (3) Otherwise, Z% of the leftover profits are exempt if the relevant amounts would cause the tested income amount for the period of account to exceed the tested expense amount for that period.
- (4) “Z%” is given by the following formula—

$$\frac{100\% \times E}{I + R}$$

where—

E is the amount of the excess which would be caused by the relevant amounts,

I is the amount of any increase in the tested income amount which would be caused by the relevant amounts, and

R is the amount of any reduction in the tested expense amount which would be caused by the relevant amounts.

- (5) “The relevant amounts” are—
- (a) the financing income amount for the period of account which company C would have as a result of the application of section 314A as mentioned in subsection (1)(d) so far as it would include the leftover profits, and
  - (b) any other financing income amounts for the period of account corresponding to the amount given by paragraph (a) which members of the worldwide group who make claims under this Chapter in relation to any CFC would have.
- (6) For the purposes of subsection (5)(a) assume that company C's financing income amount would include P% of the leftover profits.
- (7) “P%” has the meaning given by section 371BC(3), subject to sections 371BG(3)(a) and 371BH(3)(b).
- (8) Subject to what follows, terms used in this section which are defined in Part 7 (tax treatment of financing costs and income) have the same meaning as they have in Part 7.
- (9) In subsections (2) to (4) references to the tested income amount or the tested expense amount are to that amount determined without regard to any debits, credits or other amounts arising from UK banking business or insurance business.

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- (10) But subsection (9) does not apply for the purpose of determining any financing income amount under section 314A or affect the way in which any such amount is to be taken into account in determining the tested income amount or the tested expense amount.
- (11) “UK banking business or insurance business” means banking business or insurance business carried on by—
- (a) a UK resident company, or
  - (b) a non-UK resident company acting through a UK permanent establishment.
- (12) Part 7 has effect for the purposes of this section with the following modifications.
- (13) In section 261 (application of Part 7) the following are to be omitted—
- (a) in subsection (1), the words from “for which” to the end, and
  - (b) subsections (2) to (5).
- (14) Section 337(1)(a) (which limits “the worldwide group” to “large” groups) is to be omitted.

### **Determining the profits of a qualifying loan relationship**

371IF Take the following steps to determine the profits of a qualifying loan relationship for the purposes of this Chapter.

*Step 1* Determine the credits from the qualifying loan relationship which are brought into account in determining the CFC's non-trading finance profits. The result is “the step 1 credits”.

*Step 2* Determine the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

- (a) are from any derivative contract or other arrangement (other than a qualifying loan relationship) entered into by the CFC as a hedge of risk in connection with the qualifying loan relationship, and
- (b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 1 credits and if the debits exceed the credits subtract the deficit from the step 1 credits. The result is “the step 2 credits”.

*Step 3* Allocate to the qualifying loan relationship a just and reasonable proportion of the credits from the CFC's relevant debtor relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 2 credits). Add the credits to the step 2 credits. The result is “the step 3 credits”. A debtor relationship of the CFC is “relevant” if the loan which is the subject of it is used by the CFC to fund the loan which is the subject of the qualifying loan relationship

*Step 4* Allocate to the qualifying loan relationship a just and reasonable proportion of the credits and debits which are brought into account in determining the CFC's non-trading finance profits so far as they—

- (a) are from any derivative contract or other arrangement (other than a qualifying loan relationship or a relevant debtor



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relationship) entered into by the CFC as a hedge of risk in connection with a relevant debtor relationship, and

(b) are attributable to the hedge of risk.

If the credits exceed the debits add the excess to the step 3 credits and if the debits exceed the credits subtract the deficit from the step 3 credits. The result is “the step 4 credits”.

*Step 5* Allocate to the qualifying loan relationship a just and reasonable proportion of—

(a) the debits from the CFC's loan relationships which are brought into account in determining the CFC's non-trading finance profits (so far as not reflected in the step 4 credits), and

(b) any amounts set off under Chapter 16 of Part 5 of CTA 2009 (non-trading deficits) against amounts which, apart from the set off, would be included in the CFC's non-trading finance profits.

Reduce the step 4 credits accordingly to give the profits of the qualifying loan relationship.

### **What is a “qualifying loan relationship”?**

371I(G) In this Chapter “qualifying loan relationship” means a creditor relationship of the CFC—

- (a) the ultimate debtor in relation to which is a qualifying company, and
- (b) which is not prevented from being a qualifying loan relationship by section 371IH.

(2) In this Chapter “the ultimate debtor”, in relation to a creditor relationship of the CFC, means the debtor in relation to the creditor relationship.

This is subject to what follows.

(3) Subsection (4) or (5) (as the case may be) applies if—

- (a) there is a loan (“loan A”) which is the subject of a creditor relationship of the CFC,
- (b) loan A, or a part of loan A, is made and used to fund (directly or indirectly) another loan (“loan B”) to a person (“P”), and
- (c) loan B, or a part of loan B, is not made and used to fund (directly or indirectly) a further loan to any person.

(4) If all of loan A is made and used to fund (directly or indirectly) loan B, the ultimate debtor in relation to the CFC's creditor relationship mentioned in subsection (3)(a) is P.

(5) If only part of loan A is made and used to fund (directly or indirectly) loan B—

- (a) that part of loan A is to be treated for the purposes of this Chapter as a separate loan giving rise to a separate creditor relationship of the CFC, and
- (b) the ultimate debtor in relation to that separate creditor relationship is P.

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- (6) If the requirement of subsection (3)(c) is met in relation to a part of loan B only, in subsections (4) and (5) references to loan B are to be read as references to that part of loan B only.
- (7) But neither subsection (4) nor subsection (5) applies if—
- (a) the debtor (“D”) in relation to the CFC's creditor relationship is a qualifying company the main business of which is banking business or insurance business,
  - (b) the use of loan A, or the part of loan A, as mentioned in subsection (3)(b) occurs in the ordinary course of D's banking business or insurance business (as the case may be), and
  - (c) P is not a UK resident qualifying company.
- (8) In this section “qualifying company” means a company which—
- (a) is connected with the CFC, and
  - (b) is controlled by the UK resident person or persons who control the CFC.

**Exclusions from definition of “qualifying loan relationship”**

- 371I(1) If the ultimate debtor in relation to a creditor relationship of the CFC is a non-UK resident company, the creditor relationship cannot be a qualifying loan relationship so long as some or all of the company's debits—
- (a) are being brought into account for the purposes of Chapter 4 of Part 2 of CTA 2009 (UK permanent establishments of non-UK resident companies) in determining the company's profits which are attributable to a UK permanent establishment, or
  - (b) are being brought into account for the purposes of Part 3 of ITTOIA 2005 (property income) in determining the company's profits of a UK property business.
- (2) If the ultimate debtor in relation to a creditor relationship of the CFC is a UK resident company, the creditor relationship can be a qualifying loan relationship only so long as—
- (a) an election under section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments) is in effect in relation to the company, and
  - (b) all the company's debits are being brought into account for the purpose of determining exemption adjustments in relation to the company under that section.
- (3) If the ultimate debtor in relation to a creditor relationship of the CFC is another CFC, the creditor relationship cannot be a qualifying loan relationship so long as—
- (a) some or all of the other CFC's debits are relevant to the application of Chapters 3 to 8 or Chapter 12 in the case of the other CFC, and
  - (b) as a result of that, the CFC charge is not being charged in relation to the other CFC's accounting periods or any sums charged are less than what they would otherwise have been.

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- (4) In subsections (1) to (3) references to the debits of the company which is the ultimate debtor in relation to a creditor relationship of the CFC are references to—
- (a) the ultimate debtor's debits in relation to the loan which is the subject of the CFC's creditor relationship, or
  - (b) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), the ultimate debtor's debits in relation to loan B.
- (5) A creditor relationship of the CFC cannot be a qualifying loan relationship if it is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor in relation to the creditor relationship to provide (directly or indirectly) funding for—
- (a) a loan to another person, or
  - (b) so far as not covered by paragraph (a), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.
- (6) Subsection (5) does not apply if—
- (a) the main business of the ultimate debtor is banking business or insurance business, and
  - (b) the funding for the loan or arrangement would be provided in the ordinary course of the ultimate debtor's banking business or insurance business (as the case may be).
- (7) A creditor relationship of the CFC cannot be a qualifying loan relationship if—
- (a) the main business of the ultimate debtor in relation to the creditor relationship is banking business or insurance business, and
  - (b) the creditor relationship is, or is connected (directly or indirectly) to, an arrangement the main purpose, or one of the main purposes, of which is for the ultimate debtor to provide (directly or indirectly) funding for a loan or arrangement as mentioned in subsection (5)(a) or (b) in order to obtain a tax advantage for the ultimate debtor.
- (8) A creditor relationship of the CFC cannot be a qualifying loan relationship if the loan which is the subject of the creditor relationship is made to any extent (other than a negligible one) out of funds received by the CFC (directly or indirectly)—
- (a) from a relevant UK connected company other than by way of a loan, or
  - (b) as a result of an arrangement which gives rise to a deduction in the calculation of the profits of a trade of a relevant UK connected company (apart from the ultimate debtor) for the purposes of Part 3 of CTA 2009 (trading income).
- (9) For the purposes of subsection (8) a company is “relevant UK connected” if—
- (a) the company is a UK resident company connected with the CFC,

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- (b) the company's main business is banking business or insurance business, and
  - (c) the company's banking business or insurance business (as the case may be) is a trade.
- (10) A creditor relationship of the CFC cannot be a qualifying loan relationship if—
- (a) the CFC receives relevant UK funds or other assets for the purpose of funding the loan which is the subject of the CFC's creditor relationship,
  - (b) the provision of the relevant UK funds or other assets is itself funded (wholly or partly and directly or indirectly) by a loan made to a UK connected company by—
    - (i) a non-UK resident person, or
    - (ii) a UK resident person who is not connected with the CFC,
  - (c) the relevant loan is wholly or mainly used to repay wholly or partly another loan made to the ultimate debtor by a person not connected with the ultimate debtor, and
  - (d) the events mentioned in paragraphs (a) to (c) take place under, or are otherwise connected (directly or indirectly) with, an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.
- (11) In subsection (10)—
- (a) “relevant UK funds or other assets” and “UK connected company” have the same meaning as in section 371EC, and
  - (b) in paragraph (c) “the relevant loan” means—
    - (i) the loan which is the subject of the CFC's creditor relationship, or
    - (ii) if the ultimate debtor is determined in accordance with section 371IG(4) or (5), loan B.
- (12) In subsections (4)(b) and (11)(b)(ii) references to loan B do not include any part of loan B—
- (a) which loan A is not made and used to fund, or
  - (b) in relation to which the requirement of section 371IG(3)(c) is not met.

### Power to amend definitions

371II The HMRC Commissioners may by regulations amend this Chapter—

- (a) so as to amend the definition of “qualifying resources” for the purposes of section 371IB, or
- (b) so as to amend the definition of “qualifying loan relationship” or “ultimate debtor” for the purposes of this Chapter.

### Claims

371I(1) A claim under this Chapter must be made by being included in company C's company tax return for the relevant corporation tax accounting period (as defined in section 371BC(3)).

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- (2) The claim may be included in the return originally made or by amendment.
- (3) The claim may be amended or withdrawn by company C only by amending the return.
- (4) A claim under this Chapter may be made, amended or withdrawn at any time up to whichever is the last of the following dates—
  - (a) the first anniversary of the filing date for company C's company tax return for the relevant corporation tax accounting period under paragraph 14 of Schedule 18 to FA 1998;
  - (b) if notice of enquiry is given into that return under paragraph 24 of that Schedule, 30 days after the enquiry is completed;
  - (c) if after such an enquiry an officer of Revenue and Customs amends the return under paragraph 34(2) of that Schedule, 30 days after notice of the amendment is issued;
  - (d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.
- (5) A claim under this Chapter may be made, amended or withdrawn at a later time if an officer of Revenue and Customs allows it.
- (6) In any event, if after a claim under this Chapter is made there is a change of circumstances affecting the tested income amount or the tested expense amount mentioned in section 371IE(2), the claim may be amended at any time within the period of 12 months after the change of circumstances for the purpose of taking account of the change of circumstances.
- (7) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment to the extent that it makes, amends or withdraws a claim under this Chapter within the time allowed by or under this section.
- (8) In subsection (4) references to an enquiry into a company tax return do not include an enquiry restricted to a previous amendment making, amending or withdrawing a claim under this Chapter.
- (9) An enquiry is so restricted if—
  - (a) the scope of the enquiry is limited as mentioned in paragraph 25(2) of Schedule 18 to FA 1998, and
  - (b) the amendment giving rise to the enquiry consisted of the making, amending or withdrawing of a claim under this Chapter.

## CHAPTER 10

### THE EXEMPT PERIOD EXEMPTION

#### Introduction to Chapter

371JA(1) This Chapter sets out an exemption called “the exempt period exemption” for the purposes of section 371BA(2)(b).

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- (2) Section 371JE also provides for adjustments of profits which would otherwise pass through the CFC charge gateway (see section 371BB(2)(b)) linked to the exempt period exemption.

### The basic rule

- 371J(B) The exempt period exemption applies for a CFC's accounting period if—
- (a) the accounting period ends during an exempt period of the CFC (see sections 371JC and 371JD),
  - (b) the subsequent period condition is met, and
  - (c) the chargeable company condition is met.
- (2) The subsequent period condition is met if—
- (a) the CFC does not cease to be a CFC before having at least one accounting period which begins after the end of the exempt period, and
  - (b) section 371BC (charging the CFC charge) does not apply in relation to the CFC's first accounting period to begin after the end of the exempt period (see section 371BA(2)).
- (3) The chargeable company condition is met if, at all times during the relevant period—
- (a) the charging condition in section 371JC is met, and
  - (b) each company which would be a chargeable company for the purposes of that condition is an original chargeable company or is connected with an original chargeable company.
- (4) In subsection (3)—
- “original chargeable company” means a company which, for the purposes of the charging condition in section 371JC, would be a chargeable company at the beginning of the exempt period, and
- “the relevant period” means the period which—
- (a) begins immediately after the beginning of the exempt period, and
  - (b) ends at the end of the CFC's first accounting period to begin after the end of the exempt period.
- (5) This section is subject to section 371JF (anti-avoidance).

### When does an exempt period begin?

- 371J(C) An exempt period of a CFC begins at any time (“the relevant time”) during an accounting period of the CFC if—
- (a) the initial condition is met,
  - (b) the charging condition is met at the relevant time, and
  - (c) at no time during the relevant preceding period (if there is one) is the charging condition met.
- (2) The initial condition is met if—
- (a) immediately before the relevant time, the company (“C”) which is the CFC is carrying on a business, or

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- (b) if the relevant time is the time at which C is incorporated or formed, C is incorporated or formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies when C begins to control the company or companies.
- (3) To determine if the charging condition is met at any time, assume—
  - (a) that the company which is the CFC is a CFC at the time in question if that is not otherwise the case,
  - (b) that the time in question is itself an accounting period of the CFC, and
  - (c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.
- (4) The charging condition is met at the time in question if, as a result of steps 1, 3 and 4 in section 371BC(1), there would be one or more chargeable companies in relation to the assumed accounting period.
- (5) “The relevant preceding period” means the period of 12 months ending immediately before the relevant time, excluding any part of that period during which the company which is the CFC does not exist.

#### **How long is an exempt period?**

- 371J**D**) Subject to what follows, an exempt period of a CFC lasts 12 months.
- (2) Subsection (3) applies if a notice is given to an officer of Revenue and Customs requesting that the length of an exempt period of a CFC be extended (or further extended).
  - (3) An officer of Revenue and Customs may extend (or further extend) the length of the exempt period.
  - (4) A notice under subsection (2) must be given no later than the end of the exempt period (as it stands at the time the notice is given).
  - (5) A notice under subsection (2) may be given only by a company which, at the time the notice is given, would be a chargeable company for the purposes of the charging condition in section 371JC.

#### **Adjustment of profits passing through the CFC charge gateway**

- 371J**E**) This section applies for a CFC's accounting period if—
- (a) the accounting period begins, but does not end, during an exempt period of the CFC, and
  - (b) the subsequent period condition and the chargeable company condition in section 371JB are both met.
- (2) The CFC's assumed total profits which would otherwise pass through the CFC charge gateway are to be adjusted to ensure that no profits which arise in the exempt period, as determined on a just and reasonable basis, pass through the CFC charge gateway.
  - (3) This section is subject to section 371JF (anti-avoidance).

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### **Anti-avoidance**

371J(F) The exempt period exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if condition A or B is met.

(2) Condition A is that—

- (a) an arrangement is entered into at any time,
- (b) the main purpose, or one of the main purposes, of the arrangement is to secure a tax advantage for any person,
- (c) the arrangement is linked to the exempt period exemption applying or being expected to apply (apart from this section)—
  - (i) for the relevant accounting period, or
  - (ii) for that period and one or more other accounting periods of the CFC, and
- (d) the arrangement involves one or both of the following—
  - (i) the CFC holding assets which give rise to non-trading finance profits or trading finance profits of the CFC, or
  - (ii) the CFC holding intellectual property which gives rise to any income of the CFC.

(3) Condition B is that—

- (a) an arrangement is entered into at any time,
- (b) in consequence of the arrangement, the length of any accounting period of the CFC is less than 12 months, and
- (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the exempt period exemption applies—
  - (i) for the relevant accounting period, or
  - (ii) for that period and one or more other accounting periods of the CFC.

(4) In this section references to the exempt period exemption include references to section 371JE.

### **Amendment of company tax returns**

371J(G) This section applies in relation to a company's company tax return for a corporation tax accounting period if an exempt period of a CFC falls (wholly or partly) in the corporation tax accounting period.

- (2) Any amendment of the return which relates to the application (or non-application) of the exempt period exemption or section 371JE for an accounting period of the CFC may be made by the company at any time no later than 12 months after the relevant filing date.
- (3) “The relevant filing date” means the date which is the filing date under paragraph 14 of Schedule 18 to FA 1998 for the company's company tax return for its corporation tax accounting period in which ends the CFC's first accounting period to begin after the end of the exempt period.
- (4) “Corporation tax accounting period” means an accounting period for corporation tax purposes.



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## CHAPTER 11

### THE EXCLUDED TERRITORIES EXEMPTION

#### Introduction to Chapter

371KA This Chapter sets out an exemption called “the excluded territories exemption” for the purposes of section 371BA(2)(b).

#### The basic rule

371KB) The excluded territories exemption applies for a CFC's accounting period if—

- (a) the CFC is resident (see section 371KC) in an excluded territory for the accounting period,
  - (b) the total of the following amounts is no more than the threshold amount for the accounting period (see section 371KD)—
    - (i) the CFC's category A income (if any) for the accounting period (see sections 371KE and 371KF),
    - (ii) the CFC's category B income (if any) for the accounting period (see section 371KG),
    - (iii) the CFC's category C income (if any) for the accounting period (see section 371KH), and
    - (iv) the CFC's category D income (if any) for the accounting period (see section 371KI),
  - (c) the IP condition is met (see section 371KJ), and
  - (d) the CFC is not, at any time during the accounting period, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person.
- (2) In this Chapter “excluded territory” means a territory specified as such in regulations made by the HMRC Commissioners.
- (3) The HMRC Commissioners may also by regulations, in relation to CFCs resident in a specified excluded territory or to other specified cases, do one or more of the following—
- (a) provide that one or both of the requirements set out in subsection (1)(b) and (c) does not have to be met in order for the excluded territories exemption to apply;
  - (b) modify one or both of those requirements, including by modifying any provision of this Chapter mentioned in subsection (1)(b) or (c);
  - (c) specify further requirements which must be met in order for the excluded territories exemption to apply.
- (4) If an amount is included in more than one of the categories of income mentioned in subsection (1)(b)(i) to (iv), the amount is to be counted only once in determining if the threshold amount is exceeded.

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### **How to determine the territory in which a CFC is resident**

- 371K(C) For the purposes of this Chapter the territory in which a CFC is resident for an accounting period is to be determined in accordance with this section; and in this Chapter “the CFC's territory” means that territory as so determined.
- (2) The CFC is taken to be resident in the territory determined in accordance with section 371TA.
  - (3) But section 371TA(1)(b) is to be applied only if, at all times during the accounting period, the CFC or persons with interests in the CFC are liable under the law of the territory in question to tax on the CFC's income.
  - (4) If, as a result of subsection (3), no territory of residence can be determined, the excluded territories exemption cannot apply for the accounting period.

### **What is “the threshold amount”?**

- 371K(D) The threshold amount for a CFC's accounting period is—
- (a) 10% of the CFC's accounting profits for the accounting period, or
  - (b) if more, £50,000.
- (2) If the accounting period is less than 12 months, the amount specified in subsection (1)(b) is to be reduced proportionately.
  - (3) In this Chapter references to a CFC's accounting profits for an accounting period are to be read ignoring section 371VD(7) and (8).

### **Category A income: the basic rule**

- 371K(E) A CFC's category A income for an accounting period consists of any gross amounts (that is, amounts before deduction of expenses or transfers to or from reserves) of any relevant income to which subsection (3), (4) or (5) applies. This is subject to section 371KF.
- (2) “Relevant income” means any income of the CFC which—
    - (a) is brought into account in determining the CFC's accounting profits for the accounting period, or
    - (b) is not so brought into account but arises in the accounting period.
  - (3) This subsection applies to any relevant income (apart from any dividend or other distribution of a company) so far as it is exempt from tax in the CFC's territory.
  - (4) This subsection applies to any relevant income so far as the tax which falls to be paid in respect of the relevant income in the CFC's territory is at a reduced rate by virtue of a provision having effect under the law of that territory the purpose of which is (wholly or mainly) to encourage (directly or indirectly) investment in that territory.
  - (5) This subsection applies to any relevant income if—
    - (a) any tax falls to be paid in respect of the relevant income in the CFC's territory,

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- (b) under the law of that territory, the CFC, any person who has an interest in the CFC or any person connected with the CFC is entitled to any repayment of tax or any payment in respect of a credit for tax, and
- (c) that repayment or payment—
  - (i) is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a), but
  - (ii) is not a form of relief in respect of losses incurred by the CFC.

### **Category A income: permanent establishments in excluded territories**

371K(F) This section applies if—

- (a) a CFC's category A income for an accounting period would include (apart from this section) the gross amount of any relevant income which arises from the activities of a permanent establishment (“PE”) which the CFC has in a territory outside the CFC's territory, and
  - (b) the territory in which PE is established is an excluded territory.
- (2) The gross amount of that relevant income is to be included in the CFC's category A income only so far as it would also have been included had the references in section 371KE(3) to (5) to the CFC's territory instead been references to the territory in which PE is established.

### **Category B income**

371K(G) A CFC's category B income for an accounting period consists of any notional interest which—

- (a) is deducted from any of the CFC's relevant income for tax purposes under the law of the CFC's territory or any territory in which the CFC has a permanent establishment, but
  - (b) is not deducted in determining the CFC's assumed taxable total profits for the accounting period.
- (2) But the CFC's category B income is not to exceed its relevant non-local income.
- (3) “Notional interest” means an amount representing a notional interest expense or other financing charge calculated by reference to any of the CFC's equity or debt.
- (4) “Relevant income” has the same meaning as in section 371KE.
- (5) “Relevant non-local income” means the gross amount (that is, the amount before deduction of expenses or transfers to or from reserves) of any non-trading income—
- (a) which is included in the CFC's relevant income, and
  - (b) which is received (directly or indirectly) from—
    - (i) a person resident outside the CFC's territory, or
    - (ii) a permanent establishment which a person resident in the CFC's territory (apart from the CFC itself) has in a territory outside the CFC's territory.

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### Category C income

371KH A CFC's category C income for an accounting period is the total of the following amounts—

- (a) amounts included in the CFC's accounting profits for the period which fall within section 371VD(4)(a) (whether or not those amounts would have been included in those profits apart from section 371VD(4)(a)), and
- (b) amounts included in those profits by virtue only of section 371VD(4)(b).

### Category D income

371K(1) A CFC's category D income for an accounting period consists of the gross amounts (that is, the amounts before deduction of expenses or transfers to or from reserves) of any income which—

- (a) is brought into account in determining the CFC's accounting profits for the accounting period, and
- (b) is to be included in the CFC's category D income in accordance with subsection (3) or (4).

(2) Subsection (3) applies if—

- (a) income arises from any provision made or imposed by means of an arrangement as between the CFC and any company connected with the CFC,
- (b) in the CFC's territory, the income is reduced by an amount (“the relevant amount”) for tax purposes on the basis that the income is more than what it would have been had the company connected with the CFC not been connected with the CFC, and
- (c) there is not in any territory a corresponding increase for tax purposes in the income of a company connected with the CFC.

(3) The relevant amount is to be included in the CFC's category D income.

(4) Income is to be included in the CFC's category D income so far as the tax which falls to be paid in respect of the income in the CFC's territory is at a reduced rate by virtue of a ruling or other decision or an arrangement made in relation to the CFC by a governmental authority in that territory.

### The IP condition

371K(1) This section applies for the purposes of section 371KB(1)(c).

(2) The IP condition is met unless—

- (a) the CFC's assumed total profits for the accounting period include amounts arising from intellectual property held by the CFC (“the exploited IP”),
- (b) all or parts of the exploited IP were—
  - (i) transferred (directly or indirectly) to the CFC by persons related to the CFC at times during the relevant period, or

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- (ii) otherwise derived (directly or indirectly) at times during that period out of or from intellectual property held at times during that period by persons related to the CFC,
  - (c) as a result of those transfers or other derivations, the value of the intellectual property held by those persons related to the CFC, taken together, has been significantly reduced from what it would otherwise have been, and
  - (d) if only parts of the exploited IP were so transferred or derived, the significance condition is met.
- (3) The significance condition is met if—
- (a) the parts of the exploited IP (“the UK derived IP”) which were transferred or otherwise derived as mentioned in subsection (2)(b) are, taken together, a significant part of the exploited IP, or
  - (b) as a result of the transfers or other derivations of the UK derived IP, the CFC's assumed total profits for the accounting period are significantly higher than what they would otherwise have been.
- (4) In relation to a non-UK resident person who is related to the CFC, in this section references to the transfer or holding of intellectual property by a person related to the CFC are limited to, as the case may be—
- (a) the transfer of intellectual property which before the transfer was held by the non-UK resident person (wholly or partly) for the purposes of a permanent establishment which the person has in the United Kingdom, or
  - (b) the holding of intellectual property by the non-UK resident person (wholly or partly) for those purposes.
- (5) “The relevant period” means the period covering the accounting period and the 6 years before the accounting period.

## CHAPTER 12

### THE LOW PROFITS EXEMPTION

#### Introduction to Chapter

371LA This Chapter sets out an exemption called “the low profits exemption” for the purposes of section 371BA(2)(b).

#### The basic rule

371LB (1) The low profits exemption applies for a CFC's accounting period if subsection (2), (3), (4) or (5) applies.

- (2) This subsection applies if the CFC's accounting profits for the accounting period are no more than £50,000.
- (3) This subsection applies if the CFC's assumed taxable total profits for the accounting period are no more than £50,000.
- (4) This subsection applies if—

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- (a) the CFC's accounting profits for the accounting period are no more than £500,000, and
  - (b) the amount of those profits representing non-trading income is no more than £50,000.
- (5) This subsection applies if—
- (a) the CFC's assumed taxable total profits for the accounting period are no more than £500,000, and
  - (b) the amount of those profits representing non-trading income is no more than £50,000.
- (6) If the accounting period is less than 12 months, the amounts specified in subsections (2), (3), (4)(a) and (b) and (5)(a) and (b) are to be reduced proportionately.

### Anti-avoidance

371L(1) The low profits exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if condition A or B is met.

- (2) Condition A is that—
- (a) an arrangement is entered into at any time,
  - (b) in consequence of the arrangement, the low profits exemption would (apart from this section) apply for the relevant accounting period, and
  - (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profits exemption applies—
    - (i) for the relevant accounting period, or
    - (ii) for that period and one or more other accounting periods of the CFC.
- (3) Condition B is that, at any time during the relevant accounting period, the CFC's business is, wholly or mainly, the provision of UK intermediary services.
- (4) For the purposes of subsection (3) the CFC provides “UK intermediary services” if—
- (a) a UK resident individual (“the service provider”) personally performs, or is under an obligation personally to perform, services in the United Kingdom for a person (“the client”), and
  - (b) the services are provided not under a contract directly between the service provider and the client but under an arrangement involving the CFC.
- (5) The low profits exemption does not apply for a CFC's accounting period by virtue of section 371LB(2) or (4) if condition C is met.
- (6) Condition C is that, in determining the CFC's assumed taxable total profits for the accounting period, Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

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## CHAPTER 13

### THE LOW PROFIT MARGIN EXEMPTION

#### Introduction to Chapter

371MA This Chapter sets out an exemption called “the low profit margin exemption” for the purposes of section 371BA(2)(b).

#### The basic rule

371MB) The low profit margin exemption applies for a CFC's accounting period if the CFC's accounting profits for the period are no more than 10% of the CFC's relevant operating expenditure.

- (2) In this section references to the CFC's accounting profits are to those profits as determined before any deduction for interest.
- (3) The CFC's “relevant operating expenditure” is its operating expenditure brought into account in determining its accounting profits for the accounting period, excluding—
  - (a) the cost of goods purchased by the CFC, other than goods used by the CFC in the territory in which it is resident for the accounting period, and
  - (b) any expenditure which gives rise, directly or indirectly, to income of a person related to the CFC.

#### Anti-avoidance

371MC The low profit margin exemption does not apply for a CFC's accounting period (“the relevant accounting period”) if—

- (a) an arrangement is entered into at any time,
- (b) in consequence of the arrangement, the low profit margin exemption would (apart from this section) apply for the relevant accounting period, and
- (c) the main purpose, or one of the main purposes, of the arrangement is to secure that the low profit margin exemption applies—
  - (i) for the relevant accounting period, or
  - (ii) for that period and one or more other accounting periods of the CFC.

## CHAPTER 14

### THE TAX EXEMPTION

#### Introduction to Chapter

371NA This Chapter sets out an exemption called “the tax exemption” for the purposes of section 371BA(2)(b).

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### The basic rule

371NB(1) Take the following steps to determine if the tax exemption applies for a CFC's accounting period.

*Step 1* Applying section 371TB, determine the territory (“the CFC's territory”) in which the CFC is resident for the accounting period. If no territory of residence can be determined by applying section 371TB, the tax exemption cannot apply and no further steps are to be taken.

*Step 2* Determine the amount of tax (“the local tax amount”) which is paid in the CFC's territory in respect of the CFC's local chargeable profits arising in the accounting period (applying section 371NC so far as relevant). If the local tax amount is determined under designer rate tax provisions (see section 371ND), the tax exemption cannot apply and step 3 is not to be taken.

*Step 3* In accordance with section 371NE, determine the amount of the corresponding UK tax for the accounting period. The tax exemption applies if the local tax amount is at least 75% of the corresponding UK tax.

- (2) Subsection (3) applies if an amount of tax is paid in the CFC's territory by a person (whether or not the CFC) in respect of any of the CFC's local chargeable profits arising in the accounting period taken together with other amounts.
- (3) For the purposes of step 2 in subsection (1) the amount of tax is to be apportioned between the CFC's local chargeable profits in question and the other amounts on a just and reasonable basis.
- (4) In this Chapter references to the CFC's local chargeable profits are to its profits as determined for tax purposes under the law of the CFC's territory, ignoring any capital gains or losses.

### Reductions to “the local tax amount”

371NQ(1) This section applies for the purposes of step 2 in section 371NB(1).

- (2) The local tax amount is to be reduced to what it would have been—
  - (a) had any income, or any income and expenditure (where the income exceeds the expenditure), to which subsection (3) applies not been brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, and
  - (b) had any expenditure to which subsection (4) applies been brought into account in determining those profits.
- (3) This subsection applies to any income, or any income and expenditure, of the CFC—
  - (a) which is brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
  - (b) which does not fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.



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- (4) This subsection applies to any expenditure of the CFC—
  - (a) which is not brought into account in determining the CFC's local chargeable profits arising in the accounting period in respect of which tax is paid in the CFC's territory, but
  - (b) which does fall to be brought into account in determining the CFC's assumed taxable total profits for the accounting period.
- (5) Subsection (6) applies if—
  - (a) in the CFC's territory any tax falls to be paid in respect of the CFC's local chargeable profits arising in the accounting period,
  - (b) under the law of that territory, any repayment of tax, or any payment in respect of a credit for tax, is made to any person, and
  - (c) that repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a).
- (6) The local tax amount is to be reduced (or further reduced after any reduction under subsection (2)) by the amount of that repayment or payment.

#### **What are “designer rate tax provisions”?**

- 371ND(1) For the purposes of step 2 in section 371NB(1) “designer rate tax provisions” means provisions—
- (a) which appear to the HMRC Commissioners to be designed to enable companies to exercise significant control over the amount of tax which they pay, and
  - (b) which are specified in regulations made by the HMRC Commissioners.
- (2) Regulations under subsection (1) may make different provision for different cases or with respect to different territories.

#### **How to determine “the corresponding UK tax”**

- 371NE(1) For the purposes of step 3 in section 371NB(1) “the corresponding UK tax” is the amount of corporation tax which, applying the corporation tax assumptions, would be charged in respect of the CFC's assumed taxable total profits for the accounting period.
- (2) In determining that amount of corporation tax—
- (a) ignore any relief from corporation tax attributable to the local tax amount which would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income, and
  - (b) deduct from what would otherwise be that amount of corporation tax—
    - (i) any amount which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's assumed taxable total profits by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax), and
    - (ii) any amount of income tax or corporation tax actually charged in respect of any income included in the CFC's assumed taxable total profits.

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- (3) In subsection (2)(b) the references to an amount being set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the CFC whether on the making of a claim or otherwise.

## CHAPTER 15

### RELEVANT INTERESTS IN A CFC

#### *Introduction*

#### **Application of Chapter**

- 3710A This Chapter applies for the purpose of determining the persons who have “relevant interests” in a CFC for the purposes of step 1 in section 371BC(1).

#### **Provision about interpretation**

- 3710B(1) This section applies for the purposes of this Chapter.
- (2) A person's interest in a company is an “indirect” interest so far as the person has the interest by virtue of having an interest in another company; and references to a “direct” interest in a company are to be read accordingly.
- (3) An interest held by an open-ended investment company within the meaning of Chapter 2 of Part 13 of CTA 2010 (see sections 613 and 615) is treated as held by the company's shareholders in proportion to their shareholdings.
- (4) An interest held by the trustees of an authorised unit trust is treated as held by the persons who have rights under the trust in proportion to their rights.
- (5) An interest held by a bare trustee or nominee (including by virtue of subsection (3) or (4)) is treated as held by the person or persons for whom the bare trustee or nominee holds the interest.
- (6) “Bare trustee” means a person acting as trustee for—
- (a) a person absolutely entitled as against the trustee,
  - (b) two or more persons who are so entitled,
  - (c) a person who would be so entitled but for being a minor or otherwise lacking legal capacity, or
  - (d) two or more persons who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.
- (7) Subsection (8) applies in a case not covered by subsection (5) if—
- (a) an interest is held in a fiduciary or representative capacity (including by virtue of subsection (3) or (4)), and
  - (b) there are one or more identifiable beneficiaries.
- (8) The interest is taken to be held by that beneficiary or, as the case may be, apportioned between those beneficiaries on a just and reasonable basis.

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### *What is a “relevant interest” in a CFC?*

#### **“Relevant interests” of UK resident companies**

371O(1) A UK resident company's interest in a CFC is a “relevant interest”, except so far as subsection (2) applies to it.

(2) This subsection applies to the interest so far as it is an indirect interest which the UK resident company has by virtue of having an interest in another UK resident company.

#### **“Relevant interests” of persons related to UK resident companies**

371O(1) This section applies if, by virtue of section 371OC, a UK resident company (“UKRC”) has a relevant interest in a CFC.

(2) A related person's interest in the CFC is a “relevant interest”, except so far as subsection (4) or (5) applies to it.

(3) “Related person” means a person, other than a UK resident company, who is connected or associated with UKRC.

(4) This subsection applies to the related person's interest so far as it is an indirect interest which the related person has by virtue of having an interest in a UK resident company or another related person.

(5) This subsection applies to the interest so far as it is the same as UKRC's relevant interest in the CFC by virtue of UKRC having an interest in the related person.

#### **Other “relevant interests”**

371O(1) This section applies if a person (“P”) has a direct interest in a CFC which is not a relevant interest by virtue of section 371OC or 371OD.

(2) P's direct interest is a “relevant interest”, except so far as subsection (3) applies to it.

(3) This subsection applies to P's direct interest so far as it is the same as another person's relevant interest in the CFC by virtue of the other person having an interest in P.

(4) In subsection (3) the reference to another person's relevant interest is to another person's relevant interest by virtue of section 371OC or 371OD.

## **CHAPTER 16**

### **CREDITABLE TAX OF A CFC**

#### **What is “creditable tax”?**

371P(1) For the purposes of step 2 in section 371BC(1) a CFC's creditable tax for an accounting period is the total of—

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- (a) the amount of any relief from corporation tax attributable to any foreign tax which, applying the corporation tax assumptions, would be given to the CFC by virtue of Part 2 (double taxation relief) in respect of any income included or represented in the CFC's chargeable profits for the accounting period,
  - (b) any amount of relevant income tax which, applying the corporation tax assumptions, would be set off against corporation tax on the CFC's chargeable profits for the accounting period by virtue of section 967 of CTA 2010 (cases in which a company receives a payment bearing income tax),
  - (c) any amount of income tax or corporation tax actually charged in respect of any income included or represented in the CFC's chargeable profits for the accounting period, and
  - (d) any amount of a foreign CFC charge paid in respect of any income included or represented in the CFC's chargeable profits for the accounting period.
- (2) In subsection (1)(a) “foreign tax” means—
- (a) the local tax amount, or
  - (b) any tax under the law of a relevant foreign territory.
- (3) In subsection (1)(b) “relevant income tax” means income tax which the CFC bears by deduction on a payment so far as the payment is included or represented in the CFC's chargeable profits.
- (4) In subsection (1)(d) “foreign CFC charge” means a charge under the law of a relevant foreign territory (by whatever name known) which is similar to the CFC charge.
- (5) In subsection (1)(b) to (d) references to an amount being set off, an amount actually charged or an amount paid do not include so much of any such amount as has been or falls to be repaid to the CFC or any other person whether on the making of a claim or otherwise.
- (6) “Relevant foreign territory” means a territory outside the United Kingdom other than the territory in which the CFC is resident for the accounting period.

## CHAPTER 17

### APPORTIONMENT OF A CFC'S CHARGEABLE PROFITS AND CREDITABLE TAX

#### *Introduction*

#### **Application of Chapter**

- 371QA This Chapter applies for the purpose of apportioning a CFC's chargeable profits and creditable tax for an accounting period among the relevant persons as required by step 3 in section 371BC(1).

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### **Provision about interpretation**

- 371QB) This section applies for the purposes of this Chapter.
- (2) Section 371OB applies as it applies for the purposes of Chapter 15.
  - (3) “Ordinary shares”, in relation to any company, means shares of a single class, however described, which is the only class of share issued by the company.
  - (4) For the purposes of subsection (3)—
    - (a) “share” includes a fraction of a share, and
    - (b) shares issued by a company which are paid up to different amounts are not to be taken to be of a single class.
  - (5) A person (“P”) holds ordinary shares in the CFC “indirectly” if P directly holds ordinary shares in a company which is share-linked to the CFC.
  - (6) A company is “share-linked” to the CFC if it has an interest in the CFC only by virtue of it holding directly—
    - (a) ordinary shares in the CFC, or
    - (b) ordinary shares in another company which is share-linked to the CFC (whether by virtue of paragraph (a) or this paragraph),and “share-linked company” means a company which is share-linked to the CFC.

*How are the apportionments to be made?*

### **The basic rules**

- 371QC) If conditions X to Z are met, the CFC's chargeable profits and creditable tax are to be apportioned among the relevant persons in accordance with section 371QD.
- (2) If not, the percentage of the chargeable profits and the percentage of the creditable tax to be apportioned to each relevant person is to be determined on a just and reasonable basis.
  - (3) Condition X is that the relevant persons all have their relevant interests by virtue only of their holding, directly or indirectly, ordinary shares in the CFC.
  - (4) Condition Y is that each relevant person meets the requirement that the person is either—
    - (a) UK resident at all times during the accounting period, or
    - (b) non-UK resident at all times during the accounting period.
  - (5) Condition Z is that no company which has an intermediate interest in the CFC at any time in the accounting period has that interest otherwise than by virtue of holding, directly or indirectly, ordinary shares in the CFC.
  - (6) A company (“C”) has an “intermediate interest” in the CFC if—
    - (a) C has an interest in the CFC, and
    - (b) one or more of the relevant persons have relevant interests in the CFC by virtue of having an interest in C.

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### Apportionments to be made in proportion to shareholding

- 371QD) If conditions X to Z in section 371QC are met, apply subsections (2) and (3) to each relevant person.
- (2) Determine the percentage (“P%”) of the issued ordinary shares in the CFC represented by the relevant person's relevant interest.
  - (3) P% of the CFC's chargeable profits and P% of the CFC's creditable tax is then apportioned to the relevant person.
  - (4) This section is supplemented by sections 371QE and 371QF.

### Indirect shareholdings

- 371QE) This section applies to the relevant interest of a relevant person (“R”) so far as R has that interest by virtue of holding, indirectly, ordinary shares in the CFC (“the relevant shares”).
- (2) The percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it) is given by the following formula—

$$P \times S$$

where—

P is the product of the appropriate fractions of R and each of the share-linked companies through which R indirectly holds the relevant shares, other than the share-linked company which directly holds the relevant shares, and

S is the percentage of the issued ordinary shares in the CFC which the relevant shares represent.

- (3) “The appropriate fraction”, in relation to any person who directly holds ordinary shares in a share-linked company, means that fraction of the issued ordinary shares in the share-linked company which the holding represents.
- (4) If R has different indirect holdings of shares in the CFC (as in the case where different shares are held through different share-linked companies)—
  - (a) apply subsection (2) separately in relation to each holding (reading references to the relevant shares accordingly), and
  - (b) then add the separate results together to give the total percentage of the issued ordinary shares in the CFC represented by R's relevant interest (so far as this section applies to it).

### Variable shareholdings

- 371QF) This section applies if the percentage of the issued ordinary shares in the CFC represented by a relevant person's relevant interest varies during the accounting period.

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- (2) That percentage is taken to be the percentage equal to the sum of the relevant percentages for each holding period.
- (3) “Holding period” means a part of the accounting period during which the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest remains the same.
- (4) “Relevant percentage”, in relation to a holding period, means the percentage given by the following formula—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares in the CFC represented by the relevant person's relevant interest during the holding period,

H is the number of days in the holding period, and

A is the number of days in the accounting period.

### **Anti-avoidance**

- 371Q(1) This section applies in relation to an accounting period (“the relevant accounting period”) of a CFC if—
- (a) at any time an arrangement is entered into, and
  - (b) the main purpose, or one of the main purposes, of the arrangement is to obtain for any person a tax advantage within section 1139(2) (da) of CTA 2010 in relation to—
    - (i) the relevant accounting period, or
    - (ii) that period and one or more other accounting periods of the CFC.
- (2) The CFC's chargeable profits and creditable tax for the relevant accounting period are to be apportioned in accordance with section 371QC(2) (and not section 371QD if that section would otherwise apply).
  - (3) The apportionments must (in particular) be made in a way which, so far as practicable, counteracts the effects of the arrangement mentioned in subsection (1)(a) so far as those effects are referable to the purpose mentioned in subsection (1)(b).

## **CHAPTER 18**

### **CONTROL ETC**

#### **Overview of Chapter**

- 371RA(1) Sections 371RB and 371RE set out how to determine for the purposes of this Part if a company is “controlled” by another person or persons.

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- (2) Section 371RC sets out certain cases in which a non-UK resident company which would not otherwise be a CFC is to be taken to be a CFC for the purposes of this Part.

### Legal and economic control

- 371R(1) A person (“P”) “controls” a company (“C”) if—
- (a) by means of the holding of shares or the possession of voting power in or in relation to C or any other company, or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating C or any other company,
- P has the power to secure that the affairs of C are conducted in accordance with P's wishes.
- (2) A person (“P”) “controls” a company (“C”) if it is reasonable to suppose that P would—
- (a) if the whole of C's share capital were disposed of, receive (directly or indirectly and whether at the time of the disposal or later) over 50% of the proceeds of the disposal,
  - (b) if the whole of C's income were distributed, receive (directly or indirectly and whether at the time of the distribution or later) over 50% of the distributed amount, or
  - (c) in the event of the winding-up of C or in any other circumstances, receive (directly or indirectly and whether at the time of the winding-up or other circumstances or later) over 50% of C's assets which would then be available for distribution.
- (3) For the purposes of subsection (2) any rights which P has as a relevant bank are to be ignored.
- (4) In subsection (2)—
- (a) in paragraph (a) the reference to C's share capital is to C's share capital excluding any share capital held by relevant banks,
  - (b) in determining for the purposes of paragraph (b) the percentage of the distributed amount which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of the distributed amount at the time of the distribution, and
  - (c) in determining for the purposes of paragraph (c) the percentage of C's assets which it is reasonable to suppose P would receive, ignore any rights of a relevant bank which would entitle the bank directly to receive a percentage of C's assets at the time of the winding-up or other circumstances.
- (5) “Relevant bank” means a person (“RB”) who—
- (a) carries on banking business which is regulated in the territory in which RB is resident, and
  - (b) is acting, in the ordinary course of that business, in relation to money lent to C by RB in the ordinary course of that business.



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- (6) In subsections (2) and (4) references to P receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for P's benefit.
- (7) If two or more persons, taken together, meet the requirement of subsection (1) or (2) for controlling a company, those persons are taken to control the company.

#### **Legal and economic control: the 40% rule**

- 371R(1) This section applies to a non-UK resident company (“C”) if—
- (a) in accordance with section 371RB(7), two persons (“the controllers”) control C, and
  - (b) one of the controllers is UK resident and the other is non-UK resident.
- (2) If conditions X and Y are met, C is to be taken to be a CFC (if C would not otherwise be).
- (3) Condition X is that the UK resident controller has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.
- (4) Condition Y is that the non-UK resident controller has interests, rights and powers representing—
- (a) at least 40%, but
  - (b) no more than 55%,
- of the holdings, rights and powers in respect of which the controllers fall to be taken as controlling C.

#### **Legal and economic control: supplementary provision**

- 371R(1) Subsection (2) applies for the purpose of—
- (a) determining, in accordance with section 371RB, if a person, or two or more persons, control a company, or
  - (b) determining if condition X or Y in section 371RC is met in relation to two persons who control a company.
- (2) There is to be attributed to each person all the rights and powers mentioned in subsection (3) (so far as they would not otherwise be attributed to the person).
- (3) The rights and powers referred to in subsection (2) are—
- (a) rights and powers which the person (“P”) is entitled to acquire at a future date or which P will, at a future date, become entitled to acquire,
  - (b) rights and powers of other persons so far as they fall within subsection (4),
  - (c) if P is UK resident, rights and powers of any UK resident person who is connected with P, and
  - (d) if P is UK resident, rights and powers which would, in accordance with subsection (2), be attributed to a UK resident person (“Q”) who

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is connected with P if Q were P (including rights and powers which would be attributed to Q by virtue of this paragraph).

- (4) Rights and powers fall within this subsection so far as they—
- (a) are required, or may be required, to be exercised in one or more of the following ways—
    - (i) on behalf of P,
    - (ii) under the direction of P, or
    - (iii) for the benefit of P, and
  - (b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (5) In subsections (3)(b) to (d) and (4) references to a person's rights and powers include references to any rights or powers which the person—
- (a) is entitled to acquire at a future date, or
  - (b) will, at a future date, become entitled to acquire.
- (6) In determining for the purposes of this section whether one person is connected with another, section 1122(4) of CTA 2010 (as applied by section 371VF(2)(b)) is to be ignored.
- (7) In this section and sections 371RB and 371RC references to—
- (a) rights and powers of a person, or
  - (b) rights and powers which a person is or will become entitled to acquire,
- include references to rights and powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

#### **Control determined by reference to accounting standards**

- 371RE) A person (“P”) “controls” a company (“C”) at any time when P is C's parent undertaking.
- (2) But C is not to be taken to be a CFC by virtue of subsection (1) at the time in question unless the 50% condition is met at that time.
  - (3) To determine if the 50% condition is met at the time in question, assume—
    - (a) that C is a CFC at that time,
    - (b) that that time is itself an accounting period of the CFC, and
    - (c) that section 371BC (charging the CFC charge) applies in relation to the assumed accounting period.
  - (4) The 50% condition is met at the time in question if, as a result of steps 1 and 3 in section 371BC(1), at least 50% of the CFC's chargeable profits would be apportioned to P taken together with its UK resident subsidiary undertakings (if any).
  - (5) “Parent undertaking” and “subsidiary undertaking” are to be read in accordance with Financial Reporting Standard 2 issued in July 1992 by the Accounting Standards Board, as from time to time modified, amended or revised.

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- (6) For the purposes of this section it does not matter if P does not prepare, or is not required to prepare, consolidated financial statements in accordance with Financial Reporting Standard 2 (but see section 371RF(3)).

#### **Power to amend section 371RE etc**

371RF(1) The Treasury may by regulations amend section 371RE as they consider appropriate to take account of—

- (a) any modification, amendment or revision of Financial Reporting Standard 2, or
- (b) any relevant document.

(2) “Relevant document” means—

- (a) a document which replaces Financial Reporting Standard 2, or
- (b) a document which replaces, modifies, amends or revises a document falling within paragraph (a) or a document which is a relevant document by virtue of this paragraph.

(3) The Treasury may by regulations make provision corresponding to section 371RE—

- (a) which operates by reference to any other accounting standard dealing with consolidated financial statements, and
- (b) which is to apply, instead of section 371RE, to determine if a person “controls” a company where that person prepares, or is required to prepare, consolidated financial statements in accordance with that standard.

(4) The Treasury may by regulations provide that, if specified conditions are met, a company is not to be taken to be a CFC by virtue of—

- (a) section 371RE, or
- (b) provision corresponding to section 371RE contained in regulations under subsection (3).

(5) In subsections (3) and (4) references to section 371RE are to that section as amended from time to time by regulations under subsection (1).

## **CHAPTER 19**

### **ASSUMED TAXABLE TOTAL PROFITS, ASSUMED TOTAL PROFITS AND THE CORPORATION TAX ASSUMPTIONS**

#### *Overview*

#### **Overview of Chapter**

371SA This Chapter explains the concepts of “assumed taxable total profits” and “assumed total profits” (see section 371SB) and “the corporation tax assumptions” (see section 371SC) which are referred to in this Part.

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*“Assumed taxable total profits” and “assumed total profits”*

**What are “assumed taxable total profits” and “assumed total profits”?**

- 371S(B) For the purposes of this Part a CFC's “assumed taxable total profits” for an accounting period are what, applying the corporation tax assumptions, would be the CFC's taxable total profits of the accounting period for corporation tax purposes.
- (2) “Taxable total profits” has the meaning given by section 4(2) of CTA 2010 (calculation of taxable total profits).
  - (3) But, for this purpose, in section 4(3) of CTA 2010—
    - (a) step 1 is to be applied subject to subsections (4) to (6) below, and
    - (b) step 2 is to be ignored.
  - (4) Any income which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or a beneficiary is to be added to the income determined at step 1.
  - (5) If there is more than one settlor or beneficiary in relation to the settlement, the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.
  - (6) If by virtue of subsection (4) any income (“the settlement income”) is added to the income determined at step 1, any dividend or other distribution which derives from the settlement income is to be excluded from the income determined at step 1.
  - (7) Subsection (8) applies if there is any income which, by virtue of subsection (4), would (apart from subsection (8)) be included in—
    - (a) the chargeable profits for an accounting period of a CFC which is a beneficiary in relation to a settlement, and
    - (b) the chargeable profits for an accounting period of a CFC which is a settlor in relation to the settlement.
  - (8) If the CFC charge is charged in relation to the beneficiary's accounting period, the income is not to be included in the settlor's chargeable profits.
  - (9) For the purposes of this Part a CFC's “assumed total profits” for an accounting period are its assumed taxable total profits for the period before taking step 2 in section 4(2) of CTA 2010.

*“The corporation tax assumptions”*

**What are “the corporation tax assumptions”?**

- 371S(C) In this Part “the corporation tax assumptions” means the assumptions set out in sections 371SD to 371SR.
- (2) The corporation tax assumptions are to be applied in determining the following for an accounting period (“the relevant accounting period”) of a CFC—

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- (a) the CFC's assumed taxable total profits in accordance with section 371SB(1),
- (b) the corresponding UK tax in accordance with section 371NE, and
- (c) the CFC's creditable tax in accordance with Chapter 16.

### **UK residence etc**

371SD(1) Assume—

- (a) that the CFC is UK resident at all times during the relevant accounting period,
- (b) if the relevant accounting period is not the CFC's first accounting period, that the CFC has been UK resident from the beginning of the CFC's first accounting period, and
- (c) except where the CFC ceases to be a CFC at the end of the relevant accounting period, that the CFC will continue to be UK resident until it ceases to be a CFC,

and that the CFC is, has been and will continue to be within the charge to corporation tax, and that its accounting periods (as determined in accordance with section 371VB) are accounting periods for corporation tax purposes, accordingly.

(2) Subsection (1)—

- (a) does not require it to be assumed that there is any change in the place or places at which the CFC carries on its activities, and
- (b) requires (in particular) that it be assumed that the CFC does not get the benefit of section 1279 of CTA 2009 (exemption for profits from securities free of tax to residents abroad).

(3) If the CFC is (actually) UK resident immediately before the beginning of its first accounting period, assume that its UK residence from the beginning of that accounting period (as assumed in accordance with subsection (1)) is not continuous with its (actual) UK residence before the beginning of that accounting period.

(4) Except where the relevant accounting period is the CFC's first accounting period, assume that a determination of the CFC's assumed taxable total profits has been made for all previous accounting periods back to (and including) the CFC's first accounting period.

(5) Subsection (4) applies (in particular) for the purpose of applying any relief which is relevant to two or more accounting periods.

(6) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.

### **Close company**

371SE Assume that the CFC is not a close company.

### **Claims and elections**

371SF(1) In relation to any relief under the Corporation Tax Acts which is dependent upon the making of a claim or election, assume the CFC—

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- (a) to have made that claim or election which would give the maximum amount of relief, and
  - (b) to have made that claim or election within any applicable time limit.
- (2) Subsection (1) does not cover (so far as it would otherwise do so) a claim or election under—
- (a) section 18A of CTA 2009 (exemption for profits or losses of foreign permanent establishments),
  - (b) section 1275 of CTA 2009 (relief for unremittable income),
  - (c) section 9A of CTA 2010 (designated currency of a UK resident investment company), or
  - (d) regulations made under paragraph 16 of Schedule 8 to FA 2006 (election for lease to be treated as long funding lease).
- (3) Subsection (1) is also subject to section 371SK(5).

#### **Disapplication of assumption in section 371SF(1)**

- 371S**G**) This section applies if a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed—
- (a) not to have made for the relevant accounting period a specified claim or election otherwise covered by section 371SF(1),
  - (b) to have made for the relevant accounting period a specified claim or election, being different from one assumed by section 371SF(1) but being one which (subject to compliance with any applicable time limit) could have been made by a company within the charge to corporation tax, or
  - (c) to have disclaimed or required the postponement, in whole or in part, of a specified allowance for the relevant accounting period if (subject to compliance with any applicable time limit) a company within the charge to corporation tax could have disclaimed the allowance or required such a postponement (as the case may be).
- (2) In determining for the purposes of section 371BA(3) the CFC's assumed total profits and the amounts to be relieved against those profits at step 2 in section 4(2) of CTA 2010—
- (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  - (b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.
- (3) In determining the CFC's creditable tax—
- (a) the assumption set out in the notice under subsection (1) is to be applied so far as relevant, and
  - (b) the assumption set out in section 371SF(1) is to be disapplied to the extent necessary as a consequence.
- (4) The claims which may be specified in a notice under subsection (1) by virtue of paragraph (b) include claims under the provision mentioned in section 371SF(2)(b) or 371SK(5).
- (5) A notice under subsection (1)—

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- (a) may be given only by a company or companies determined under subsection (6) or (7), and
  - (b) must be given—
    - (i) within 20 months after the end of the relevant accounting period, or
    - (ii) within such longer period as an officer of Revenue and Customs may allow.
- (6) A company may give a notice if—
- (a) the company would be a chargeable company were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (7) Two or more companies may together give a notice if—
- (a) the companies would all be chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, and
  - (b) the percentage of the CFC's chargeable profits which would be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (8) In subsections (6) and (7) “X%” means the total percentage of the CFC's chargeable profits which would be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.

### **Elections under section 9A of CTA 2010**

371S(1) This section applies if—

- (a) during the relevant accounting period or any earlier accounting period of the CFC, a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made an election under section 9A of CTA 2010 (designated currency of a UK resident investment company) in the form specified in the notice, and
  - (b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make an election under that section in the form specified in the notice (see, in particular, section 9A(2)).
- (2) Assume—
- (a) that an election under section 9A of CTA 2010 has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and
  - (b) that, accordingly, sections 9A and 9B of that Act apply to determine the effect (if any) of that election.
- (3) Subsection (2)(b) does not apply if—

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- (a) a notice is given to an officer of Revenue and Customs revoking the notice under subsection (1), and
  - (b) the time at which the notice revoking the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to revoke its assumed election under section 9A of CTA 2010.
- (4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).
- (5) A company may give a notice if—
- (a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (6) Two or more companies may together give a notice if—
- (a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (7) In subsections (5) and (6) (and this subsection)—
- “the applicable accounting period” means the accounting period of the CFC during which the notice under subsection (1) or (3) (as the case may be) is given, and
- “X%” means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.

### **Modification of sections 6 and 7 of CTA 2010**

371S(1) This section applies if—

- (a) in accordance with section 371SH, the CFC is assumed to have made an election under section 9A of CTA 2010, but
  - (b) applying the corporation tax assumptions apart from this section, section 6 or 7 of CTA 2010 could not apply in relation to the CFC for a period of account because the CFC does not prepare its accounts in accordance with generally accepted accounting practice.
- (2) If sterling is the CFC's designated currency for the period of account, assume that section 6 of CTA 2010 applies in relation to the CFC as if the words “in accordance with generally accepted accounting practice” were—
- (a) omitted from subsection (1A)(a), and



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- (b) in subsection (2), inserted after “its accounts in sterling”.
- (3) If the CFC's designated currency for the period of account is a currency other than sterling, assume that section 7 of CTA 2010 applies in relation to the CFC as if the words “in accordance with generally accepted accounting practice” were—
  - (a) omitted from subsection (1A)(a), and
  - (b) at step 1 in subsection (2), inserted after “that currency”.

### **Elections for leases to be treated as long funding leases**

371S(1) This section applies if—

- (a) a notice is given to an officer of Revenue and Customs requesting that the CFC be assumed to have made a long funding lease election in the form specified in the notice, and
  - (b) the time at which the notice is given is a time at which, applying the corporation tax assumptions apart from this section, the CFC would have been able to make a long funding lease election in the form specified in the notice.
- (2) Assume—
- (a) that a long funding lease election has been made by the CFC in the form specified in the notice under subsection (1) at the time in question, and
  - (b) that, accordingly, regulation 2(5) of the 2007 Regulations applies to determine the effect (if any) of that election.
- (3) Subsection (2)(b) does not apply if—
- (a) a notice is given to an officer of Revenue and Customs withdrawing the notice under subsection (1), and
  - (b) the time at which the notice withdrawing the notice under subsection (1) is given is a time at which, applying the corporation tax assumptions apart from this section and the assumption in subsection (2)(a), the CFC would have been able to withdraw its assumed long funding lease election.
- (4) A notice under subsection (1) or (3) may be given only by a company or companies determined under subsection (5) or (6).
- (5) A company may give a notice if—
- (a) the company would be likely to be a chargeable company in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and
  - (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) would represent more than half of X%.
- (6) Two or more companies may together give a notice if—
- (a) the companies would all be likely to be chargeable companies in relation to the applicable accounting period were section 371BC (charging the CFC charge) to apply in relation to that period, and

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- (b) the percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to the companies, taken together, at step 3 in section 371BC(1) would represent more than half of X%.
- (7) In this section—
- (a) “the 2007 Regulations” means the Long Funding Leases (Elections) Regulations 2007 (S.I. 2007/304),
  - (b) terms defined in the 2007 Regulations have the same meaning as they have in the 2007 Regulations,
  - (c) “the applicable accounting period” means the CFC's accounting period in which falls the effective date specified in the notice under subsection (1), and
  - (d) “X%” means the total percentage of the CFC's chargeable profits for the applicable accounting period which would be likely to be apportioned to chargeable companies at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the applicable accounting period.
- (8) The Treasury may by regulations amend this section as they consider appropriate to take account of any regulations made by them from time to time under paragraph 16 of Schedule 8 to FA 2006 (elections for leases to be treated as long funding leases).

### **Intangible fixed assets**

- 371SK(1) This section applies for the purpose of applying Part 8 of CTA 2009 (intangible fixed assets).
- (2) Assume that any intangible fixed asset acquired or created by the CFC before its first accounting period was acquired or created by the CFC at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.
  - (3) In subsection (2) references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.
  - (4) The assumption in subsection (2) does not affect the determination of the question whether Part 8 of CTA 2009 applies to an asset in accordance with section 882 of that Act (application of Part 8 to assets created or acquired on or after 1 April 2002).
  - (5) Assume also that the CFC—
    - (a) has not claimed any relief under Chapter 7 of Part 8 of CTA 2009 (roll-over relief in case of reinvestment), or
    - (b) made any provisional declaration of entitlement to such relief.
  - (6) Subsection (5) is subject to section 371SG(4).

### **Group relief etc**

- 371SU(1) Assume that the CFC is neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.

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- (2) Subsection (3) applies if—
  - (a) under Part 5 of CTA 2010 (group relief) the CFC actually surrenders any relief which is allowed to another company by way of group relief, but
  - (b) applying the corporation tax assumptions apart from subsection (3), the relief would reduce the CFC's assumed taxable total profits for the relevant accounting period.
- (3) Assume that the relief is to be ignored in determining the CFC's assumed taxable total profits for the relevant accounting period.

### **Capital allowances**

- 371SM(1) This section applies if, before the CFC's first accounting period, the CFC incurred any capital expenditure on the provision of plant or machinery for the purposes of its trade.
- (2) For the purposes of Part 2 of CAA 2001 (plant and machinery allowances) assume that the plant or machinery—
    - (a) was provided for purposes wholly other than those of the trade, and
    - (b) was not brought into use for the purposes of the trade until the beginning of the CFC's first accounting period,and that section 13 of CAA 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies accordingly.
  - (3) In this section references to the CFC's first accounting period are to the CFC's accounting period which begins when it becomes a CFC.
  - (4) This section is to be read as if it were contained in Part 2 of CAA 2001.

### **Unremittable overseas income**

- 371SN(1) For the purposes of Part 18 of CTA 2009 (unremittable overseas income) assume that in section 1274(1)(a), (3) and (4) of that Act references to the United Kingdom are references to the relevant territories.
- (2) “The relevant territories” means—
    - (a) the United Kingdom,
    - (b) the territory in which the CFC is taken to be resident for the relevant accounting period as determined under Chapter 20, and
    - (c) any other territory in which the CFC is in fact resident at any time during the relevant accounting period.

### **Tax advantages**

- 371SQ(1) This section applies if there is an arrangement or other conduct a purpose of which is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 by obtaining by any means what would, applying the corporation tax assumptions apart from this section, be a tax advantage within section 1139(2)(a) to (d) of that Act.
- (2) So far as they would not otherwise do so, the Corporation Tax Acts are to be assumed to apply in relation to the arrangement or other conduct in the

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same way as they would apply were the purpose of obtaining a tax advantage within section 1139(2)(da) of CTA 2010 the purpose of obtaining an actual tax advantage within section 1139(2)(a) to (d) of that Act by the means in question.

### **Disguised interest: application of Chapter 2A of Part 6 of CTA 2009**

371S(P) This section applies if—

- (a) applying the corporation tax assumptions apart from this section, Chapter 2A of Part 6 of CTA 2009 (disguised interest) would, but for section 486D(1) of that Act, apply in relation to a return produced for the CFC by an arrangement to which the CFC is a party, and
  - (b) it is reasonable to assume that the main purpose, or one of the main purposes, of the CFC being a party to the arrangement is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.
- (2) Chapter 2A of Part 6 of CTA 2009 is to be assumed to apply in relation to the return.
  - (3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 486D(4) of CTA 2009.
  - (4) This section is without prejudice to the generality of section 371SO.

### **Shares accounted for as liabilities: application of section 521C of CTA 2009**

371S(Q) This section applies if—

- (a) applying the corporation tax assumptions apart from this section, section 521C of CTA 2009 (shares accounted for as liabilities) would, but for section 521C(1)(f) of that Act, apply to a share held by the CFC, and
  - (b) the main purpose, or one of the main purposes, for which the CFC holds the share is to obtain a tax advantage within section 1139(2)(da) of CTA 2010 for any person by obtaining what would, applying the corporation tax assumptions apart from this section, be a relevant tax advantage in relation to the CFC.
- (2) Section 521C of CTA 2009 is to be assumed to apply to the share.
  - (3) In subsection (1)(b) the reference to obtaining what would be a relevant tax advantage is to be read in accordance with section 521E(4) of CTA 2009.
  - (4) This section is without prejudice to the generality of section 371SO.

### **Double taxation relief: counteraction notices**

371S(R) This section applies if it is reasonable to suppose that, applying the corporation tax assumptions apart from this section, each of conditions A to D of section 82 (double taxation relief: conditions to be met for giving of counteraction notice) would or might be met in relation to the CFC in relation to the relevant accounting period.

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- (2) Assume that such adjustments are to be made as are necessary for counteracting what, applying the corporation tax assumptions apart from this section, would be the effects of the scheme or arrangement in question in the relevant accounting period that would be referable to the purpose referred to in condition B of section 82.

## CHAPTER 20

### RESIDENCE OF CFCS

#### The basic rule

- 371TA) For the purposes of this Part a CFC is taken to be resident for an accounting period (“the relevant accounting period”) in—
- (a) the territory determined by applying section 371TB, or
  - (b) if no territory can be determined by applying that section—
    - (i) if subsection (2) applies, the territory in which the CFC is taken to be resident under the double taxation arrangements in question, or
    - (ii) otherwise, the territory in which the CFC is incorporated or formed.
- (2) This subsection applies if the CFC is incorporated or formed in the United Kingdom but is taken to be non-UK resident by virtue of section 18 of CTA 2009 (companies treated as non-UK resident under double taxation arrangements).
- (3) This section is subject to section 371KC and step 1 in section 371NB(1).

#### How to determine the territory in which the CFC is resident

- 371TB) The CFC is taken to be resident in the territory under the law of which, at all times during the relevant accounting period, the CFC is liable to tax by reason of domicile, residence or place of management.
- (2) If there are two or more territories (each of which is called an “eligible territory”) falling within subsection (1), the CFC is taken to be resident in only one of the eligible territories.
  - (3) To determine that territory, go through the following subsections.

If two or more subsections apply, the earlier or earliest subsection takes precedence.
  - (4) If an election or designation under subsection (8) or (9) has effect for the relevant accounting period by virtue of section 371TC(9)(b), the CFC is taken to be resident in the eligible territory which is the subject of the election or designation.
  - (5) If, at all times during the relevant accounting period, the CFC's place of effective management is situated in one of the eligible territories only, the CFC is taken to be resident in that territory.

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- (6) If—
- (a) at all times during the relevant accounting period, the CFC's place of effective management is situated in two or more of the eligible territories, and
  - (b) immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of those eligible territories,

the CFC is taken to be resident in the territory in which over 50% of the amount of the CFC's assets is situated.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

- (7) If, immediately before the end of the relevant accounting period, over 50% of the amount of the CFC's assets is situated in one of the eligible territories, the CFC is taken to be resident in that territory.

For this purpose, the amount of the CFC's assets is determined by reference to their market value immediately before the end of the relevant accounting period.

- (8) If, in accordance with section 371TC(1), an election specifying an eligible territory is made, the CFC is taken to be resident in that territory.
- (9) If an officer of Revenue and Customs designates an eligible territory on a just and reasonable basis (see section 371TC(6) to (8)), the CFC is taken to be resident in that territory.

### **Elections and designations about residence**

371T(1) An election under section 371TB(8)—

- (a) may be made only by a company or companies determined under subsection (2) or (3),
  - (b) must be made by notice to an officer of Revenue and Customs,
  - (c) must be made no later than 12 months after the end of the relevant accounting period,
  - (d) must state, in relation to each company making the election, the percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to the company at step 3 in section 371BC(1) were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period,
  - (e) must be signed on behalf of each company making the election, and
  - (f) is irrevocable.
- (2) A company may make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the company would be a chargeable company whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would represent more than half of X%.

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- (3) Two or more companies may together make an election if it is likely that, were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period, the companies would all be chargeable companies whose apportioned percentage of the CFC's chargeable profits for the relevant accounting period would, taken together, represent more than half of X%.
- (4) In subsections (2) and (3) "X%" means the total percentage of the CFC's chargeable profits for the relevant accounting period which would be likely to be apportioned to chargeable companies were section 371BC (charging the CFC charge) to apply in relation to the relevant accounting period.
- (5) In subsections (2) to (4) references to apportioned percentages of the CFC's chargeable profits for the relevant accounting period are to the percentages apportioned at step 3 in section 371BC(1).
- (6) A designation under section 371TB(9) is irrevocable.
- (7) An officer of Revenue and Customs must give notice of a designation to each company which the officer considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the relevant accounting period.
- (8) The notice must specify—
  - (a) the date on which the designation was made,
  - (b) the CFC's name,
  - (c) the relevant accounting period, and
  - (d) the territory designated.
- (9) An election or designation has effect in relation to—
  - (a) the relevant accounting period, and
  - (b) each successive accounting period of the CFC until subsection (10) applies to an accounting period,regardless of any change in the persons who have interests in the CFC or any change in those interests.
- (10) This subsection applies to an accounting period ("the later period") if—
  - (a) one or more of the territories which were eligible territories in relation to the relevant accounting period does not fall within section 371TB(1) in relation to the later period, or
  - (b) some other territory also falls within section 371TB(1) in relation to the later period.

## CHAPTER 21

### MANAGEMENT

#### Introduction to Chapter

- 371U(1) The HMRC Commissioners are responsible for the management of the CFC charge, including the collection of sums charged.

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(2) In this Chapter—

“closure notice” means a notice under paragraph 32 of Schedule 18 to FA 1998 (completion of enquiry and statement of conclusions),

“discovery assessment” means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule), and

“the Taxes Acts” has the same meaning as in TMA 1970.

### **Application of the Taxes Acts to the CFC charge**

371UB) The provision of step 5 in section 371BC(1) relating to the charging of a sum as if it were an amount of corporation tax is to be taken as applying all enactments applying generally to corporation tax.

(2) This is subject to—

- (a) the provisions of the Taxes Acts, and
- (b) any necessary modifications.

(3) The enactments referred to in subsection (1) include—

- (a) those relating to returns of information and the supply of accounts, statements and reports,
- (b) those relating to the assessing, collecting and receiving of corporation tax,
- (c) those conferring or regulating a right of appeal, and
- (d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(4) In particular, TMA 1970 is to have effect as if—

- (a) any reference to corporation tax included a reference to a sum charged at step 5 in section 371BC(1) as if it were an amount of corporation tax, and
- (b) any reference to profits of a company included, in the case of a chargeable company in relation to a CFC's accounting period, references to the percentage of the CFC's chargeable profits in respect of which the company is charged at step 5 in section 371BC(1).

(5) Nothing in—

- (a) paragraph 10 of Schedule 18 to FA 1998 (claims or elections in company tax returns), or
- (b) Schedule 1A to TMA 1970 (claims or elections not included in returns),

applies to an election under section 371TB(8).

### **Just and reasonable apportionments**

371UC) This section applies if—



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- (a) an apportionment of a CFC's chargeable profits and creditable tax is to be made in accordance with section 371QC(2), and
  - (b) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return.
- (2) An officer of Revenue and Customs may determine that another basis is to be used for the apportionment; and matters are then to proceed as if that were the only basis allowed by the Taxes Acts.
- (3) The officer's determination may be questioned on an appeal against an amendment of the company's tax return made under paragraph 30 or 34 of Schedule 18 to FA 1998.
- (4) But it may be questioned only on the ground that the basis of apportionment determined by the officer is not just and reasonable.

### **Relief against sum charged**

- 371UD(1) Subsection (2) applies if (apart from subsection (2)) a chargeable company in relation to a CFC's accounting period is entitled, or on the making of a claim would be entitled, to a deduction in respect of a relevant allowance for the relevant corporation tax accounting period.
- (2) The company may make a claim under this subsection for relief in respect of the relevant allowance.
- (3) If the company makes a claim, the relief is given by setting off the relevant sum against the sum charged on the company at step 5 in section 371BC(1).
- (4) "The relevant sum" is the sum equal to corporation tax at the appropriate rate on so much of the relevant allowance as is specified in the claim.
- (5) So much of the relevant allowance as is specified in the claim is to be taken for the purposes of the Tax Acts as having been allowed as a deduction in accordance with the appropriate provision of those Acts.
- (6) No other relief is available against a sum charged on a company at step 5 in section 371BC(1).
- (7) In this section—
- (a) "the appropriate rate" and "the relevant corporation tax accounting period" have the meaning given by section 371BC(3), and
  - (b) "relevant allowance" means—
    - (i) any loss to which section 37 or 62(1) to (3) of CTA 2010 applies,
    - (ii) any qualifying charitable donation,
    - (iii) any expenses of management to which section 1219(1) of CTA 2009 applies,
    - (iv) any adjusted BLAGAB management expenses for the purposes of section 73 of FA 2012,
    - (v) any excess to which section 260(3) of CAA 2001 applies,
    - (vi) any amount available to the company by way of group relief,or

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- (vii) any non-trading deficit on the company's loan relationships.
- (8) But, in relation to a sum charged on a company by virtue of section 371BH(2), in this section—
  - (a) “the appropriate rate” means the rate given by section 371BH(3)(a), and
  - (b) “relevant allowance” means any adjusted BLAGAB management expenses for the purposes of section 73 of FA 2012.

### **Appeals affecting more than one person**

371U(F) This section applies if—

- (a) a relevant appeal involves any question concerning the application of this Part in relation to a particular person, and
  - (b) the resolution of that question is likely to affect the liability under this Part of any other person in relation to the CFC concerned.
- (2) Each of the following is a “relevant appeal”—
- (a) an appeal under paragraph 34(3) of Schedule 18 to FA 1998 against an amendment of a company tax return, and
  - (b) an appeal under paragraph 48 of that Schedule against a discovery assessment.
- (3) The appeal is to be conducted as follows.
- (4) Each of the persons whose liability under this Part is likely to be affected by the resolution of the question is entitled to be a party to the proceedings.
- (5) The tribunal must determine the question separately from any other questions in the proceedings.
- (6) The tribunal's determination on the question is to have effect as if made in an appeal to which each of those persons was a party.

### **Recovery of sum charged from other UK resident companies**

371U(F) This section applies if a sum charged on a company (“the defaulting company”) at step 5 in section 371BC(1) as if it were an amount of corporation tax is not fully paid before the date on which it is due and payable in accordance with the Taxes Acts.

- (2) An officer of Revenue and Customs may give a notice of liability to another UK resident company which holds or has held (directly or indirectly) the whole or any part of the same interest in the CFC concerned as is or was held by the defaulting company.
- (3) If such a notice is given to a company (“the responsible company”), the following are payable by the responsible company—
  - (a) the whole or, as the case may be, the corresponding part of the sum charged so far as it is unpaid as at the time the notice is given,
  - (b) the whole or, as the case may be, the corresponding part of any unpaid interest due on the sum charged as at the time the notice is given, and

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- (c) any interest accruing on the sum charged after the notice is given so far as referable to the sum payable by the responsible company under paragraph (a).
- (4) Subsection (5) applies if any sum payable by the responsible company under subsection (3) is not fully paid by the end of the period of 3 months starting with the date on which the notice is given.
- (5) Without affecting the right of recovery from the responsible company, the outstanding amount may be recovered from the defaulting company.

## CHAPTER 22

### SUPPLEMENTARY PROVISION

#### Definitions

371VA In this Part—

“accounting period”, in relation to a CFC, is to be read in accordance with section 371VB,

“accounting profits”, in relation to a CFC, is to be read in accordance with sections 371VC and 371VD,

“arrangement” includes—

- (a) any agreement, scheme, transaction or understanding (whether or not legally enforceable), and
- (b) a series of arrangements or a part of an arrangement,

“assumed taxable total profits”, in relation to a CFC, is to be read in accordance with section 371SB(1) to (6),

“assumed total profits”, in relation to a CFC, is to be read in accordance with section 371SB(9), subject to section 371DA(2),

“banking business” means the business of—

- (a) banking, deposit-taking, money-lending or debt-factoring, or
- (b) any activity similar to an activity falling within paragraph (a),

“CFC” is to be read in accordance with section 371AA(3), subject to sections 371RC and 371RE(2) and regulations under section 371RF(4),

“the CFC charge” is to be read in accordance with section 371AA(1),

“chargeable company”, in relation to a CFC's accounting period, means a company which is a chargeable company for the purposes of step 4 in section 371BC(1),

“chargeable profits”, in relation to a CFC, is to be read in accordance with section 371BA(3),

“company” is to be read subject to section 371VE,

“company tax return” means a return required to be made under Schedule 18 to FA 1998,

“contract of insurance” has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,

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“control” is to be read in accordance with sections 371RB and 371RE, subject to section 371RF,

“the corporation tax assumptions” is to be read in accordance with section 371SC,

“creditable tax”, in relation to a CFC, is to be read in accordance with section 371PA,

“the HMRC Commissioners” means the Commissioners for Her Majesty's Revenue and Customs,

“insurance business” means the business of effecting or carrying out of contracts of insurance, including the investment of premiums received,

“intellectual property” means—

- (a) any patent, trade mark, registered design, copyright or design right, or
- (b) any licence or other right in relation to anything falling within paragraph (a),

“interest”, as in an interest in a company, is to be read in accordance with section 371VH,

“the local tax amount”, in relation to a CFC, means the amount of tax determined at step 2 in section 371NB(1),

“non-trading finance profits” is to be read in accordance with section 371VG,

“non-trading income” means income which is not trading income,

“property business profits” is to be read in accordance with section 371VI,

“relevant finance lease” means—

- (a) a long funding lease for the purposes of Part 2 of CAA 2001 (plant and machinery allowances), or
- (b) a short lease for the purposes of that Part which meets the finance lease test in section 70N of that Act,

and includes a part of such a lease,

“relevant interest” is to be read in accordance with Chapter 15,

“tax advantage” has the meaning given by section 1139 of CTA 2010,

“trading finance profits” is to be read in accordance with section 371VG,

“trading income”, in relation to a CFC, means income brought into account in determining the CFC's trading profits for the accounting period in question,

“trading profits”, in relation to a CFC, means any profits included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under Part 3 of CTA 2009 (trading income),

“UK connected capital contribution”, in relation to a CFC, means any capital contribution to the CFC made (directly or indirectly) by a UK resident company connected with the CFC (whether in relation to an issue of shares in the CFC or otherwise), and

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“UK permanent establishment”, in relation to a non-UK resident company, means a permanent establishment which the company has in the United Kingdom and through which it carries on a trade in the United Kingdom.

### **Accounting periods**

371V(1) This section applies for the purposes of this Part.

- (2) An accounting period of a CFC begins—
  - (a) when the CFC becomes a CFC, or
  - (b) immediately after the end of the previous accounting period of the CFC, if the CFC is still a CFC.
- (3) An accounting period of a CFC comes to an end on the occurrence of any of the following—
  - (a) the CFC ceasing to be a CFC,
  - (b) the CFC becoming, or ceasing to be, liable to tax in a territory by reason of domicile, residence or place of management,
  - (c) the CFC ceasing to have any source of income at all, or
  - (d) a company which has a relevant interest in the CFC ceasing to have any relevant interest in the CFC at all or ceasing to be within the charge to corporation tax.
- (4) Without affecting subsections (2) and (3), sections 10(1)(a) to (d), (i) and (j) and (5), 11(1) and (2) and 12 of CTA 2009 (corporation tax accounting periods) apply as they apply for corporation tax purposes.
- (5) Subsection (6) applies if it appears to an officer of Revenue and Customs that the beginning or end of a CFC's accounting period is uncertain.
- (6) An officer of Revenue and Customs may by notice specify as an accounting period of the CFC such period not exceeding 12 months as the officer considers appropriate.
- (7) Subsection (8) applies if after the giving of a notice under subsection (6)—
  - (a) further facts come to the knowledge of an officer of Revenue and Customs, and
  - (b) as a result of that, it appears to an officer of Revenue and Customs that any accounting period specified in the notice is not the true accounting period.
- (8) An officer of Revenue and Customs must by notice amend the notice under subsection (6) so as to specify what appears to the officer to be the true accounting period.
- (9) A notice under subsection (6) or (8) must be given to each company which the officer of Revenue and Customs considers would be likely to be a chargeable company were the CFC charge to be charged in relation to the CFC's accounting period in question.

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### **Accounting profits**

371V(1) This section and section 371VD (with which this section needs to be read) apply for the purposes of this Part.

- (2) A CFC's accounting profits for an accounting period are its pre-tax profits for the period.
- (3) If financial statements for the CFC are prepared for the accounting period in accordance with an acceptable accounting practice, the CFC's pre-tax profits are to be determined by reference to the amounts disclosed in those statements (subject to subsections (4) and (5)).
- (4) Subsection (5) applies if—
  - (a) the CFC's financial statements for the accounting period (or any aspect of them) are not prepared in accordance with an acceptable accounting practice, or
  - (b) no financial statements are prepared at all for the CFC for the accounting period within 12 months after the end of that period.
- (5) The CFC's pre-tax profits are to be determined by reference to the amounts which would have been disclosed had financial statements for the accounting period been prepared for the CFC in accordance with—
  - (a) the acceptable accounting practice in accordance with which financial statements for the CFC are normally prepared, or
  - (b) if paragraph (a) cannot be applied, international accounting standards.
- (6) Each of the following is an “acceptable accounting practice”—
  - (a) international accounting standards,
  - (b) UK generally accepted accounting practice, and
  - (c) accounting practice which is generally accepted in the territory in which the CFC is resident for the accounting period.
- (7) In this section references to amounts disclosed in financial statements include amounts comprised in amounts so disclosed.
- (8) If the CFC's accounting profits (or any amounts included in them) are determined in a currency other than sterling, they are to be translated into their sterling equivalent using the average rate of exchange for the accounting period calculated from daily spot rates.

### **Adjustments to accounting profits**

371VD(1) This section applies for the purpose of determining a CFC's accounting profits for an accounting period.

- (2) The following are to be ignored in determining the profits—
  - (a) any dividend or other distribution which is not brought into account in determining the CFC's assumed total profits for the accounting period on the basis that it would be exempt for the purposes of Part 9A of CTA 2009 (company distributions),
  - (b) any property business profits or property business losses, and

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- (c) any capital profits or losses.
- (3) In subsection (2)(b) “property business losses” means any losses of a UK property business or overseas property business of the CFC; such losses are to be determined in a way corresponding to the way in which property business profits are determined.
- (4) The profits are to include—
  - (a) any amount which accrues during the accounting period to the trustees of a settlement in relation to which the CFC is a settlor or beneficiary, and
  - (b) the CFC's share of any income which accrues during the accounting period to a partnership of which the CFC is a partner, as determined by apportioning that income between the partners on a just and reasonable basis.
- (5) If there is more than one settlor or beneficiary in relation to a settlement covered by subsection (4)(a), the income is to be apportioned between the CFC and the other settlors or beneficiaries on a just and reasonable basis.
- (6) In subsection (4)(b) “partnership” includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.
- (7) Part 4 (transfer pricing) applies as it applies in relation to the determination of the CFC's assumed taxable total profits for the accounting period.
- (8) But subsection (7) is to be ignored if the difference made in the amount of the profits as a result of its application would not be more than £50,000.

### **Cell companies etc**

- 371V(1) This Part applies in relation to unincorporated cells and incorporated cells as if they were non-UK resident companies.
- (2) An “unincorporated cell” is an identifiable part (by whatever name known) of a non-UK resident company which meets the following condition.
  - (3) The condition is that, under the law under which the non-UK resident company is incorporated or formed, under the articles of association or other document regulating the non-UK resident company or under any arrangement entered into by or in relation to the non-UK resident company—
    - (a) assets and liabilities of the non-UK resident company may be wholly or mainly allocated to the part of the company in question,
    - (b) liabilities so allocated are to be met wholly or mainly out of assets so allocated, and
    - (c) there are members of the non-UK resident company who have rights in relation to the company's assets which cover only or mainly assets so allocated.
  - (4) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (2) as a company for the purposes of this Part; but its assets and liabilities are to be apportioned between it and the unincorporated cell (and any other unincorporated cells which are part of the company) on a just and reasonable basis.

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- (5) An “incorporated cell” is an entity (by whatever name known) established under the articles of association or other document regulating a non-UK resident company—
- (a) which, under the law under which the non-UK resident company is incorporated or formed, has a legal personality distinct from that of the non-UK resident company, but
  - (b) which is not itself a company (ignoring this section).
- (6) Subsection (1) does not affect the status of the non-UK resident company mentioned in subsection (5) as a company for the purposes of this Part.
- (7) The Treasury may by regulations provide for this Part to apply in relation to—
- (a) parts of companies falling within specified descriptions, or
  - (b) other entities falling within specified descriptions which are not themselves companies (ignoring this section),
- as if they were non-UK resident companies.
- (8) Regulations under subsection (7) may add to, repeal or otherwise amend subsections (1) to (6).

### **Connected persons etc**

371V(F) This section applies for the purposes of this Part.

- (2) The following provisions of CTA 2010 apply—
- (a) section 882(2) to (7) (“associated” persons), and
  - (b) section 1122 (“connected” persons).
- (3) A person is “related” to a CFC if—
- (a) the person is connected or associated with the CFC,
  - (b) at least 25% of the CFC's chargeable profits would be apportioned to the person at step 3 in section 371BC(1) were that step required to be taken in relation to the accounting period in question, or
  - (c) if the CFC is a CFC by virtue of section 371RC, the person is connected or associated with either or both of the controllers.

### **Finance profits**

371V(G) In this Part “non-trading finance profits”, in relation to a CFC, means any amounts—

- (a) which are included in the CFC's assumed total profits for the accounting period in question on the basis that they would be chargeable to corporation tax under—
  - (i) section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships), or
  - (ii) Part 9A of that Act (company distributions), or
- (b) which—
  - (i) are included in the CFC's assumed total profits for the accounting period in question on the basis that they arise



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- from an arrangement which would be a relevant finance lease, but
- (ii) are not trading profits.
- (2) Subsection (1) is subject to subsection (3) and sections 371CB(2) and (8), 371CE(2) and 371IA(9).
- (3) Any credits or debits which are to be brought into account in determining the CFC's property business profits for the accounting period in question in accordance with section 371VI(2) are not to be brought into account in determining the CFC's non-trading finance profits.
- (4) In this Part “trading finance profits”, in relation to a CFC, means any amounts included in the CFC's assumed total profits for the accounting period in question—
- (a) which are trading profits by virtue of section 297, 573 or 931W of CTA 2009, or
- (b) which are trading profits arising from an arrangement which would be a relevant finance lease.
- (5) Subsection (4) is subject to section 371CE(2).

### **Interests in companies**

371V(1) This section applies for the purposes of this Part.

- (2) The following persons have an “interest” in a company—
- (a) any person who has, or is entitled to acquire, share capital or voting rights in the company,
- (b) any person who has, or is entitled to acquire, a right to receive or participate in distributions of the company,
- (c) any person who is entitled—
- (i) to direct how income or assets of the company are to be applied,
- (ii) to have such income or assets applied on the person's behalf, or
- (iii) otherwise to secure that such income or assets will be applied (directly or indirectly) for the person's benefit, and
- (d) any other person who, either alone or together with other persons, has control of the company.
- (3) In subsection (2) references to a person being entitled to do anything cover cases in which—
- (a) a person is presently entitled to do it at a future date, or
- (b) a person will at a future date be entitled to do it.
- (4) In subsection (2)(c) references to a person being entitled to do anything also cover cases in which it is reasonable to suppose that a person is presently able, or will at a future date become able, to do the thing (even though the person presently has, or will have, no entitlement to do the thing).

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- (5) Subsection (6) applies if a person's entitlement (or supposed ability) to do anything mentioned in subsection (2)(c) is (or would be) contingent upon a default of the company or any other person under any agreement.
- (6) The person is not to have an interest in the company under subsection (2) (c) by virtue of that entitlement (or supposed ability) unless the default has occurred.
- (7) Rights which a person has as a loan creditor of a company are to be ignored for the purposes of subsection (2).
- (8) In subsection (7)—  
     “loan creditor” has the meaning given by section 453 of CTA 2010, but ignoring subsection (4) of that section, and  
     “rights” does not include any rights excluded from subsection (7) by subsection (10).
- (9) Subsection (10) applies if, in accordance with generally accepted accounting practice, a loan creditor divides its rights and liabilities under a loan relationship to which it is a party as mentioned in section 415(1) of CTA 2009 (loan relationships with embedded derivatives).
- For this purpose, if a loan creditor does not prepare its accounts in accordance with generally accepted accounting practice, assume that it prepares IAS accounts (within the meaning of section 1127 of CTA 2010).
- (10) Any rights falling within section 415(1)(b) of CTA 2009 are to be excluded from subsection (7).
- (11) Subsections (12) and (13) apply if—  
     (a) apart from subsection (12), a person has, or two or more persons together have, an interest in a company (“company 1”), and  
     (b) company 1 has an interest in another company (“company 2”).  
 (In paragraph (b) “interest” includes an interest by virtue of subsection (12).)
- (12) The person or persons mentioned in subsection (11)(a) are to be taken to have an interest in company 2 (and references to a person's interest in a company are to be read accordingly).
- (13) For the purposes of references to one person's interest in a company being the same as another person's interest—  
     (a) the person mentioned in subsection (11)(a), or  
     (b) each of the persons so mentioned,  
 is to be taken as having, to the extent of that person's interest in company 1, the same interest as company 1 has in company 2.
- (14) If two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they are taken to have the interest in equal shares.

### **Property business profits**

- 371(VI) Subject to what follows, in this Part “property business profits”, in relation to a CFC, means any profits included in the CFC's assumed total profits for

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the accounting period in question on the basis that they would be chargeable to corporation tax under Part 4 of CTA 2009 (property income).

- (2) Any credits or debits—
- (a) which are brought into account under Part 5 of CTA 2009 in determining the CFC's assumed total profits for the accounting period, and
  - (b) which fall within subsection (3) or (5),
- are to be brought into account in determining the CFC's property business profits.
- (3) Credits and debits fall within this subsection so far as they are from a debtor relationship of the CFC where the loan which is the subject of the debtor relationship—
- (a) is made and used solely for the purposes of a relevant property business, and
  - (b) is not used to any extent for the purpose of funding (directly or indirectly)—
    - (i) a loan to any other person, or
    - (ii) so far as not covered by sub-paragraph (i), an arrangement intended to produce for any person a return in relation to any amount which it is reasonable to suppose would be a return by reference to the time value of that amount of money.
- (4) In subsection (3) “debtor relationship” has the meaning given by section 302(6) of CTA 2009 (and does not include anything which, although not falling within section 302(1) of that Act, is treated for any purpose as if it were a debtor relationship); and “loan” is to be read accordingly.
- (5) Credits and debits fall within this subsection so far as they—
- (a) are from any derivative contract or other arrangement entered into by the CFC as a hedge of risk in connection with a relevant property business, and
  - (b) are attributable to that hedge of risk.
- (6) “Relevant property business” means a UK property business or overseas property business of the CFC, profits of which are included in the CFC's property business profits apart from subsection (2).

## Regulations

371VJ Regulations under this Part may contain incidental, supplemental, consequential and transitional provision and savings.”

## PART 2

### FOREIGN PERMANENT ESTABLISHMENTS

#### *Main provision*

2 Chapter 3A of Part 2 of CTA 2009 (foreign permanent establishments of UK resident companies) is amended as follows.

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3 In section 18A(1) omit “UK resident”.

4 After section 18C insert—

**“18CA Income arising from immovable property**

The references in section 18A(6) to profits which would be taken to be attributable to the permanent establishment of a company in a territory include any income arising from immovable property which has been used for the purposes of the business carried on by the company through the permanent establishment in the territory (to such extent as is appropriate having regard to the extent to which it has been so used); and the references to losses in section 18A(7) are to be construed accordingly.

**18CB Profits and losses from investment business**

(1) In determining any relevant profits amount or relevant losses amount under section 18A(6) or (7) in relation to a company, there are to be left out of account any profits or losses of any part of the company's business which consists of the making of investments.

(2) Subsection (1) does not apply to profits or losses arising from assets so far as the assets are effectively connected with any part of the permanent establishment through which a trade or overseas property business of the company is carried on in the territory.

(3) In subsection (2) “effectively connected” is to be given the same meaning as it would be given for the purposes of the OECD model were subsection (2) contained in the OECD model.”

5 (1) Section 18F is amended as follows.

(2) In subsection (1)(a) for “subsection (6)” substitute “ subsections (6) to (8) ”.

(3) For subsection (2) substitute—

“(2) The relevant day”, in relation to an election made by a UK resident company, means—

(a) the day on which, at the time of the election, the company's accounting period following that in which the election is made is expected to begin, or

(b) if the election is made before the company's first accounting period, the day on which that accounting period begins.

(2A) “The relevant day”, in relation to an election made by a non-UK resident company, means the day on which the company becomes UK resident.”

(4) In subsection (6) for “The election can be revoked” substitute “ An election can be revoked by the company which made it ”.

(5) After subsection (6) insert—

“(7) An election made by a UK resident company is revoked if the company ceases to be UK resident.

(8) An election made by a non-UK resident company is revoked if, having become UK resident, the company ceases to be UK resident.”

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6 For sections 18G to 18I substitute—

**“18G Anti-diversion rule**

- (1) This section applies for the purposes of this Chapter for any relevant accounting period (“period X”) of a company (“company X”) in relation to a territory outside the United Kingdom (“territory X”) if—
  - (a) there is an adjusted relevant profits amount in relation to territory X for period X,
  - (b) the adjusted relevant profits amount includes diverted profits (see section 18H), and
  - (c) none of the exemptions mentioned in section 18I applies for period X.
- (2) The diverted profits are to be left out of the adjusted relevant profits amount.
- (3) For the purposes of this Chapter “adjusted”, in relation to a relevant profits amount, is what the relevant profits amount would be if it were determined without reference to gains or losses which are chargeable gains or allowable losses for corporation tax purposes.

**18H What are “diverted profits”?**

- (1) In section 18G(1)(b) “diverted profits” means so much of company X's total profits of period X as pass through the diverted profits gateway.
- (2) To determine the extent to which company X's total profits of period X pass through the diverted profits gateway, apply—
  - (a) section 371BB of TIOPA 2010 (controlled foreign companies: the CFC charge gateway), and
  - (b) except Chapter 8 of Part 9A of that Act, the other provisions referred to in that section,as if references to the CFC charge gateway were references to the diverted profits gateway.
- (3) In applying section 371BB of TIOPA 2010 and the other provisions referred to in it assume—
  - (a) that company X is a CFC resident in territory X,
  - (b) that period X is the CFC's accounting period, and
  - (c) that company X's total profits of period X are the CFC's assumed total profits for the accounting period.
- (4) Subsection (3)(a) does not require it to be assumed that there is any change in the place or places at which company X carries on its activities.
- (5) Section 371BB of TIOPA 2010 and the other provisions referred to in it are also to be applied subject to sections 18HA to 18HE below.
- (6) In this section—
  - (a) references to company X's total profits of period X are to those profits ignoring this Chapter and step 2 in section 4(3) of CTA 2010, and

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- (b) references to section 371BB of TIOPA 2010 are to that section omitting subsection (2)(b).

#### **18HA Modification of Chapter 3 of Part 9A of TIOPA 2010**

Chapter 3 of Part 9A of TIOPA 2010 (the CFC charge gateway: determining which of Chapters 4 to 8 applies) applies for the purposes of section 18H(2) with the omission of—

- (a) section 371CA(10)(a),
- (b) in section 371CB(2), the words “or Chapter 8 (solo consolidation)”,
- (c) section 371CC(1)(b), (3)(b) and (c), (4) to (7), (9) and (10),
- (d) section 371CD,
- (e) section 371CE(2) to (9), and
- (f) section 371CG.

#### **18HB Modification of Chapter 4 of Part 9A of TIOPA 2010**

- (1) Chapter 4 of Part 9A of TIOPA 2010 (the CFC charge gateway: profits attributable to UK activities) applies for the purposes of section 18H(2) with the following modifications.
- (2) The modifications are—
  - (a) section 371DA(3)(g)(i) is to be omitted, and
  - (b) in section 371DH(4), after “the accounting period”, in the second place it occurs, there is to be inserted “ or the United Kingdom ”.
- (3) Section 371VF(3) of TIOPA 2010 (definition of “related” person) is to be applied as relevant with the omission of paragraphs (b) and (c).

#### **18HC Modification of Chapter 5 of Part 9A of TIOPA 2010**

Chapter 5 of Part 9A of TIOPA 2010 (the CFC charge gateway: non-trading finance profits) applies for the purposes of section 18H(2) with the omission of—

- (a) in section 371EA(1), the words from “so far as” to the end, and
- (b) sections 371EB to 371EE.

#### **18HD Modification of Chapter 7 of Part 9A of TIOPA 2010**

Chapter 7 of Part 9A of TIOPA 2010 (the CFC charge gateway: captive insurance business) applies for the purposes of section 18H(2) with the omission of section 371GA(6)(b).

#### **18HE Modification of Chapter 9 of Part 9A of TIOPA 2010**

- (1) Chapter 9 of Part 9A of TIOPA 2010 (exemptions for profits from qualifying loan relationships) applies for the purposes of section 18H(2) with the following modifications.
- (2) In section 371IA(2) and (11) the reference to a chargeable company is to be read as a reference to company X (as is the reference in section 371CB(8));

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and references elsewhere in Chapter 9 to company C are to be read as references to company X.

- (3) For section 371IA(5) there is to be substituted—
- “(5) 75% of the profits of each qualifying loan relationship are “exempt” under this Chapter.”
- (4) In section 371IA(9)(a) the words “or Chapter 8 (solo consolidation)” are to be omitted.
- (5) Sections 371IB to 371IE are to be omitted.
- (6) Section 371IH(11)(a) is to be read ignoring the modification in section 18HC(b) above.
- (7) In section 371IJ references to the relevant corporation tax accounting period are to be read as references to period X and subsection (6) is to be omitted.

### **18I Exemptions from anti-diversion rule**

- (1) The exemptions referred to in section 18G(1)(c) are the exemptions set out in Chapters 11 to 14 of Part 9A of TIOPA 2010 (controlled foreign companies: exemptions from the CFC charge).
- (2) In applying those Chapters for the purposes of section 18G(1)(c)—
- references to section 371BA(2)(b) of TIOPA 2010 are to be read as references to section 18G(1)(c),
  - the assumptions set out in subsection (3) are to be made, and
  - section 371VF(3) of TIOPA 2010 (definition of “related” person) is to be read with the omission of paragraphs (b) and (c).
- (3) For the purposes of subsection (2)(b), assume—
- that the permanent establishment which company X has in territory X is a separate company from company X,
  - that the separate company is a CFC resident in territory X,
  - that period X and company X's other accounting periods for corporation tax purposes are accounting periods of the CFC for the purposes of Part 9A of TIOPA 2010,
  - that the CFC's assumed total profits for period X are the adjusted relevant profits amount,
  - that the CFC's assumed taxable total profits for period X are the same as the CFC's assumed total profits for period X,
  - that the CFC is connected with company X and is also connected or associated with any person with whom company X is connected or associated, and
  - that any person who has an interest in company X also has an interest in the CFC.
- (4) Chapters 11 to 14 of Part 9A of TIOPA 2010 are also to be applied subject to sections 18IA to 18ID below.

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### **18IA The excluded territories exemption**

- (1) Chapter 11 of Part 9A of TIOPA 2010 (controlled foreign companies: the excluded territories exemption) applies for the purposes of section 18G(1)(c) with the following modifications.
- (2) Sections 371KB(1)(b)(iii) and 371KH are to be omitted.
- (3) Section 371KC is to be omitted and the assumption set out in section 18I(3)(b) above in relation to the CFC's residence is to be applied instead; and references to “the CFC's territory” are to be read accordingly.
- (4) Section 371KD(3) is to be omitted and references to a CFC's accounting profits for an accounting period are to be read as references to the adjusted relevant profits amount.
- (5) Section 371KE(2)(b) is to be omitted.
- (6) Section 371KF is to be omitted.
- (7) In section 371KG(3) the reference to the CFC's equity or debt is to be read as a reference to company X's equity or debt (ignoring the assumption in section 18I(3)(a) above).
- (8) Section 371KI(2) and (3) is to be omitted.
- (9) In section 371KJ—
  - (a) in subsection (2)(a), the reference to intellectual property held by the CFC is to be read as a reference to intellectual property held by company X (ignoring the assumption in section 18I(3)(a) above), and
  - (b) in subsections (2)(b) and (c) and (4), references to the CFC are to be read as references to company X (ignoring that assumption).

### **18IB The low profits exemption**

Chapter 12 of Part 9A of TIOPA 2010 (controlled foreign companies: the low profits exemption) applies for the purposes of section 18G(1)(c) with the omission of section 371LB(2) and (4) and section 371LC(5) and (6).

### **18IC The low profit margin exemption**

- (1) Chapter 13 of Part 9A of TIOPA 2010 (controlled foreign companies: the low profit margin exemption) applies for the purposes of section 18G(1)(c) with the following modifications.
- (2) In section 371MB—
  - (a) subsection (2) is to be omitted, and
  - (b) references to the CFC's accounting profits for an accounting period are to be read as references to the adjusted relevant profits amount determined before any deduction for interest.



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## **18ID The tax exemption**

- (1) Chapter 14 of Part 9A of TIOPA 2010 (controlled foreign companies: the tax exemption) applies for the purposes of section 18G(1)(c) with the following modifications.
- (2) At step 1 in section 371NB(1)—
  - (a) in the first paragraph, the reference to section 371TB of TIOPA 2010 is to be read as a reference to the assumption in section 18I(3)(b) above relating to the CFC's residence, and
  - (b) the second paragraph is to be omitted.
- (3) References to the CFC's local chargeable profits arising in the accounting period are to be read as references to the adjusted relevant profits amount and, accordingly, sections 371NB(4) and 371NC(2) to (4) are to be omitted.
- (4) For the purposes of step 3 in section 371NB(1) the amount of the corresponding UK tax for the accounting period is to be determined in accordance with subsection (5) below; and section 371NE is to be omitted accordingly.
- (5) “The corresponding UK tax” is the amount of corporation tax which would be payable in respect of the adjusted relevant profits amount if it were subject in full to corporation tax, ignoring any credit which would be allowed against it under section 18(3) of TIOPA 2010 and assuming, where there is more than one rate of corporation tax applicable to period X, that it were chargeable at the average rate over period X.”

7 After section 18P(2) insert—

- “(3) Subsection (2) does not apply in relation to—
- (a) a chargeable gain accruing on the disposal of an asset used, and used only, for the purposes of a trade so far as carried on by the company in the relevant foreign territory through the company's permanent establishment there, or
  - (b) a chargeable gain accruing on the disposal of currency or of a debt within section 252(1) of TCGA 1992 where the currency or debt is or represents money in use for the purposes of a trade so far as carried on by the company in the relevant foreign territory through the company's permanent establishment there.”

### *Lloyd's underwriters*

8 In Chapter 5 of Part 4 of FA 1994 (Lloyd's underwriters) after section 227B insert—

## **“227C Exemption for profits or losses of foreign permanent establishments**

- (1) This section applies for the purposes of section 18A(6) and (7) of the Corporation Tax Act 2009 (exemption for profits or losses of foreign permanent establishments: “relevant profits amount” and “relevant losses amount”).
- (2) Any regulations made under section 229(1)(d) below are to be ignored.

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- (3) Profits or losses which are taken to arise to a corporate member in an underwriting year from its membership of one or more syndicates are to be left out of account in relation to any relevant accounting period so far as they are profits or losses of a previous underwriting year which began before the relevant day (as defined in section 18F of the 2009 Act (effect of election under section 18A)).
- (4) Profits or losses arising to a corporate member from assets forming part of a premium trust fund which are taken to be profits or losses of an underwriting year are to be left out of account in relation to any relevant accounting period so far as they are allocated under the rules or practice of Lloyds to a previous underwriting year which began before the relevant day (as defined in section 18F of the 2009 Act).”

*Plant and machinery allowances*

- 9 In section 15 of CAA 2001 (plant and machinery allowances: qualifying activities) after subsection (2A) insert—

“(2B) Subsection (2A) does not apply to the business so far as it consists of a plant or machinery lease under which the company is a lessor if any profits or losses arising from the lease are to be left out of account as mentioned in section 18C(3) of CTA 2009.”

**PART 3**

OTHER AMENDMENTS

*TMA 1970*

- 10 TMA 1970 is amended as follows.
- 11 In section 55 (recovery of tax not postponed) in subsection (1) omit paragraph (d).
- 12 In section 59E (provision about when corporation tax due and payable) in subsection (11) for paragraph (b) substitute—
- “(b) to any sum charged on a company at step 5 in section 371BC(1) of TIOPA 2010 (controlled foreign companies) as if it were an amount of corporation tax;”.
- 13 In section 59F (arrangements for paying tax on behalf of group members) in subsection (6) for paragraph (b) and the “and” after it substitute—
- “(b) a sum charged on a company at step 5 in section 371BC(1) of TIOPA 2010 (controlled foreign companies) as if it were an amount of corporation tax, and”.

*ICTA*

- 14 In ICTA omit Chapter 4 of Part 17 (controlled foreign companies).

*FA 1998*

- 15 FA 1998 is amended as follows.

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16 In section 32 (unrelieved surplus advance corporation tax) for subsection (5) substitute—

“(5) The provision which may be made by regulations under this section includes provision for or in connection with enabling unrelieved surplus advance corporation tax to be set against liability to a sum charged at step 5 in section 371BC(1) of the Taxation (International and Other Provisions) Act 2010 (controlled foreign companies) as if it were an amount of corporation tax for an accounting period.”

17 (1) Schedule 18 (company tax returns) is amended as follows.

(2) In paragraph 1 for “section 747(4)(a) of the Taxes Act 1988 (tax on profits of controlled foreign company)” substitute “step 5 in section 371BC(1) of the Taxation (International and Other Provisions) Act 2010 (controlled foreign companies)”.

(3) In paragraph 8(1), in the third step, for paragraph 2 substitute—

“(2) Any sum charged at step 5 in section 371BC(1) of the Taxation (International and Other Provisions) Act 2010 (controlled foreign companies).”

*FA 2000*

18 Schedule 22 to FA 2000 (tonnage tax) is amended as follows.

19 (1) Paragraph 54 is amended as follows.

(2) In sub-paragraph (1)—

- (a) for “under section 747 of the Taxes Act 1988” substitute “at step 5 in section 371BC(1) of the Taxation (International and Other Provisions) Act 2010 (“TIOPA 2010”)”,
- (b) for “controlled foreign company” (in both places) substitute “CFC”, and
- (c) at the end insert “; and, accordingly, the tonnage tax company is not to be a chargeable company for the purposes of Part 9A of TIOPA 2010 in relation to the CFC's accounting period in question.”

(3) For sub-paragraphs (2) to (5) substitute—

“(2) In relation to a CFC which—

- (a) is a member of a tonnage tax group, and
- (b) is a tonnage tax company by virtue of the group's tonnage tax election, or would be if it were within the charge to corporation tax, the corporation tax assumptions within the meaning of Part 9A of TIOPA 2010 are to be taken to include the following assumption.

(3) The CFC is to be assumed to be a single company that is a tonnage tax company.

(4) Nothing in section 371SL(1) of TIOPA 2010 affects sub-paragraphs (2) and (3) above.

(5) In this paragraph “CFC” has the same meaning as in Part 9A of TIOPA 2010.”

20 (1) Paragraph 57 is amended as follows.

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- (2) In sub-paragraph (1)(b) for the words from “controlled” to the end substitute “CFC apportioned to the company at step 3 in section 371BC(1) of the Taxation (International and Other Provisions) Act 2010.”
- (3) For sub-paragraph (4) substitute—
- “(4) For the purposes of sub-paragraph (1)(b)—
- (a) “tonnage profits” means so much of the CFC's chargeable profits for its accounting period in question as, applying the corporation tax assumptions, are calculated in accordance with paragraph 4 of this Schedule; and
- (b) so much of those chargeable profits as are tonnage profits shall be treated as apportioned at step 3 in section 371BC(1) of the Taxation (International and Other Provisions) Act 2010 in the same proportions as those profits (taken generally) are apportioned.
- (4A) In sub-paragraphs (1)(b) and (4) terms defined in Part 9A of the Taxation (International and Other Provisions) Act 2010 have the same meaning as in that Part.”

*FA 2002*

- 21 In FA 2002 omit section 90 (controlled foreign companies and treaty non-resident companies).

*ITA 2007*

- 22 (1) Section 725 of ITA 2007 (transfer of assets abroad: reduction in amount charged where controlled foreign company involved) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) This section applies if—
- (a) under Part 9A of TIOPA 2010 (controlled foreign companies), the CFC charge is charged in relation to a CFC's accounting period, and
- (b) apart from this section, the amount of income treated as arising to an individual under section 721 for a tax year would be or include a sum forming part of the CFC's chargeable profits for that accounting period.”
- (3) In subsection (2)—
- (a) for “controlled foreign company's” (in both places) substitute “CFC's”, and
- (b) in the definition of “CA” for “chargeable amount” substitute “CFC's chargeable profits for that accounting period so far as apportioned to chargeable companies at step 3 in section 371BC(1) of TIOPA 2010”.
- (4) For subsection (3) substitute—
- “(3) Terms used in this section which are defined in Part 9A of TIOPA 2010 have the same meaning as in that Part.”

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#### FA 2007

- 23 (1) Paragraph 3 of Schedule 11 to FA 2007 (technical provision made by insurers) is amended as follows.
- (2) In sub-paragraph (1) for paragraph (b) and the “or” after it substitute—
- “(b) a CFC (within the meaning of Part 9A of the Taxation (International and Other Provisions) Act 2010) which carries on general business, or”.
- (3) In sub-paragraph (2) for paragraph (b) substitute—
- “(b) a company which for the purposes of Part 9A of the Taxation (International and Other Provisions) Act 2010 has an interest in a CFC (within the meaning of that Part) which carries on general business.”

#### CTA 2009

- 24 CTA 2009 is amended as follows.
- 25 In section A1 (overview of the Corporation Tax Acts) in subsection (2)—
- (a) omit paragraph (b), and
- (b) before paragraph (k) (as inserted by paragraph 136 of Schedule 16 to this Act) insert—
- “(ja) Part 9A of that Act (controlled foreign companies).”.
- 26 In section 486D (disguised interest: arrangement with no tax avoidance purpose) omit subsections (5) and (6).
- 27 (1) Section 486E (disguised interest: excluded shares) is amended as follows.
- (2) In subsection (7)(c) for “relevant controlled foreign company” substitute “ CFC within the meaning of Part 9A of TIOPA 2010 ”.
- (3) For subsections (9) and (10) substitute—
- “(9) For the purposes of subsection (7)(b) a company (“C”) is a relevant joint venture company if—
- (a) the holding company is one of two persons who, taken together, control C,
- (b) the holding company has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the holding company and the second person fall to be taken as controlling C, and
- (c) the second person has interests, rights and powers representing—
- (i) at least 40%, but
- (ii) no more than 55%,
- of the holdings, rights and powers in respect of which the holding company and the second person fall to be taken as controlling C.
- (10) For the purposes of subsection (9)—
- (a) section 371RB of TIOPA 2010 (read with section 371RD of that Act) applies for the purpose of determining if two persons, taken together, control a company, and

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- (b) section 371RD of that Act applies for the purpose of determining if the requirements of paragraphs (b) and (c) are met in any case.”
- (4) Omit subsection (11).
- 28 In section 521E (unallowable purpose) omit subsections (5) and (6).
- 29 Omit section 870 (intangible fixed assets: assumptions to be made in the case of a controlled foreign company) and the cross-heading before it.
- 30 In Chapter 2 of Part 9A (exemption of distributions received by small companies) after section 931C insert—

**“931CA Further exemption where distribution received from CFC**

- (1) Subsection (2) applies if—
  - (a) under Part 9A of TIOPA 2010 (controlled foreign companies), the CFC charge is charged in relation to a CFC's accounting period,
  - (b) a dividend or other distribution of the CFC is received in an accounting period (for corporation tax purposes) of the recipient in which the recipient is a small company,
  - (c) the whole or a part of the distribution is paid in respect of profits which are chargeable profits of the CFC for its accounting period mentioned in paragraph (a), and
  - (d) the requirements of section 931B(b) to (d) are met in relation to the distribution.
- (2) The distribution is exempt.
- (3) If part of the distribution is not paid in respect of chargeable profits—
  - (a) for the purposes of this Part and Part 2 of TIOPA 2010 that part of the distribution is treated as a separate distribution, and
  - (b) subsection (2) does not apply to that separate distribution.
- (4) In this section references to chargeable profits of the CFC are limited to chargeable profits so far as apportioned to chargeable companies at step 3 in section 371BC(1) of TIOPA 2010.”
- 31 In section 931E (distributions from controlled companies) for subsections (3) to (5) substitute—
 

“(3) Condition B is that—

  - (a) the recipient is one of two persons who, taken together, control the payer,
  - (b) the recipient has interests, rights and powers representing at least 40% of the holdings, rights and powers in respect of which the recipient and the second person fall to be taken as controlling the payer, and
  - (c) the second person has interests, rights and powers representing—
    - (i) at least 40%, but
    - (ii) no more than 55%,
 of the holdings, rights and powers in respect of which the recipient and the second person fall to be taken as controlling the payer.

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- (4) Section 371RB of TIOPA 2010 (read with section 371RD of that Act) applies for the purposes of this section.
- (5) Section 371RD of TIOPA 2010 applies for the purpose of determining if the requirements of subsection (3)(b) and (c) are met in any case.
- (6) In subsections (4) and (5) references to section 371RD of TIOPA 2010 are to that section omitting subsection (3)(c) and (d)."

*FA 2009*

- 32 Part 2 of Schedule 16 to FA 2009 (amendment of exempt activities exemption) is amended as follows.
- 33 In paragraph 12—
  - (a) in sub-paragraph (2) omit paragraph (b) and the “and” before it, and
  - (b) after sub-paragraph (2) insert—
    - “(3) The amendments made by this Part have no effect in relation to a qualifying holding company.”
- 34 Omit paragraph 15.
- 35 In paragraph 16—
  - (a) in paragraph (a) after “2009” insert “ but before 1 January 2013 ”, and
  - (b) omit paragraph (b) and the “and” before it.
- 36 In the cross-heading before paragraph 17 for “*during three years before 1 July 2012*” substitute “*from 1 July 2009*”.

*CTA 2010*

- 37 CTA 2010 is amended as follows.
- F70 38 .....

**Textual Amendments**

**F70** Sch. 20 para. 38 omitted (with effect in accordance with s. 36(3)-(5) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), s. 36(2)(b)

- 39 (1) Section 938M (group mismatch schemes: controlled foreign companies) is amended as follows.
  - (2) In subsection (1) for the words from the beginning to “company” substitute “ Section 371SL(1) of TIOPA 2010 (assumption that a CFC ”.
  - (3) In subsection (2)—
    - (a) for “chargeable profits” substitute “ assumed taxable total profits ”, and
    - (b) for “Chapter 4 of Part 17 of ICTA” substitute “ Part 9A of TIOPA 2010 ”.
- 40 In section 1139 (definition of “tax advantage”) in subsection (2) —
  - (a) omit the “or” after paragraph (d), and
  - (b) after paragraph (d) insert—

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“(da) the avoidance or reduction of a charge or assessment to a charge under Part 9A of TIOPA 2010 (controlled foreign companies), or”.

*TIOPA 2010*

41 TIOPA 2010 is amended as follows.

42 (1) Section 179 (compensating payment if advantaged person is controlled foreign company) is amended as follows.

(2) For subsection (1) substitute—

“(1) Subsection (2) applies if—

- (a) the actual provision is provision made or imposed in relation to a CFC,
- (b) for the purpose of determining the CFC's assumed taxable total profits for an accounting period, the CFC's profits and losses are to be calculated in accordance with section 147(3) or (5) in the case of that provision,
- (c) in relation to the accounting period, sums are charged on chargeable companies at step 5 in section 371BC(1), and
- (d) in consequence of the application of section 147(3) or (5) as mentioned in paragraph (b), the total of those sums is more than it would otherwise be.”

(3) In subsection (2) for “controlled foreign company” substitute “ CFC ”.

(4) In subsection (3)—

- (a) in paragraph (a) for “companies mentioned in subsection (1)(c)” substitute “ chargeable companies on which a sum is charged ”, and
- (b) in paragraph (b) for “tax chargeable under section 747(4) of ICTA” substitute “ the CFC charge ”.

(5) For subsection (4) substitute—

“(4) In this section terms which are defined in Part 9A have the same meaning as they have in that Part.

(5) For the purposes of subsections (1)(c) and (d) and (3)(a) assume that any claims made under Chapter 9 of Part 9A for the accounting period were not made.”

F7143 .....

<p><b>Textual Amendments</b></p> <p><b>F71</b> Sch. 20 paras. 43-45 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 11(2)(c)(iii)</p>
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F7144 .....



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**Textual Amendments**

**F71** Sch. 20 paras. 43-45 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 11(2)(c)(iii)

<sup>F71</sup>45 .....

**Textual Amendments**

**F71** Sch. 20 paras. 43-45 repealed (with effect in accordance with Sch. 5 para. 26(1) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 11(2)(c)(iii)

*Insurance Companies (Reserve) (Tax) Regulations 1996 (S.I. 1996/2991)*

46 The Insurance Companies (Reserve) (Tax) Regulations 1996 (S.I. 1996/2991) are amended as follows.

47 (1) Regulation 8A is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) for “controlled foreign company” substitute “ CFC (within the meaning of Part 9A of the Taxation (International and Other Provisions) Act 2010) ”, and

(b) in sub-paragraph (b) for “controlled foreign company” substitute “ CFC ”.

(3) In paragraph (4)—

(a) for “controlled foreign company's” substitute “CFC's”, and

(b) for “the company” substitute “ the CFC ”.

48 In regulation 8B for “controlled foreign company” substitute “ CFC (within the meaning of Part 9A of the Taxation (International and Other Provisions) Act 2010) ”.

**PART 4**

COMMENCEMENT PROVISION

*Commencement provision relating to controlled foreign companies etc*

49 (1) The CFC charge is charged in relation to accounting periods of CFCs beginning on or after 1 January 2013.

(2) The first accounting period of a company which is a CFC at the beginning of 1 January 2013 begins at that time.

(3) Sub-paragraph (2) is subject to paragraph 50 below.

(4) This paragraph is to be read as if contained in Part 9A of TIOPA 2010.

50 (1) The repeal of Chapter 4 of Part 17 of ICTA by paragraph 14 above has no effect for accounting periods within the meaning of that Chapter (see section 751) beginning before 1 January 2013.

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- (2) Sub-paragraphs (3) and (4) apply to a company which—
- (a) has an accounting period within the meaning of Chapter 4 of Part 17 of ICTA beginning before 1 January 2013 but ending on or after that date, and
  - (b) is not, at the end of 31 December 2012, a life assurance subsidiary.
- (3) The company is not to have an accounting period within the meaning of Part 9A of TIOPA 2010 before its accounting period mentioned in sub-paragraph (2)(a) ends.
- (4) If the company is a CFC immediately after the end of its accounting period mentioned in sub-paragraph (2)(a), its first accounting period within the meaning of Part 9A of TIOPA 2010 begins at that time.
- (5) Sub-paragraph (6) applies to a company which—
- (a) apart from sub-paragraph (6), would have an accounting period within the meaning of Chapter 4 of Part 17 of ICTA beginning before 1 January 2013 but ending on or after that date, and
  - (b) is, at the end of 31 December 2012, a life assurance subsidiary.
- (6) The company's accounting period mentioned in sub-paragraph (5)(a) ends at the end of 31 December 2012 (and, accordingly, paragraph 49(2) above applies in relation to the company if it is a CFC at the beginning of 1 January 2013).
- (7) “Life assurance subsidiary” means a company in which a life assurance company has a relevant interest as determined in accordance with Chapter 15 of Part 9A of TIOPA 2010.
- (8) “Life assurance company” means a company carrying on life assurance business within the meaning of Part 2 of this Act (see section 56).
- (9) The amendments made by paragraphs 11, 12, 13, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27(2) and (4), 28, 29, 38, 39, 42, 47 and 48 above are to be ignored so far as appropriate in consequence of the sub-paragraphs above.
- 51      The amendment made by paragraph 27(3) above has no effect for relevant periods beginning before 1 January 2013 (and the relevant provisions of Chapter 4 of Part 17 of ICTA continue to have effect accordingly notwithstanding the repeal of that Chapter by paragraph 14 above).
- 52      The amendment made by paragraph 30 above has no effect in relation to dividends or other distributions received before 1 January 2013.
- 53      The amendment made by paragraph 31 above has no effect in relation to dividends or other distributions received before 1 January 2013 (and the relevant provisions of Chapter 4 of Part 17 of ICTA continue to have effect accordingly notwithstanding the repeal of that Chapter by paragraph 14 above).
- 54      The amendments made by paragraphs 33 to 36 above are treated as having come into force on 30 June 2012.

*Commencement provision relating to foreign permanent establishments*

- 55      (1) The amendments made by paragraphs 3, 5 and 9 above come into force on 1 January 2013; but the amendment made by paragraph 5(3) above has no effect in relation to elections made before that date.

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- (2) The amendments made by paragraphs 4 and 6 to 8 above have effect for relevant accounting periods beginning on or after 1 January 2013.

## PART 5

### TRANSITIONAL PROVISION

#### *First accounting periods*

- 56 (1) This paragraph applies in relation to a CFC the first accounting period of which is determined in accordance with paragraph 49(2) or 50(4) above.
- (2) For the purposes of sections 371SD(6), 371SK(3) and 371SM(3) of TIOPA 2010, assume that the CFC became a CFC at the time mentioned in paragraph 49(2) or 50(4) (as the case may be).

#### *Elections under section 9A of CTA 2010*

- 57 (1) This paragraph applies if—
- (a) during a company's accounting period within the meaning of Chapter 4 of Part 17 of ICTA a notice is given in relation to the company under paragraph 4(2C) of Schedule 24 to ICTA,
  - (b) as a result of that, the company is to be assumed under paragraph 4(2C) of Schedule 24 to ICTA to have made an election under section 9A of CTA 2010,
  - (c) the assumed election—
    - (i) does not cease to have effect before the end of the company's last accounting period within the meaning of Chapter 4 of Part 17 of ICTA to begin before 1 January 2013, and
    - (ii) apart from the repeal of that Chapter by paragraph 14 above, would not have ceased to have effect at the end of that period, and
  - (d) the company is a CFC immediately after the end of its last accounting period mentioned in paragraph (c) and its first accounting period within the meaning of Part 9A of TIOPA 2010 begins at that time accordingly.
- (2) In the application of Part 9A of TIOPA 2010 in relation to the company as a CFC, the assumption mentioned in sub-paragraph (1)(b) is to continue to be made as if it were required to be made by section 371SH(2) of TIOPA 2010.

#### *Exempt periods*

- 58 (1) This paragraph applies if—
- (a) there is an exempt period in relation to a company under Part 3A of Schedule 25 to ICTA (cases in which section 747(3) of ICTA does not apply) which begins before 1 January 2013,
  - (b) the exempt period—
    - (i) does not end before the end of the company's last accounting period within the meaning of Chapter 4 of Part 17 of ICTA to begin before 1 January 2013, and

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- (ii) apart from the repeal of that Chapter by paragraph 14 above, would not have ended at the end of that period, and
  - (c) the company is a CFC immediately after the end of its last accounting period mentioned in paragraph (b) and its first accounting period within the meaning of Part 9A of TIOPA 2010 begins at that time accordingly.
- (2) The remainder of the exempt period is to be treated as an exempt period of the company for the purposes of Chapter 10 of Part 9A of TIOPA 2010.
  - (3) The remainder of the exempt period is to be determined in accordance with paragraph 15F of Schedule 25 to ICTA and, for this purpose, assume that Chapter 4 of Part 17 of ICTA continues to apply in relation to the company as if that Chapter had not been repealed by paragraph 14 above; and section 371JD of TIOPA 2010 is to be ignored accordingly.
  - (4) Section 371JB of TIOPA 2010 applies in relation to the exempt period as if subsection (1)(b) and (c) were omitted.
  - (5) Section 371JE of TIOPA 2010 applies in relation to the exempt period as if subsection (1)(b) were omitted.
  - (6) Section 371JF of TIOPA 2010 does not affect the application of the exempt period exemption or section 371JE of TIOPA 2010 by virtue of this paragraph.

*Designer rate tax provisions*

- 59 (1) The Controlled Foreign Companies (Designer Rate Tax Provisions) Regulations 2000 (S.I. 2000/3158) are to have effect for the purposes of section 371ND of TIOPA 2010 as if they had been made by the HMRC Commissioners under that section.
- (2) The power of the HMRC Commissioners to make regulations under that section includes power to revoke or amend the 2000 Regulations for the purposes of that section.

SCHEDULE 21

Section 183

RELIEF IN RESPECT OF DECOMMISSIONING EXPENDITURE

*Restriction of relief available in respect of decommissioning expenditure*

- 1 Part 8 of CTA 2010 (oil activities) is amended as follows.
- 2 In section 330 (supplementary charge in respect of ring fence trades), at the end of subsection (2) insert—
  - “See also sections 330A and 330B (which provide for the amount of adjusted ring fence profits to be further adjusted where decommissioning expenditure has been taken into account).”
- 3 After section 330 insert—

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### **“330A Decommissioning expenditure taken into account in calculating ring fence profits**

- (1) This section applies where—
  - (a) any decommissioning expenditure is taken into account in calculating the amount mentioned in paragraph (a) of subsection (3) of section 330 or the amount mentioned in paragraph (b) of that subsection, and
  - (b) if that expenditure were not so taken into account, the amount of the adjusted ring fence profits of the company for the accounting period would be greater than nil.
- (2) In calculating for the purposes of section 330(1) the amount of the adjusted ring fence profits of the company for the accounting period, there is to be added an amount equal to the appropriate fraction of the used-up amount of that expenditure.
- (3) For the purposes of this section—

“the appropriate fraction” is

$$\frac{SC - 20\%}{SC}$$

where SC is the percentage specified in section 330(1) for the accounting period, and

“the used-up amount”, in relation to any expenditure, is the difference between—

- (a) the adjusted ring fence profits of the company for the accounting period determined in the absence of this section (which may be nil), and
  - (b) what the adjusted ring fence profits of the company for that accounting period would be if that expenditure were not taken into account as mentioned in subsection (1).
- (4) In determining for the purposes of this section whether, and to what extent, any losses which have been taken into account as mentioned in subsection (1) are attributable to decommissioning expenditure—
    - (a) assume that any amounts of any other expenditure which could be taken into account in calculating those losses are taken into account before any amounts of decommissioning expenditure, and
    - (b) where any losses have been surrendered in accordance with Part 5, the company must specify, in accordance with a basis determined jointly by the company, the surrendering company (if different) and any other claimant company, whether any of those losses is attributable to decommissioning expenditure.
  - (5) But if paragraph (a) of subsection (4) would work unfavourably in the company's case, the company may elect for that paragraph not to apply in relation to it and for any amounts of expenditure which could be taken into

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account in calculating those losses instead to be taken into account in the order specified in the election.

- (6) In determining for the purposes of this section the used-up amount of decommissioning expenditure, assume that any other amounts that could be deducted in calculating the adjusted ring fence profits of the company for the accounting period have already been so deducted.
- (7) But if subsection (6) would work unfavourably in the company's case, the company may elect for that subsection not to apply in relation to it and for any amounts that could be deducted in calculating those adjusted ring fence profits instead to be deducted in the order specified in the election.
- (8) For the purposes of this section, any deduction made under section 330B is to be disregarded.
- (9) This section does not apply in relation to any accounting period for which the percentage specified in section 330(1) is less than or equal to 20% (including any accounting period beginning before 24 March 2011 and ending on or after that date).
- (10) In this section—
  - “claimant company” and “surrendering company” are to be read in accordance with Part 5 (see section 188), and
  - “decommissioning expenditure” has the meaning given by section 330C.

### **330B Decommissioning expenditure taken into account for PRT purposes**

- (1) This section applies where—
  - (a) any decommissioning expenditure is taken into account in calculating the assessable profit accruing to a participator in any chargeable period from an oil field, and
  - (b) if that expenditure were not so taken into account, the amount of petroleum revenue tax with which the participator would be chargeable in respect of the field for the chargeable period would be greater than nil.
- (2) In calculating for the purposes of section 330(1) the amount of the participator's adjusted ring fence profits for the relevant accounting period, there is to be deducted an amount equal to the appropriate fraction of the PRT difference.
- (3) For the purposes of this section—
  - “the appropriate fraction” is

$$\frac{SC - 20\%}{SC}$$

where SC is the percentage specified in section 330(1) for the relevant accounting period, and

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- “the PRT difference” is the difference between—
- (a) the amount of petroleum revenue tax with which the participator is chargeable for the chargeable period (which may be nil), and
  - (b) the amount of petroleum revenue tax with which the participator would be chargeable for that chargeable period if the decommissioning expenditure were not taken into account as mentioned in subsection (1).
- (4) In determining for the purposes of this section whether, and to what extent, any allowable losses which have been taken into account as mentioned in subsection (1) are attributable to decommissioning expenditure, assume that any amounts of any other expenditure which could be taken into account in calculating those losses are taken into account before any amounts of decommissioning expenditure.
- (5) But if subsection (4) would work unfavourably in the participator's case, the participator may elect for that subsection not to apply in relation to it and for any amounts of expenditure which could be taken into account in calculating those losses instead to be taken into account in the order specified in the election.
- (6) This section does not apply in relation to any accounting period for which the percentage specified in section 330(1) is less than or equal to 20% (including any accounting period beginning before 24 March 2011 and ending on or after that date).
- (7) In this section—
- “assessable profit” and “allowable loss” have the same meaning as in Part 1 of OTA 1975 (see section 2 of that Act),
  - “decommissioning expenditure” has the meaning given by section 330C, and
  - “the relevant accounting period”—
    - (a) in a case where section 301 applies, is to be construed in accordance with subsection (7) of that section, and
    - (b) in any other case, means the accounting period for which a deduction in respect of any petroleum revenue tax with which the participator may be chargeable for the chargeable period mentioned in subsection (1) would be made under section 299(2) (deduction of PRT in calculating income for corporation tax purposes).

### **330C Meaning of “decommissioning expenditure”**

- (1) In sections 330A and 330B “decommissioning expenditure” means expenditure incurred in connection with—
- (a) demolishing any plant or machinery,
  - (b) preserving any plant or machinery pending its reuse or demolition,
  - (c) preparing any plant or machinery for reuse,
  - (d) arranging for the reuse of any plant or machinery, or
  - (e) the restoration of any land.

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- (2) It is immaterial for the purposes of subsection (1)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.
  - (3) It is immaterial for the purposes of subsection (1)(c) and (d) whether the plant or machinery is in fact reused.
  - (4) In subsection (1)(e) “restoration” includes landscaping.
  - (5) The Treasury may by order amend this section.
  - (6) An order under subsection (5) may include transitional provision and savings.”
- 4 In section 7 of FA 2011 (increase in rate of supplementary charge), in subsection (6), at the end insert—
- “See also sections 330A and 330B of CTA 2010 (which have effect in relation to the separate accounting period consisting of so much of the straddling period as falls on or after 24 March 2011).”

*Extension of loss relief available in respect of decommissioning expenditure*

- 5 (1) In Chapter 2 of Part 4 of CTA 2010 (relief for trade losses), section 40 (ring fence trades: extension of periods for which relief may be given) is amended as follows.
- (2) In subsection (1)(b), for the words from “for which” to the end substitute “ for which any allowances under section 164 or 403 of CAA 2001 are made to the company in respect of decommissioning expenditure ”.
- (3) In subsection (3)—
- (a) for “the allowance” substitute “ the sum of the allowances ”, and
  - (b) for “that allowance” substitute “ that amount ”.
- (4) After that subsection insert—
- “(3A) In this section “decommissioning expenditure” has the meaning given by section 330C.”

*Application*

- 6 (1) The amendments made by this Schedule have effect in relation to expenditure incurred in connection with decommissioning carried out on or after 21 March 2012.
- (2) In sub-paragraph (1) “decommissioning” means anything falling within any of paragraphs (a) to (e) of section 330C(1) of CTA 2010 (as inserted by this Schedule).

SCHEDULE 22

Section 184

REDUCTION OF SUPPLEMENTARY CHARGE FOR CERTAIN OIL FIELDS

*Amendments of Chapter 7 of Part 8 of CTA 2010*

- 1 In Part 8 of CTA 2010 (oil activities), Chapter 7 (reduction of supplementary charge for certain new oil fields) is amended as follows.



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- 2 In section 334 (company's pool of field allowances), for “new oil fields” substitute “eligible oil fields”.

**Commencement Information**

**I8** Sch. 22 para. 2 in force at 1.4.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/744, art. 2

- 3 (1) Section 337 (initial licensee to hold a field allowance) is amended as follows.
- (2) In subsection (1)—
- (a) for “an initial licensee in a new oil field” substitute “ a licensee in an additionally-developed oil field or a new oil field (an “eligible oil field”) on the authorisation day ”, and
- (b) at the end insert “ (and accordingly may hold more than one field allowance for the field at the same time) ”.
- (3) In subsection (2), omit “initial”.
- (4) The heading of that section becomes “ **Licensee to hold field allowance** ”.

**Commencement Information**

**I9** Sch. 22 para. 3 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

- 4 In section 338 (holding a field allowance on acquisition of equity share), for “a new oil field” substitute “ an eligible oil field ”.

**Commencement Information**

**I10** Sch. 22 para. 4 in force at 1.4.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/744, art. 2

- 5 In section 339 (unactivated amount of field allowance), in subsections (1) and (3), for “a new oil field” substitute “ an eligible oil field ”.

**Commencement Information**

**I11** Sch. 22 para. 5 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

- 6 (1) Section 340 (introduction to section 341) is amended as follows.
- (2) In subsection (1), for “a new oil field” substitute “ an eligible oil field ”.
- (3) In subsection (5), for “the new oil field” substitute “ the field ”.

**Commencement Information**

**I12** Sch. 22 para. 6 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

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- 7 (1) Section 341 (activation of field allowance) is amended as follows.
- (2) In subsection (1), for “the new oil field” substitute “ the eligible oil field ”.
- (3) After subsection (3) insert—
- “(4) Subsection (5) applies for the purpose of determining the amount of a company's field allowance for an eligible oil field (“the relevant field allowance”) to be activated in a case where—
- (a) the company holds one or more other field allowances for the field, and
- (b) at the time when the company began to hold the relevant field allowance, the company already held one or more of those other field allowances (an “earlier field allowance”).
- (5) The amount of the company's relevant income from the field in the accounting period is to be reduced (but not to below nil) by the amount of any earlier field allowance activated in respect of the accounting period.
- (6) In a case where the company began to hold two or more field allowances at the same time, the company may determine the order in which the company is to be regarded for the purposes of this section as having begun to hold them.”

**Commencement Information**

**I13** Sch. 22 para. 7 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

- 8 In section 342 (introduction to sections 343 and 344), in subsections (1) and (6), for “a new oil field” substitute “ an eligible oil field ”.

**Commencement Information**

**I14** Sch. 22 para. 8 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

- 9 In section 343 (reference periods), in subsection (3), for “the new oil field” substitute “ the eligible oil field ”.

**Commencement Information**

**I15** Sch. 22 para. 9 in force at 1.4.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/744, art. 2

- 10 (1) Section 344 (activation of field allowance) is amended as follows.
- (2) In subsection (1), for “the new oil field” substitute “ the eligible oil field ”.
- (3) In subsection (4), for “the new oil field” substitute “ the field ”.
- (4) After that subsection insert—

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- “(5) Subsection (6) applies for the purpose of determining the amount of a company's field allowance for an eligible oil field (“the relevant field allowance”) to be activated in a case where—
- (a) the company holds one or more other field allowances for the field, and
  - (b) at the time when the company began to hold the relevant field allowance, the company already held one or more of those other field allowances (an “earlier field allowance”).
- (6) The amount of the company's relevant income from the field in the reference period is to be reduced (but not to below nil) by the amount of any earlier field allowance activated in respect of the reference period.
- (7) In a case where the company began to hold two or more field allowances at the same time, the company may determine the order in which the company is to be regarded for the purposes of this section as having begun to hold them.”

**Commencement Information**

**I16** [Sch. 22 para. 10](#) in force at 1.4.2013 for the purposes of the amendments made by that paragraph by [S.I. 2013/744, art. 2](#)

- 11 (1) Section 345 (introduction to sections 346 and 347) is amended as follows.
- (2) In subsection (2)—
- (a) for “a new oil field” substitute “ an eligible oil field ”, and
  - (b) for “the new oil field” substitute “ the field ”.
- (3) In subsections (3) and (4), for “the new oil field” substitute “ the field ”.
- (4) In subsection (6), for “a new oil field” substitute “ an eligible oil field ”.

**Commencement Information**

**I17** [Sch. 22 para. 11](#) in force at 1.4.2013 for the purposes of the amendments made by that paragraph by [S.I. 2013/744, art. 2](#)

- 12 (1) Section 346 (reduction of field allowance if equity disposed of) is amended as follows.
- (2) In subsection (1), for “the new oil field” (in the first place it occurs) substitute “ the eligible oil field ”.
- (3) In the definitions of “E1” and “E2”, for “the new oil field” substitute “ the field ”.

**Commencement Information**

**I18** [Sch. 22 para. 12](#) in force at 1.4.2013 for the purposes of the amendments made by that paragraph by [S.I. 2013/744, art. 2](#)

- 13 (1) Section 347 (acquisition of field allowance if equity acquired) is amended as follows.

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- (2) In subsection (1), for “the new oil field” substitute “ the eligible oil field ”.
- (3) In subsection (2)—
  - (a) for “the new oil field” (in the first place it occurs) substitute “ the eligible oil field ”, and
  - (b) for “the new oil field” (in the second place it occurs) substitute “ the field ”.
- (4) In subsection (4), for “the new oil field” substitute “ the field ”.

#### Commencement Information

**I19** Sch. 22 para. 13 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

- 14 (1) Section 349 (orders) is amended as follows.
  - (2) In subsection (1), before “qualifying oil fields” insert “ additionally-developed oil fields or ”.
  - (3) In subsection (2), for “new oil field” (in both places) substitute “ eligible oil field ”.
  - (4) After subsection (2) insert—
    - “(2A) The Commissioners for Her Majesty's Revenue and Customs may by order make provision about the meaning of any term used in this Chapter.”
  - (5) For subsection (3) substitute—
    - “(3) The provision that may be made by an order under this section includes—
      - (a) provision amending this Chapter,
      - (b) provision that has effect in relation to times before the order is made and does not increase any person's liability to tax, and
      - (c) incidental, supplemental, consequential, transitional or saving provision, including provision amending, repealing or revoking any provision made by or under this Act.”
- 15 Before section 350 insert—

#### **Additionally-developed oil field”**

- “349A(1) In this Chapter an oil field is an “additionally-developed oil field” if—
  - (a) a national authority has authorised a project described in an addendum to the consent for development for the oil field, and
  - (b) the project meets such conditions as may be specified in an order made by the Commissioners for Her Majesty's Revenue and Customs.
- (2) In this section—
  - “consent for development”, in relation to an oil field, does not include consent which is limited to the purpose of testing the characteristics of an oil-bearing area,
  - “development”, in relation to an oil field, means winning oil from the field otherwise than in the course of searching for oil or drilling wells, and

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- “national authority” means—
- (a) the Secretary of State, or
  - (b) a Northern Ireland department.
- (3) An order under this section may include provision having effect in relation to times before it is made, provided that it does not increase any person's liability to tax.
- (4) No order may be made under this section unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the House of Commons.”
- 16 (1) Section 357 (other definitions) is amended as follows.
- (2) For the definition of “authorisation day” substitute—
- ““authorisation day” means—
- (a) in relation to an additionally-developed oil field, the day when the project mentioned in section 349A(1) is authorised, and
  - (b) in relation to a new oil field, the day when development of the field is authorised as mentioned in section 350(1)(b),”.
- (3) After that definition insert—
- ““eligible oil field” means an oil field which is an additionally-developed oil field or a new oil field,”.
- (4) Omit the definition of “initial licensee”.
- (5) In the definition of “relevant income”, for “a new oil field” substitute “ an eligible oil field ”.

**Commencement Information**

**I20** Sch. 22 para. 16(2)(4)(5) in force at 1.4.2013 for the purposes of the amendments made by those subparagraphs by S.I. 2013/744, art. 2

- 17 The heading of the Chapter becomes “ REDUCTION OF SUPPLEMENTARY CHARGE FOR ELIGIBLE OIL FIELDS ”.

**Commencement Information**

**I21** Sch. 22 para. 17 in force at 1.4.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/744, art. 2

*Consequential amendments*

- 18 (1) Part 8 of CTA 2010 (oil activities) is amended as follows.
- (2) In section 270 (overview of Part)—
- (a) in subsection (7), for “certain new oil fields” substitute “ eligible oil fields ”, and
  - (b) in subsection (8), for paragraph (c) substitute—  
“(c) eligible oil field”, see section 357.”

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- (3) In section 330 (supplementary charge in respect of ring fence trades), in subsection (5), for “certain new oil fields” substitute “eligible oil fields”.

**Commencement Information**

**I22** Sch. 22 para. 18 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

- 19 (1) Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.  
 (2) At the appropriate place insert—

“eligible oil field (in Chapter 7 of Part 8) section 357”;

“““additionally-developed oil field (in Chapter section 349A”.  
 7 of Part 8)

- (3) Omit the entry relating to “initial licensee (in Chapter 7 of Part 8)”.

**Commencement Information**

**I23** Sch. 22 para. 19 in force at 1.4.2013 for the purposes of the amendments made by that paragraph by S.I. 2013/744, art. 2

- 20 In section 63 of FA 2011 (reduction of supplementary charge for new oil fields), omit subsection (3).

**Commencement Information**

**I24** Sch. 22 para. 20 in force at 1.4.2013 for the purposes of the amendment made by that paragraph by S.I. 2013/744, art. 2

*Commencement*

- 21 (1) The amendments made by paragraphs 14, 15 and 16(3) come into force on the day on which this Act is passed.  
 (2) The other amendments made by this Schedule come into force in accordance with provision contained in an order made by the Treasury.  
 (3) An order made under sub-paragraph (2) may—  
 (a) make different provision for different purposes;  
 (b) provide for such amendments to have effect in relation to times before the order is made.
- 22 (1) The Commissioners for Her Majesty's Revenue and Customs may by order make any incidental, supplemental, consequential, transitional or saving provision in consequence of the amendments made by this Schedule.  
 (2) An order under this paragraph may—  
 (a) amend, repeal or revoke any provision made by or under CTA 2010;

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- (b) include provision having effect in relation to times before it is made, provided that it does not increase any person's liability to tax.

## SCHEDULE 23

Section 190

### AIR PASSENGER DUTY

#### PART 1

##### NORTHERN IRELAND LONG HAUL RATES OF DUTY FROM 1 NOVEMBER 2011 TO 31 MARCH 2012

- 1 In section 30 of FA 1994 (air passenger duty: rates of duty) after subsection (4A) insert—
- “(4B) Subsection (4C) applies if—
- (a) the passenger's journey is a relevant Northern Ireland journey, and
  - (b) apart from subsection (4C), subsection (2) would not apply to the journey.
- (4C) The applicable rate in subsection (2) applies to the journey instead of the applicable rate in subsection (3), (4) or (4A) (as the case may be).
- (4D) A passenger's journey is a “relevant Northern Ireland journey”—
- (a) in the case of a journey which has only one flight, if the flight begins in Northern Ireland, and
  - (b) in any other case, if the first flight of the journey—
    - (i) begins in Northern Ireland, and
    - (ii) is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.”
- 2 In article 3 of the Air Passenger Duty (Connected Flights) Order 1994 (S.I. 1994/1821) for “section 30(6), or section 31(3),” substitute “ Chapter 4 of Part 1 ”.
- 3 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 November 2011 but before 1 April 2012.

#### PART 2

##### RATES OF DUTY FROM 1 APRIL 2012

- 4 (1) Section 30 of FA 1994 (air passenger duty: rates of duty) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (a) for “£12” substitute “ £13 ”, and
  - (b) in paragraph (b) for “£24” substitute “ £26 ”.
- (3) In subsection (3)—
- (a) in paragraph (a) for “£60” substitute “ £65 ”, and

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(b) in paragraph (b) for “£120” substitute “ £130 ”.

(4) In subsection (4)—

- (a) in paragraph (a) for “£75” substitute “ £81 ”, and
- (b) in paragraph (b) for “£150” substitute “ £162 ”.

(5) In subsection (4A)—

- (a) in paragraph (a) for “£85” substitute “ £92 ”, and
- (b) in paragraph (b) for “£170” substitute “ £184 ”.

(6) After subsection (4A) insert—

“(4B) Subsection (4C) applies if—

- (a) the passenger's journey is a relevant Northern Ireland journey, and
- (b) apart from subsection (4C), subsection (2) would not apply to the journey.

(4C) The applicable rate in subsection (2) applies to the journey instead of the applicable rate in subsection (3), (4) or (4A) (as the case may be).

(4D) A passenger's journey is a “relevant Northern Ireland journey”—

- (a) in the case of a journey which has only one flight, if the flight begins in Northern Ireland, and
- (b) in any other case, if the first flight of the journey—
  - (i) begins in Northern Ireland, and
  - (ii) is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.”

5 In article 3 of the Air Passenger Duty (Connected Flights) Order 1994 (S.I. 1994/1821) for “section 30(6), or section 31(3),” substitute “ Chapter 4 of Part 1 ”.

6 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 April 2012.

### PART 3

#### DEVOLUTION OF NORTHERN IRELAND LONG HAUL RATES OF DUTY

7 Chapter 4 of Part 1 of FA 1994 (air passenger duty) is amended as follows.

8 (1) Section 30 (rates of duty) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1) does not apply to the carriage of a chargeable passenger to which section 30A below (Northern Ireland long haul rates of duty) applies.”

(3) Omit subsections (4B) to (4D) (as inserted by paragraph 4(6) above).

(4) The amendments made by this paragraph have effect in relation to the carriage of passengers beginning on or after the relevant day as defined in section 30A of FA 1994 (as inserted by paragraph 9 below).

9 After section 30 insert—



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### **“30A Northern Ireland long haul rates of duty**

- (1) This section applies to the carriage of a chargeable passenger if—
  - (a) the carriage begins on or after the relevant day,
  - (b) the only flight, or the first flight, of the passenger's journey begins at a place in Northern Ireland,
  - (c) the passenger's journey does not end at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A, and
  - (d) if the passenger's journey has more than one flight, the first flight is not followed by a connected flight beginning at a place in the United Kingdom or a territory specified in Part 1 of Schedule 5A.
- (2) Air passenger duty is chargeable on the carriage of the chargeable passenger at the rate determined as follows.
- (3) If the passenger's journey ends at a place in a territory specified in Part 2 of Schedule 5A—
  - (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and
  - (b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.
- (4) If the passenger's journey ends at a place in a territory specified in Part 3 of Schedule 5A—
  - (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and
  - (b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.
- (5) If the passenger's journey ends at any other place—
  - (a) if the passenger's agreement for carriage provides for standard class travel in relation to every flight on the passenger's journey, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, and
  - (b) in any other case, the rate is the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph.
- (6) The rate of £0 may be set for the purposes of any paragraph.
- (7) The same rate may be set for the purposes of two or more paragraphs.
- (8) Subsections (5) to (7) and (10) to (12) of section 30 apply for the purposes of this section as they apply for the purposes of that section.
- (9) “The relevant day” means the day appointed as such by an order.
- (10) Section 42(4) and (5) does not apply to an order under subsection (9).

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- (11) None of the following applies to any matter in respect of which this section authorises provision to be made by an Act of the Northern Ireland Assembly—
- (a) any paragraph of Schedule 2 or 3 to the Northern Ireland Act 1998 (excepted and reserved matters);
  - (b) section 63 of that Act (financial acts of the Assembly).
- (12) A Bill containing provision authorised by this section may not be passed by the Northern Ireland Assembly except in pursuance of a recommendation which—
- (a) is made by the Minister of Finance and Personnel, and
  - (b) is signified to the Assembly by the Minister or on the Minister's behalf.
- (13) A Bill containing provision authorised by this section may not be passed by the Northern Ireland Assembly without cross-community support (as defined in section 4(5) of the Northern Ireland Act 1998).
- (14) “Passed”, in relation to a Bill, means passed at the final stage (at which the Bill can be passed or rejected but not amended).
- (15) Duty paid to the Commissioners in respect of the carriage of chargeable passengers to which this section applies must be paid by the Commissioners into the Consolidated Fund of Northern Ireland.”
- 10 (1) Section 33 (registration of aircraft operators) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) If the Commissioners decide to keep a register under section 33A below, an operator of a chargeable aircraft does not become liable to be registered under this section just because the aircraft is used for the carriage of chargeable passengers to which section 30A above applies.”
- (3) In subsection (3)(b) after “passengers” insert “ or, if the Commissioners have decided to keep a register under section 33A below, that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers apart from the carriage of chargeable passengers to which section 30A above applies ”.
- (4) In subsection (4) after “registered” (in both places) insert “ under this section ”.
- (5) In subsection (7) after “section” insert “ or section 33A below ”.
- 11 After section 33 insert—

**“33A Registration of Northern Ireland long haul aircraft operators**

- (1) The Commissioners may under this section keep a register of aircraft operators.
- (2) If the Commissioners decide to keep a register under this section, the operator of a chargeable aircraft becomes liable to be registered under this section if the aircraft is used for the carriage of chargeable passengers to which section 30A above applies.

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- (3) A person who has become liable to be registered under this section ceases to be so liable if the Commissioners are satisfied at any time—
- (a) that he no longer operates any chargeable aircraft, or
  - (b) that no chargeable aircraft which he operates will be used for the carriage of chargeable passengers to which section 30A above applies.
- (4) A person who is not registered under this section and has not given notice under this subsection shall, if he becomes liable to be registered under this section at any time, give written notice of that fact to the Commissioners not later than the end of the prescribed period beginning with that time.
- (5) Notice under subsection (4) above shall be in such form, be given in such manner and contain such information as the Commissioners may direct.”
- 12 In section 34 (fiscal representatives) in subsection (5)—
- (a) omit “under section 33 above”, and
  - (b) in paragraph (a) for “that section” substitute “ section 33 or 33A above ”.
- 13 After section 41 insert—

**“41A Northern Ireland long haul rates of duty: disclosure of information**

- (1) An officer of Revenue and Customs may disclose to the Secretary of State, the Treasury or the Department of Finance and Personnel in Northern Ireland any information for purposes connected with the setting of rates of duty under section 30A above, including (in particular) to enable the setting of rates under that section to be taken into account for the purposes of section 58 of the Northern Ireland Act 1998 (payments by Secretary of State into Consolidated Fund of Northern Ireland).
  - (2) Information disclosed under subsection (1) above may not be further disclosed without the consent of the Commissioners (which may be general or specific).
  - (3) In section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) references to section 18(1) of that Act are to be read as including a reference to subsection (2) above.”
- 14 In section 44 of CRCA 2005 (payment into Consolidated Fund) after subsection (2) (c) insert—
- “(ca) sums required by section 30A(15) of the Finance Act 1994 (air passenger duty: Northern Ireland long haul rates of duty) to be paid into the Consolidated Fund of Northern Ireland,”.
- 15 In column 2 of the Table in paragraph 1 of Schedule 41 to FA 2008 (penalties for failure to notify), in the entry relating to air passenger duty, after “33(4)” insert “ or 33A(4) ”.

**PART 4**

OTHER PROVISION

- 16 Chapter 4 of Part 1 of FA 1994 (air passenger duty) is amended as follows.

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17 In section 28 (introduction to air passenger duty) for subsection (3) substitute—  
“(3) Sections 29 and 29A below set out how to determine if an aircraft is a chargeable aircraft for the purposes of this Chapter.”

18 (1) Section 29 (chargeable aircraft) is amended as follows.

(2) For subsection (1) substitute—

“(1) For the purposes of this Chapter an aircraft is a chargeable aircraft if—

- (a) it is a fixed-wing aircraft designed or adapted to carry persons in addition to the flight crew,
- (b) its authorised take-off weight is not less than 5.7 tonnes, and
- (c) it is fuelled by kerosene (as defined in section 1(8) of the Hydrocarbon Oil Duties Act 1979).”

(3) In subsection (2) for “ten” (wherever occurring) substitute “ 5.7 ”.

(4) Omit subsection (3).

19 After section 29 insert—

**“29A Chargeable aircraft: exceptions**

(1) This section applies for the purposes of this Chapter.

(2) An aircraft is not a chargeable aircraft whenever its operation falls within an exemption set out in sub-paragraph (b), (c), (f) or (g) under the category of activity “Aviation” in Annex I to Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 (as amended by Directive [2008/101/EC](#) of the European Parliament and of the Council of 19 November 2008).

(3) Those exemptions are to be read in accordance with paragraphs 2.2 to 2.5 of the Annex to Commission Decision [2009/450/EC](#) of 8 June 2009.

(4) An aircraft is not a chargeable aircraft whenever it is being operated under a public service obligation imposed under Article 16 of Regulation [\(EC\) No 1008/2008](#) of the European Parliament and of the Council of 24 September 2008 (common rules for the operation of air services).”

20 In section 30 (rate of duty) before subsection (5) insert—

“(4E) In relation to the carriage of a chargeable passenger on an aircraft to which subsection (4F) applies—

- (a) if the rate which (apart from this subsection) would apply is the rate in subsection (2)(a) or (b), a rate equal to twice the rate in subsection (2)(b) is to apply instead,
- (b) if the rate which (apart from this subsection) would apply is the rate in subsection (3)(a) or (b), a rate equal to twice the rate in subsection (3)(b) is to apply instead,
- (c) if the rate which (apart from this subsection) would apply is the rate in subsection (4)(a) or (b), a rate equal to twice the rate in subsection (4)(b) is to apply instead, and

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- (d) if the rate which (apart from this subsection) would apply is the rate in subsection (4A)(a) or (b), a rate equal to twice the rate in subsection (4A)(b) is to apply instead.

(4F) This subsection applies to an aircraft if—

- (a) its authorised take-off weight is not less than 20 tonnes, but
- (b) it is not authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants).

(4G) In subsection (4F)(a) “take-off weight” is to be read in accordance with section 29(2) but as if “20” were substituted for “5.7” wherever occurring.

(4H) For the purposes of subsection (4F)(b) an aircraft is authorised to seat more than 18 persons (excluding members of the flight crew and cabin attendants) if—

- (a) there is a certificate of airworthiness (as defined in section 29(4)) in force in respect of the aircraft showing that the maximum number of persons who may be seated on the aircraft (excluding members of the flight crew and cabin attendants) is more than 18, or
- (b) the Commissioners are satisfied that the aircraft is designed or adapted to seat more than 18 persons (excluding members of the flight crew and cabin attendants) or the aircraft belongs to a class or description of aircraft in respect of which the Commissioners are so satisfied.”

21 In section 30A (as inserted by paragraph 9 above) after subsection (5) insert—

“(5A) In relation to the carriage of a chargeable passenger on an aircraft to which section 30(4F) applies—

- (a) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (3)(a) or (b), the following rate is to apply instead—
  - (i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or
  - (ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (3)(b),
- (b) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (4)(a) or (b), the following rate is to apply instead—
  - (i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or
  - (ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (4)(b), and
- (c) if the rate which (apart from this subsection) would apply is the rate set for the purposes of subsection (5)(a) or (b), the following rate is to apply instead—
  - (i) the rate set by an Act of the Northern Ireland Assembly for the purposes of this paragraph, or

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- (ii) if no rate is so set for the purposes of this paragraph, a rate equal to twice the rate set for the purposes of subsection (5)(b).”
- 22 (1) Section 43 (interpretation) is amended as follows.
- (2) In subsection (1) for the definition of “passenger” substitute—
- ““passenger”, in relation to any aircraft, means any person carried on the aircraft other than—
- (a) a member of the flight crew,
- (b) a cabin attendant, or
- (c) a person who is not carried for reward and who satisfies such other requirements as may be prescribed.”
- (3) After subsection (1) insert—
- “(1A) The agreements and arrangements covered by the definition of “agreement for carriage” in subsection (1) include informal agreements or arrangements between, for example, members of a family or friends.”
- 23 The amendments made by this Part of this Schedule have effect in relation to the carriage of passengers beginning on or after 1 April 2013.

## SCHEDULE 24

Section 191

### MACHINE GAMES DUTY

#### PART 1

##### IMPOSITION OF DUTY

###### *The duty*

- 1 A duty of excise, to be known as machine games duty, is to be charged on the playing of dutiable machine games in the United Kingdom.

###### *Dutiable machine games*

- 2 (1) A “machine game” is a game (whether of skill or chance or both) played on a machine for a prize.
- (2) A machine game is “dutiable” if—
- (a) the prize or at least one of the prizes that can be won from playing the game on the machine is or includes cash, and
- (b) the maximum amount of cash that a player can win from playing the game on the machine exceeds the lowest charge payable for playing the game on the machine.
- (3) “Cash” means money or anything that may reasonably be considered to equate to money, including—
- (a) anything that can be used in the same way as if it were money, and

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- (b) anything that allows a person to obtain money on demand or otherwise represents a promise to pay a person money on demand.
- (4) The things mentioned in sub-paragraph (3) include—
- (a) anything of an intangible nature (such as points), and
  - (b) anything that a person has as a result of the taking of any step by someone else (such as the crediting of an account).
- (5) If an adult would reasonably assume that a machine game satisfies the tests in sub-paragraph (2)(a) and (b) (taking into account the way in which the game is presented and all the other circumstances of the case), the game is taken to be a dutiable machine game, whether or not it does in fact satisfy those tests.
- (6) In identifying for the purposes of this paragraph the lowest charge payable for playing a game, any offer that waives or permits a player to pay less than the charge that the player would be required to pay without the offer is disregarded.
- (7) Paragraph 3 makes further provision about what counts as a dutiable machine game for the purposes of this Schedule.
- 3 (1) A game that would otherwise be a dutiable machine game does not count as one if—
- (a) it involves betting on future real events,
  - (b) bingo duty is charged on the playing of it,
  - (c) lottery duty is charged on the taking of a ticket or chance in it, or
  - (d) it is a real game of chance and playing it—
    - (i) amounts to dutiable gaming for the purposes of section 10 of FA 1997, or
    - (ii) would do so but for subsection (3), (3B) or (4) of that section.
- (2) A “real game of chance” is a game of chance (within the meaning of [F72Part 3 of FA 2014]) that is non-virtual.
- (3) A game consisting of several stages counts as a dutiable machine game if—
- (a) at least one stage would (if played on its own) be a dutiable machine game, or
  - (b) the stages (taken together) amount to a dutiable machine game.
- (4) If more than one game can be played on a given machine, each game is to be considered separately in deciding whether it is a dutiable machine game.

#### Textual Amendments

**F72** Words in Sch. 24 para. 3(2) substituted (1.12.2014) by [Finance Act 2014 \(c. 26\)](#), s. 198(2)(c), [Sch. 28 para. 31\(2\)](#) (with [Sch. 29](#))

- 4 The Treasury may by order specify criteria to be taken into account in deciding—
- (a) whether a particular game (or class of game) falls within the definitions in paragraph 2(1) and (2), and
  - (b) what counts as a single go at playing a particular game (or class of game).

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### [<sup>F73</sup>Types of machine

#### Textual Amendments

**F73** Sch. 24 para. 5 and cross-heading substituted (with effect in accordance with s. 124(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 124\(2\)](#)

- 5
- (1) Machines are divided into three types for the purposes of machine games duty.
  - (2) A machine is a “type 1 machine” if it can be demonstrated that—
    - (a) the highest charge payable for playing a dutiable machine game on the machine does not exceed 20p, and
    - (b) the maximum amount of cash that can be won from playing a dutiable machine game on the machine does not exceed £10.
  - (3) A machine is a “type 2 machine” if—
    - (a) it is not a type 1 machine, and
    - (b) it can be demonstrated that the highest charge payable for playing a dutiable machine game on the machine does not exceed £5.
  - (4) Any other machine is a “type 3 machine”.
  - (5) The Treasury may by order substitute for a sum for the time being specified in subparagraph (2)(a) or (b) or (3)(b) such higher sum as may be specified in the order.]

### *How the duty is charged*

- 6
- (1) Machine games duty is charged on a taxable person's total net takings in an accounting period for each type of machine.
  - [<sup>F74</sup>(2) The amount of the duty is found by—
    - (a) applying the lower rate to the person's total net takings in the accounting period for type 1 machines,
    - (b) applying the standard rate to the person's total net takings in the accounting period for type 2 machines,
    - (c) applying the higher rate to the person's total net takings in the accounting period for type 3 machines, and
    - (d) aggregating the results.]
    - (3) This is subject to paragraph 10 (negative amounts of duty).
    - (4) The person's “total net takings” in the accounting period for a type of machine are the sum of the person's net takings in the period for all the relevant machines of that type.
    - (5) The person's “net takings” in the period for each relevant machine are determined in accordance with paragraphs 7 and 8.
    - (6) If any of the relevant machines changes type during the accounting period—
      - (a) the net takings in the part of the period before the change and the net takings in the part after the change are to be allocated separately in calculating the person's total net takings in the period for each type of machine, and
      - (b) if it is not possible to identify the part of a period to which an amount relates, the amount is to be apportioned on a just and reasonable basis.



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- (7) For the meaning of “relevant machine” in relation to a taxable person and an accounting period, see paragraph 50.

#### Textual Amendments

**F74** Sch. 24 para. 6(2) substituted (with effect in accordance with s. 124(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 124\(3\)](#)

#### *Net takings per machine*

- 7 (1) A taxable person's net takings in an accounting period for a relevant machine are—
- (a) the takings, less
  - (b) the payouts.
- (2) The takings are the charges that become due at any material time from players for playing dutiable machine games on that machine (irrespective of when the games are played or the prizes are paid out).
- (3) The payouts are the prizes (whether cash or non-cash) that are paid out at any material time to players as a result of playing dutiable machine games on that machine (irrespective of when the games are played or the charges become due).
- (4) Sub-paragraph (3) does not include prizes paid out to—
- (a) a person who is a registrable person in respect of the premises where the machine is located,
  - (b) a representative or employee of such a person at those premises, or
  - (c) a person acting for or at the direction of a person within paragraph (a).
- (5) Sub-paragraph (3) does not include prizes paid out unlawfully (for example, a prize paid out to a child or young person in breach of a condition attached to an operating licence by virtue of section 83(1)(b) of the Gambling Act 2005).
- (6) If it is not reasonably practicable to attribute charges and prizes to dutiable machine games or to apportion them between dutiable machine games and other games or other activities, any attribution or apportionment is to be done on a just and reasonable basis.
- (7) “Material time” means any time in the accounting period when the person is liable for machine games duty in respect of the machine.
- (8) The Commissioners may by regulations make provision about the point in time at which a charge is taken to become due, or a prize is taken to be paid out, for the purposes of this paragraph.
- (9) If a machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would be required to pay without the offer, the charge (if any) is treated as becoming due when the player plays the game.
- (10) A prize that is paid out using a system involving redemption tickets, points or anything similar is taken to be paid out when the prize is redeemed (rather than when the means of redemption is issued or communicated to the winner).
- (11) Sub-paragraphs (9) and (10) do not limit the power in sub-paragraph (8).

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- 8 (1) In calculating the takings and the payouts under paragraph 7, the following amounts are to be left out of account—
- (a) amounts arising from playing dutiable machine games on a domestic occasion, and
  - (b) amounts arising in any other circumstances specified by the Treasury by order.
- (2) The power in sub-paragraph (1)(b)—
- (a) may be exercised generally or in relation to particular cases or kinds of case, and
  - (b) may include provision requiring specified conditions to be met before amounts are left out of account.

*[<sup>F75</sup>The rates*

**Textual Amendments**

**F75** Sch. 24 para. 9 and cross-heading substituted (with effect in accordance with s. 124(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 124\(4\)](#)

- 9 (1) The lower rate is 5%.
- (2) The standard rate is 20%.
- (3) The higher rate is 25%.
- (4) If a rate changes during an accounting period—
- (a) the old rate is to be applied to the person's total net takings in the part of the period before the change, and
  - (b) the new rate is to be applied to the person's total net takings in the part of the period after the change.
- (5) If it is not possible to identify for the purposes of sub-paragraph (4) the part of the period to which an amount relates, it is to be apportioned on a just and reasonable basis.]

*Negative amounts of duty*

- 10 (1) If the calculation of the amount of machine games duty for which a taxable person is liable for an accounting period results in a negative amount (“amount X”)—
- (a) the amount of machine games duty for which that person is liable for that period is treated as nil, and
  - (b) the amount of duty for which that person is liable for the next accounting period is to be reduced by amount X.
- (2) Sub-paragraph (1) applies to an accounting period whether or not amount X results wholly or partly from the previous application of that sub-paragraph.
- (3) Subject to any reduction required by sub-paragraph (1)(b), the person is not entitled to any repayment or refund of machine games duty in respect of amount X.

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### *Who is liable*

- 11 (1) A person is liable for machine games duty in respect of a machine at any time if at the time—
- (a) the person is responsible for the premises where the machine is located (see paragraph 12),
  - (b) the machine is available there for use by others for playing dutiable machine games on it, and
  - (c) the machine is not an excluded dual-use machine (see paragraph 13).
- (2) If, at any time, there is more than one person who satisfies sub-paragraph (1)(a) to (c) in respect of a machine, each of them is jointly and severally liable for the duty.
- (3) A person who is liable for machine games duty in accordance with this paragraph is referred to as a “taxable person”.

### *Responsible for premises*

- 12 (1) This paragraph sets out who is “responsible” for premises for the purposes of paragraph 11.
- (2) If a person is registered in respect of premises, that person is responsible for the premises.
- (3) A person is “registered” at any time in respect of premises if at the time there is an entry in force for that person in the MGD register in respect of those premises.
- (4) If no-one is registered in respect of premises, any person who is a registrable person in respect of the premises or a representative of such a person is responsible for the premises.
- (5) Paragraphs 20 to 24 make further provision about registration and registrable persons.

### *Excluded dual-use machines*

- 13 (1) A machine is an “excluded dual-use machine” if—
- (a) it is capable of being used both for playing machine games and for some other purpose that is not related to playing machine games, and
  - (b) condition A or B is met.
- (2) Condition A is that the machine is not designed, adapted or presented in such a way as to—
- (a) facilitate its use for playing dutiable machine games, or
  - (b) draw attention to the possibility of its use for playing such games.
- (3) Condition B is that the machine is so designed, adapted or presented but the person mentioned in paragraph 11(1) does not know, and could not reasonably be expected to know, that it is.
- (4) References to a machine being “adapted” include a machine to which anything has been done, including the installation of computer software on it.
- (5) The Commissioners may by order specify criteria to be taken into account in deciding whether a machine falls within the definition in sub-paragraph (1).

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(6) The Treasury may by order amend this paragraph.

*Accounting periods*

- 14 (1) An accounting period for machine games duty is a period of 3 consecutive months.
- (2) The first day of an accounting period is such day as HMRC may direct.
- (3) A direction under sub-paragraph (2) may apply generally or only to a particular case or class of case.
- (4) HMRC may agree with a registered person to make either or both of the following changes for the purposes of that person's liability to machine games duty—
- (a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods,
  - (b) to begin accounting periods on days other than those applying by virtue of sub-paragraph (2).
- (5) HMRC may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where—
- (a) a person becomes or ceases to be registered, or
  - (b) an agreement under sub-paragraph (4) begins or ends.
- (6) If there is reason to believe that a person who is liable for machine games duty may not discharge that liability as it falls due from time to time—
- (a) HMRC may by direction specify shorter periods to be treated as accounting periods for the purposes of that person's liability to machine games duty,
  - (b) any such direction continues to have effect until it is withdrawn by HMRC (unless otherwise specified in the direction), and
  - (c) withdrawal of a direction does not prevent the giving of further directions in respect of the same person.

*Valuing prizes*

- 15 (1) This paragraph applies in valuing prizes for the purposes of this Schedule (including in determining the maximum amount of cash that can be won from playing a machine game).
- (2) The value of a prize includes any portion that—
- (a) represents a refund of the charge payable for playing the game, or
  - (b) is calculated by reference to the amount of any such charge.
- (3) The value of a prize in the form of something that is reasonably considered to equate to money is equal to the amount of money to which the thing is reasonably considered to equate.
- (4) For a prize in the form of a currency other than sterling or in the form of something that is reasonably considered to equate to such a currency—
- (a) the value of the prize is, in relation to any day, the sterling equivalent of that currency determined by reference to the London closing rate for that currency for the previous day, and
  - (b) for the purposes of paragraph 7(3), the day in relation to which the value is assessed is the last day of the relevant accounting period.

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- (5) The value of a prize other than cash depends on the person (“A”) from whom the person paying out the prize (“B”) obtained it—
  - (a) if A was not connected with B when B obtained the prize from A, the value is the cost to B of obtaining the prize from A,
  - (b) if A was connected with B when B obtained the prize from A, the value is the smaller of—
    - (i) the cost to B of obtaining the prize from A, and
    - (ii) the amount that it would have cost B, at the time B obtained the prize, to obtain it from a person not connected with B.
- (6) Whether A is connected with B is to be determined in accordance with section 1122 of CTA 2010.
- (7) If the value of a prize other than cash cannot reasonably be determined in accordance with sub-paragraph (5), the value of the prize is such amount as is just and reasonable.
- (8) For the purposes of sub-paragraph (5), an amount paid by way of value added tax on the acquisition of a thing is to be treated as part of its cost (whether or not the amount is taken into account for the purpose of a credit or refund).
- (9) The Commissioners may by regulations make further provision about the way in which prizes are to be valued for the purposes of this Schedule.
- (10) This paragraph applies to a part of a prize as it applies to a whole prize, and references to a prize are to be read accordingly.

#### *Valuing charges*

- 16 (1) This paragraph applies in determining for the purposes of this Schedule the amount of a charge (or the highest or lowest charge) payable or due for playing a machine game.
- (2) If the amount of a charge in money's worth cannot be determined, it is assumed to be such amount as is just and reasonable.
- (3) If a composite charge is payable or due for the opportunity to play a machine game more than once, the amount of the charge payable or due for each individual go is to be determined on a just and reasonable basis.
- (4) If a composite charge is payable or due for the opportunity to play a machine game and for something else, the amount of the charge payable or due for playing the game is to be determined on a just and reasonable basis.
- (5) The Commissioners may by regulations make further provision about the way in which the amount of charges is to be determined for the purposes of this Schedule.
- (6) Sub-paragraph (7) applies if—
  - (a) a dutiable machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would have been required to pay without the offer,
  - (b) the offer was made available to the player by way of winnings from an activity in respect of which another duty of excise or value added tax is charged, and

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- (c) the value of the offer is deductible in calculating the amount of that other duty or value added tax payable in respect of that activity.
- (7) The amount of the charge due from the player for playing the dutiable machine game is taken for the purposes of paragraph 7 to be the amount that the player would have been required to pay without the offer.
- (8) Regulations under sub-paragraph (5) may include provision extending or modifying the circumstances in which sub-paragraph (7) applies.

#### *Collection and management*

- 17 The Commissioners are responsible for the collection and management of machine games duty.

#### *Returns*

- 18 (1) The Commissioners may make regulations requiring registrable persons to make returns to HMRC in respect of relevant machines.
- (2) Regulations under this paragraph may in particular make provision about—
- (a) liability to make a return,
  - (b) timing,
  - (c) form,
  - (d) content,
  - (e) method of making (including provision requiring returns to be made electronically),
  - (f) declarations,
  - (g) authentication, and
  - (h) when a return is to be treated as made.

#### *Assessment and payment*

- 19 (1) The Commissioners may make regulations about payment of machine games duty.
- (2) The regulations may in particular make provision about—
- (a) timing,
  - (b) instalments,
  - (c) methods of payment (including provision requiring payments to be made electronically),
  - (d) when payment is to be treated as made, and
  - (e) the process and effect of assessments by HMRC of amounts due.
- (3) Subject to regulations under this paragraph, section 12 of FA 1994 (assessment) applies in relation to liability to pay machine games duty.

#### *Registration*

- 20 (1) The Commissioners must maintain a register of those responsible for premises where relevant machines are located.
- (2) The register is to be known as the MGD register.

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- (3) A person must not make a relevant machine available for use by others for playing dutiable machine games on it unless a registrable person (whether that person or someone else) is registered in respect of the premises where the machine is located.
- (4) Paragraph 21 identifies who is a registrable person in respect of premises.
- (5) This paragraph does not apply in relation to a relevant machine if it is reasonable to expect that the only takings and the only payouts in respect of the machine would be amounts that would be left out of account by virtue of paragraph 8.

#### *Registrable persons*

- 21
- (1) If a person holds a relevant licence or permit in respect of premises, that person is a registrable person in respect of those premises.
  - (2) But if the premises are leased to a person (“T”) for the purposes of an activity for which an alcohol licence is required and the alcohol licence in respect of the premises is held by someone else, T (and not the licence-holder) is a registrable person in respect of those premises.
  - (3) If the premises are a stall at a travelling fair, each of the following is a registrable person in respect of the premises—
    - (a) the holder of the stall, and
    - (b) the person in charge of the fair.
  - (4) For premises not falling within any of the preceding sub-paragraphs, each person listed in sub-paragraph (5) is a registrable person in respect of the premises.
  - (5) The persons are—
    - (a) a person required to hold a relevant licence or permit in respect of the premises,
    - (b) an owner, lessee or occupier of the premises,
    - (c) a person who is responsible to the owner, lessee or occupier for the management of the premises,
    - (d) a person who is responsible for controlling the use of machines that are made available on the premises for use by others for playing dutiable machine games on them, and
    - (e) a person who is responsible for controlling the admission of persons to the premises or for providing persons resorting to the premises with goods or services.
  - (6) “Relevant licence or permit” is defined in paragraph 22.
  - (7) “Alcohol licence” means—
    - (a) a premises licence issued under Part 3 of the Licensing Act 2003 that authorises the supply of alcohol for consumption on the licensed premises,
    - (b) a premises licence issued under Part 3 of the Licensing (Scotland) Act 2005, except where such a licence only applies to the sale of alcohol for consumption off the premises, and
    - (c) a licence issued under the Licensing (Northern Ireland) Order 1996 (S.I. 1996/3158 (N.I. 22)), except where such a licence only applies to the sale of intoxicating liquor by retail for consumption off the premises.

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- (8) “Travelling fair” means a fair—
- (a) consisting wholly or principally of the provision of amusements,
  - (b) provided wholly or principally by persons who travel from place to place for the purpose of providing such fairs, and
  - (c) held at a place no part of which has been used for the provision of such a fair on more than 27 days in the same calendar year.
- 22 (1) A “relevant licence or permit” is—
- (a) a licence issued under Part 8 of the Gambling Act 2005,
  - (b) a family entertainment centre gaming machine permit as defined in section 247 of that Act,
  - (c) a club gaming permit as defined in section 271 of that Act,
  - (d) a club machine permit as defined in section 273 of that Act,
  - (e) a prize gaming permit as defined in section 289 of that Act,
  - (f) an on-premises alcohol licence or a relevant Scottish licence as defined, in each case, in section 277 of that Act but only if a licence or permit listed above is not held in respect of the same premises,
  - (g) a club premises certificate granted under Part 4 of the Licensing Act 2003 but only if a licence or permit listed above is not held in respect of the same premises,
  - (h) a certificate of registration within the meaning of the Betting, Gaming Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)),
  - (i) a bookmaking office licence within the meaning of that Order,
  - (j) a bingo club licence within the meaning of that Order,
  - (k) an amusement permit within the meaning of that Order,
  - (l) a certificate of registration within the meaning of the Registration of Clubs (Northern Ireland) Order 1996 (S.I. 1996/3159 (N.I. 23)), or
  - (m) a licence issued under the Licensing (Northern Ireland) Order 1996 (S.I. 1996/3158 (N.I. 22)) but only if a licence, permit or certificate listed above is not held in respect of the same premises.
- (2) In sub-paragraph (1), “listed above” means listed in any of the preceding provisions of that sub-paragraph.
- (3) The Treasury may by order amend this paragraph to add to, vary or restrict the list in sub-paragraph (1).

#### *Compulsory registration*

- 23 (1) Sub-paragraph (2) applies if—
- (a) it appears to HMRC that a relevant machine is being made available by anyone at premises for use by others for playing dutiable machine games on it, and
  - (b) no-one is registered in respect of the premises.
- (2) HMRC may give a notice under this paragraph to any person they believe to be a registrable person in respect of the premises.
- (3) The notice is referred to as a “registration notice”.



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- (4) A person to whom a registration notice is given may appeal to an appeal tribunal against the notice.
- (5) The appeal may be made on either or both of the following grounds—
  - (a) that the person is not a registrable person in respect of the premises,
  - (b) that relevant machines are not being made available at the premises for use by others for playing dutiable machine games on them.
- (6) The appeal must be made within the period of 30 days beginning with the date of the registration notice.
- (7) If—
  - (a) no appeal is made within that period, or
  - (b) an appeal made within that period is dismissed or withdrawn,HMRC may proceed to register the person in respect of the premises (unless another person has since become registered in respect of them).
- (8) Registration under this paragraph is treated as made with effect from the date of the registration notice.

*Procedure for registration, de-registration etc*

- 24
- (1) The Commissioners may make regulations about registration.
  - (2) Regulations under this paragraph may in particular make provision about—
    - (a) the procedure for applying for registration (including provision requiring applications to be made electronically),
    - (b) the timing of applications,
    - (c) the information to be provided,
    - (d) the giving of registration notices and the making of appeals against them,
    - (e) the procedure for compulsory registration under paragraph 23,
    - (f) notification of changes to the register,
    - (g) de-registration, and
    - (h) re-registration after a person ceases to be registered.
  - (3) The regulations may permit HMRC to make registration, or continued registration, subject to conditions.
  - (4) Those conditions may in particular require—
    - (a) the provision of security for the payment of machine games duty, and
    - (b) (in the case of a foreign person) the appointment of a United Kingdom representative with responsibility for discharging liability to machine games duty.
  - (5) In sub-paragraph (4) “foreign person” means a person who—
    - (a) in the case of an individual, is not usually resident in the United Kingdom,
    - (b) in the case of a body corporate, does not have an established place of business in the United Kingdom, and
    - (c) in any other case, does not include an individual who is usually resident in the United Kingdom.

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- (6) The regulations may include provision for the registration of groups of persons; and may provide for the modification of the provisions of this Part of this Schedule in their application to groups.
- (7) The modifications may, for example, include a modification ensuring that, where a representative member of a group is registered in place of the members, each member will be jointly and severally liable for the duty payable by the representative member on behalf of the group.

#### *Publication of register*

#### PROSPECTIVE

- 25
- (1) The MGD register is to contain such details of those who are entered on the register and of the premises in respect of which they are registered as the Commissioners think fit.
  - (2) The Commissioners may publish the register (or a part of it).
  - (3) If they choose not to publish it or they choose to publish only a part of it, the Commissioners must nonetheless make arrangements for the provision of a copy of an entry in the register (or the unpublished part of it) to a member of the public on request.
  - (4) But the Commissioners may refuse a request under sub-paragraph (3) if the person making the request does not pay a fee specified by the Commissioners.
  - (5) The fee must not exceed the reasonable cost (including any indirect cost) of meeting the request.

#### *Profit-sharers*

- 26
- (1) Sub-paragraph (2) applies if—
    - (a) it appears to HMRC that machine games duty may be chargeable in respect of a machine,
    - (b) no-one is registered in respect of the premises where the machine is located, and
    - (c) either—
      - (i) HMRC do not know the identity of any of those responsible for the premises (see paragraph 12), or
      - (ii) HMRC do know the identity of one or more such persons but none of them is in the United Kingdom.
  - (2) HMRC may give a notice under this paragraph to any person they believe to be beneficially entitled to a share of the machine's takings.
  - (3) The notice must inform the person to whom it is given (“P”) that P will become liable to pay a share of the duty in accordance with this paragraph unless, within the specified period—
    - (a) P provides HMRC with sufficient information to identify a person in the United Kingdom who is responsible for the premises, or

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- (b) P satisfies HMRC that, when P became beneficially entitled to a share of the machine's takings, P took all reasonable steps to ascertain that a registrable person was registered in respect of the premises.
- (4) The specified period is—
  - (a) such period of 30 days or more as is specified in the notice, or
  - (b) such other period as may be agreed between HMRC and P.
- (5) If P fails to satisfy sub-paragraph (3)(a) or (b) within the specified period, HMRC may assess to the best of their judgement an amount equal to P's share of the machine games duty that would have been due in respect of the machine for an accounting period on the assumptions set out in sub-paragraph (6).
- (6) The assumptions are—
  - (a) that P had been liable for machine games duty in respect of the machine in the accounting period in accordance with paragraph 11,
  - (b) that the machine had been the only machine in respect of which P was so liable, and
  - (c) that the dutiable machine games in respect of which P is beneficially entitled to a share of the takings had been the only dutiable machine games played on the machine.
- (7) P's share is a percentage equal to the share of the machine's takings to which P is beneficially entitled.
- (8) An assessment under this paragraph may relate to more than one machine, more than one set of premises and more than one accounting period.
- (9) But it may not relate to a period that began more than 4 years before the date of the assessment.
- (10) An amount assessed under this paragraph is deemed to be an amount of machine games duty assessed under section 12 of FA 1994 and due from P in accordance with regulations under paragraph 19 of this Schedule.
- (11) P is not entitled to any repayment from HMRC of an amount assessed under this paragraph if HMRC subsequently identify a person responsible for the premises.
- (12) But if, after P has paid such an amount, HMRC make an assessment under section 12 of FA 1994 of an amount of machine games duty due from another person in respect of the same takings from the same machine for the same accounting period, account must be taken in that assessment of the amount paid by P.

#### *Reviews and appeals*

- 27
- (1) The decisions mentioned in sub-paragraph (2) are to be treated as if they were listed in subsection (2) of section 13A of FA 1994 (customs and excise reviews and appeals: meaning of “relevant decision”) and, accordingly, as if they were relevant decisions for the purposes mentioned in subsection (1) of that section.
  - (2) The decisions are—
    - (a) a decision of HMRC to refuse a request for an agreement under paragraph 14,
    - (b) a decision to give a direction under that paragraph,
    - (c) a decision not to give such a direction,

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- (d) a decision of HMRC under regulations by virtue of paragraph 24(2),
- (e) a decision of HMRC about security by virtue of paragraph 24(4)(a), and
- (f) a decision of HMRC about the appointment of a United Kingdom representative by virtue of paragraph 24(4)(b).

*Interest*

- 28 (1) This paragraph applies if an order is made under section 104(3) of FA 2009 appointing a day on which sections 101 to 103 of that Act are to come into force for the purposes of machine games duty.
- (2) Interest charged under section 101 of that Act on an amount of machine games duty (or an amount enforceable as if it were machine games duty) may be enforced as if it were an amount of machine games duty payable by the person liable for the amount on which the interest is charged.

*Penalties and enforcement*

- 29 In Schedule 24 to FA 2007 (penalties for errors), in the Table in paragraph 1, after the entry relating to remote gaming duty insert—

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“Machine games duty	Return under regulations under paragraph 18 of Schedule 24 to FA 2012.”
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- 30 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry relating to remote gaming duty insert—

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“Machine games duty	Obligation under paragraph 20(3) of Schedule 24 to FA 2012 (obligation to register in respect of premises).”
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- 31 In Schedule 55 to FA 2009 (penalty for failure to make returns etc), in the Table in paragraph 1, after item 28 insert—

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“29	Machine games duty	Return under regulations under paragraph 18 of Schedule 24 to FA 2012”.
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- 32 In that Schedule, in each of the following provisions, for “28” substitute “ 29 ”

- (a) paragraph 2(1)(b),
- (b) paragraph 13A(1), and
- (c) paragraph 13F(1).

- 33 In Schedule 56 to FA 2009 (penalty for failure to make payments on time), in the Table in paragraph 1, after item 11M insert—

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“11N	Machine games duty	Amount payable under paragraph 6 of Schedule 24 to FA 2012 (except an amount The date determined by or under regulations under paragraph 19 of Schedule 24 to FA 2012 as the date by which the amount must be paid”.
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falling within item 17A,  
23 or 24)

- 34 In that Schedule, in each of the following provisions, for “11M” substitute “ 11N ”
- (a) items 17A, 23 and 24 of the Table in paragraph 1,
  - (b) paragraph 2(c),
  - (c) paragraph 3(1)(b),
  - (d) paragraph 8A(1), and
  - (e) paragraph 8F(1).
- 35 (1) Contravention of a provision mentioned in sub-paragraph (2) attracts a penalty under section 9 of FA 1994 (penalties) and also attracts daily penalties under that section.
- (2) The provisions are—
- (a) any provision of regulations made under paragraph 18,
  - (b) any provision of regulations made under paragraph 19,
  - (c) paragraph 20(3), and
  - (d) any provision of regulations made under paragraph 24.

#### *Forfeiture*

- 36 (1) A machine is liable to forfeiture if—
- (a) an officer of Revenue and Customs finds it on any premises,
  - (b) the officer is satisfied that it is being, has been or is about to be made available on the premises for use by others for playing dutiable machine games on it, and
  - (c) condition A or B is met.
- (2) Condition A is that—
- (a) no-one is registered in respect of the premises, and
  - (b) there is a serious risk that any machine games duty chargeable in respect of the machine would not be paid.
- (3) Condition B is that the officer is satisfied that an amount of machine games duty has become due and payable in respect of the machine, but has not been paid.

#### *Offences*

- 37 (1) A person commits an offence if the person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion (by that person or any other person) of any machine games duty.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the maximum amount, or both.
- (3) The maximum amount is the greater of—
- (a) [F76the statutory maximum][F76£20,000] and
  - (b) three times the duty or other amount that is unpaid or the payment of which is sought to be avoided.

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- (4) In the application of this paragraph—
- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, or
  - (b) in Northern Ireland,
- the reference in sub-paragraph (2)(b) to 12 months is to be read as a reference to 6 months.
- (5) Section 27 of BGDA 1981 (offences by bodies corporate) has effect for the purposes of any offence under this paragraph as it has effect for the purposes of [<sup>F77</sup>the offence] mentioned in that section.

#### Textual Amendments

- F76** Sum in Sch. 24 para. 37(3)(a) substituted (E.W.) (12.3.2015) for words by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 2 para. 13](#) (with reg. 5(1))
- F77** Words in Sch. 24 para. 37(5) substituted (1.12.2014) by [Finance Act 2014 \(c. 26\)](#), s. 198(2)(c), [Sch. 28 para. 31\(3\)](#) (with [Sch. 29](#))

#### *Protection of officers*

- 38 Section 31 of BGDA 1981 applies in relation to machine games duty as it applies in relation to [<sup>F78</sup>bingo duty].

#### Textual Amendments

- F78** Words in Sch. 24 para. 38 substituted (1.12.2014) by [Finance Act 2014 \(c. 26\)](#), s. 198(2)(c), [Sch. 28 para. 31\(4\)](#) (with [Sch. 29](#))

#### *Orders and regulations*

- 39 (1) This paragraph applies to orders and regulations under this Part of this Schedule.
- (2) Orders and regulations—
- (a) may make provision that applies generally or only for specified purposes,
  - (b) may make different provision for different purposes, and
  - (c) may include transitional provision and savings.
- (3) Regulations may confer a discretion on HMRC.
- (4) Orders and regulations are to be made by statutory instrument.
- (5) For the purposes of making an order under paragraph 8(1)(b)—
- (a) the statutory instrument containing the order must be laid before the House of Commons, and
  - (b) the order ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, it is approved by a resolution of the House of Commons.
- (6) In reckoning the 28-day period, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or

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- (b) the House of Commons is adjourned for more than 4 days.
- (7) An order ceasing to have effect by virtue of sub-paragraph (5)(b) does not affect—
  - (a) anything previously done under the order, or
  - (b) the making of a new order.
- (8) A statutory instrument containing an order under paragraph 13(6) or 22(3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (9) Subject to sub-paragraphs (5) and (8), a statutory instrument containing an order or regulations is subject to annulment in pursuance of a resolution of the House of Commons.

#### *Transitional provision*

- 40 (1) The Commissioners may by notice direct that regulations under paragraph 24 (procedure for registration, de-registration etc) are to apply in relation to the period before the go-live date with the modifications specified in the notice.
- (2) A notice under sub-paragraph (1) must be published by the Commissioners.
- (3) For a person who, on the go-live date, is responsible for premises where a relevant machine is located, the first accounting period is to be the period beginning with that day and ending with—
  - (a) the day before the day on which the next accounting period is to begin by virtue of a direction given under paragraph 14(2), or
  - (b) such other day as is necessary to give effect to an agreement made under paragraph 14(4).

#### *Consequential amendments*

- 41 (1) Section 1(1) of CEMA 1979 (interpretation) is amended as follows.
- (2) In the definition of “the revenue trade provisions of the customs and excise Acts”, at the end insert—
  - “(f) the provisions of Part 1 of Schedule 24 to the Finance Act 2012;”.
- (3) In the definition of “revenue trader”, in paragraph (a)—
  - (a) omit “or” at the end of sub-paragraph (ic),
  - (b) after that sub-paragraph insert—
    - “(id) being responsible for premises where relevant machines are located (within the meaning of Part 1 of Schedule 24 to the Finance Act 2012); or”, and
  - (c) in sub-paragraph (ii), for “or (ic)” substitute “, (ic) or (id)”.
- 42 (1) For section 118BC of that Act (inspection powers: gaming duty) substitute—

#### **“118BC Inspection powers: gaming duty and machine games duty**

- (1) Subsection (2) applies to premises if an officer has reasonable cause to believe that—
  - (a) section 10 gaming is taking place, has taken place or is about to take place on the premises, or

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- (b) machines are located on the premises in respect of which a person is, has been or is about to become liable for machine games duty.
  - (2) The officer may at any reasonable time enter and inspect the premises and inspect—
    - (a) accounts, records and other documents in the custody or control of any relevant person, and
    - (b) any relevant equipment.
  - (3) Subsection (1) does not permit an officer to enter or inspect a particular part of premises if—
    - (a) the officer has no reasonable cause to believe that paragraph (a) or, as the case may be, (b) of that subsection is satisfied with respect to that particular part, and
    - (b) the part is used solely as a dwelling.
  - (4) An officer may at any reasonable time (whether or not as part of an inspection under subsection (2)) require a relevant person or anyone acting on such a person's behalf—
    - (a) to open relevant equipment, and
    - (b) to carry out any other operation that may be necessary to enable the officer to ascertain whether any gaming duty or machine games duty is payable in respect of it and, if so, how much.
  - (5) A “relevant person” is—
    - (a) in relation to gaming duty, a person who is engaging, or whom the officer reasonably suspects of engaging, in section 10 gaming or in any activity by reason of which the person is or may become liable to gaming duty, and
    - (b) in relation to machine games duty, a person who is, has been or is about to become liable to machine games duty or whom the officer reasonably suspects of being, having been or being about to become so liable.
  - (6) “Relevant equipment” is—
    - (a) in relation to gaming duty, equipment that is being, or the officer reasonably suspects of having been or of being intended to be, used on the premises for or in connection with section 10 gaming, and
    - (b) in relation to machine games duty, any equipment that is, or the officer reasonably suspects of being, a machine in respect of which a person is, has been or may become liable to machine games duty and any other equipment used in connection with such a machine.
  - (7) In this section—
    - (a) “section 10 gaming” means gaming to which section 10 of the Finance Act 1997 applies, and
    - (b) a reference to premises where a machine is located is to be read in accordance with Part 1 of Schedule 24 to the Finance Act 2012.”
- (2) In section 118G of that Act (offences under Part 9A), in subsection (1), for “or section 118B” substitute “, 118B or 118BC(4)”.



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- 43 In section 2 of BGDA 1981 (bookmakers: general bets), in subsection (2), omit paragraph (d).
- 44 (1) Section 26H of BGDA 1981 (exemptions from remote gaming duty) is amended as follows.
- (2) After subsection (2A) insert—
- “(2B) Subsection (2) does not apply in cases where the other gambling tax is machine games duty.”
- (3) In subsection (3), before paragraph (b) insert—
- “(aa) machine games duty.”
- 45 In Schedule A1 to BGDA 1981 (betting duties: double taxation relief), in paragraph 7, after paragraph (c) insert—
- “(ca) machine games duty.”
- 46 In Schedule 4B to BGDA 1981 (remote gaming duty: double taxation relief), in paragraph 7, after paragraph (c) insert—
- “(ca) machine games duty.”
- 47 In section 12 of FA 1994 (assessment to excise duty), in subsection (2)(c), after “1997” insert “ or Part 1 of Schedule 24 to the Finance Act 2012 ”.
- 48 In section 10 of FA 1997 (gaming duty), for subsection (3AA) substitute—
- “(3AA) This section does not apply to the playing of a game in respect of which—
- (a) bingo duty or lottery duty is chargeable, or would be chargeable but for an express exception, or
- (b) machine games duty is chargeable.”
- 49 In section 7 of the Borders, Citizenship and Immigration Act 2009 (Customs revenue functions of the director), in subsection (2)(e)—
- (a) omit “and” at the end of sub-paragraph (vi), and
- (b) at the end of sub-paragraph (vii) insert “and (viii) machine games duty;”.

#### *Interpretation*

- 50 In this Part of this Schedule—
- “appeal tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;
- “cash” has the meaning given in paragraph 2 (and “non-cash” is to be read accordingly);
- “charge”, in relation to a game, means a charge or deduction in money or money's worth, however it is described or levied and whether it becomes due before or after the game is played;
- “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
- “dutiable machine game” has the meaning given in paragraph 2, subject to paragraphs 3 and 4;
- “game” does not include a sport;
- “the go-live date” is defined in paragraph 66(5);

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“HMRC” means Her Majesty's Revenue and Customs;

“machine” means any apparatus that uses or applies mechanical power, electrical power or both;

“machine game” has the meaning given in paragraph 2;

“MGD register” has the meaning given in paragraph 20;

“money” means money in sterling or any other currency;

“payouts” means prizes paid out to players as a result of playing dutiable machine games on a machine;

“the payouts”, in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;

“premises” includes any place, any means of transport and any stall or other moveable structure;

“prize”, in relation to a game—

- (a) means a prize in the form of cash or non-cash (or both), however it is described or paid out and whether it is a prize provided by a person making the game available or is winnings of money staked, but
- (b) a benefit consisting of nothing more than the opportunity to play the game again does not count as a prize;

“registered” has the meaning given in paragraph 12 (and “registration” is to be read accordingly);

“registrable person” has the meaning given in paragraph 21;

“relevant machine” means—

- (a) a machine in respect of which machine games duty is or will be chargeable, or
- (b) in relation to a particular taxable person and accounting period, a machine in respect of which that person is liable for machine games duty in that period;

“representative” means a personal representative, trustee in bankruptcy, receiver or liquidator or any other person acting in a representative capacity;

“specified” includes described;

“takings” means charges due from players for playing dutiable machine games on a machine;

“the takings”, in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;

“taxable person” has the meaning given in paragraph 11;

“total net takings” has the meaning given in paragraph 6;

“United Kingdom” includes the territorial sea of the United Kingdom.

- 51 (1) This Part of this Schedule is to be read in accordance with this paragraph.
- (2) A person “plays” a game if the person participates in the game—
  - (a) whether or not there are other participants in the game, and
  - (b) whether or not a computer generates images or data taken to represent the actions of other participants in the game.
- (3) A reference to the charge (or the lowest or highest charge) payable for playing a machine game—
  - (a) is a reference to the charge (or the lowest or highest charge) payable for a single go at playing the game, and

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- (b) includes any charge that entitles the person paying it to play a machine game or to play it at a reduced rate (even if the charge is ostensibly a charge for something else).
- (4) A reference to “paying” a charge is to be read, in the case of a charge in money's worth, as a reference to the provision of the thing, or performance of the service, in money's worth.
- (5) A reference to a prize (or the maximum amount of cash) that can be won from playing a machine game is a reference to a prize (or the maximum amount of cash) that can be won from a single go at playing the game.
- (6) A reference to “paying out” a prize is to be read, in the case of a prize in money's worth, as a reference to the provision of the thing, or performance of the service, in money's worth.
- (7) A reference to the premises where a machine is located or made available includes, in the case of a portable machine, the premises where the machine is issued to those wanting to play dutiable machines games on it.
- 52 The imposition or payment of machine games duty does not make lawful anything that is otherwise unlawful.

## PART 2

### REMOVAL OF AMUSEMENT MACHINE LICENCE DUTY

#### *Amendment of BGDA 1981*

- 53 The following provisions of BGDA 1981 are omitted—
- (a) sections 21 to 26,
  - (b) section 26H(3)(a),
  - (c) section 26N(3) and (4), and
  - (d) Schedules 4 and 4A.
- 54 (1) Part 3 of that Act (general) is amended as follows.
- (2) In section 27 (offences by bodies corporate), for the words from “section 24” to “Schedule 4” substitute “ paragraph 13(1) or (3) or 14(1) of Schedule 1 or paragraph 16 of Schedule 3 ”.
- (3) In section 31 (protection of officers), for “remote gaming duty or the duty on amusement machine licences” substitute “ or remote gaming duty ”.
- (4) In section 33 (interpretation), in subsection (2), for “remote gaming duty or the duty on amusement machine licences” substitute “ or remote gaming duty ”.

#### *Amendment of other enactments*

- 55 In section 102 of CEMA 1979, in subsection (3)(a), omit “or an amusement machine licence”.
- 56 In section 10 of FA 1997 (gaming duty), omit subsection (3A).

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- 57 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, omit the entry relating to amusement machine licence duty.
- 58 In section 7 of the Borders, Citizenship and Immigration Act 2009 (Customs revenue functions of the director), in subsection (2)(e), omit sub-paragraph (i).

*Transitional provision and savings*

- 59 (1) If a licence granted under section 21 of BGDA 1981 is to expire on or after the go-live date, the holder of the licence is entitled to repayment of an amount of duty.
- (2) That amount is the difference between—
- (a) the amount of duty actually paid on the licence before the go-live date in accordance with section 23 of that Act, and
  - (b) the amount (if less) determined in accordance with sub-paragraph (3).
- (3) The amount is to be determined as follows—
- Step 1* Calculate the amount of duty that would have been paid if the period for which the licence was granted had been the number of complete months beginning with the date on which the licence was granted and ending immediately before the go-live date. The day immediately following the end of that period of complete months is referred to as “day X”.
- Step 2* Add to the amount calculated under Step 1 an amount representing the duty payable for the period of days beginning with day X and ending with the day before the go-live date. The duty payable for each such day in that period is to be calculated as 1/365th of the amount of duty payable for a licence of 12 months for a machine of the relevant category.
- (4) If—
- (a) duty is being paid on the licence in accordance with arrangements made under paragraph 7A of Schedule 4 to BGDA 1981 (payment of duty by instalments), and
  - (b) the amount of duty actually paid on the licence before the go-live date in accordance with section 23 of that Act is less than the amount determined in accordance with sub-paragraph (3),
- the difference between those amounts is to be treated under that Act as unpaid duty.
- (5) If a person entitled to a repayment of more than £10 under this paragraph has not received the repayment within the period of 90 days beginning with the go-live date—
- (a) the person may give notice to HMRC of that fact,
  - (b) the Commissioners must pay interest to the person on the amount of the repayment for the period from the end of that 90-day period until the day on which the repayment is made, and
  - (c) any such interest accrues at the rate under section 197 of FA 1996 (rates of interest) that is applicable for Parts 2 and 3 of Schedule 3 to FA 2001 (excise duty payment by Commissioners in case of error or delay).
- 60 (1) If a licence granted or to be granted under section 21 of BGDA 1981 would expire within the period of 30 days ending with the go-live date, a person may apply—
- (a) for the licence to be treated as extended for the necessary period, or

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- (b) for a new amusement machine licence to be treated as granted in its place under Schedule 4 to that Act for the necessary period.
- (2) The necessary period is the period from expiry of the licence until immediately before the go-live date.
- (3) An application under this paragraph may be made before or after the licence is granted but, if made after the licence is granted, it must be made before the day on which the licence is to expire.
- (4) The application must be made to HMRC in such form and manner as HMRC may require.
- (5) HMRC must grant the application once it has received payment of an amount of duty payable on the licence (or new licence) in respect of the necessary period.
- (6) The amount of duty payable in respect of the necessary period is to be the sum of the amounts payable for each day in that period, each such amount being 1/365th of the duty payable for a licence of 12 months for a machine of the relevant category.
- (7) Schedule 4 to BGDA 1981 and any regulations made under that Schedule apply (subject to any modifications specified by the Commissioners in a notice published for the purposes of this paragraph) to an amount of duty payable in accordance with this paragraph as to an amount of duty payable in accordance with section 23 of that Act.
- (8) Nothing in this paragraph affects the operation of that Act with respect to the provision of amusement machines in the necessary period in a case where no application is made under this paragraph or an application is not granted.
- (9) But if a default licence is granted under Schedule 4A to BGDA 1981 for the necessary period, the amount of duty that may be assessed under paragraph 4 of that Schedule is limited to the amount that would have been payable if an application had been made for a licence under this paragraph.
- 61 (1) This paragraph applies to licences to be granted under section 21 of BGDA 1981 on or after 2 January 2013 (a “final month licence”).
- (2) Section 21(3) of that Act has effect as if—
- (a) the requirement to grant amusement machine licences for a period of one or more whole months were omitted, and
- (b) the power to grant amusement machine licences for a period not exceeding 12 months were a power to grant such licences for a period ending with a day that is no later than the day before the go-live date.
- (3) The requirement in section 21(4) of that Act to grant special amusement machine licences for a period of 12 months has effect in relation to a final month licence as if it were a requirement to grant a licence for the period beginning with the date of grant and ending with the day before the go-live date.
- (4) The amount of duty payable on a final month licence is to be calculated in the manner described in paragraph 60(6).
- (5) The Commissioners may by notice direct that Schedules 4 and 4A to BGDA 1981 and any regulations made under those Schedules are to apply to a final month licence with such modifications as may be specified in the notice.

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- (6) A notice under sub-paragraph (5) must be published by the Commissioners.
- 62 (1) The enactments repealed by this Part of this Schedule continue to have effect on and after the go-live date in relation to the provision of amusement machines before that date.
- (2) Enactments continuing to have effect by virtue of sub-paragraph (1) are to be read with any necessary modifications.
- (3) Without prejudice to the generality of sub-paragraph (2), paragraph 4 of Schedule 4A to BGDA 1981 (assessment of amount equivalent to duty) is to be read as if the reference in sub-paragraph (3) to the due date were a reference to the day before the go-live date.

### PART 3

#### VAT EXEMPTION

##### *Amendment of VATA 1994*

- 63 For section 23 of VATA 1994 substitute—

**“23 Value of supplies involving relevant machine games**

- (1) If a person plays a relevant machine game, then for the purposes of VAT the amount paid by the person is to be treated as consideration for a supply of services to that person.
- (2) “Relevant machine game” is defined in section 23A.
- (3) The value to be taken as the value of supplies made by a person (“the supplier”) in the circumstances mentioned in subsection (1) in any period is to be determined as if the consideration for the supplies were reduced by an amount equal to X.
- (4) X is the amount (if any) paid out in that period by way of winnings in respect of relevant machine games made available by the supplier (whether the games were played in the same period or an earlier one).
- (5) X does not include any winnings paid out to the supplier or a person acting on the supplier's behalf.
- (6) Inserting a token into a machine on which a relevant machine game is played is to be treated for the purposes of subsection (1) as the payment of an amount equal to that for which the token can be obtained.
- (7) Providing a specified kind of token by way of winnings is to be treated for the purposes of subsection (4) as the payment out of an amount by way of winnings equal to the value of the token.
- (8) A specified kind of token is—
- (a) a token that can be inserted into the same machine to enable games to be played on the machine, or
  - (b) a token that is not of such a kind but can be exchanged for money.

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- (9) The value of a specified kind of token is—
- (a) for a token within subsection (8)(a), an amount equal to that for which the token can be obtained, and
  - (b) for a token within subsection (8)(b), an amount equal to that for which the token can be exchanged.
- (10) If it is not reasonably practicable to attribute payments and winnings to relevant machine games or to apportion them between relevant machine games and other games or other activities, any attribution or apportionment is to be done on a just and reasonable basis.
- (11) For the purposes of this section, a person plays a game if the person participates in the game—
- (a) whether or not there are other participants in the game, and
  - (b) whether or not a computer generates images or data taken to represent the actions of other participants in the game.

### **23A Meaning of “relevant machine game”**

- (1) A “relevant machine game” is a game (whether of skill or chance or both) that—
- (a) is played on a machine for a prize, and
  - (b) is not excluded by subsection (2).
- (2) A game is excluded by this subsection if—
- (a) takings and payouts in respect of it are taken into account in determining any charge to machine games duty,
  - (b) it involves betting on future real events,
  - (c) bingo duty is charged on the playing of it or would be so charged but for paragraphs 1 to 5 of Schedule 3 to the Betting and Gaming Duties Act 1981 (exemptions from bingo duty),
  - (d) lottery duty is charged on the taking of a ticket or chance in it or would be so charged but for an express exception,
  - (e) it is a real game of chance and playing it amounts to dutiable gaming for the purposes of section 10 of the Finance Act 1997 or would do so but for subsection (3), (3B) or (4) of that section, or
  - (f) playing it amounts to remote gaming within the meaning of section 26A of the Betting and Gaming Duties Act 1981 (remote gaming duty: interpretation).
- (3) In this section—
- “game” does not include a sport;
  - “machine” means any apparatus that uses or applies mechanical power, electrical power or both;
  - “prize”, in relation to a game, does not include the opportunity to play the game again;
  - “real game of chance” means a game of chance (within the meaning of the Betting and Gaming Duties Act 1981) that is non-virtual.
- (4) The Treasury may by order amend this section.”

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- 64 (1) In Part 2 of Schedule 9 to that Act (exemptions: the groups), the provisions of Group 4 are amended as follows.
- (2) After Item 1 insert—
- “1A The provision of any facilities for the playing of dutiable machine games (as defined in Part 1 of Schedule 24 to the Finance Act 2012) but only to the extent that—
- (a) the facilities are used to play such games, and
- (b) the takings and payouts in respect of those games are taken into account in determining the charge to machine games duty.”
- (3) In Note (1)—
- (a) for “Item 1 does” substitute “ Items 1 and 1A do ”, and
- (b) omit paragraph (d) and the word “or” immediately preceding that paragraph.
- (4) After Note (1) insert—
- “(1A) Item 1 does not apply to the provision of facilities to the extent that the facilities are used to play a relevant machine game (as defined in section 23A).”
- (5) Accordingly—
- (a) in Part 2 of Schedule 9, in the heading of Group 4, after “GAMING” insert “ , DUTIABLE MACHINE GAMES ”, and
- (b) in Part 1 of that Schedule, in the Index, for “Betting, gaming and lotteries” substitute “ Betting, gaming, dutiable machine games and lotteries ”.
- 65 (1) Paragraph 9 of Schedule 11 to that Act (administration, collection and enforcement) is amended as follows.
- (2) For paragraph (a) substitute—
- “(a) to open any machine on which relevant machine games (as defined in section 23A) are capable of being played; and”.
- (3) In paragraph (b), for “subsection (2) of that section” substitute “ section 23(3) ”.
- (4) Accordingly, in the heading immediately before paragraph 9, for “*gaming machines*” substitute “ *machines on which relevant machine games are played* ”.

## PART 4

### MISCELLANEOUS

#### *Application*

- 66 (1) The provisions of this Schedule have effect as follows.
- (2) Part 1 has effect in relation to the playing of machine games on or after 1 February 2013 (and Schedules 55 and 56 to FA 2009, as amended by Part 1 of this Schedule, are taken to have come into force for the purposes of machine games duty on that date).
- (3) Part 2 has effect in relation to the provision of amusement machines on or after 1 February 2013.



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- (4) Part 3 has effect in relation to supplies made on or after that date.
- (5) A reference in this Schedule to the “go-live date” is to 1 February 2013.
- 67 (1) The Treasury may by regulations make transitional or saving provision in connection with the removal of amusement machine licence duty and the introduction of machine games duty.
- (2) The power in sub-paragraph (1) is without prejudice to—
  - (a) the provision made by Part 2 of this Schedule, and
  - (b) any power in this Schedule apart from this paragraph to make transitional or saving provision in connection with the matters mentioned in sub-paragraph (1).
- (3) Regulations under this paragraph are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

## SCHEDULE 25

Section 194

### REMOTE GAMBLING: DOUBLE TAXATION RELIEF

#### *Unilateral relief*

- 1 BGDA 1981 is amended as follows.
- 2 After section 5D insert—

#### **“5E Double taxation relief**

- (1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay general betting duty under a provision of sections 2 to 4 or section 5AB (“the relevant provision”).
- (2) Bets in respect of which P is liable to pay both general betting duty under the relevant provision and the qualifying foreign tax are referred to as “eligible bets”.
- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule A1.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that accounting period in respect of bets of the applicable class (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.

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(7) “The applicable class” means the class of bets to which the relevant provision applies.

(8) “The duty actually paid” means the general betting duty paid by P for that accounting period in respect of bets of the applicable class.

(9) A bet does not count as an “eligible bet” if it was made by or on behalf of P.”

3 After section 8 insert—

**“8ZA Double taxation relief**

(1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay pool betting duty.

(2) Bets in respect of which P is liable to pay both pool betting duty and the qualifying foreign tax are referred to as “eligible bets”.

(3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.

(4) Whether any credit is allowed is determined in accordance with Schedule A1.

(5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.

(6) Total repayments to P for that accounting period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.

(7) “The duty actually paid” means the pool betting duty paid by P for that accounting period.

(8) A bet does not count as an “eligible bet” if it was made by or on behalf of P.”

4 After section 10 insert—

**“10A Definition of qualifying foreign tax**

(1) For the purposes of general betting duty or pool betting duty, a “qualifying foreign tax” is a foreign tax specified by the Commissioners in relation to that duty (“the relevant duty”).

(2) “Specified” means specified in a notice published by the Commissioners, as revised or replaced from time to time.

(3) The Commissioners must specify a foreign tax under this section if they are satisfied that—

- (a) it is a gambling tax,
- (b) the activities on which it is charged include betting,
- (c) the bets in respect of which it is charged include bets in respect of which the relevant duty is also charged, and
- (d) the charge in respect of such bets is based on betting by persons in or deemed to be in the country or territory where the tax is imposed.

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- (4) The following factors indicate that a tax is a gambling tax—
  - (a) that it is charged on activities involving betting or gaming (rather than activities generally), and
  - (b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).
- (5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice.”

5 After section 26I insert—

#### **“26IA Double taxation relief**

- (1) This section applies if—
  - (a) P is liable to pay remote gaming duty on the provision of facilities for remote gaming, and
  - (b) P is also liable to pay a qualifying foreign tax in respect of remote gaming using those facilities.
- (2) The remote gaming using those facilities in respect of which the qualifying foreign tax is charged is referred to as “eligible gaming”.
- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule 4B.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.
- (7) “The duty actually paid” means the remote gaming duty paid by P for that accounting period.
- (8) Remote gaming does not count as “eligible gaming” if one of the participants in the game in question is P or someone acting on P's behalf.

#### **26IB Definition of qualifying foreign tax**

- (1) For the purposes of remote gaming duty, a “qualifying foreign tax” is a foreign tax specified by the Commissioners in relation to remote gaming duty.
- (2) “Specified” means specified in a notice published by the Commissioners, as revised or replaced from time to time.
- (3) The Commissioners must specify a foreign tax under this section if they are satisfied that—
  - (a) it is a gambling tax,
  - (b) the activities on which it is charged include remote gaming,

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- (c) the remote gaming on which it is charged includes remote gaming using facilities in respect of which remote gaming duty is also charged, and
  - (d) the charge is based on remote gaming by persons in or deemed to be in the country or territory where the tax is imposed.
- (4) The following factors indicate that a tax is a gambling tax—
- (a) that it is charged on activities involving betting or gaming (rather than activities generally), and
  - (b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).
- (5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice.

### **26IC Regulations about claims for double taxation relief**

- (1) The Commissioners may make regulations about—
  - (a) claims for repayment under section 26IA, and
  - (b) the making of repayments under that section.
- (2) Regulations under this section may in particular include provision about—
  - (a) the time within which claims may be made,
  - (b) the form, content and delivery of claims,
  - (c) the evidence required to satisfy the Commissioners of the validity of claims, and
  - (d) the investigation and processing of claims.”

6

In section 33 (interpretation)—

- (a) in subsection (1), after the definition of “the Commissioners” insert—
 

““foreign tax” means a tax, including any sort of duty or levy, imposed in a country or territory outside the United Kingdom (see also subsection (1B));”, and
- (b) after subsection (1A) insert—
 

“(1B) A reference in this Act to a foreign tax does not include any penalty, interest, surcharge or other such cost arising in connection with the tax (whether or not recoverable as if it were that tax).”

7

Before Schedule 1 insert—

“SCHEDULE  
A1

BETTING DUTIES: DOUBLE TAXATION RELIEF

*Introduction*

- 1 This Schedule sets out the rules for determining whether credit is allowed under section 5E or 8ZA for qualifying foreign tax paid by P.

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### *Definitions*

- 2 (1) This Schedule is to be read as follows.
- (2) “The applicable class”—
  - (a) in the case of section 5E, has the meaning given in that section, and
  - (b) in the case of section 8ZA, means dutiable pool bets.
- (3) A “reconciliation period” is—
  - (a) if P has monthly accounting periods, a period consisting of 12 consecutive accounting periods,
  - (b) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and
  - (c) if P has any other length of accounting period, a period consisting of such number of consecutive accounting periods as would produce a period as near as possible to 365 days.
- (4) In relation to an accounting period, a reference to “the reconciliation period” is to the reconciliation period in which that accounting period falls.

### *Credit allowed*

- 3 (1) To determine whether credit is allowed for an accounting period—
  - (a) calculate the notional UK liability and the notional foreign liability for the accounting period, and
  - (b) compare the two figures.
- (2) No credit is allowed if either figure is nil or both figures are nil.
- (3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

### *Notional UK liability*

- 4 The notional UK liability for an accounting period is calculated as follows—

*Step 1* If the applicable class is a class to which a provision of sections 2 to 4 applies, calculate P's net stake receipts for the period in accordance with section 5 but by reference to eligible bets (rather than bets of the applicable class).

If the applicable class is the class to which section 5AB applies, calculate the commission charges in accordance with that section relating to eligible bets determined in the period (rather than bets to which that section applies).

If the applicable class is dutiable pool bets, calculate P's net pool betting receipts for the period in accordance with section 7A but by reference to eligible bets (rather than dutiable pool bets).

In calculating P's net stake receipts or net pool betting receipts for the purposes of this Step, do not carry forward to the period any losses in respect of eligible bets that arose in an accounting period before the start of the reconciliation period.

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*Step 2* If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.

Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.

“The appropriate rate” is the percentage specified in whichever of section 2(3), 3(3)(a), 3(3)(b), 4(3), 5AB(4) or 7(2) applies to the applicable class, as in force for the accounting period in question.

#### *Notional foreign liability*

- 5 The notional foreign liability for an accounting period is calculated as follows—

*Step 1* Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged solely in respect of eligible bets and accounted for by reference to periods corresponding to P's accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible bets) that arose before the start of the reconciliation period.

*Step 2* If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

#### *Clawback*

- 6 (1) This paragraph applies if in respect of the applicable class of bets—
- (a) P receives a repayment under section 5E or 8ZA for one or more accounting periods in a reconciliation period, and
  - (b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.
- (2) P is liable to repay all or part of the repayment or repayments received.
- (3) The amount that P is liable to repay is the smallest of—
- (a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible bets,
  - (b) the loss multiplied by the appropriate rate (as defined in paragraph 4) for the applicable class of bets, and
  - (c) the repayment (or the sum of the repayments) made to P for the reconciliation period.

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- (4) “The loss” means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.
- (5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible bets, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).
- (6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.
- (7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid general betting duty or, as the case may be, pool betting duty.

#### *Breach of return obligations*

- 7 The Commissioners are not required to make a repayment under section 5E or 8ZA if P is in breach of any obligation to deliver a return with respect to—
  - (a) general betting duty,
  - (b) pool betting duty,
  - (c) bingo duty,
  - (d) remote gaming duty,
  - (e) gaming duty, or
  - (f) lottery duty.

#### *Reduction etc in foreign tax paid*

- 8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place—
  - (a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,
  - (b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or
  - (c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.
- (2) P must notify the Commissioners of the event on becoming aware of it.
- (3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 5E or 8ZA is to be recalculated in accordance with this Schedule.
- (4) In any other case, the amount for which credit is allowed under section 5E or 8ZA is to be reduced by a just and reasonable sum to reflect the amount of tax waived or refunded or the deduction or relief given.
- (5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 5E or 8ZA should not have been made, P is liable for the amount that should not have been repaid, as if it were unpaid general betting duty or, as the case may be, pool betting duty.

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- (6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c).”
- 8 (1) Schedule 1 (betting duties) is amended as follows.
- (2) In paragraph 2, after sub-paragraph (4) insert—
- “(5) Regulations under this paragraph may also in particular include provision about claims for repayment under section 5E and about the making of any such repayment, including provision about—
- (a) the time within which claims may be made,
  - (b) the form, content and delivery of claims,
  - (c) the evidence required to satisfy the Commissioners of the validity of claims, and
  - (d) the investigation and processing of claims.”
- (3) In paragraph 2A, after sub-paragraph (3) insert—
- “(4) Regulations under sub-paragraph (2) may also include provision about claims for repayment under section 8ZA and about the making of any such repayment, including provision about anything mentioned in paragraph 2(5) (a) to (d).”
- 9 After Schedule 4A insert—

“SCHEDULE  
4B

REMOTE GAMING DUTY: DOUBLE TAXATION RELIEF

*Introduction*

- 1 This Schedule sets out the rules for determining whether credit is allowed under section 261A for qualifying foreign tax paid by P.

*Reconciliation periods*

- 2 (1) For the purposes of this Schedule, a “reconciliation period” is—
- (a) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and
  - (b) if P has any other length of accounting period, a period consisting of such number of consecutive accounting periods as would produce a period as near as possible to 365 days.
- (2) In relation to an accounting period, a reference to “the reconciliation period” is to the reconciliation period in which that accounting period falls.

*Credit allowed*

- 3 (1) To determine whether credit is allowed for an accounting period—
- (a) calculate the notional UK liability and the notional foreign liability for the accounting period, and
  - (b) compare the two figures.



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- (2) No credit is allowed if either figure is nil or both figures are nil.
- (3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

#### *Notional UK liability*

- 4 The notional UK liability for an accounting period is calculated as follows—

*Step 1* Calculate P's remote gaming profits for the period in accordance with section 26C(2) but by reference to the use of the facilities provided by P for eligible gaming (rather than remote gaming generally).

In calculating P's remote gaming profits for the purposes of this Step, do not carry forward to the period any losses (in respect of the use of the facilities for eligible gaming) that arose in an accounting period before the start of the reconciliation period.

*Step 2* If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.

Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.

“The appropriate rate” is the percentage specified in section 26C(1) as in force for the accounting period in question.

#### *Notional foreign liability*

- 5 The notional foreign liability for an accounting period is calculated as follows—

*Step 1* Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged in respect of eligible gaming and were accounted for by reference to periods corresponding to P's accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible gaming) that arose before the start of the reconciliation period.

*Step 2* If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

#### *Clawback*

- 6 (1) This paragraph applies if in respect of eligible gaming—

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- (a) P receives a repayment under section 261A for one or more accounting periods in a reconciliation period, and
  - (b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.
- (2) P is liable to repay all or part of the repayment or repayments received.
- (3) The amount that P is liable to repay is the smallest of—
- (a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible gaming,
  - (b) the loss multiplied by the appropriate rate (as defined in paragraph 4), and
  - (c) the repayment (or the sum of the repayments) made to P for the reconciliation period.
- (4) “The loss” means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.
- (5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible gaming, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).
- (6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.
- (7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid remote gaming duty.

*Breach of return obligations*

- 7 The Commissioners are not required to make a repayment under section 261A if P is in breach of any obligation to deliver a return with respect to—
- (a) general betting duty,
  - (b) pool betting duty,
  - (c) bingo duty,
  - (d) remote gaming duty,
  - (e) gaming duty, or
  - (f) lottery duty.

*Reduction etc in foreign tax paid*

- 8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place—
- (a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,
  - (b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or
  - (c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.
- (2) P must notify the Commissioners of the event on becoming aware of it.

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- (3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 26IA is to be recalculated in accordance with this Schedule.
- (4) In any other case, the amount for which credit is allowed under that section is to be reduced by a just and reasonable sum to reflect the amount of tax waived or refunded or the deduction or relief given.
- (5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 26IA should not have been made, P is liable for the amount that should not have been repaid, as if it were unpaid remote gaming duty.
- (6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c)."

#### *Consequential amendments*

- 10 In section 13A(2) of FA 1994 (meaning of "relevant decision"), after paragraph (g) insert—
  - "(ga) any decision by HMRC as to whether or not any person is entitled to any repayment under section 5E, 8ZA or 26IA of the Betting and Gaming Duties Act 1981 (double taxation relief), or the amount of the repayment to which any person is so entitled;"
- 11 (1) The Table in paragraph 1 of Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing) is amended as follows.
  - (2) In the second column of the entry for general betting duty, for "paragraph 4(1) to (3) of Schedule 1 to BGDA 1981" substitute " paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraph 4(1) to (3) of Schedule 1 to that Act ".
  - (3) In the second column of the entry for pool betting duty, for "paragraphs 4(2) and 5(1) of Schedule 1 to BGDA 1981" substitute " paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraphs 4(2) and 5(1) of Schedule 1 to that Act ".
  - (4) In the second column of the entry for remote gaming duty, for "to register under regulations under section 26J of BGDA 1981" substitute " to notify under paragraph 8(2) of Schedule 4B to BGDA 1981 (reduction etc in qualifying foreign tax) and obligation to register under regulations under section 26J of that Act ".

#### *Commencement*

- 12 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 1 April 2012 (and, accordingly, the first reconciliation period begins with the first accounting period in relation to which the amendments have effect).

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## SCHEDULE 26

Section 196

## CATEGORISATION OF SUPPLIES

**PART 1**

## ZERO-RATED SUPPLIES

*Introductory*

1 Part 2 of Schedule 8 of VATA 1994 (zero-rating) is amended as follows.

*Food*

2 (1) Group 1 (food) is amended as follows.

(2) After excepted item 4 insert—

“4A Sports drinks that are advertised or marketed as products designed to enhance physical performance, accelerate recovery after exercise or build bulk, and other similar drinks, including (in either case) syrups, concentrates, essences, powders, crystals or other products for the preparation of such drinks.”

(3) In Note (3), omit the words from “and for the purposes of paragraph (b) above” to the end.

(4) After that Note insert—

“(3A) For the purposes of Note (3), in the case of any supplier, the premises on which food is supplied include any area set aside for the consumption of food by that supplier's customers, whether or not the area may also be used by the customers of other suppliers.

(3B) “Hot food” means food which (or any part of which) is hot at the time it is provided to the customer and—

- (a) has been heated for the purposes of enabling it to be consumed hot,
- (b) has been heated to order,
- (c) has been kept hot after being heated,
- (d) is provided to a customer in packaging that retains heat (whether or not the packaging was primarily designed for that purpose) or in any other packaging that is specifically designed for hot food, or
- (e) is advertised or marketed in a way that indicates that it is supplied hot.

(3C) For the purposes of Note (3B)—

- (a) something is “hot” if it is at a temperature above the ambient air temperature, and
- (b) something is “kept hot” after being heated if the supplier stores it in an environment which provides, applies or retains heat, or takes other steps to ensure it remains hot or to slow down the natural cooling process.

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(3D) In Notes (3B) and (3C), references to food being heated include references to it being cooked or reheated.”

#### *Protected buildings*

- 3 (1) Group 6 (protected buildings) is amended as follows.
- (2) Omit items 2 and 3 (approved alterations and building materials).
- (3) In Note (3), for “(12) to (14) and (22) to (24)” substitute “ and (12) to (14) ”.
- (4) For Note (4) substitute—
- “ (4) For the purposes of item 1, a protected building is not to be regarded as substantially reconstructed unless, when the reconstruction is completed, the reconstructed building incorporates no more of the original building (that is to say, the building as it was before the reconstruction began) than the external walls, together with other external features of architectural or historic interest.”
- (5) In Note (5), in paragraphs (a), (b) and (c) omit “or other supply”.
- (6) Omit Notes (6) to (11).

#### **Commencement Information**

**I25** Sch. 26 para. 3(1) in force at Royal Assent and Sch. 26 para. 3(2)-(6) in force in relation to relevant supplies at 1.10.2015, see Sch. 26 para. 7(3)

#### *Caravans*

- 4 (1) Group 9 (caravans and houseboats) is amended as follows.
- (2) For item 1 substitute—
- “1 Caravans which exceed the limits of size of a trailer for the time being permitted to be towed on roads by a motor vehicle having a maximum gross weight of 3,500 kilogrammes and which—
- (a) were manufactured to standard BS 3632:2005 approved by the British Standards Institution, or
- (b) are second hand, were manufactured to a previous version of standard BS 3632 approved by that Institution and were occupied before 6 April 2013.”
- (3) In item 3 for “5(3)” substitute “ 5(4) ”.
- (4) In the Note for “item 3” substitute “ item 4 ”.

#### **Commencement Information**

**I26** Sch. 26 para. 4 in force at 6.4.2013 see Sch. 26 para. 7(2)

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## PART 2

### EXEMPT SUPPLIES

*Land: self storage and facilities to supply hairdressing services*

- 5 (1) In Part 2 of Schedule 9 to VATA 1994 (exemptions), Group 1 (land) is amended as follows.
- (2) In item 1, after paragraph (k) insert—  
“(ka) the grant of facilities for the self storage of goods;”.
- (3) In that item, omit “and” at the end of paragraph (m) and after that paragraph insert—  
“(ma) the grant of facilities to a person who uses the facilities wholly or mainly to supply hairdressing services; and”.
- (4) In that item, in paragraph (n), for “(m)” substitute “(ma)”.
- (5) After Note (15) insert—  
“(15A) In paragraph (ka)—  
“facilities for the self storage of goods” means the use of a relevant structure for the storage of goods by the person (or persons) to whom the grant of facilities is made, and  
“goods” does not include live animals.  
(15B) For the purposes of Note (15A), use by a person with the permission of the person (or any of the persons) to whom the grant of facilities is made counts as use by the person (or persons) to whom that grant is made.  
(15C) A grant of facilities for the self storage of goods does not fall within paragraph (ka) if—  
(a) the person making the grant (“P”)—  
(i) is doing so in circumstances where the relevant structure used is, or forms part of, a relevant capital item, and  
(ii) is connected with any person who uses that relevant structure for the self storage of goods,  
(b) the grant is made to a charity which uses the relevant structure solely otherwise than in the course of a business, or  
(c) in a case where the relevant structure is part of a building, its use for the storage of goods by the person (or persons) to whom the grant is made is ancillary to other use of the building by that person (or those persons).  
(15D) In Notes (15A) and (15C) “relevant structure” means the whole or part of—  
(a) a container or other structure that is fully enclosed, or  
(b) a unit or building.  
(15E) In Note (15C)(a)(i) “relevant capital item” means a capital item which—  
(a) is subject to adjustments of input tax deduction by P under regulations made under section 26(3), and  
(b) has not yet reached the end of its prescribed period of adjustment.”
- (6) After Note (16) insert—

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“(17) Paragraph (ma) does not apply to a grant of facilities which provides for the exclusive use, by the person to whom the grant is made, of a whole building, a whole floor, a separate room or a clearly defined area, unless the person making the grant or a person connected with that person provides or makes available (directly or indirectly) services related to hairdressing for use by the person to whom the grant is made.

(18) For the purposes of Note (17)—

- (a) “services related to hairdressing” means the services of a hairdresser's assistant or cashier, the booking of appointments, the laundering of towels, the cleaning of the facilities subject to the grant, the making of refreshments and other similar services typically used in connection with hairdressing, but does not include the provision of utilities or the cleaning of shared areas in a building, and
- (b) it does not matter if the services related to hairdressing are shared with other persons.

(19) For the purposes of Notes (15C) and (17) any question whether a person is connected with any other person is to be determined in accordance with section 1122 of the Corporation Tax Act 2010 (connected person).”

### PART 3

#### SUPPLIES CHARGEABLE AT REDUCED RATE

- 6 (1) Schedule 7A to VATA 1994 (charge at reduced rate) is amended as follows.
- (2) In Part 1 (index to reduced-rate supplies of goods and services), at the appropriate place insert—

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“Caravans	Group 12”.
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- (3) In Part 2 (the groups), at the end insert—

#### “GROUP 12

#### CARAVANS

##### Item No

- 1 Supplies of caravans which exceed the limits of size of a trailer for the time being permitted to be towed on roads by a motor vehicle having a maximum gross weight of 3,500 kilogrammes.
- 2 The supply of such services as are described in paragraph 1(1) or 5(4) of Schedule 4 in respect of a caravan within item 1.

NOTE: This Group does not include—

- (a) removable contents other than goods of a kind mentioned in item 4 of Group 5 of Schedule 8, or
- (b) the supply of accommodation in a caravan.”

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### Commencement Information

**I27** Sch. 26 para. 6 in force at 6.4.2013 see Sch. 26 para. 7(2)

## PART 4

### COMMENCEMENT AND TRANSITIONAL PROVISION

- 7 (1) Subject to sub-paragraphs (2) and (3), the amendments made by this Schedule come into force on 1 October 2012.
- (2) Paragraphs 4 and 6 come into force on 6 April 2013.
- (3) Paragraph 3(2) to (6) comes into force, in relation to relevant supplies, on 1 October 2015.
- (4) A supply is “relevant” if it is—
- (a) a supply of any services, other than excluded services, which is made—
    - (i) in the course of an approved alteration of a protected building, and
    - (ii) pursuant to a written contract entered into, or a relevant consent applied for, before 21 March 2012, or
  - (b) a supply of building materials which is made—
    - (i) to a person to whom the supplier is supplying services within paragraph (a) which include the incorporation of the materials into the building (or its site) in question, and
    - (ii) pursuant to a written contract entered into, or a relevant consent applied for, before 21 March 2012.
- (5) In relation to supplies made on or after 1 October 2012 but before 1 October 2015, Group 6 has effect as if, for the purposes of item 1 of that Group, a protected building were also regarded as substantially reconstructed if sub-paragraph (6) or (7) applies.
- (6) This sub-paragraph applies if at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works would, if supplied by a taxable person, be relevant supplies.
- (7) This sub-paragraph applies if—
- (a) at least 10% (measured by reference to cost) of the reconstruction of the protected building was completed before 21 March 2012, and
  - (b) at least three-fifths of the works carried out to effect the reconstruction (measured by reference to cost) are of such a nature that the supply of services (other than excluded services), materials and other items to carry out the works would, if supplied by a taxable person, be relevant supplies but for the requirement for a written contract to have been entered into or relevant consent to have been applied for before that date.
- (8) For the purposes of sub-paragraph (4), works carried out that are not within the scope of the written contract entered into, or the relevant consent applied for, as it stood immediately before 21 March 2012, are not a supply made pursuant to that contract or relevant consent.



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(9) In this paragraph—

“excluded services” means the services of an architect, surveyor or other person acting as consultant or in a supervisory capacity;

“Group 6” means Group 6 of Part 2 of Schedule 8 to VATA 1994 (protected buildings);

“relevant consent” means—

- (a) in the case of an ecclesiastical building to which section 60 of the Planning (Listed Buildings and Conservation Areas) Act 1990 applies, consent for the approved alterations by a competent body with the authority to approve alterations to such buildings, or
- (b) in any other case, consent under any provision of—
  - (i) Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990,
  - (ii) Part 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997,
  - (iii) Part 5 of the Planning (Northern Ireland) Order 1991,
  - (iv) Part 1 of the Ancient Monuments and Archaeological Areas Act 1979, or
  - (v) Part 2 of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

(10) The Notes of Group 6 apply in relation to this paragraph as they apply in relation to that Group, except that in applying Notes (9), (10) and (11), references to item 2 are to be read as references to sub-paragraph (4) of this paragraph.

## SCHEDULE 27

Section 196

### ANTI-FORESTALLING CHARGE TO VAT

#### PART 1

### ANTI-FORESTALLING CHARGE TO VAT

#### *Introductory*

1 In this Schedule—

“date of the VAT change” means 1 October 2012;

“pre-change supply” means a supply of a description specified in paragraph 3 which—

- (a) is treated as taking place before the date of the VAT change, and
- (b) if it had been treated as taking place on that date, would have been charged to VAT at the standard rate as a result of the amendments made by Schedule 26.

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### *The charge*

- 2 (1) There is an anti-forestalling charge to value added tax on any pre-change supply which—
- (a) is treated as taking place on or after 21 March 2012, and
  - (b) is a supply linked to the post-change period (see paragraph 4).
- (2) “Chargeable pre-change supply” means a supply to which sub-paragraph (1) applies.
- (3) An anti-forestalling charge to value added tax under this Schedule is to be treated for all purposes as if it were value added tax charged in accordance with VATA 1994.

### *The supplies*

- 3 (1) The descriptions of supplies are—
- (a) the supply, in the course of an approved alteration of a protected building, of any services, other than the services of an architect, surveyor or any person acting as consultant or in a supervisory capacity,
  - (b) the supply of building materials to a person to whom the supplier is supplying services within paragraph (a) which include the incorporation of the materials into the building (or its site),
  - (c) the grant of facilities for the self storage of goods, or
  - (d) the grant of a right to receive a supply within paragraph (c).
- (2) The Notes to Group 6 in Schedule 8 to VATA 1994 have effect for the purposes of sub-paragraph (1)(a) and (b) as they had effect for the purposes of items 1 to 3 of that Group on 21 March 2012.
- (3) For the purposes of this Schedule a right to receive a supply includes—
- (a) any option to receive that supply, and
  - (b) any interest deriving from such an option.

### *Supplies linked to the post-change period*

- 4 (1) A supply of services within paragraph 3(1)(a) or (c) is linked to the post-change period if, and to the extent that, the services are carried out or provided on or after the date of the VAT change.
- (2) A supply of goods within paragraph 3(1)(b) is linked to the post-change period if, and to the extent that, the goods are incorporated into the building concerned (or its site) on or after that date.
- (3) A supply within paragraph 3(1)(d) is linked to the post-change period if, and to the extent that, the services to which the grant relates are carried out or provided on or after that date.

### *Power to modify this Schedule*

- 5 (1) The Treasury may by order modify this Schedule for the purposes of preventing an anti-forestalling charge from arising, in the circumstances specified in the order, in relation to any description of supplies specified in the order.
- (2) An order under this paragraph may contain provision having retrospective effect.
- (3) An order under this paragraph is to be made by statutory instrument.

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- (4) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

## PART 2

### LIABILITY AND AMOUNT

#### *Liability*

- 6 (1) An anti-forestalling charge under this Schedule on a chargeable pre-change supply—
- (a) is a liability of the supplier (subject to sub-paragraph (2)), and
  - (b) becomes due on the date of the VAT change (rather than at the time of supply).
- (2) If, on the date on which the anti-forestalling charge becomes due, the person who would be liable to pay the charge under sub-paragraph (1)—
- (a) is not a taxable person, but
  - (b) is treated as a member of a group under sections 43A to 43D of VATA 1994, the anti-forestalling charge is a liability of the representative member of the group.

#### *Amount*

- 7 (1) The amount of the anti-forestalling charge on a chargeable pre-change supply is the amount of VAT that would be chargeable on the supply if it were subject to VAT at 20%.
- This is subject to any reduction under sub-paragraph (2).
- (2) If the chargeable pre-change supply is not wholly linked to the post-change period, the anti-forestalling charge is the relevant proportion of that amount.
- (3) The relevant proportion is—

$$\frac{P}{W}$$

where—

P is so much of the consideration for the chargeable supply as is attributable, on a just and reasonable basis, to that part of the supply (or, in the case of a grant of a right, that part of the supply to which the right relates) which is linked to the post-change period;

W is the whole of the consideration for the chargeable pre-change supply.

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### PART 3

#### ADMINISTRATION AND INTERPRETATION

##### *Person ceasing to be taxable person before anti-forestalling charge due*

- 8 (1) This paragraph applies if, on the date on which an anti-forestalling charge under this Schedule becomes due (“the due date”), the person who is liable to pay the charge under paragraph 6 is not a taxable person.
- (2) The anti-forestalling charge must be accounted for by that person in accordance with VATA 1994 (and regulations made under that Act) as if it were VAT due in the last period for which the person was required to make a return by or under VATA 1994.
- (3) If an amount assessed as due by way of an anti-forestalling charge under this Schedule would (in the absence of this sub-paragraph) carry interest from a date earlier than the due date, it is to be treated as only carrying interest from the due date.

##### *Adjustment of contracts following the VAT change*

- 9 (1) This paragraph applies where—
- (a) a contract for the supply of goods or services is made before the date of the VAT change, and
  - (b) there is an anti-forestalling charge under this Schedule on the supply.
- (2) The consideration for the supply is to be increased by an amount equal to the anti-forestalling charge, unless the contract provides otherwise.

##### *Invoices*

- 10 Regulations under paragraph 2A of Schedule 11 to VATA 1994 (VAT invoices) may make provision about the provision, replacement or correction of invoices in connection with an anti-forestalling charge under this Schedule.

##### *Interpretation: general*

- 11 (1) Expressions used in this Schedule and in VATA 1994 have the same meaning in this Schedule as in that Act.
- (2) In this Schedule “treated as taking place” means treated as taking place for the purposes of the charge to VAT.

## SCHEDULE 28

Section 203

### NON-ESTABLISHED TAXABLE PERSONS

#### *New Schedule 1A*

- 1 In VATA 1994, after Schedule 1 insert—

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“SCHEDULE  
1A

REGISTRATION IN RESPECT OF TAXABLE SUPPLIES: NON-UK ESTABLISHMENT

*Liability to be registered*

- 1 (1) A person becomes liable to be registered under this Schedule at any time if conditions A to D are met.
  - (2) Condition A is that—
    - (a) the person makes taxable supplies, or
    - (b) there are reasonable grounds for believing that the person will make taxable supplies in the period of 30 days then beginning.
  - (3) Condition B is that those supplies (or any of them) are or will be made in the course or furtherance of a business carried on by the person.
  - (4) Condition C is that the person has no business establishment, or other fixed establishment, in the United Kingdom in relation to any business carried on by the person.
  - (5) Condition D is that the person is not registered under this Act.
- 2 (1) A person does not become liable to be registered by virtue of paragraph 1(2) (b) if the reason for believing that taxable supplies will be made in the 30-day period mentioned there is that a business, or part of a business, carried on by a taxable person is to be transferred to the person as a going concern in that period.
  - (2) But if the transfer takes place, the transferee becomes liable to be registered under this Schedule at the time of the transfer if conditions A to D in paragraph 1 are met in relation to the transferee at that time.
  - (3) In determining for the purposes of sub-paragraph (2) whether condition B is met, the reference in paragraph 1(3) to a business is to be read as a reference to the business, or part of the business, that is transferred to the transferee.
- 3 A person is treated as having become liable to be registered under this Schedule at any time when the person would have become so liable under paragraph 1 or 2 but for any registration that is subsequently cancelled under—
  - (a) paragraph 11,
  - (b) paragraph 13(3) of Schedule 1,
  - (c) paragraph 6(2) of Schedule 2,
  - (d) paragraph 6(3) of Schedule 3, or
  - (e) paragraph 6(2) of Schedule 3A.
- 4 (1) A person does not cease to be liable to be registered under this Schedule except in accordance with sub-paragraph (2).
  - (2) A person who has become liable to be registered under this Schedule ceases to be so liable at any time if the Commissioners are satisfied that—

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- (a) the person has ceased to make taxable supplies in the course or furtherance of a business carried on by the person, or
- (b) the person is no longer a person in relation to whom condition C in paragraph 1 is met.

*Notification of liability and registration*

- 5 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(a) or 2(2) must notify the Commissioners of the liability before the end of the period of 30 days beginning with the day on which the liability arises.
- (2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the day on which the liability arises.
- 6 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(b) must notify the Commissioners of the liability before the end of the period by reference to which the liability arises.
- (2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the period by reference to which the liability arises.

*Notification of end of liability*

- 7 (1) A person registered under paragraph 5 or 6 who, on any day, ceases to make or have the intention of making taxable supplies in the course or furtherance of a business carried on by that person must notify the Commissioners of that fact within 30 days beginning with that day.
- (2) But the person need not notify the Commissioners if on that day the person would otherwise be liable or entitled to be registered under this Act (disregarding for this purpose the person's registration under this Schedule and any enactment that prevents a person from being liable to be registered under different provisions at the same time).

*Cancellation of registration*

- 8 (1) The Commissioners must cancel a person's registration under this Schedule if—
- (a) the person satisfies them that the person is not liable to be registered under this Schedule, and
  - (b) the person requests the cancellation.
- (2) The cancellation is to be made with effect from—
- (a) the day on which the request is made, or
  - (b) such later day as may be agreed between the Commissioners and the person.
- (3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement to be registered under this Act.

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- 9 (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person has ceased to be liable to be registered under this Schedule.
- (2) The cancellation is to be made with effect from—
- (a) the day on which the person ceased to be so liable, or
  - (b) such later day as may be agreed between the Commissioners and the person.
- (3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement, or entitled, to be registered under this Act.
- 10 In determining for the purposes of paragraphs 8 and 9 whether a time is a time when a person would be subject to a requirement, or entitled, to be registered under this Act, so much of any provision of this Act as prevents a person from becoming liable or entitled to be registered when the person is already registered or when the person is so liable under any other provision must be disregarded.
- 11 (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person was not liable to be registered under this Schedule on the day on which the person was registered.
- (2) The cancellation is to be made with effect from the day on which the person was registered.
- 12 Paragraphs 8 to 11 are subject to paragraph 18 of Schedule 3B (cancellation of registration under this Schedule of persons seeking to be registered under that Schedule etc).

#### *Exemption from registration*

- 13 (1) The Commissioners may exempt a person from registration under this Schedule if the person satisfies them that the taxable supplies that the person makes or intends to make—
- (a) are all zero-rated, or
  - (b) would all be zero-rated if the person were a taxable person.
- (2) The power in sub-paragraph (1) is exercisable only if the person so requests and the Commissioners think fit.
- (3) If there is a material change in the nature of the supplies made by a person exempted under this paragraph, the person must notify the Commissioners of the change—
- (a) within 30 days beginning with the day on which the change occurred, or
  - (b) if no particular day is identifiable as that day, within 30 days of the end of the quarter in which the change occurred.
- (4) If it appears to the Commissioners that a request under this paragraph should no longer be acted upon on or after any day or has been withdrawn on any day, they must register the person who made the request with effect from that day.

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- (5) A reference in this paragraph to supplies is to supplies made in the course or furtherance of a business carried on by the person.

*Supplementary*

- 14 Any notification required under this Schedule must be made in such form and manner and must contain such particulars as may be specified in regulations or by the Commissioners in accordance with regulations.”

*Other amendments of VATA 1994*

- 2 VATA 1994 is amended as follows.
- 3 In section 7 (place of supply of goods), in subsection (4)(c)(ii), after “Schedule 1” insert “ or 1A ”.
- 4 In section 54 (farmers etc), in subsection (2), after “Schedule 1” insert “ or is, has become or has ceased to be liable to be registered under Schedule 1A ”.
- 5 In section 55 (customers to account for tax on supplies of gold etc), in subsection (1) —
- (a) for “Schedule 1” substitute “ Schedules 1 and 1A ”, and
- (b) for “that Schedule” substitute “ Schedule 1 ”.
- 6 In section 55A (customers to account for tax on supplies of goods or services of a kind used in missing trader intra-community fraud), in subsection (3), for “Schedule 1” substitute “ Schedules 1 and 1A ”.
- 7 In section 69 (breaches of regulatory provisions), in subsection (1)(a), after “Schedule 1,” insert “ paragraph 7 of Schedule 1A, ”.
- 8 In section 73 (failure to make returns etc), in subsection (3)(b), after “Schedule 1,” insert “ paragraph 9 or 11 of Schedule 1A, ”.
- 9 In section 74 (interest on VAT recovered or recoverable by assessment), in subsection (1)(c), after “Schedule 1,” insert “ under paragraph 13 of Schedule 1A, ”.
- 10 In section 77 (assessments: time limits and supplementary assessments), in subsection (4C), after paragraph (a) insert—
- “(aa) paragraph 5, 6 or 13(3) of Schedule 1A.”.
- 11 (1) Paragraph 1 of Schedule 1 (registration in respect of taxable supplies) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in paragraph (a), after “if” insert “ the person is UK-established and ”, and
- (b) in paragraph (b), after “if” insert “ the person is UK-established and ”.
- (3) In sub-paragraph (2), for “and the transferee is not registered under this Act at the time of the transfer” substitute “ , the transferee is UK-established at the time of the transfer and the transferee is not registered under this Act at that time ”.
- (4) After sub-paragraph (2) insert—
- “(2A) In determining the value of a person's supplies for the purposes of sub-paragraph (1)(a) or (2)(a), supplies are to be taken into account (subject to



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sub-paragraphs (3) to (7)) whether or not the person was UK-established when they were made.”

(5) In sub-paragraph (4)(a), after “below,” insert “ paragraph 11 of Schedule 1A, ”.

(6) In sub-paragraph (5), after “below,” insert “ paragraph 11 of Schedule 1A, ”.

(7) At the end insert—

“(10) A person is “UK-established” if the person has a business establishment, or some other fixed establishment, in the United Kingdom in relation to a business carried on by the person.”

12 In paragraph 3 of that Schedule, at the end of paragraph (b) insert “; or  
(c) is not at that time UK-established (see paragraph 1(10)).”

13 Accordingly, in the heading of that Schedule, at the end insert “ : UK ESTABLISHMENT ”.

14 In paragraph 1 of Schedule 2 (registration in respect of supplies from other member States)—

(a) in sub-paragraph (1)(b), after “Schedule 1” insert “ or 1A ”, and

(b) in sub-paragraph (4), after “Schedule 1,” insert “ paragraph 11 of Schedule 1A, ”.

15 In paragraph 1 of Schedule 3 (registration in respect of acquisitions from other member States)—

(a) in sub-paragraph (1)(b), after “Schedule 1” insert “ , 1A ”, and

(b) in sub-paragraph (3), after “Schedule 1,” insert “ paragraph 11 of Schedule 1A, ”.

16 In paragraph 1 of Schedule 3A (registration in respect of disposals of assets for which a VAT repayment is claimed)—

(a) in sub-paragraph (1), after “Schedule 1,” insert “ 1A, ”, and

(b) in sub-paragraph (2), after “Schedule 1,” insert “ paragraph 11 of Schedule 1A, ”.

17 In paragraph 18 of Schedule 3B (supply of electronic services in member States: special accounting scheme)—

(a) after “Schedule 1”, in the first place it occurs, insert “ or 1A ”, and

(b) after “Schedule 1”, in the second place it occurs, insert “ or, as the case may be, 1A ”.

#### *Amendments of other Acts*

18 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry for the obligations under Schedule 1 to VATA 1994 insert the following entry—

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“Value added tax	Obligations under paragraphs 5, 6 and 13(3) of Schedule 1A to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).”
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*Status:* Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)

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### *Application*

- 19 The amendments made by this Schedule have effect in relation to supplies made or to be made on or after 1 December 2012.

## SCHEDULE 29

Section 204

### ADMINISTRATION OF VAT

- 1 VATA 1994 is amended as follows.
- 2 (1) Section 18B (fiscally warehoused goods: relief) is amended as follows.
- (2) In subsection (1)(d) omit “be in such form and”.
- (3) In subsection (2)(d) omit “in such form as the Commissioners may by regulations specify”.
- (4) After subsection (2) insert—
- “(2A) A certificate under subsection (1)(d) or (2)(d) must be in such form as may be specified by regulations or by the Commissioners in accordance with regulations.”
- 3 (1) Section 18C (warehouses and fiscal warehouses: services) is amended as follows.
- (2) In subsection (1)(c) omit “, in such a form as the Commissioners may by regulations specify”.
- (3) After subsection (1) insert—
- “(1A) A certificate under subsection (1)(c) must be in such form as may be specified by regulations or by the Commissioners in accordance with regulations.”
- 4 In section 35(2) (refund of VAT to persons constructing certain buildings), for the words following paragraph (c) substitute—
- “as may be specified by regulations or by the Commissioners in accordance with regulations.”
- 5 (1) Section 39(3) (repayment of VAT to those in business overseas) is amended as follows.
- (2) Before paragraph (a) insert—
- “(za) for claims to be made in such form and manner as may be specified in the scheme or by the Commissioners in accordance with the scheme;”.
- (3) For paragraph (c) substitute—
- “(c) for generally regulating—
- (i) the time by which claims must be made, and
- (ii) the methods by which the amount of any repayment is to be determined and the repayment is to be made.”
- 6 (1) Section 48 (VAT representatives) is amended as follows.

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- (2) For subsection (1B)(c) substitute—
- “(c) Council Regulation (EC) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.”
- (3) After subsection (4) insert—
- “(4A) Regulations under subsection (4) may require a notification under that subsection to be made in such form and manner, and to contain such particulars, as may be specified in the regulations or by the Commissioners in accordance with the regulations.”
- 7 In section 54(6)(a) (farmers etc)—
- (a) omit “the form and manner in which”, and
- (b) for “is to be made” substitute “ to be made in the form and manner specified in the regulations or by the Commissioners in accordance with the regulations ”.
- 8 In Schedule 1 (registration in respect of taxable supplies), in paragraph 17 (notifications)—
- (a) after “form” insert “ and manner ”, and
- (b) for “as the Commissioners may by regulations prescribe” substitute “ as may be specified in regulations or by the Commissioners in accordance with regulations. ”
- 9 In Schedule 2 (registration in respect of supplies from other member States), in paragraph 9 (notifications)—
- (a) after “form” insert “ and manner ”, and
- (b) for “as the Commissioners may by regulations prescribe” substitute “ as may be specified in regulations or by the Commissioners in accordance with regulations. ”
- 10 In Schedule 3 (registration in respect of acquisitions from other member States), in paragraph 10 (notifications)—
- (a) after “form” insert “ and manner ”, and
- (b) for “as the Commissioners may by regulations prescribe” substitute “ as may be specified in regulations or by the Commissioners in accordance with regulations. ”
- 11 In Schedule 3A (registration in respect of disposals of assets for which a VAT repayment is claimed), in paragraph 8 (notifications)—
- (a) after “form” insert “ and manner ”, and
- (b) for “as the Commissioners may by regulations prescribe” substitute “ as may be specified in regulations or by the Commissioners in accordance with regulations. ”
- 12 (1) Paragraph 2 of Schedule 11 (accounting for VAT and payment of VAT) is amended as follows.
- (2) In sub-paragraph (1) (keeping accounts and making returns), insert at the end “ or by the Commissioners in accordance with the regulations. ”
- (3) In sub-paragraph (3) (statements containing particulars of certain transactions)—
- (a) for paragraph (b) substitute—

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- “(b) specified by the Commissioners in accordance with the regulations,” and
- (b) for “prescribed” substitute “ so specified ”.
- (4) In sub-paragraph (3A) (statements containing particulars of certain supplies)—
- (a) for paragraph (b) substitute—
- “(b) specified by the Commissioners in accordance with the regulations,” and
- (b) for “prescribed” substitute “ so specified ”.
- (5) In sub-paragraph (3B) (notification of certain events), for “determined by the Commissioners in accordance with powers conferred by the regulations” substitute “ by the Commissioners in accordance with the regulations ”.
- (6) In sub-paragraph (4) (notification of acquisition of certain goods), insert at the end “ or (in the case of the notification requirement) by the Commissioners in accordance with the regulations ”.
- (7) In sub-paragraph (5)(a) (further provision about notifications), after “regulations” insert “ or by the Commissioners in accordance with the regulations ”.
- 13 In consequence of the amendments made by this Schedule—
- (a) in FA 1996, omit section 30(2), and
- (b) in FA 2009, omit section 77(2)(d).

## SCHEDULE 30

Section 207

### CLIMATE CHANGE LEVY

#### PART 1

##### REDUCED-RATE SUPPLIES ON OR AFTER 1 APRIL 2011: DEEMED SUPPLY

- 1 (1) In paragraph 45A(2)(b) of Schedule 6 to FA 2000 (reduced-rate supplies: deemed supply) for “80” substitute “ 65 ”.
- (2) The amendment made by this paragraph has effect in relation to a deemed supply if the actual supply in question was treated as taking place on or after 1 April 2011.

#### PART 2

##### TAXABLE SUPPLIES ON OR AFTER 1 APRIL 2012 FOR USE IN RECYCLING PROCESSES

- 2 Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- 3 In paragraph 4(2)(b) (definition of taxable supply) for “45A” substitute “ 43B ”.
- 4 In paragraph 5(3) (taxable supplies: deemed supplies of electricity) for “45A” substitute “ 43B ”.
- 5 In paragraph 6(2A) (taxable supplies: deemed supplies of gas) for “45A” substitute “ 43B ”.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

- 6 In paragraph 14(3A)(a) (use of electricity in an “exemption-retaining” way) for “, 18 and 18A” substitute “ and 18 ”.
- 7 Omit paragraph 18A (exemption: supply for use in recycling processes).
- 8 In paragraph 34 (time of supply of commodities other than gas and electricity: deemed supplies)—
- (a) in sub-paragraph (1)(b), for “45A” substitute “ 43B ”, and
- (b) in sub-paragraph (4), for “45A” substitute “ 43B ”.
- 9 In paragraph 39(1)(c) (regulations as to time of supply) for “45A” substitute “ 43B ”.
- 10 In paragraph 42 (amount payable by way of levy)—
- (a) in sub-paragraph (1)—
- (i) in paragraph (a) after “supply” (in the second place it occurs) insert “ or a supply for use in scrap metal recycling ”,
- (ii) in paragraph (c) for “were not a reduced-rate supply.” substitute “ were a supply to which paragraph (a) applies; ”, and
- (iii) after paragraph (c) insert—
- “(d) if the supply is a supply for use in scrap metal recycling, 20 per cent of the amount that would be payable if the supply were a supply to which paragraph (a) applies.”, and
- (b) after that sub-paragraph insert—
- “(1ZA) If a taxable supply is both a reduced-rate supply and a supply for use in scrap metal recycling, the amount payable by way of levy on the supply under sub-paragraph (1) is the lower of the two amounts provided for that supply under that sub-paragraph.”
- 11 Before the cross-heading before paragraph 44 insert—

*“Supplies for use in scrap metal recycling*

- 43A(1) For the purposes of this Schedule, a taxable supply is a supply for use in scrap metal recycling if—
- (a) the person to whom the taxable commodity is supplied intends to cause the commodity to be used as fuel in a process (“the recycling process”) to be carried out by that person which is the shredding (or fragmentation), pre-treatment and melting of scrap metal for recycling, and
- (b) the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that there is another process (“the competing process”) that—
- (a) uses taxable commodities otherwise than as fuel,
- (b) produces a product of the same kind as one produced by the recycling process,
- (c) uses a greater amount of energy than the recycling process to produce a given quantity of that product, and
- (d) involves a lesser charge to levy for a given quantity of that product than would, but for paragraph 42(1)(d), be the case for the recycling process.

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)

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- (3) For the purposes of sub-paragraph (2)(a), taxable commodities are used “otherwise than as fuel” only if the supplies of those commodities to the person using them are exempted from the levy by virtue of paragraph 18.
- (4) Sub-paragraphs (5) and (6) apply where the recycling process or the competing process, as well as producing a product of the same kind as one produced by the other process (“the corresponding product”), also produces one or more products that are not (“different products”).
- (5) If the production of the different products is merely incidental to the production of the corresponding product, the different products are to be treated for the purposes of sub-paragraph (2)(c) and (d) as being of the same kind as the corresponding product.
- (6) If the production of the different products is not merely incidental to the production of the corresponding product—
- (a) the amounts of energy referred to in sub-paragraph (2)(c), and the amounts of the charge to levy referred to in sub-paragraph (2)(d), are to be determined on a just and reasonable apportionment, and
  - (b) in calculating the amount payable by way of levy on the taxable supply, only the proportion of the supply that is the same as the proportion of the energy used by the recycling process to produce the corresponding product (as determined for the purposes of paragraph (a)) is to be treated as being a supply for use in scrap metal recycling.
- (7) In this paragraph—
- “melting” means—
- (a) the pre-heating and first melting of scrap metal before casting into items (“intermediates”) for further processing or re-melting, or
  - (b) the heating of scrap metal as part of the recycling process before any solidification and re-melting,
- but excluding the melting of any metal which is not scrap but which is added at any stage to improve the quality or adjust the composition of the recycled metal or intermediates, and
- “metal” means aluminium or steel.
- (8) The Commissioners may by regulations make provision for giving effect to this paragraph.
- (9) Regulations under this paragraph may, in particular, include provision for determining whether or not a taxable supply is a supply for use in scrap metal recycling (to any extent).

*Supplies for use in scrap metal recycling  
and reduced-rate supplies: deemed supply*

- 43B (1) This paragraph applies where—
- (a) a taxable supply (“the original supply”) has been made to any person (“the recipient”),

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- (b) the original supply was made on the basis that it was, to any extent, a supply for use in scrap metal recycling or a reduced-rate supply,
  - (c) it is later determined that the original supply was (or was to some extent) a different kind of supply, and
  - (d) the amount payable on the supply on the basis mentioned in paragraph (b) is less than the amount payable on the supply on the basis of the later determination.
- (2) For the purposes of this Schedule—
- (a) the recipient is deemed to make a taxable supply to itself of the taxable commodity, and
  - (b) the amount payable by way of levy on that deemed supply is—
    - (i) the amount payable on the original supply on the basis of the later determination mentioned in sub-paragraph (1)(c), less
    - (ii) the amount payable on the original supply on the basis mentioned in sub-paragraph (1)(b).
- (3) This paragraph does not apply where a supply is treated as not being a reduced-rate supply by virtue of paragraph 45B.”
- 12 Omit paragraph 45A (reduced-rate supplies: deemed supply).
- 13 After paragraph 62(1)(c) (tax credits) insert—
- “(ca) after a taxable supply has been made on the basis that it was not a supply for use in scrap metal recycling, it is determined that the supply was (to any extent) a supply for use in scrap metal recycling;
  - (cb) after a taxable supply has been made on the basis that it was (to any extent) a supply for use in scrap metal recycling, it is determined that the supply was such a supply to a greater extent than previously determined;”.
- 14 In paragraph 101(2)(a) (penalty for incorrect notification)—
- (a) in sub-paragraph (ii) omit “, 18A”,
  - (b) omit the “or” after sub-paragraph (ii), and
  - (c) before sub-paragraph (iv) insert—
    - “(iiia) a supply (or supplies) for use in scrap metal recycling, or”.
- 15 In paragraph 146(3) (regulations subject to affirmative resolution procedure) omit “18A,”.
- 16 In paragraph 147 (interpretation)—
- (a) in the definition of “prescribed”, omit “, 18A”, and
  - (b) insert at the appropriate place—
    - ““supply for use in scrap metal recycling” has the meaning given by paragraph 43A(1);”.
- 17 Omit section 188 of FA 2003 (climate change levy: exemption for fuel used in recycling process).
- 18 (1) FA 2011 is amended as follows.

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- (2) In section 79 (which provides for a lower rate of climate change levy for Northern Ireland gas supplies treated as taking place before 1 November 2013), in subsection (2)—
- (a) omit the “and” after paragraph (b), and
  - (b) after that paragraph insert—
    - “(ba) the supply is not a supply for use in scrap metal recycling (within the meaning of that Schedule (see paragraph 147)), and”.
- (3) Omit section 80 (power to suspend exemption for supplies used in recycling process).
- 19 The amendments made by paragraphs 2 to 18 have effect in relation to supplies of taxable commodities so far as the commodities are actually supplied on or after 1 April 2012.

### PART 3

#### RATES OF CLIMATE CHANGE LEVY FOR SUPPLIES ON OR AFTER 1 APRIL 2013

- 20 In paragraph 42(1) of Schedule 6 to FA 2000 (amount payable by way of levy) (as amended by paragraph 10(a) above)—
- (a) before paragraph (c) insert—
    - “(ba) if the supply is a reduced-rate supply of electricity, 10 per cent of the amount that would be payable if the supply were a supply to which paragraph (a) applies;”.
  - (b) in paragraph (c), for “a” (in the first place it occurs) substitute “any other”, and
  - (c) for the table substitute—

#### “TABLE

<i>Taxable commodity supplied</i>	<i>Rate at which levy payable if supply is not a reduced-rate supply or a supply for use in scrap metal recycling</i>
Electricity	£0.00524 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£0.00182 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.01172 per kilogram
Any other taxable commodity	£0.01429 per kilogram”.

- 21 In paragraph 43B(1) of Schedule 6 to FA 2000 (supplies for use in scrap metal recycling and reduced-rate supplies: deemed supply) (as inserted by paragraph 11 above), for paragraph (b) substitute—
- “(b) the original supply was made on the basis that it was, to any extent—
    - (i) a supply for use in scrap metal recycling,
    - (ii) a reduced-rate supply of electricity, or



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(iii) a reduced-rate supply of any other taxable commodity.”

- 22 In section 79 of FA 2011 (which provides for a lower rate of climate change levy for Northern Ireland gas supplies treated as taking place before 1 November 2013), in subsection (3)(a), for “£0.00062” substitute “ £0.00064 ”.
- 23 The amendments made by paragraphs 20 to 22 have effect in relation to supplies treated as taking place on or after 1 April 2013.

## SCHEDULE 31

Section 207

### CLIMATE CHANGE LEVY: CLIMATE CHANGE AGREEMENTS

- 1 Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- 2 In paragraph 44(1)(a), (2A) and (2C) (definition of “reduced-rate” supply) for “Secretary of State” substitute “ Administrator ”.
- 3 In paragraph 45(1) (variation of certificates under paragraph 44) for “Secretary of State” substitute “ Administrator ”.
- 4 In paragraph 45B(2) and (6) (removal of reduced rate) for “Secretary of State” (wherever occurring) substitute “ Administrator ”.
- 5 In the cross-heading before paragraph 47 omit “with Secretary of State”.
- 6 In paragraph 47(1) (definition of “climate change agreement”: direct agreements)—
- (a) in paragraph (a), for “Secretary of State” substitute “ Administrator ”,
  - (b) omit the “and” after paragraph (f),
  - (c) in paragraph (g)—
    - (i) for “five-yearly” substitute “ seven-yearly ”, and
    - (ii) after “Secretary of State” insert “ or the Administrator ”, and
  - (d) after paragraph (g) insert “, and
  - (h) containing any terms required by regulations falling within paragraph 52E.”
- 7 (1) Paragraph 48 (definition of “climate change agreement”: combination of umbrella and underlying agreements) is amended as follows.
- (2) In sub-paragraph (3)(c)—
    - (a) for “five-yearly” substitute “ seven-yearly ”, and
    - (b) after “Secretary of State” insert “ or the Administrator ”.
  - (3) In sub-paragraph (4)—
    - (a) in paragraph (a), for “Secretary of State” substitute “ Administrator ”,
    - (b) omit the “and” after paragraph (c), and
    - (c) after paragraph (d) insert “, and
    - (e) containing any terms required by regulations falling within paragraph 52E.”
  - (4) In sub-paragraph (5)—
    - (a) for paragraph (b) substitute—
      - “(b) entered into with the Administrator,”,

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- (b) omit paragraph (c),
  - (c) omit the “and” after paragraph (d), and
  - (d) after paragraph (e) insert “, and
    - (f) containing any terms required by regulations falling within paragraph 52E.”
- 8 (1) Paragraph 49 (supplemental provision relating to climate change agreements) is amended as follows.
- (2) In sub-paragraph (3) for “Secretary of State” (wherever occurring) substitute “Administrator”.
- (3) In sub-paragraph (7) for “paragraphs 47 and 48 and this paragraph” substitute “this Part of this Schedule”.
- (4) In sub-paragraph (8)—
- (a) for “Secretary of State” substitute “Administrator”,
  - (b) after paragraph (a) insert “ or ”, and
  - (c) omit paragraph (c) and the “or” before it.
- 9 After paragraph 52 insert—

*“The Administrator etc*

- 52A (1) In this Part of this Schedule references to “the Administrator” are to the body appointed as such by regulations made by the Secretary of State.
- (2) The body appointed must be a body established by an enactment (as defined in section 97 of the Climate Change Act 2008).
- (3) Different bodies may be appointed in relation to facilities in different parts of the United Kingdom.
- 52B (1) The Administrator is responsible for administering the scheme set out in paragraphs 44 to 52.
- (2) This covers (in particular) the administration of climate change agreements.
- (3) In this Part of this Schedule “administrative function” means—
- (a) the Administrator's function imposed by sub-paragraph (1), or
  - (b) any other power or duty of the Administrator conferred or imposed by or under a provision of this Part of this Schedule.
- 52C (1) The Administrator may require persons falling within sub-paragraph (2) to pay to the Administrator such charges as may from time to time be specified to cover any costs incurred by the Administrator in carrying out any administrative function.
- (2) The persons falling within this sub-paragraph are parties or potential or former parties to agreements falling within paragraph 47 or to umbrella or underlying agreements within the meaning of paragraph 48.
- (3) In sub-paragraph (1) “specified” means specified in, or determined in accordance with, a scheme made by the Administrator for the purposes of this paragraph.

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- (4) A scheme may provide for the times at which, and the manner in which, charges are to be paid.
  - (5) Paragraph 146(7) applies in relation to the Administrator's power to make a scheme under this paragraph as it applies in relation to a power to make regulations under this Schedule.
  - (6) A scheme may revoke or vary any previous scheme.
  - (7) A scheme may be made only with the consent of the Secretary of State.
  - (8) Charges received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.
  - (9) Sub-paragraph (8) does not apply if the Administrator is the Environment Agency.
- 52D(1) The Secretary of State may by regulations make provision about the administration of the scheme set out in paragraphs 44 to 52.
- (2) Sub-paragraph (1) covers (in particular)—
    - (a) provision about climate change agreements, and
    - (b) provision about how the Administrator is to carry out any administrative function.
  - (3) Without prejudice to the generality of sub-paragraphs (1) and (2), regulations may contain any provision falling within paragraph 52E or 52F.
  - (4) Regulations may—
    - (a) require the Administrator to obtain the Secretary of State's consent to any course of action,
    - (b) confer or impose other powers or duties on the Secretary of State or the Administrator, or
    - (c) confer or impose powers or duties on other persons.
  - (5) The Secretary of State may give directions to the Administrator about how the Administrator is to carry out any administrative function (and this power to give directions includes power to vary or revoke directions previously given).
  - (6) The Secretary of State may issue guidance to the Administrator about how the Administrator is to carry out any administrative function; and the Administrator must have regard to any guidance issued.
- 52E (1) Regulations may—
- (a) specify terms which must be included in agreements falling within paragraph 47 or in umbrella or underlying agreements within the meaning of paragraph 48, and
  - (b) confer power on the Administrator to vary such agreements to take account of any changes in the terms specified under paragraph (a) from time to time.
- (2) The terms which may be specified under sub-paragraph (1)(a) include (in particular) terms falling within paragraph 49(4) under which the absence (or partial absence) of any progress towards meeting any targets for a facility

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may be made up for by the payment to the Administrator of a sum specified in, or determined in accordance with, the regulations.

(3) Sums received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.

52F (1) Regulations may confer power on the Administrator—

- (a) to impose a financial penalty of a specified amount on a person who, as a representative of a facility to which a climate change agreement applies, contravenes a term of the agreement, and
  - (b) to terminate, with effect from a specified date, the agreement so far as it applies to the facility if—
    - (i) the financial penalty is not paid to the Administrator within a specified period, or
    - (ii) the contravention is not remedied to the Administrator's satisfaction within a specified period.
- (2) Regulations may also confer power on the Administrator to terminate, with effect from a specified date and without first imposing a financial penalty, a climate change agreement so far as it applies to a facility if there is a contravention of the agreement by a person who is a representative of the facility.
- (3) Neither sub-paragraph (1)(a) nor sub-paragraph (2) covers a failure to meet, or to make progress towards meeting, any targets set for a facility under a climate change agreement.
- (4) If regulations falling within sub-paragraph (1) or (2) are made, the regulations must also—
- (a) confer rights of appeal against a decision taken by the Administrator to impose a financial penalty or to terminate a climate change agreement (as the case may be), and
  - (b) specify the court, tribunal or person who is to hear and determine the appeal.
- (5) The Secretary of State may be specified for the purposes of sub-paragraph (4)(b).
- (6) Penalties received by the Administrator must be paid to the Secretary of State who must pay them into the Consolidated Fund.
- (7) Regulations may confer power on the Administrator to terminate, with effect from a specified date, a climate change agreement so far as it applies to a facility in specified circumstances not involving a contravention of the agreement.
- (8) In sub-paragraphs (1) to (7)—
- “representative” has the meaning given by paragraph 47(2), and
  - “specified” means specified in, or determined in accordance with, the regulations.
- (9) Sub-paragraph (10) or (11) (as the case may be) applies if a climate change agreement is terminated in respect of a facility before the start of, or during, a period specified for the facility in such a certificate as is mentioned in paragraph 44(1).

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(10) If the termination is before the start of the specified period, the Administrator must, in respect of the facility, give a variation certificate within paragraph 45(1)(a) in relation to the specified period.

(11) If the termination is during the specified period, the Administrator must, in respect of the facility, give a variation certificate within paragraph 45(1)(b) in relation to the specified period specifying the day of the termination.”

10 In paragraph 137(1) (disclosure of information) after paragraph (f) insert—  
“(fa) the Administrator (within the meaning of Part 4 of this Schedule);”.

11 The amendments made by this Schedule have no effect in relation to climate change agreements entered into with the Secretary of State before the day on which this Act is passed.

SCHEDULE 32

Section 207

CLIMATE CHANGE LEVY: SUPPLIES SUBJECT TO THE CARBON PRICE SUPPORT RATES AND COMBINED HEAT AND POWER STATIONS

PART 1

MAIN PROVISION

*Amendments to Schedule 6 to FA 2000*

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*Status: Point in time view as at 15/03/2018. This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012. (See end of Document for details)*

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*Provision relating to Schedule 20 to FA 2011*

- 17 .....  
18 .....

*Commencement*

- 19 .....

**F79** **PART 2**

CARBON PRICE SUPPORT RATES FROM 1 APRIL 2014

- 20 .....

**PART 3**

ELECTRICITY PRODUCED IN COMBINED HEAT AND POWER STATIONS

- 21 (1) Paragraph 20A of Schedule 6 to FA 2000 (climate change levy: exemption in relation to electricity produced in combined heat and power stations) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) omit the “and” after paragraph (c), and
  - (b) after paragraph (d) insert “; and
  - (e) the electricity is actually supplied before 1 April 2018.”
- (3) In sub-paragraph (4)(a)—
- (a) in sub-paragraph (i), after “station” insert “ before 1 April 2013 ”, and
  - (b) in sub-paragraph (ii), after “station”, in the first place it occurs, insert “ before 1 April 2013 ”.
- 22 (1) The following repeals are made in consequence of paragraph 21.
- (2) In Schedule 6 to FA 2000—
- (a) in paragraph 5(3), omit “20B(6)(a),”,
  - (b) omit paragraphs 20A and 20B,
  - (c) in paragraph 24(2)—
    - (i) omit “or 20A,”
    - (ii) omit “or in combined heat and power stations”, and
    - (iii) omit “or 20B”, and
  - (d) omit paragraph 149A.
- (3) Omit sections 123 and 124 of FA 2002.
- (4) Omit section 193(3) and (5) of FA 2003.
- (5) The repeals made by this paragraph come into force on the day appointed by the Treasury by order made by statutory instrument.

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## SCHEDULE 33

Section 209

### INHERITANCE TAX: GIFTS TO CHARITIES ETC

#### *Reduced rate of inheritance tax*

1 After Schedule 1 to IHTA 1984 insert—

#### “SCHEDULE 1A

#### GIFTS TO CHARITIES ETC: TAX CHARGED AT LOWER RATE

##### *Application of this Schedule*

- 1 (1) This Schedule applies if—
  - (a) a chargeable transfer is made (under section 4) on the death of a person (“D”), and
  - (b) all or part of the value transferred by the chargeable transfer is chargeable to tax at a rate other than nil per cent.
- (2) The part of the value transferred that is chargeable to tax at a rate other than nil per cent is referred to in this Schedule as “TP”.

##### *The relief*

- 2 (1) If the charitable giving condition is met—
  - (a) the tax charged on the part of TP that qualifies for the lower rate of tax is to be charged at the lower rate of tax, and
  - (b) the tax charged on any remaining part of TP is to be charged at the rate at which it would (but for this Schedule) have been charged on the whole of TP in accordance with section 7.
- (2) For the purposes of this paragraph, the charitable giving condition is met if, for one or more components of the estate (taking each component separately), the donated amount is at least 10% of the baseline amount.
- (3) Paragraph 3 defines the components of the estate.
- (4) Paragraphs 4 and 5 explain how to calculate the donated amount and the baseline amount for each component.
- (5) The part of TP that “qualifies for the lower rate of tax” is the part attributable to all the property in each of the components for which the donated amount is at least 10% of the baseline amount.
- (6) The lower rate of tax is 36%.

##### *The components of the estate*

- 3 (1) For the purposes of paragraph 2, the components of the estate are—
  - (a) the survivorship component,
  - (b) the settled property component, and
  - (c) the general component.

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- (2) The survivorship component is made up of all the property comprised in the estate that, immediately before D's death, was joint (or common) property liable to pass on D's death—
- (a) by survivorship (in England and Wales or Northern Ireland),
  - (b) under a special destination (in Scotland), or
  - (c) by or under anything corresponding to survivorship or a special destination under the law of a country or territory outside the United Kingdom.
- (3) The settled property component is made up of all the settled property comprised in the estate in which there subsisted, immediately before D's death, an interest in possession to which D was beneficially entitled immediately before death.
- (4) The general component is made up of all the property comprised in the estate other than—
- (a) property in the survivorship component,
  - (b) property in the settled property component, and
  - (c) property that forms part of the estate by virtue of section 102(3) of the Finance Act 1986 (gifts with reservation).

*The donated amount*

- 4 The donated amount, for a component of the estate, is so much of the value transferred by the relevant transfer as (in total) is attributable to property that—
- (a) forms part of that component, and
  - (b) is property in relation to which section 23(1) applies.

*The baseline amount*

- 5 The baseline amount, for a component of the estate, is the amount calculated in accordance with the following steps—

*Step 1* Determine the part of the value transferred by the chargeable transfer that is attributable to property in that component.

*Step 2* Deduct from the amount determined under Step 1 the appropriate proportion of the available nil-rate band.

“The appropriate proportion” is a proportion equal to the proportion that the amount determined under Step 1 bears to the value transferred by the chargeable transfer as a whole.

“The available nil-rate band” is the amount (if any) by which—

- (a) the nil-rate band maximum (increased, where applicable, in accordance with section 8A), exceeds
- (b) the sum of the values transferred by previous chargeable transfers made by D in the period of 7 years ending with the date of the relevant transfer.

*Step 3* Add to the amount determined under Step 2 an amount equal to so much of the value transferred by the relevant transfer as (in total) is attributable to property that—



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- (a) forms part of that component, and
- (b) is property in relation to which section 23(1) applies.

The result is the baseline amount for that component.

*Rules for determining whether charitable giving condition is met*

- 6
- (1) For the purpose of calculating the donated amount and the baseline amount, any amount to be arrived at in accordance with section 38(3) or (5) is to be arrived at assuming the rate of tax is the lower rate of tax (see paragraph 2(6)).
  - (2) For the purpose of calculating the donated amount, section 39A does not apply to a specific gift of property in relation to which section 23(1) applies (but that section does apply to such a gift for the purpose of calculating the baseline amount).
  - (3) Subject to sub-paragraphs (1) and (2), the provisions of this Act apply for the purpose of calculating the donated amount and the baseline amount as for the purpose of calculating the tax to be charged on the value transferred by the chargeable transfer.

*Election to merge parts of the estate*

- 7
- (1) An election may be made under this paragraph if, for a component of the estate, the donated amount is at least 10% of the baseline amount.
  - (2) That component is referred to as “the qualifying component”.
  - (3) The effect of the election is that the qualifying component and one or more eligible parts of the estate (as specified in the election) are to be treated for the purposes of this Schedule as if they were a single component.
  - (4) Accordingly, if the donated amount for that deemed single component is at least 10% of the baseline amount for it, the property in that component is to be included in the part of TP that qualifies for the lower rate of tax.
  - (5) In relation to the qualifying component—
    - (a) each one of the other two components of the estate is an “eligible part” of the estate, and
    - (b) all the property that forms part of the estate by virtue of section 102(3) of the Finance Act 1986 (gifts with reservation) is also an “eligible part” of the estate.
  - (6) The election must be made by all those who are appropriate persons with respect to the qualifying component and each of the eligible parts to be treated as a single component.
  - (7) “Appropriate persons” means—
    - (a) with respect to the survivorship component, all those to whom the property in that component passes on D's death (or, if they have subsequently died, their personal representatives),
    - (b) with respect to the settled property component, the trustees of all the settled property in that component,

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- (c) with respect to the general component, all the personal representatives of D or, if there are none, all those who are liable for the tax attributable to the property in that component, and
- (d) with respect to property within paragraph (b) of sub-paragraph (5), all those in whom the property within that paragraph is vested when the election is to be made.

#### *Opting out*

- 8 (1) If an election is made under this paragraph in relation to a component of the estate, this Schedule is to apply as if the donated amount for that component were less than 10% of the baseline amount for it (whether or not it actually is).
- (2) The election must be made by all those who are appropriate persons (as defined in paragraph 7(7)) with respect to the component.

#### *Elections: procedure*

- 9 (1) An election under this Schedule must be made by notice in writing to HMRC within two years after D's death.
- (2) An election under this Schedule may be withdrawn by notice in writing to HMRC given—
- (a) by all those who would be entitled to make such an election, and
  - (b) no later than the end of the period of two years and one month after D's death.
- (3) An officer of Revenue and Customs may agree in a particular case to extend the time limit in sub-paragraph (1) or (2)(b) by such period as the officer may allow.

#### *General interpretation*

- 10 In this Schedule, in relation to D—
- “the chargeable transfer” means the chargeable transfer mentioned in paragraph 1(1);
  - “the estate” means D's estate immediately before death;
  - “the relevant transfer” means the transfer of value that D is treated (under section 4) as having made immediately before death.”

#### *Consequential amendments*

- 2 IHTA 1984 is amended as follows in consequence of paragraph 1.
- 3 In section 7 (rates), in subsection (1), after “(4) and (5) below” insert “ and to Schedule 1A ”.
- 4 In section 33 (amount of charge under section 32), after subsection (2) insert—
- “(2ZA) In determining for the purposes of subsection (1)(b)(ii) the rate or rates that would have applied in accordance with subsection (1) of section 7, the effect of Schedule 1A (if it would have applied) is to be disregarded.”

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5 In section 78 (conditionally exempt occasion), in subsection (3), for “33(3)” substitute “ 33(2ZA) ”.

6 In section 128 (rate of charge: woodlands)—

- (a) the existing provisions become subsection (1) of that section, and
- (b) after that subsection insert—

“(2) In determining for the purposes of subsection (1) the rate or rates at which tax would have been charged on the amount determined under section 127, the effect of Schedule 1A (if it would have applied) is to be disregarded.”

7 After section 141 insert—

#### “141A Apportionment of relief under section 141

- (1) This section applies if any part of the value transferred by the later transfer qualifies for the lower rate of tax in accordance with Schedule 1A.
- (2) The amount of the reduction made under section 141(1) is to be apportioned in accordance with this section.
- (3) For each qualifying component, the tax chargeable on so much of the value transferred by the later transfer as is attributable to property in that component (“the relevant part of the tax”) is to be reduced by the appropriate proportion of the amount calculated in accordance with section 141(3).
- (4) “The appropriate proportion” is a proportion equal to the proportion that—
  - (a) the relevant part of the tax, bears to
  - (b) the tax chargeable on the value transferred by the later transfer as a whole.
- (5) If parts of an estate are treated under Schedule 1A as a single component, subsection (3) applies to the single component (and not to individual components forming part of the deemed single component).
- (6) If, after making the reductions required by subsection (3), there remains any part of the tax chargeable on the value transferred by the later transfer that has not been reduced, the remaining part of the tax is to be reduced by so much of the amount calculated in accordance with section 141(3) as has not been used up for the purposes of making the reductions required by subsection (3).
- (7) In this section—

“component” means a component of the estate, as defined in paragraph 3 of Schedule 1A;

“the later transfer” has the meaning given in section 141(1);

“qualifying component” means a component (or deemed single component) for which the donated amount is at least 10% of the baseline amount, as determined in accordance with Schedule 1A.”

8 In Schedule 4 (maintenance funds for historic buildings etc), in paragraph 14, after sub-paragraph (2) insert—

“(2A) In determining for the purposes of sub-paragraph (2) the effective rate or rates at which tax would have been charged on the amount in accordance

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with section 7(1), the effect of Schedule 1A (if it would have applied) is to be disregarded.”

*Instruments of variation to be notified to charities etc*

9 In section 142 of IHTA 1984 (alteration of dispositions taking effect on death), after subsection (3) insert—

“(3A) Subsection (1) does not apply to a variation by virtue of which any property comprised in the estate immediately before the person's death becomes property in relation to which section 23(1) applies unless it is shown that the appropriate person has been notified of the existence of the instrument of variation.

(3B) For the purposes of subsection (3A) “the appropriate person” is—

- (a) the charity or registered club to which the property is given, or
- (b) if the property is to be held on trust for charitable purposes or for the purposes of registered clubs, the trustees in question.”

*Commencement*

- 10 (1) The Schedule inserted by paragraph 1 has effect in cases where D's death occurs on or after 6 April 2012 (and the amendments made by paragraphs 3 to 8 are to be read accordingly).
- (2) The amendment made by paragraph 9 has effect in cases where the person's death occurs on or after 6 April 2012.

SCHEDULE 34

Section 211

BANK LEVY

*Introductory*

1 Schedule 19 to FA 2011 (bank levy) is amended as follows.

*Rates 2012*

2 In paragraph 6 (steps for determining the amount of the bank levy), in sub-paragraph (2)—

- (a) for “0.039%” substitute “ 0.044% ”, and
- (b) for “0.078%” substitute “ 0.088% ”.

3 In paragraph 7 (special provision for chargeable periods falling wholly or partly before 1 January 2012), in sub-paragraph (2)—

- (a) for “0.039%” substitute “ 0.044% ”, and
- (b) for “0.078%” substitute “ 0.088% ”.

4 The amendments made by paragraphs 2 and 3 are treated as having come into force on 1 January 2012.

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*Rates from 2013*

F80 5 .....

**Textual Amendments**

**F80** Sch. 34 para. 5 omitted (retrospective to 1.1.2013) by virtue of Finance Act 2013 (c. 29), s. 202(4)(a)(5) (with s. 202(6)-(13))

6 (1) In paragraph 7 (special provision for chargeable periods falling wholly or partly before 1 January 2012) for sub-paragraphs (1) and (2) substitute—

“(1) Paragraph 6(2) applies subject to this paragraph if some or all of the chargeable period falls before 1 January 2013.

(2) For Step 7 there is substituted—

“*Step 7* Determine the proportion (“P%”) (if any) of the chargeable period which falls within each of the periods (“rate periods”) specified in column 1 of the following table. In relation to each rate period—

- (a) charge P% of the amount of the long term chargeable equity and liabilities at the rate specified, in relation to the rate period concerned, in the second column of the table, and
- (b) charge P% of the amount of the short term chargeable liabilities at the rate specified, in relation to the rate period concerned, in the third column of the table.

Add together the results for each rate period in which some or all of the chargeable period falls to give the amount of the bank levy.

<i>Rate period</i>	<i>Rate for long term chargeable equity and liabilities</i>	<i>Rate for short term chargeable liabilities</i>
1 January 2011 to 28 February 2011	0.025%	0.05%
1 March 2011 to 30 April 2011	0.05%	0.1%
1 May 2011 to 31 December 2011	0.0375%	0.075%
1 January 2012 to 31 December 2012	0.044%	0.088%
Any time on or after 1 January 2013	0.0525%	0.105%”

F81 (2) .....

**Textual Amendments**

**F81** Sch. 34 para. 6(2) omitted (1.1.2014) by virtue of Finance Act 2013 (c. 29), s. 203(7)(8)

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7 The amendments made by [<sup>F82</sup>paragraph] 6 come into force on 1 January 2013.

#### Textual Amendments

**F82** Word in Sch. 34 para. 7 substituted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), s. 202(4)(b)(5) (with s. 202(6)-(13))

#### *Joint ventures*

8 (1) Paragraph 43 (calculation of chargeable equity and liabilities where relevant group has an interest in a joint venture) is amended as follows.

(2) In sub-paragraph (1), for paragraphs (d) and (e) substitute “, and

(d) in the absence of this paragraph, none of the liabilities taken into account in determining the amount of the chargeable equity and liabilities of the relevant group would include the JV liabilities.”

(3) For sub-paragraph (2) substitute—

“(2) For the purposes of determining the chargeable equity and liabilities of the relevant group under paragraph 17 or 19 (as the case may be) the joint venture is to be treated as if—

(a) it were a member of the group in relation to—

(i) the liabilities of the joint venture which consist of the JV liabilities, and

(ii) the assets of the joint venture so far as determined by the relevant interest, and

(b) it were not a member of the group in relation to the remaining liabilities and assets of the joint venture.”

9 In paragraph 44 (chargeable equity and liabilities of joint venture: prevention of double charge), in sub-paragraph (7)(b), for the words from “liabilities for” to “27(2)(a)” substitute “ taken into account in calculating the chargeable equity and liabilities of V (or where sub-paragraph (6) applies, A) ”.”

10 The amendments made by paragraphs 8 and 9 have effect in relation to chargeable periods ending on or after 1 January 2012.

#### *Double taxation relief*

11 (1) In paragraph 66 (double taxation arrangements), after sub-paragraph (9) insert—

“(9A) If arrangements specified in an order under this paragraph provide for relief from the bank levy for periods before the order is made, regulations under this paragraph which are made on the same day as the order, and come into force on the same day as the order, may make provision in relation to those periods.”

(2) After paragraph 67 insert—

“*Disclosure of information to foreign tax authorities etc*

67A(1) If the Treasury by order declares that—

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- (a) international tax enforcement arrangements which are specified in the order have been made in relation to any territory or territories outside the United Kingdom in association with double taxation arrangements specified under paragraph 66 in the same or a previous order, and
  - (b) it is expedient that those international tax enforcement arrangements have effect,
- those arrangements have effect, and do so in spite of anything in any enactment or instrument.
- (2) “International tax enforcement arrangements” means arrangements which relate to one or both of the following—
    - (a) the exchange of information foreseeably relevant to the administration, enforcement or recovery of the bank levy or any equivalent foreign levy to which the double taxation arrangements relate;
    - (b) the service of documents relating to the bank levy or any such equivalent foreign levy.
  - (3) An order under this paragraph revoking an earlier order may contain transitional provisions that appear to the Treasury to be necessary or expedient.
  - (4) Subsections (4) and (5) of section 173 of FA 2006 (international tax enforcement arrangements: disclosure of information) apply to arrangements which have effect under this paragraph as they apply to arrangements which have effect under that section.
  - (5) Orders under this paragraph are to be made by statutory instrument.
  - (6) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) Accordingly, the italic heading before paragraph 68 is omitted.

*Transitional provision*

- 12 (1) This paragraph applies where—
- (a) an amount of the bank levy is treated as if it were an amount of corporation tax chargeable on an entity (“E”) for an accounting period of E,
  - (b) the chargeable period in respect of which the amount of the bank levy is charged falls (or partly falls) on or after 1 January 2012, and
  - (c) under the Instalment Payment Regulations, one or more instalment payments, in respect of the total liability of E for the accounting period, were treated as becoming due and payable before the commencement date (“pre-commencement instalment payments”).
- (2) Paragraphs 2 to 10 are to be ignored for the purpose of determining the amount of any pre-commencement instalment payment.
  - (3) If there is at least one instalment payment, in respect of the total liability of E for the accounting period, which under the Instalment Payment Regulations is treated as becoming due and payable on or after the commencement date (“post-

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commencement instalment payments”), the amount of that instalment payment, or the first of them, is to be increased by the adjustment amount.

- (4) If there are no post-commencement instalment payments, a further instalment payment, in respect of the total liability of E for the accounting period, of an amount equal to the adjustment amount is to be treated as becoming due and payable at the end of the period of 30 days beginning with the commencement date.
- (5) “The adjustment amount” is the difference between—
- (a) the aggregate amount of the pre-commencement instalments determined in accordance with sub-paragraph (2), and
  - (b) the aggregate amount of those instalment payments determined ignoring sub-paragraph (2) (and so taking account of paragraphs 2 to 10).
- (6) In the Instalment Payment Regulations—
- (a) in regulations 6(1)(a), 7(2), 8(1)(a) and (2)(a), 9(5), 10(1), 11(1) and 13, references to regulation 4A, 4B, 4C, 4D, 5, 5A or 5B of those Regulations are to be read as including a reference to sub-paragraphs (1) to (5) (and in regulation 7(2) “the regulation in question”, and in regulation 8(2) “that regulation”, are to be read accordingly), and
  - (b) in regulation 9(3), the reference to those Regulations is to be read as including a reference to sub-paragraphs (1) to (5).
- (7) In section 59D of TMA 1970 (general rule as to when corporation tax is due and payable), in subsection (5), the reference to section 59E is to be read as including a reference to this paragraph.
- (8) In this paragraph—
- “the chargeable period” is to be construed in accordance with paragraph 4 or (as the case may be) 5 of Schedule 19 to FA 2011;
- “the commencement date” means the day on which this Act is passed;
- “the Instalment Payment Regulations” means the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175);
- and references to the total liability of E for an accounting period are to be construed in accordance with regulation 2(3) of the Instalment Payment Regulations.

## SCHEDULE 35

Section 214

### STAMP DUTY LAND TAX: HIGHER RATE FOR CERTAIN TRANSACTIONS

#### *Introductory*

- 1 Part 4 of FA 2003 (stamp duty land tax) is amended in accordance with paragraphs 2 to 9.

#### *Higher rate of tax: main provisions*

- 2 (1) Section 55 (amount of tax chargeable: general) is amended as follows.
- (2) In subsection (1), after “chargeable transaction” insert “ to which this section applies ”.



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(3) After that subsection insert—

“(1A) This section applies to any chargeable transaction other than a transaction to which paragraph 3 of Schedule 4A or step 4 of section 74(1A) (higher rate for certain transactions) applies.”

<sup>F83</sup>(4) . . . . .

(5) In subsection (5), for “74” substitute “ 74(2) and (3) ”.

<sup>F84</sup>(6) . . . . .

**Textual Amendments**

**F83** Sch. 35 para. 2(4) omitted (with effect in accordance with s. 2(2) of the amending Act) by virtue of Stamp Duty Land Tax Act 2015 (c. 1), Sch. para. 21(c)(ii) (with s. 2(3)-(6))

**F84** Sch. 35 para. 2(6) omitted (with effect in accordance with s. 2(2) of the amending Act) by virtue of Stamp Duty Land Tax Act 2015 (c. 1), Sch. para. 21(c)(ii) (with s. 2(3)-(6))

3 After section 55 insert—

**“55A Amount of tax chargeable: higher rate for certain transactions**

Schedule 4A provides for the calculation of the tax chargeable in respect of certain transactions involving higher threshold interests in dwellings.”

4 After Schedule 4 insert—

“SCHEDULE  
4A

STAMP DUTY LAND TAX: HIGHER RATE FOR CERTAIN TRANSACTIONS

*Meaning of “higher threshold interest”*

- 1 (1) In this paragraph “interest in a single dwelling” means so much of the subject-matter of a chargeable transaction as consists of a chargeable interest in or over a single dwelling (together with appurtenant rights).
- (2) An interest in a single dwelling is a higher threshold interest for the purposes of this Schedule if chargeable consideration of more than £2,000,000 is attributable to that interest.

*Transactions involving a higher threshold interest*

- 2 (1) Sub-paragraphs (2) to (8) apply to a chargeable transaction whose subject-matter consists of or includes a higher threshold interest.
- (2) If the main subject-matter of the transaction consists entirely of higher threshold interests, the transaction is a high-value residential transaction for the purposes of paragraph 3.
- (3) If the main subject-matter of the transaction includes a chargeable interest other than a higher threshold interest, the transaction (“the primary

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transaction”) is to be treated for the relevant purposes as two separate chargeable transactions as follows—

- (a) a transaction whose subject-matter is all the higher threshold interests, together with any appurtenant rights;
  - (b) a transaction whose subject-matter is the remainder of the subject-matter of the primary transaction.
- (4) For those purposes, the chargeable consideration for a transaction treated as occurring under sub-paragraph (3) is so much of the chargeable consideration for the primary transaction as is attributable to that transaction.
- (5) The transaction mentioned in sub-paragraph (3)(a) is a high-value residential transaction for the purposes of paragraph 3.
- (6) “Relevant purposes” means the purposes of—
- (a) paragraphs 3 and 5 of this Schedule,
  - (b) section 55 (amount of tax chargeable: general),
  - (c) Schedule 5 (amount of tax chargeable: rent),
  - (d) Schedule 6B (transfers involving multiple dwellings), and
  - (e) any other provision of this Part, so far as it is necessary because of any of paragraphs (a) to (d) to treat the purposes in question as relevant purposes.
- (7) If a transaction treated under sub-paragraph (3) as two separate transactions is notifiable, each of the separate transactions (but not the primary transaction) is also treated as a separate, and notifiable, transaction for the purposes of section 76 (duty to deliver land transaction return).
- (8) The provisions relating to land transaction returns are to be read with any adjustments that may be necessary as a result of sub-paragraph (7).
- (9) The reference in sub-paragraph (1) to a chargeable transaction does not include a transaction to which section 74 (exercise of collective rights by tenants of flats) or section 75 (crofting community right to buy) applies.

*Amount of tax chargeable: higher rate for certain transactions*

- 3 (1) Where this paragraph applies to a chargeable transaction—
- (a) the amount of tax chargeable in respect of the transaction is 15% of the chargeable consideration for the transaction, and
  - (b) the transaction is not taken to be linked to any other transaction for the purposes of section 55(4).
- (2) This paragraph applies to a chargeable transaction if—
- (a) the transaction is a high-value residential transaction, and
  - (b) the condition in sub-paragraph (3) is met.
- (3) The condition is that—
- (a) the purchaser is a company,
  - (b) the acquisition is made by or on behalf of the members of a partnership one or more of whose members is a company, or
  - (c) the acquisition is made for the purposes of a collective investment scheme.

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- (4) References in sub-paragraph (3) to a company do not include a company acting in its capacity as trustee of a settlement.
- (5) If there are two or more purchasers acting jointly, the condition in sub-paragraph (3) is treated as met if it is met in relation to at least one of those purchasers.
- (6) In relation to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17(2) of Schedule 15, sub-paragraph (3) has effect as if the following were substituted for paragraph (b) of that sub-paragraph—
  - “(b) the purchasers (see paragraph 17(3) of Schedule 15) include a company, or”.
- (7) In relation to an event that is a chargeable transaction by virtue of paragraph 17A(4) of that Schedule, sub-paragraph (3) has effect as if the following were substituted for paragraph (b) of that sub-paragraph—
  - “(b) the purchasers (see paragraph 17A(5) of Schedule 15) include a company, or”.
- (8) For the purposes of sub-paragraph (3), paragraph 3 of Schedule 16 (bare trustees) applies as if sub-paragraphs (2) and (3) of that paragraph were omitted.
- (9) In the case of a transaction for which the whole or part of the chargeable consideration is rent, this paragraph has effect subject to section 56 and Schedule 5 (amount of tax chargeable: rent).
- (10) The Treasury may by order amend this paragraph for the purpose of limiting the circumstances in which the condition in sub-paragraph (3) is to be treated as met.

*Acquisitions of interests in the same dwelling through different transactions*

- 4 (1) Sub-paragraphs (2) and (3) apply if—
  - (a) the subject-matter of a chargeable transaction includes a chargeable interest in or over a dwelling,
  - (b) one or more land transactions, the subject-matter of each of which includes a chargeable interest in or over the dwelling, are linked to that chargeable transaction, and
  - (c) the total consideration attributable to the interests mentioned in paragraphs (a) and (b) (and to any appurtenant rights, but disregarding any rent) is more than £2,000,000.
- (2) Each of those chargeable interests is treated as a higher threshold interest for the purposes of this Schedule.
- (3) If the condition in paragraph 3(3) is met in the case of the transaction mentioned in sub-paragraph (1)(a), it is also treated as met in the case of each transaction mentioned in sub-paragraph (1)(b) that is a chargeable transaction.

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- (4) The transactions referred to in this paragraph do not include any transaction to which section 74 (exercise of collective rights by tenants of flats) or section 75 (crofting community right to buy) applies.

*Property developers*

- 5 (1) A company is treated as not being a company for the purposes of paragraph 3(3)(a) if—
- (a) the company acquires the subject-matter of the chargeable transaction in the course of a bona fide property development business and for the sole purpose of developing and reselling the land, and
  - (b) the company has carried on that business for at least two years before the effective date of the transaction.
- (2) Where the subject-matter of a chargeable transaction is acquired by or on behalf of the members of a partnership, those members are taken not to include a company for the purposes of paragraph 3(3)(b) if—
- (a) that subject-matter is acquired in the course of a bona fide property development business and for the sole purpose of developing and reselling the land, and
  - (b) the partnership has carried on that business for at least two years before the effective date of the transaction.
- (3) In relation to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17(2) of Schedule 15 (“the partnership transfer”) the purchasers are treated as not including a company for the purposes of paragraph 3(3)(b) (as modified by paragraph 3(6)) if—
- (a) the acquisition effected by the land transfer referred to in paragraph 17(1)(a) of that Schedule was made in the course of a bona fide property development business, and for the sole purpose of developing and reselling the land, and
  - (b) the partnership is continuing to carry on that business at the effective date of the partnership transfer, and has carried it on for at least two years before that date.
- (4) In relation to an event that is a chargeable transaction by virtue of paragraph 17A(4) of Schedule 15 (“the qualifying event”) the purchasers are treated as not including a company for the purposes of paragraph 3(3)(b) (as modified by paragraph 3(7)) if—
- (a) the acquisition effected by the land transfer referred to in paragraph 17A(1)(a) of that Schedule was made in the course of a bona fide property development business, and for the sole purpose of developing and reselling the land, and
  - (b) the partnership is continuing to carry on that business at the effective date of the qualifying event, and has carried it on for at least two years before that date.
- (5) A property development business is a business that consists of or includes buying, and redeveloping for resale, residential property.

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- (6) For the purposes of sub-paragraph (1)(b) a property development business is treated as having been carried on by the company at any time when it was carried on by a company which is a member of the same group as the company.
- (7) Companies are members of the same group for the purposes of this paragraph if they are members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7).

*Partnerships: application of paragraph 2 to certain transactions*

- 6 (1) Sub-paragraphs (2) and (3) apply where the subject-matter of a transaction to which Part 3 of Schedule 15 applies consists of or includes a higher threshold interest.
- (2) The transaction is not to be treated as a high-value residential transaction by virtue of paragraph 2(2) unless the chargeable consideration for the transaction is more than £2,000,000.
- (3) Paragraph 2(3) to (8) does not apply to the transaction if—
  - (a) the subject-matter of the transaction includes a chargeable interest other than a higher threshold interest, and
  - (b) the result of applying paragraph 2(3) and (4) would be that chargeable consideration of £2,000,000 or less would be attributable to the separate transaction mentioned in paragraph 2(3)(a).
- (4) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a transfer of an interest in a partnership that is a chargeable transaction by virtue of sub-paragraph (2) of paragraph 14 of Schedule 15 is—
  - (a) if the transfer is a Type A transfer, the relevant partnership property as defined in sub-paragraph (5) of that paragraph, or
  - (b) if the transfer is a Type B transfer, the relevant partnership property as defined in sub-paragraph (5A) of that paragraph.
- (5) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a transfer of an interest in a partnership that is a chargeable transaction by virtue of sub-paragraph (2) of paragraph 17 of Schedule 15 is the subject-matter of the land transfer referred to in sub-paragraph (1)(a) of that paragraph.
- (6) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a chargeable transaction that is treated as occurring by virtue of sub-paragraph (4) of paragraph 17A of Schedule 15 is the subject-matter of the land transfer referred to in sub-paragraph (1)(a) of that paragraph.

*Meaning of “dwelling”*

- 7 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
- (2) A building or part of a building counts as a dwelling if—
  - (a) it is used or suitable for use as a single dwelling, or

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- (b) it is in the process of being constructed or adapted for such use.
- (3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.
- (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of the dwelling.
- (5) The subject-matter of a transaction is also taken to include an interest in a dwelling if—
  - (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
  - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
  - (c) construction or adaptation of the building, or part of the building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5) “contract”, “relevant deeming provision” and “substantially performed” have the same meaning as in paragraph 7(5) of Schedule 6B.
- (7) A building or part of a building used for a purpose specified in section 116(2) or (3) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.
- 8 (1) The Treasury may by order amend paragraph 7 so as to specify cases where use of a building is to be use of a building as a dwelling for the purposes of sub-paragraph (2) or (5) of that paragraph.
- (2) The reference in section 116(8)(a) (power to amend section 116(2) and (3)) to “the purposes of subsection (1)” includes a reference to the purposes of paragraph 7(2) and (5).

#### *Interpretation*

- 9 In this Schedule—
  - “appurtenant rights”, in relation to a chargeable interest that is, or is part of, the subject-matter of a transaction, means any rights or interests appurtenant or pertaining to the chargeable interest that are acquired with it;
  - “attributable” means attributable on a just and reasonable basis;
  - “collective investment scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act);
  - “company” means a body corporate other than a partnership.”

#### *Higher rate of tax: exercise of collective rights by tenants of flats*

- 5 (1) Section 74 (exercise of collective rights by tenants of flats) is amended as follows.

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(2) After subsection (1) insert—

“(1A) The rate of tax is determined as follows.

*Step 1* Determine the fraction of the relevant consideration produced by dividing the total amount of that consideration by the number of qualifying flats contained in the premises.

*Step 2* If the amount produced by step 1 is £2,000,000 or less, determine the rate of tax and the tax chargeable in accordance with subsections (2) and (3).

*Step 3* If the amount produced by step 1 is more than £2,000,000 and the condition in paragraph 3(3) of Schedule 4A is not met with respect to the transaction, determine the rate of tax and the tax chargeable in accordance with subsections (2) and (3).

*Step 4* If the amount produced by step 1 is more than £2,000,000 and the condition in paragraph 3(3) of Schedule 4A is met with respect to the transaction, subsections (2) and (3) do not apply, and the amount of tax chargeable in respect of the transaction is 15% of the chargeable consideration for the transaction.”

<sup>F85</sup>(3) .....

#### Textual Amendments

**F85** Sch. 35 para. 5(3) omitted (with effect in accordance with s. 2(2) of the amending Act) by virtue of Stamp Duty Land Tax Act 2015 (c. 1), Sch. para. 21(c)(ii) (with s. 2(3)-(6))

#### Minor and consequential amendments

6 (1) Section 109 (general power to vary Part 4 of FA 2003 by regulations) is amended as follows.

(2) After subsection (2) insert—

“(2A) The power under subsection (2)(b) includes power to alter the conditions for the application to a chargeable transaction of paragraph 3 of Schedule 4A (higher rate for certain transactions), other than the condition that the transaction must be a high-value residential transaction.”

(3) In subsection (3)—

(a) for “subsection (2)(b),” substitute “ subsections (2)(b) and (2A), ”,

(b) omit the “or” at the end of paragraph (a), and

(c) after that paragraph insert—

“(aa) section 74(1A) (exercise of collective rights by tenants of flats),

(ab) Schedule 4A (amount of tax chargeable: high-value interests in dwellings), or”.

7 (1) Schedule 5 (amount of tax chargeable: rent) is amended as follows.

(2) In paragraph 9—

(a) in sub-paragraph (4)—

(i) after “section 55” insert “ or 74(1A) ”, and

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- (ii) after “Schedule” (in the second place it occurs) insert “ 4A or ”, and
  - (b) in sub-paragraph (5)—
    - (i) for “that section” substitute “ section 55 ”, and
    - (ii) after “Schedule” (in the second place it occurs) insert “ 6B ”.
  - (3) In paragraph 9A(1), for “where there is chargeable consideration other than rent.” substitute “where—
    - (a) there is chargeable consideration other than rent, and
    - (b) section 55 (amount of tax chargeable: general) applies to the transaction (whether as a result of paragraph 2 of Schedule 4A or otherwise).”
  - 8 In paragraph 2(4) of Schedule 6B (transfers involving multiple dwellings)—
    - (a) omit the “or” at the end of paragraph (a), and
    - (b) after that paragraph insert—
      - “(aa) paragraph 3 of Schedule 4A applies to it, or”.
  - 9 (1) Schedule 15 (partnerships) is amended as follows.
    - (2) In paragraphs 11(2C) and 19(2C), in the substituted sub-paragraph (4)—
      - (a) after “section 55” insert “ or 74(1A) ”, and
      - (b) after “Schedule” (in the second place it occurs) insert “ 4A or ”.
    - (3) In paragraph 30(2)—
      - (a) for “either or both” substitute “ one or more ”, and
      - (b) after paragraph (a) insert—
        - “(aa) paragraph 3 of Schedule 4A applies to the transaction;”.
- Application of amendments*
- 10 (1) Except as mentioned in sub-paragraph (2), the amendments made by this Schedule have effect in relation to any land transaction of which the effective date is on or after 21 March 2012.
  - (2) Those amendments do not have effect in relation to any transaction that is—
    - (a) effected in pursuance of a contract entered into and substantially performed before 21 March 2012,
    - (b) effected in pursuance of a contract entered into before that date and not excluded by sub-paragraph (3), or
    - (c) excepted by sub-paragraph (4).
  - (3) A transaction effected in pursuance of a contract entered into before 21 March 2012 is excluded by this sub-paragraph if—
    - (a) there is any variation of the contract, or assignment (or assignation) of rights under the contract, on or after 21 March 2012,
    - (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
    - (c) on or after that date there is an assignment (or assignation), subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.



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- (4) A transaction treated as occurring under paragraph 17(2) or 17A(4) of Schedule 15 to FA 2003 (partnerships) is excepted by this sub-paragraph if the effective date of the land transfer referred to in sub-paragraph (1)(a) of the paragraph concerned is before 21 March 2012.

## SCHEDULE 36

Section 218

### AGREEMENT BETWEEN UK AND SWITZERLAND

#### Modifications etc. (not altering text)

- C21** Sch. 36 applied (with modifications) (19.4.2013) by [The Small Charitable Donations Regulations 2013 \(S.I. 2013/938\)](#), regs. 1, 6

## PART 1

### INTRODUCTION

#### *The Agreement and the Joint Declaration*

- 1 In this Schedule—
- (a) “the Agreement” means the agreement signed on 6 October 2011 between the United Kingdom and the Swiss Confederation on co-operation in the area of taxation, as amended by a protocol signed by them on 20 March 2012 and by a mutual agreement signed by them on 18 April 2012 implementing article XVIII of that protocol,
  - (b) “the Joint Declaration” means the joint declaration (concerning a tax finality payment) forming an integral part of that protocol,
  - (c) “the start date” is the date on which the Agreement enters into force in accordance with its terms (see Article 44), and
  - (d) references to a numbered Article are to the Article of that number in the Agreement.

## PART 2

### THE PAST

#### *Taxes affected*

- 2 (1) The taxes affected by this Part are—
- (a) income tax,
  - (b) capital gains tax,
  - (c) inheritance tax, and
  - (d) VAT.
- (2) Accordingly, this Part affects—

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- (a) amounts of income on which income tax is charged,
  - (b) chargeable gains,
  - (c) the value of property forming part of the value transferred by a chargeable transfer, and
  - (d) the value of supplies on which VAT is charged.
- (3) An amount falling within one (or more) of those descriptions is referred to as a “taxable amount” and, in relation to such an amount, “tax” means whichever of the taxes mentioned in sub-paragraph (1) is (or are) charged on it.

#### *Application of this Part*

- 3 (1) This Part applies if—
- (a) a one-off payment is levied in accordance with Part 2 of the Agreement,
  - (b) a certificate is issued under Article 9(4) to a person (“P”) in respect of that payment, and
  - (c) the certificate is approved by P or considered approved by virtue of that Article.
- (2) The certificate is referred to in this Part as “the Part 2 certificate”.

#### *Qualifying amounts*

- 4 (1) The Part 2 certificate applies to taxable amounts in respect of which the conditions in sub-paragraph (2) are met.
- (2) The conditions are—
- (a) P is liable to tax on the amount,
  - (b) the amount is untaxed,
  - (c) the taxable event took place before the start date, and
  - (d) the necessary link with the certificate can be demonstrated.
- (3) The necessary link is—
- (a) in a case falling within Article 9(3) (non-UK domiciled individuals opting for self-assessment method), that the amount is included in the omitted taxable base by reference to which the one-off payment was calculated, and
  - (b) in any other case, that the amount forms part of or is represented by the assets comprised in the relevant capital by reference to which the one-off payment was calculated (referred to in the Agreement as C<sub>r</sub>).
- (4) For the purposes of sub-paragraph (3)(b), amounts are assumed to be attributed to assets in the way that produces the most beneficial outcome for P.
- (5) Paragraph 11 makes further provision about the interpretation of sub-paragraph (2).
- (6) Amounts to which the Part 2 certificate applies in accordance with this paragraph are referred to in this Part as “qualifying amounts”.

#### *Eligibility for clearance*

- 5 (1) The effect of the Part 2 certificate depends on whether P is eligible for clearance.
- (2) P is “eligible for clearance” if—

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- (a) none of the circumstances listed in Article 9(13)(a) to (e) apply (tax investigations etc), and
  - (b) Article 12(1) does not apply (wrongful behaviour in relation to non-UK domiciled status).
- (3) Otherwise, P is “not eligible for clearance”.

*Effect if P eligible for clearance*

- 6
- (1) This paragraph sets out the effect of the Part 2 certificate if P is eligible for clearance.
  - (2) P ceases to be liable to tax on qualifying amounts.
  - (3) Sub-paragraph (2) does not apply to a qualifying amount if—
    - (a) the amount was held in the United Kingdom,
    - (b) at some point during the period beginning with 6 October 2011 and ending immediately before the start date, it ceased to be held in the United Kingdom, and
    - (c) after that point (but before the start date) it began to be held in Switzerland.
  - (4) Instead, such part of the one-off payment as is attributable (on a just and reasonable basis) to the qualifying amount is to be treated as if it were a credit allowable against the tax due from P taking account of that amount.
  - (5) The meaning of tax due “taking account of” an amount is explained in Part 5 of this Schedule.
  - (6) The form in which a qualifying amount was held in the United Kingdom is irrelevant (so references in sub-paragraph (3) to the amount include an asset representing the amount).
  - (7) The total qualifying amounts to which sub-paragraphs (2) and (4) can apply as a result of the Part 2 certificate is limited to X.
  - (8) If the total exceeds X, the particular qualifying amounts to which those sub-paragraphs apply are assumed to be those that would produce the most beneficial outcome for P.
  - (9) X is—
    - (a) in a case falling within Article 9(3), the value of the omitted taxable base by reference to which the one-off payment was calculated, and
    - (b) in any other case, the value shown in the Part 2 certificate as the value of the relevant capital ( $C_T$ ).

*Ceasing to be liable to tax*

- 7
- (1) The result of “ceasing to be liable” to tax on a qualifying amount depends on the tax (or taxes) in respect of which the amount is untaxed.
  - (2) For income tax or capital gains tax, the result is that the amount is no longer liable to be brought into account in assessing the income tax or capital gains tax due from P for the tax year in which the amount would otherwise be liable to be brought into account.

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- (3) For inheritance tax, the result is that any inheritance tax due from P in respect of the chargeable transfer and attributable to the property whose value is included in the amount is no longer due from P.
- (4) For VAT, the result is that P is no longer required to account for output tax on the amount in determining the VAT payable by P for the prescribed accounting period in which P would otherwise be required to account for output tax on the amount.
- (5) But—
- (a) ceasing to be liable to tax on a qualifying amount does not affect P's liability to tax on any other amount, and
  - (b) P's liability to tax on any other amount remains what it would have been, had the qualifying amount been brought into account in calculating that liability.
- (6) Accordingly, if the qualifying amount were ever to be brought into account and it were found that the tax assessed on any other amount should have been higher as a result, P would remain liable for the extra tax due on that other amount and for any associated ancillary charge.
- (7) For the purposes of sub-paragraphs (5) and (6), the qualifying amount is assumed to form the top slice of the total sum on which P is liable to tax.

*Effect if P not eligible for clearance*

- 8 (1) This paragraph sets out the effect of the Part 2 certificate if P is not eligible for clearance.
- (2) The one-off payment is to be treated as if it were a credit allowable against the tax due from P taking account of qualifying amounts.
- (3) The one-off payment is to be applied for the purposes of sub-paragraph (2)—
- (a) in the order specified in sub-paragraph (4), and
  - (b) subject to that, in the way that produces the most beneficial outcome for P.
- (4) The order is—
- (a) first, for VAT,
  - (b) then, for income tax,
  - (c) then, for capital gains tax, and
  - (d) finally, for inheritance tax.

*Interest, penalties etc*

- 9 (1) Where, by virtue of this Part, P ceases to be liable to tax on a qualifying amount, P also ceases to be liable to any ancillary charge directly connected with that amount.
- (2) Where, by virtue of this Part, all or part of a one-off payment is treated as if it were a credit allowable against the tax due from P taking account of a qualifying amount, the credit may also be used to offset any ancillary charge directly connected with that amount.
- (3) Sub-paragraph (4) applies in the case of a qualifying amount that is part only of—
- (a) an amount of income on which income tax is charged,
  - (b) a chargeable gain,

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- (c) the value of property forming part of the value transferred by a chargeable transfer, or
  - (d) the value of a supply on which VAT is charged.
- (4) The amount of any ancillary charge directly connected with that qualifying amount is determined by apportioning the ancillary charge directly connected with the income, gain or value on a just and reasonable basis.

#### *Repayments*

- 10 Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment or refund to which P may be entitled by virtue of paragraph 6(4) or 8(2) if the credit allowable under that paragraph exceeds the total amount of tax against which the credit is allowable.

#### *Paragraph 4: supplementary provision*

- 11 (1) This paragraph explains how paragraph 4(2) is to be read for each description of taxable amount.
- (2) For income and chargeable gains—
- (a) the reference to P being “liable to tax” includes a case where P would be so liable if the income or gain were to be remitted to the United Kingdom,
  - (b) “the taxable event” takes place when the income arises or the gain accrues (whether or not, in a remittance basis case, it is remitted to the United Kingdom), and
  - (c) the income or gain is “untaxed” if it has not been brought into account in an assessment to income tax or, as the case may be, capital gains tax for the tax year in which it is required to be brought into account.
- (3) For the value of property forming part of the value transferred by a chargeable transfer—
- (a) “the taxable event” takes place when the chargeable transfer is made (or, in the case of a potentially exempt transfer, when death occurs), and
  - (b) the value of the property is “untaxed” if it has not been brought into account in determining the value transferred by the chargeable transfer.
- (4) For the value of supplies on which VAT is charged—
- (a) “the taxable event” takes place when P makes the supply, and
  - (b) the value of the supply is “untaxed” if output tax on the supply has not been accounted for in determining the VAT payable by P for the prescribed accounting period in which P is required to account for output tax on the supply.
- (5) Paragraph 4(2)(a) is not satisfied in a case where P is liable to tax only because the liability has been transferred to P as a result of action taken by HMRC (for example, as a result of a notice given under section 77A of VATA 1994 or a direction given under regulation 81 of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)).

#### *Refund of one-off payment*

- 12 If a one-off payment is refunded by HMRC in accordance with Article 15(3), this Part ceases to apply with respect to that payment.

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### PART 3

#### THE FUTURE: INCOME TAX AND CAPITAL GAINS TAX

##### *Taxes affected*

- 13 The taxes affected by this Part are—
- (a) income tax, and
  - (b) capital gains tax.

##### *Application of this Part*

- 14 (1) This Part applies if—
- (a) a sum is levied under Article 19 on an amount of income or a gain of a person, and
  - (b) a certificate is issued to the person under Article 30(1) in respect of the levying of that sum (or sums that include that sum).
- (2) This Part also applies if—
- (a) a retention is made under EUSA from an amount of income or a gain of a person,
  - (b) a tax finality payment, as contemplated by the Joint Declaration, is made on the same income or gain, and
  - (c) a certificate is issued to the person under the Joint Declaration in respect of the making of that payment (or payments that include that payment).
- (3) In this Part—
- (a) the person is referred to as “P”,
  - (b) the certificate is referred to as “the relevant certificate”,
  - (c) the amount of income, or the gain, is referred to as “the cleared amount”,
  - (d) the account or deposit (within the meaning of the Agreement) to which the certificate relates (or to which certificates relate that include the certificate) is referred to as “the underlying account”, and
  - (e) the sum levied under Article 19 on the cleared amount or, as the case may be, the tax finality payment made on it is referred to as “the transferred sum”.

##### *Effect of relevant certificate*

- 15 (1) The effect of the relevant certificate depends on whether P makes an election under paragraph 16 in respect of the underlying account for the applicable year.
- (2) “The applicable year” is the tax year for which P is liable to income tax or, as the case may be, capital gains tax on the cleared amount.
- (3) If P makes an election, the transferred sum is to be treated as if it were a credit allowable against the income tax or, as the case may be, capital gains tax due from P for the applicable year.
- (4) If P does not make an election, P ceases to be liable to income tax or, as the case may be, capital gains tax on the cleared amount.
- (5) Sub-paragraph (4) is to be read in accordance with paragraph 7.

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- (6) Where P ceases to be liable to tax on the cleared amount, P also ceases to be liable to any ancillary charge directly connected with that amount.

#### *Election*

- 16 (1) P may make an election under this paragraph in respect of the underlying account for a tax year if all the affected amounts are included in full in a return (or amended return) made by P under Part 2 of TMA 1970 for that tax year.
- (2) In relation to a tax year, an amount is an “affected amount” if—
- (a) a certificate is issued to P under Article 30(1) or the Joint Declaration in respect of the levying of a sum, or the making of a tax finality payment, on that amount,
  - (b) the account or deposit to which the certificate relates is the underlying account, and
  - (c) the amount is required to be brought into account in assessing the income tax or capital gains tax due from P for that tax year.
- (3) An election under this paragraph must be made in the return or amended return in which the affected amounts are included.
- (4) An election may only be made under this paragraph if it is accompanied by all the relevant certificates relating to the underlying account.
- (5) For the purposes of paragraph 15, P is treated as making an election under this paragraph in respect of the underlying account for a tax year if a claim is made under Part 3 of TIOPA 2010 (double taxation relief for special withholding tax) in relation to any of the affected amounts.
- (6) Section 143 of TIOPA 2010 (taking account of special withholding tax in calculating income or gains) applies with any necessary modifications in relation to a tax finality payment as it applies in relation to special withholding tax.

#### *Other credits to be allowed first*

- 17 Other than a credit allowed under Part 3 of TIOPA 2010, any credit for foreign tax allowed under that Act against the income tax or, as the case may be, capital gains tax due from P for the applicable year is to be allowed before effect is given to paragraph 15(3).

#### *Repayments*

- 18 (1) Sub-paragraph (2) applies if the amount of a credit allowable under paragraph 15(3) exceeds the amount of income tax or, as the case may be, capital gains tax due from P for the applicable year (before set-off).
- (2) The excess is to be set against any amount of the other tax (income tax or capital gains tax) due from P for that year.
- (3) Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment to which P may be entitled as a result of paragraph 15(3) if, in relation to a credit allowable under that paragraph, there is any remaining balance after applying—
- (a) sub-paragraph (2), and

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- (b) section 138(4)(a) or 140(5)(a) of TIOPA 2010, if applicable to the cleared amount.

*Relationship with special withholding tax rules*

- 19 The Joint Declaration does not count for the purposes of section 136(6)(b) of TIOPA 2010 (definition of “special withholding tax”) as a corresponding provision of international arrangements.

**PART 4**

THE FUTURE: INHERITANCE TAX

*Taxes affected*

- 20 This Part affects inheritance tax.

*Application of this Part*

- 21 (1) This Part applies if—
- (a) an amount is withheld under Article 32(2) in respect of relevant assets of a deceased person (“P”), and
  - (b) a certificate is issued under Article 32(6) in respect of the withholding of that amount.
- (2) The certificate is referred to in this Part as “the Article 32 certificate”.
- (3) The relevant assets in relation to which the Article 32 certificate is issued are referred to as “the cleared assets”.
- (4) Any reference in this Part to “the chargeable transfer” is to the transfer made (under section 4 of IHTA 1984) on P's death.

*Effect of Article 32 certificate*

- 22 (1) The cleared assets are to be treated as if they were excluded property in determining the value of P's estate immediately before P's death.
- (2) As a result, any ancillary charge directly connected with those assets is also extinguished.
- (3) But—
- (a) treating the cleared assets as if they were excluded property does not affect any liability to inheritance tax on the rest of P's estate, and
  - (b) that liability remains what it would have been, had the cleared assets not been treated as excluded property.
- (4) Accordingly, if the cleared assets were ever to be included in an account or further account under section 216 or 217 of IHTA 1984 in respect of the chargeable transfer and it were found that the inheritance tax charged on the value of the property in P's estate other than the cleared assets should have been higher, the extra tax charged on the value of that other property remains due, together with any associated ancillary charge.



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- (5) For the purposes of sub-paragraphs (3) and (4), the value of the cleared assets is assumed to form the highest part of the value transferred by the chargeable transfer.

*Election in respect of Article 32 certificates*

- 23 (1) This paragraph applies if the cleared assets for each of the Article 32 certificates issued in respect of P's death are included in full in an account or further account delivered in respect of P's death under section 216 or 217 of IHTA 1984 within the time permitted for delivering such an account or further account.
- (2) The person who delivers the account or further account may elect to disapply paragraph 22.
- (3) An election under this paragraph must be made in writing at the same time as the account or further account in which all the cleared assets are included, and signed by each person delivering the account or further account.
- (4) An election may only be made under this paragraph if it is accompanied by each of the Article 32 certificates.
- (5) If an election is made under this paragraph—
- (a) paragraph 22 does not apply to the cleared assets for any of the Article 32 certificates issued in respect of P's death, and
  - (b) the amounts withheld under Article 32(2) are instead to be treated as if they were credits allowable against the inheritance tax due on the value transferred by the chargeable transfer (calculated with the value of all those cleared assets brought into account).

*Repayments*

- 24 Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment to which a person may be entitled as a result of paragraph 23 if the credit allowable under that paragraph exceeds the inheritance tax due from the person on the value transferred by the chargeable transfer.

**PART 5**

GENERAL PROVISIONS

*Information exchange*

- 25 No obligation of secrecy (whether imposed by statute or otherwise) prevents HMRC from disclosing information pursuant to a request made by virtue of Article 36 (reciprocity measures of the United Kingdom).

*Amounts recoverable as if they were VAT*

- 26 (1) Part 2 of this Schedule applies to amounts otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 as a debt due to the Crown (amounts shown on invoices as VAT etc) in the same way as it applies to VAT.
- (2) But in the application of Part 2 to such amounts—

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- (a) a reference to the value of a supply on which VAT is charged is a reference to the value of the supply shown in the invoice mentioned in paragraph 5(2) of that Schedule,
- (b) “the taxable event” takes place when the invoice is issued,
- (c) the value of the supply shown in the invoice is “untaxed” if the amount otherwise recoverable under paragraph 5(3) of that Schedule has not been recovered, and
- (d) “ceasing to be liable” to tax on the value of that supply means that the amount otherwise recoverable is no longer recoverable.

*[<sup>F86</sup>Transfers to HMRC under Agreement*

**Textual Amendments**

**F86** Sch. 36 paras. 26A, 26B and cross-heading inserted (retrospective to 1.1.2013) by [Finance Act 2013](#) (c. 29), s. 221(1)(2)

- 26A (1) Income or chargeable gains of a person are to be treated as not remitted to the United Kingdom if conditions A to D are met.
- (2) Condition A is that (but for sub-paragraph (1)) the income or gains would be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom.
  - (3) Condition B is that the money is brought to the United Kingdom pursuant to a transfer made to HMRC in accordance with the Agreement.
  - (4) Condition C (which applies only if the money brought to the United Kingdom is a sum levied under Article 19(2)(b)) is that the sum was levied within the period of 45 days beginning with the day on which the amount derived from the income or gain in question was remitted as mentioned in Article 19(2)(b).
  - (5) Condition D is that the transfer is made in relation to a tax year in which section 809B, 809D or 809E of ITA 2007 (application of remittance basis) applies to the person.
  - (6) Sub-paragraph (1) does not apply in relation to money brought to the United Kingdom if or to the extent that—
    - (a) paragraph 18(2), or section 138(4)(a) or 140(5)(a) of TIOPA 2010, is applied in relation to it (set-off against other tax liabilities), or
    - (b) it is repaid or refunded by HMRC.]
- 26B (1) This paragraph applies if—
- (a) but for paragraph 26A(1), income or chargeable gains would have been regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom, and
  - (b) section 809Q of ITA 2007 (transfers from mixed funds) would have applied in determining the amount that would have been so remitted.
- (2) The bringing of the money to the United Kingdom counts as an offshore transfer for the purposes of section 809R(4) of ITA 2007 (composition of mixed fund).

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### *General interpretation*

27 (1) In this Schedule—

“ancillary charge” means any interest, penalty, surcharge or other ancillary charge;

“assessment”, in relation to a tax, includes a determination and also includes an amended assessment or determination (and “assess” is to be read accordingly);

“chargeable gain” means a gain that is a chargeable gain for the purposes of TCGA 1992;

“chargeable transfer” has the meaning given in section 2 of IHTA 1984;

“EUSA” means the agreement dated 26 October 2004 between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation on savings income in the form of interest payments;

“HMRC” means Her Majesty's Revenue and Customs;

“qualifying amount” is defined in paragraph 4;

“remitted to the United Kingdom” means remitted to the United Kingdom within the meaning of Chapter A1 of Part 14 of ITA 2007;

“the value transferred”, in relation to a chargeable transfer, has the meaning given in section 3 of IHTA 1984;

“taxable amount” is defined in paragraph 2;

“VAT” means value added tax charged in accordance with VATA 1994.

- (2) An expression used in relation to a tax has the same meaning as in enactments relating to that tax.
- (3) A reference to a person being “liable” includes being liable jointly with others.
- (4) A reference to the most beneficial outcome for P is a reference to the most beneficial outcome for P with respect to P's liability to tax.
- (5) A reference to the tax due “taking account of” a qualifying amount is—
  - (a) if the amount is an amount of income or a chargeable gain, a reference to the income tax or capital gains tax due for the tax year in which the amount is required to be brought into account (calculated with that amount brought into account),
  - (b) if the amount is the value of property forming part of the value transferred by a chargeable transfer, a reference to the inheritance tax due on the value transferred by the chargeable transfer (calculated with that amount brought into account),
  - (c) if the amount is the value of a supply on which VAT is charged, a reference to the VAT payable for the prescribed accounting period in which output tax on the supply is required to be brought into account (calculated with that output tax brought into account), and
  - (d) if the amount is the value of a supply to which Part 2 applies by virtue of paragraph 26, a reference to the amount otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 in respect of that supply.

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## SCHEDULE 37

Section 220

## INTERNATIONAL MILITARY HEADQUARTERS, EU FORCES, ETC

*FA 1960*

- 1 (1) Section 74A of FA 1960 (visiting forces and allied headquarters: stamp duty land tax exemptions) is amended as follows.
- (2) In subsection (4)—
- (a) for “allied”, in the first place, substitute “ international military ”, and
  - (b) omit paragraph (c).
- (3) In subsection (5)—
- (a) omit paragraph (a),
  - (b) in paragraph (b), after “Council” insert “ made for giving effect to an international agreement ”, and
  - (c) in paragraph (c), after “detachment of” insert “ a ”.
- (4) Accordingly, in the heading for that section for “**allied**” substitute “**international military**”.

*IHTA 1984*

- 2 In section 6 of IHTA 1984 (excluded property), in subsection (4), after “section 155(1)” insert “ or (5A) ”.
- 3 (1) Section 155 of that Act (visiting forces and allied headquarters: residence, etc) is amended as follows.
- (2) In subsection (4) for “allied” substitute “ international military ”.
- (3) After subsection (5) insert—
- “(5A) Section 6(4) also applies to—
- (a) the emoluments paid by the Government of any designated country to a person belonging to the EU civilian staff, not being a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, and
  - (b) any tangible movable property the presence of which in the United Kingdom is due solely to the presence in the United Kingdom of such a person serving as part of that staff.
- (5B) A period during which any such person belonging to the EU civilian staff as is referred to in subsection (5A) is in the United Kingdom by reason solely of that person belonging to that staff is not to be treated for the purposes of this Act as a period of residence in the United Kingdom or as creating a change of that person's residence or domicile.”
- (4) In subsection (6), at the end insert—
- ““the EU civilian staff” means—
- (a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of

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- the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and
- (b) civilian personnel (other than locally hired personnel)—
- (i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or
  - (ii) otherwise made available to the EU by a member State for the purposes of activities of the kind referred to in paragraph (a).”

#### *ITEPA 2003*

- 4 (1) Section 303 of ITEPA 2003 (visiting forces and staff of designated allied headquarters: relief from income tax) is amended as follows.
- (2) In subsection (2)(a) for “allied” substitute “ international military ”.
- (3) After subsection (4) insert—
- “(4A) No liability to income tax arises in respect of earnings if—
- (a) they are paid by the government of a designated country to a person belonging to the EU civilian staff, and
  - (b) that person is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.”
- (4) In subsection (6)—
- (a) omit the “and” before the definition of “designated”, and
  - (b) after that definition insert “, and
- the EU civilian staff” means—
- (a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and
  - (b) civilian personnel (other than locally hired personnel)—
    - (i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or
    - (ii) otherwise made available to the EU by a member State for the purposes of activities of the kind referred to in paragraph (a).”
- (5) Accordingly, in the heading for that section for “**and staff of designated allied headquarters**” substitute “ **etc** ”.

#### *ITA 2007*

- 5 (1) Section 833 of ITA 2007 (visiting forces and staff of designated allied headquarters: residence, etc) is amended as follows.
- (2) In subsection (2), in paragraph (a) for “allied” substitute “ international military ”.

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(3) After that subsection insert—

“(2A) This section also applies to an individual within subsection (3) or (3A).”

(4) In subsection (3), for “This section also applies to an individual who—” substitute “An individual is within this subsection if the individual—”.

(5) After that subsection insert—

“(3A) An individual is within this subsection if the individual—

- (a) belongs to the EU civilian staff,
- (b) is in the United Kingdom, but only because of serving as part of that staff, and
- (c) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.”

(6) In subsection (7)—

- (a) omit the “and” before the definition of “designated”, and
- (b) after that definition insert “, and

the EU civilian staff” means—

- (a) civilian personnel seconded by a member State to an EU institution for the purposes of activities (including exercises) relating to the preparation for, and execution of, tasks mentioned in Article 43(1) of the Treaty on European Union (tasks relating to a common security and defence policy), as amended from time to time, and
- (b) civilian personnel (other than locally hired personnel)—
  - (i) made available to the EU by a member State to work with designated international military headquarters or a force of a designated country, or
  - (ii) otherwise made available to the EU by a member State for the purposes of activities of the kind referred to in paragraph (a).”

(7) Accordingly, in the heading for that section for “**and staff of designated allied headquarters**” substitute “**etc**”.

## SCHEDULE 38

Section 223

### TAX AGENTS: DISHONEST CONDUCT

#### Modifications etc. (not altering text)

- C22** Sch. 38 applied by S.I. 2009/470, reg. 33(1) (as substituted (6.4.2013) by [The Education \(Student Loans\) \(Repayment\) \(Amendment\) Regulations 2013 \(S.I. 2013/607\)](#), regs. 1(1), **9**)
- C23** Sch. 38 applied (with application in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment and Application of Schedule 38 to the Finance Act 2012\) Regulations 2013 \(S.I. 2013/622\)](#), reg. 1, **41**
- C24** Sch. 38 applied (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Masters Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), regs. 1(1), **24(2)**

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**C25** Sch. 38 applied (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Masters Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), regs. 1(1), **43(1)**

## PART 1

### INTRODUCTION

#### *Overview*

- 1 This Schedule is arranged as follows—
- (a) this Part explains who is a tax agent and what it means to engage in dishonest conduct,
  - (b) Part 2 sets out the process for establishing whether someone is engaging in or has engaged in dishonest conduct,
  - (c) Part 3 confers power on HMRC to obtain relevant documents,
  - (d) Part 4 sets out sanctions for engaging in dishonest conduct,
  - (e) Part 5 provides for assessment of and appeals against penalties, and
  - (f) Parts 6 and 7 contain miscellaneous provisions and consequential amendments.

#### **Commencement Information**

**I28** Sch. 38 para. 1 in force at 1.4.2013 by [S.I. 2013/279](#), **art. 2**

#### *Tax agent*

- 2 (1) A “tax agent” is an individual who, in the course of business, assists other persons (“clients”) with their tax affairs.
- (2) Individuals can be tax agents even if they (or the organisations for which they work) are appointed—
- (a) indirectly, or
  - (b) at the request of someone other than the client.
- (3) Assistance with a client's tax affairs includes—
- (a) advising a client in relation to tax, and
  - (b) acting or purporting to act as agent on behalf of a client in relation to tax.
- (4) Assistance with a client's tax affairs also includes assistance with any document that is likely to be relied on by HMRC to determine a client's tax position.
- (5) Assistance given for non-tax purposes counts as assistance with a client's tax affairs if it is given in the knowledge that it will be, or is likely to be, used by a client in connection with the client's tax affairs.

#### **Commencement Information**

**I29** Sch. 38 para. 2 in force at 1.4.2013 by [S.I. 2013/279](#), **art. 2**

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### *Dishonest conduct*

- 3 (1) An individual “engages in dishonest conduct” if, in the course of acting as a tax agent, the individual does something dishonest with a view to bringing about a loss of tax revenue.
- (2) It does not matter whether a loss is actually brought about.
- (3) Nor does it matter whether the individual is acting on the instruction of clients.
- (4) A loss of tax revenue would be brought about for these purposes if clients were to—
- (a) account for less tax than they are required to account for by law,
  - (b) obtain more tax relief than they are entitled to obtain by law,
  - (c) account for tax later than they are required to account for it by law, or
  - (d) obtain tax relief earlier than they are entitled to obtain it by law.
- (5) “Tax” is defined in Part 6 of this Schedule.
- (6) “Tax relief” includes—
- (a) any exemption from or deduction or credit against or in respect of tax, and
  - (b) any repayment of tax.
- (7) A reference in this paragraph to doing something dishonest includes—
- (a) dishonestly omitting to do something, and
  - (b) advising or assisting a client to do something that the individual knows to be dishonest.

#### **Commencement Information**

**I30** Sch. 38 para. 3 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

## **PART 2**

### ESTABLISHING DISHONEST CONDUCT

#### *Conduct notice*

- 4 (1) This paragraph applies if HMRC determine that an individual is engaging in or has engaged in dishonest conduct.
- (2) An authorised officer (or an officer of Revenue and Customs with the approval of an authorised officer) may notify the individual of that determination.
- (3) The notice must state the grounds on which the determination was made.
- (4) For the effect of notifying the individual, see paragraphs 7(2) and 29(2).
- (5) A notice under this paragraph is referred to as a “conduct notice”.
- (6) In relation to a conduct notice, a reference to “the determination” is to the determination forming the subject of the notice.



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**Commencement Information**

**I31** Sch. 38 para. 4 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Appeal against determination*

- 5 (1) An individual to whom a conduct notice is given may appeal against the determination.
- (2) Notice of appeal must be given—
- (a) in writing to the officer who gave the conduct notice, and
  - (b) within the period of 30 days beginning with the day on which the conduct notice was given.
- (3) It must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm or set aside the determination.
- (5) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to income tax.
- (6) Setting aside a determination does not prevent a further conduct notice being given in respect of the same conduct if further evidence emerges.

**Commencement Information**

**I32** Sch. 38 para. 5 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Offence of concealment etc in connection with conduct notice*

- 6 (1) A person (“P”) commits an offence if, after a relevant event has occurred, P—
- (a) conceals, destroys or otherwise disposes of a material document, or
  - (b) arranges for the concealment, destruction or disposal of a material document.
- (2) A “relevant event” occurs if—
- (a) a conduct notice is given to an individual, or
  - (b) an individual is informed by an officer of Revenue and Customs that a conduct notice will be or is likely to be given to the individual.
- (3) A “material document” is any document that could be sought under paragraph 8 as a result of the giving of the conduct notice.
- (4) If P acts after the event described in sub-paragraph (2)(a), no offence is committed if P acts—
- (a) after the determination has been set aside,
  - (b) more than 4 years after the conduct notice was given, or
  - (c) without knowledge of that event.
- (5) If P acts before that event but after the event described in sub-paragraph (2)(b), no offence is committed if P acts—

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- (a) more than 2 years after the individual was, or was last, so informed, or
  - (b) without knowledge of the event described in sub-paragraph (2)(b).
- (6) P acts without knowledge of an event if P—
- (a) is not the individual with respect to whom the event has occurred, and
  - (b) does not know, and could not reasonably be expected to know, that the event has occurred.
- (7) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

#### Commencement Information

**I33** Sch. 38 para. 6 in force at 1.4.2013 by [S.I. 2013/279, art. 2](#)

### PART 3

#### POWER TO OBTAIN TAX AGENT'S FILES ETC

#### Modifications etc. (not altering text)

**C26** Sch. 38 Pt. 3 applied (N.I.) by 1992 c. 8, s. 104ZA(2A) (as inserted (1.4.2013) by [Finance Act 2012 \(c. 14\)](#), [Sch. 38 para. 57](#); [S.I. 2013/279, art. 2](#))

**C27** Sch. 38 Pt. 3 applied (E.W.S.) by 1992 c. 5, s. 110ZA(2A) (as inserted (1.4.2013) by [Finance Act 2012 \(c. 14\)](#), [Sch. 38 para. 56](#); [S.I. 2013/279, art. 2](#))

#### *Circumstances in which power is exercisable*

- 7 (1) The power in paragraph 8 is exercisable only in case A or case B and only with the approval of the tribunal.
- (2) Case A is where a conduct notice has been given to an individual and either—
- (a) the time allowed for giving notice of appeal against the determination has expired without any such notice being given, or
  - (b) notice of appeal against the determination was given within that time, but the appeal has been withdrawn or the determination confirmed.
- (3) Case B is where—
- (a) an individual has been convicted of an offence relating to tax that involves fraud or dishonesty,
  - (b) the offence was committed after the individual became a tax agent (whether or not the individual was still a tax agent when it was committed and regardless of the capacity in which it was committed),
  - (c) either—
    - (i) the time allowed for appealing against the conviction has expired without any such appeal being brought, or

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- (ii) an appeal against the conviction was brought within that time, but the appeal has been withdrawn or the conviction upheld, and
  - (d) no more than 12 months have elapsed since the date on which paragraph (c) was satisfied.
- (4) For the purposes of this paragraph, a determination or conviction that is appealed is not considered to have been confirmed or upheld until—
- (a) the time allowed for bringing any further appeal has expired, or
  - (b) if a further appeal is brought within that time, that further appeal has been withdrawn or determined.
- (5) In this Schedule, a reference to “the tax agent” is—
- (a) in a case falling within case A, a reference to the individual mentioned in sub-paragraph (2), and
  - (b) in a case falling within case B, a reference to the individual mentioned in sub-paragraph (3).
- (6) It does not matter whether the individual is still a tax agent when the power in paragraph 8 is to be exercised.

**Commencement Information**

**I34** Sch. 38 para. 7 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*File access notice*

- 8
- (1) Subject to paragraph 7, an officer of Revenue and Customs may by notice in writing require any person mentioned in sub-paragraph (2) to provide relevant documents.
  - (2) The persons are—
    - (a) the tax agent, and
    - (b) any other person the officer believes may hold relevant documents.
  - (3) “Relevant documents” is defined in paragraph 9.
  - (4) A notice under this paragraph is referred to as a “file access notice”.
  - (5) The person to whom a file access notice is given is referred to as “the document-holder”.

**Commencement Information**

**I35** Sch. 38 para. 8 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Relevant documents*

- 9
- (1) “Relevant documents” means the tax agent's working papers (whenever acting as a tax agent) and any other documents received, created, prepared or used by the tax agent for the purposes of or in the course of assisting clients with their tax affairs.
  - (2) It does not matter who owns the papers or other documents.
  - (3) The reference in sub-paragraph (1) to clients—

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- (a) includes former clients, and
- (b) is not limited to the clients with respect to whom the tax agent is engaging in or has engaged in dishonest conduct.

**Commencement Information**

**I36** Sch. 38 para. 9 in force at 1.4.2013 by [S.I. 2013/279](#), **art. 2**

*Content of notice*

- 10 (1) A file access notice may require the provision of—
- (a) particular relevant documents specified in the notice, or
  - (b) all relevant documents in the document-holder's possession or power.
- (2) A file access notice does not need to identify the clients of the tax agent.
- (3) A file access notice addressed to anyone other than the tax agent must name the tax agent.

**Commencement Information**

**I37** Sch. 38 para. 10 in force at 1.4.2013 by [S.I. 2013/279](#), **art. 2**

*Compliance*

- 11 A file access notice may require documents to be provided—
- (a) within such period,
  - (b) by such means and in such form, and
  - (c) to such person and at such place,
- as is reasonably specified in the notice or in a document referred to in the notice.

**Commencement Information**

**I38** Sch. 38 para. 11 in force at 1.4.2013 by [S.I. 2013/279](#), **art. 2**

- 12 Unless otherwise specified in the notice, a file access notice may be complied with by providing copies of the relevant documents.

**Commencement Information**

**I39** Sch. 38 para. 12 in force at 1.4.2013 by [S.I. 2013/279](#), **art. 2**

*Approval by tribunal*

- 13 (1) The tribunal may not approve the giving of a file access notice unless—
- (a) the application for approval is made by or with the agreement of an authorised officer,
  - (b) the tribunal is satisfied that the case falls within case A or case B (see paragraph 7),

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- (c) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
  - (d) the document-holder and (where different) the tax agent have been told that relevant documents are to be required and given a reasonable opportunity to make representations to an officer of Revenue and Customs, and
  - (e) the tribunal has been given a summary of any representations so made.
- (2) Nothing in sub-paragraph (1) requires the tribunal to determine whether an individual is engaging in or has engaged in dishonest conduct.
- (3) A decision by the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).

**Commencement Information**

**I40** Sch. 38 para. 13 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Documents not in person's possession or power*

- 14 A file access notice only requires the document-holder to provide a document if it is in the document-holder's possession or power.

**Commencement Information**

**I41** Sch. 38 para. 14 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Types of information*

- 15 (1) A file access notice does not require the document-holder to provide—
- (a) parts of a document that contain information relating to the conduct of a pending appeal relating to tax, or
  - (b) journalistic material (as defined in section 13 of the Police and Criminal Evidence Act 1984).
- (2) A file access notice does not require the document-holder to provide personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984).
- (3) But a file access notice may require the document-holder to provide documents that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records.

**Commencement Information**

**I42** Sch. 38 para. 15 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Old documents*

- 16 (1) A file access notice does not require the document-holder to provide a relevant document if—
- (a) the whole of the document originated before the back-stop day, and

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- (b) no part of it has a bearing on tax periods ending on or after that day.
- (2) “The back-stop day” is the first day of the period of 20 years ending with the day on which the file access notice is given.

**Commencement Information**

**I43** Sch. 38 para. 16 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Privileged communications between professional legal advisers and clients*

- 17 (1) A file access notice does not require the document-holder to provide any part of a document that is privileged.
- (2) For the purposes of this paragraph a document is privileged if it is a document in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications between client and professional legal adviser, could be maintained in legal proceedings.
- (3) Regulations under paragraph 23 of Schedule 36 to FA 2008 (information powers: privileged communications) apply (with any necessary modifications) to disputes under this paragraph as to whether a document is privileged.

**Commencement Information**

**I44** Sch. 38 para. 17 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Power to copy documents*

- 18 If a document is provided pursuant to a file access notice, an officer of Revenue and Customs may take copies of or make extracts from the document.

**Commencement Information**

**I45** Sch. 38 para. 18 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Power to retain documents*

- 19 (1) If a document is provided pursuant to a file access notice, HMRC may retain the document for a reasonable period if an officer of Revenue and Customs thinks it necessary to do so.
- (2) While a document is retained—
- (a) the document-holder may, if the document is reasonably required for any purpose, request a copy of it, and
- (b) an officer of Revenue and Customs must comply with such a request without charge.
- (3) The retention of a document under this paragraph is not to be regarded as breaking any lien claimed on the document.

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- (4) If a document retained under this paragraph is lost or damaged, the Commissioners are liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

**Commencement Information**

**I46** Sch. 38 para. 19 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Appeal against file access notice*

- 20 (1) If the document-holder is a person other than the tax agent, the document-holder may appeal against the file access notice, or any requirement in it, on the ground that it would be unduly onerous to comply with the notice or requirement.
- (2) Notice of appeal must be given—
- (a) in writing to the officer by whom the file access notice was given, and
  - (b) within the period of 30 days beginning with the day on which the file access notice was given.
- (3) It must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm, vary or set aside the file access notice or a requirement in it.
- (5) If the tribunal confirms or varies the notice or a requirement in it, the document-holder must comply with the notice or requirement—
- (a) within such period as is specified by the tribunal, or
  - (b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.
- (6) A decision by the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).
- (7) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

**Commencement Information**

**I47** Sch. 38 para. 20 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Offence of concealment etc in connection with file access notice*

- 21 (1) A person (“P”) commits an offence if P—
- (a) conceals, destroys or otherwise disposes of a required document, or
  - (b) arranges for the concealment, destruction or disposal of a required document.
- (2) A “required document” is a document within sub-paragraph (3) or sub-paragraph (4).
- (3) A document is within this sub-paragraph if at the time when P acts—
- (a) P is required to provide the document by a file access notice, and

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- (b) either—
- (i) the notice has not been complied with, or
  - (ii) it has been complied with, but P has been notified in writing by an officer of Revenue and Customs that P must continue to preserve the document (and the notification has not been withdrawn).
- (4) A document is within this sub-paragraph if at the time when P acts—
- (a) P is not required to provide the document by a file access notice,
  - (b) P has been informed by an officer of Revenue and Customs that P will be or is likely to be so required, and
  - (c) no more than 6 months have elapsed since P was, or was last, so informed.
- (5) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

**Commencement Information**

**I48** Sch. 38 para. 21 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Penalty for failure to comply*

- 22 (1) A person who fails to comply with a file access notice is liable to a penalty of £300.
- (2) Failing to comply with a file access notice also includes—
- (a) concealing, destroying or otherwise disposing of a required document, or
  - (b) arranging for any such concealment, destruction or disposal.
- (3) “Required document” has the same meaning as in paragraph 21.

**Commencement Information**

**I49** Sch. 38 para. 22 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Daily penalty for failure to comply*

- 23 If the failure continues after notification of a penalty under paragraph 22 has been issued, the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

**Commencement Information**

**I50** Sch. 38 para. 23 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Failure to comply with time limit*

- 24 A failure to do anything required to be done within a limited period of time does not give rise to liability to a penalty under paragraph 22 or 23 if the thing was done



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within such further time (if any) as an officer of Revenue and Customs may have allowed.

**Commencement Information**

**I51** Sch. 38 para. 24 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Reasonable excuse*

- 25 (1) Liability to a penalty under paragraph 22 or 23 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
  - (b) if the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure,
  - (c) if the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

**Commencement Information**

**I52** Sch. 38 para. 25 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

**PART 4**

SANCTIONS FOR DISHONEST CONDUCT

*Penalty for dishonest conduct*

- 26 (1) An individual who engages in dishonest conduct is liable to a penalty.
- (2) Subject to paragraph 27, the penalty to which the individual is liable is to be—
- (a) no less than £5,000, and
  - (b) no more than £50,000.
- (3) In assessing the amount of the penalty, regard must be had to—
- (a) whether the individual disclosed the dishonest conduct,
  - (b) whether that disclosure was prompted or unprompted,
  - (c) the quality of that disclosure, and
  - (d) the quality of the individual's compliance with any file access notice in connection with the dishonest conduct.
- (4) An individual “discloses” dishonest conduct by—
- (a) telling HMRC about it,
  - (b) giving HMRC reasonable help in identifying the client or clients concerned and in quantifying the loss of tax revenue (if any) brought about by it, and

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- (c) allowing HMRC access to records for the purpose of ensuring that any such loss is recovered or otherwise properly accounted for.
- (5) A disclosure is “unprompted” if it is made at a time when the individual has no reason to believe that HMRC have discovered or are about to discover the dishonest conduct.
- (6) Otherwise, a disclosure is “prompted”.
- (7) In relation to disclosure or compliance, “quality” includes timing, nature and extent.

**Commencement Information**

**I53** Sch. 38 para. 26 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Special reduction*

- 27 (1) This paragraph applies if HMRC propose to assess an individual to a penalty under paragraph 26 of £5,000.
- (2) If they think it right because of special circumstances, HMRC may take one or more of the following steps—
- (a) reduce the penalty to an amount below £5,000 (which may be nil),
  - (b) stay the penalty, or
  - (c) agree a compromise in relation to proceedings for the penalty.
- (3) “Special circumstances” does not include—
- (a) ability to pay, or
  - (b) the fact that a loss of tax revenue from a client is balanced by an overpayment by another person (whether or not a client).

**Commencement Information**

**I54** Sch. 38 para. 27 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Power to publish details*

- 28 (1) The Commissioners may publish information about an individual if the individual incurs a penalty under paragraph 26.
- (2) The information that may be published is—
- (a) the individual's name (including any trading name, previous name or pseudonym),
  - (b) the individual's address,
  - (c) the nature of any business carried on by the individual,
  - (d) the amount of the penalty,
  - (e) the periods or times to which the dishonest conduct relates,
  - (f) any other information the Commissioners consider it appropriate to publish in order to make clear the individual's identity, and
  - (g) the link (if there is one) between the dishonest conduct and any inaccuracy, failure or action as a result of which information is published under section 94 of FA 2009 (which relates to deliberate tax defaulters).

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- (3) No information may be published under this paragraph if the penalty incurred by the individual is £5,000 or less.
- (4) Subsections (5) to (9) and (11) of section 94 of FA 2009 apply to publishing information about an individual under this paragraph as they apply to publishing information about a person under that section.
- (5) If, in acting as a tax agent, the individual works or worked for an organisation, sub-paragraph (2)(f) includes power to publish such information about that organisation as the Commissioners consider appropriate in order to make clear the individual's identity.
- (6) Before publishing information about the organisation, the Commissioners must—
  - (a) inform the organisation that they are considering doing so, and
  - (b) afford the organisation reasonable opportunity to make representations about whether it should be published.

**Commencement Information**

**I55** Sch. 38 para. 28 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

**PART 5**

PENALTIES: ASSESSMENT ETC

*Assessment of penalties*

- 29
- (1) If a person becomes liable to a penalty under Part 3 or 4 of this Schedule, HMRC may assess the penalty.
  - (2) But, in the case of a penalty under Part 4, they may only do so if a conduct notice has been given to the person and either—
    - (a) the time allowed for giving notice of appeal against the determination has expired without notice of appeal being given, or
    - (b) notice of appeal against the determination was given within the time allowed, but the appeal has been withdrawn or the determination confirmed.
  - (3) Paragraph 7(4) applies for the purposes of sub-paragraph (2)(b).
  - (4) If HMRC assess a penalty, they must notify the person.

**Commencement Information**

**I56** Sch. 38 para. 29 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 30
- (1) HMRC may not assess a penalty under this Schedule after the applicable deadline.
  - (2) For a penalty under Part 3, the applicable deadline is the end of the period of 12 months beginning with the day on which the person became liable to the penalty.
  - (3) For a penalty under Part 4, the applicable deadline is the end of the period of 12 months beginning with the later of—

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- (a) the first day on which HMRC may assess the penalty (see paragraph 29(2)), and
  - (b) day X.
- (4) If a loss of tax revenue is brought about by the dishonest conduct, day X is—
- (a) the day immediately following the end of the appeal period for the assessment or determination of the tax revenue lost (or, if more than one client is involved, the end of the last such period), or
  - (b) if there is no such assessment or determination, the day on which the amount of tax revenue lost is ascertained.
- (5) Otherwise, day X is the day on which HMRC ascertain that no loss of tax revenue has been brought about by the dishonest conduct.
- (6) In sub-paragraph (4), “appeal period” means the period during which—
- (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been withdrawn or determined.

#### Commencement Information

**I57** Sch. 38 para. 30 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

#### *Appeal against penalty*

- 31 (1) A person may appeal against a decision of HMRC—
- (a) that a penalty is payable under Part 3 of this Schedule, or
  - (b) as to the amount of a penalty payable under Part 3 or 4 of this Schedule.
- (2) Notice of appeal must be given—
- (a) in writing to HMRC, and
  - (b) before the end of the period of 30 days beginning with the day on which notification of the penalty was issued.
- (3) It must state the grounds of appeal.
- (4) On an appeal under sub-paragraph (1)(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) On an appeal under sub-paragraph (1)(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision, or
  - (b) substitute for the decision another decision that HMRC had power to make.
- (6) If, in the case of an appeal against a penalty under Part 4, the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 27 (special reduction)—
- (a) to the same extent as HMRC (which may mean applying the same reduction as HMRC to a different starting point), or
  - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of that paragraph was flawed (when considered in the light of the principles applicable in proceedings for judicial review).

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- (7) Subject to this paragraph and paragraph 32, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

**Commencement Information**

**I58** Sch. 38 para. 31 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Enforcement of penalty*

- 32 (1) A penalty under this Schedule must be paid—
- (a) before the end of the period of 30 days beginning with the day on which notification of the penalty was issued, or
  - (b) if a notice of appeal under paragraph 31 is given, before the end of the period of 30 days beginning with the day on which the appeal is withdrawn or determined.
- (2) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable.

**Commencement Information**

**I59** Sch. 38 para. 32 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Double jeopardy*

- 33 A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person has been convicted of an offence.

**Commencement Information**

**I60** Sch. 38 para. 33 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 34 (1) A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person is personally liable to a penalty under—
- (a) Schedule 24 to FA 2007 (penalties for errors),
  - (b) Schedule 41 to FA 2008 (penalties for failure to notify etc), or
  - (c) Schedule 55 to FA 2009 (penalties for failure to make a return etc).
- (2) Sub-paragraph (1) applies where, for example, the person is personally liable by virtue of section 48(3) of VATA 1994 (VAT representatives).

**Commencement Information**

**I61** Sch. 38 para. 34 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

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*Power to change amount of penalties*

- 35 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant day, they may by regulations substitute for the sums for the time being specified in paragraphs 22(1), 23, 26(2), 27(1) and (2)(a) and 28(3) such other sums as appear to them to be justified by the change.
- (2) “Relevant day”, in relation to a specified sum, means—
- (a) the day on which this Act is passed, and
  - (b) each day on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.
- (3) Regulations under this paragraph do not apply to a failure or conduct that began before the day on which they come into force.
- (4) The power to make regulations under this paragraph is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

**Commencement Information**

**I62** Sch. 38 para. 35 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

**PART 6**

MISCELLANEOUS PROVISION AND INTERPRETATION

*Application of provisions of TMA 1970*

- 36 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
  - (b) section 114 (want of form), and
  - (c) section 115 (delivery and service of documents).

**Commencement Information**

**I63** Sch. 38 para. 36 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Tax*

- 37 (1) “Tax” means—
- (a) income tax,
  - (b) capital gains tax,
  - (c) corporation tax,
  - (d) construction industry deductions,
  - (e) VAT,

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- (f) insurance premium tax,
  - (g) inheritance tax,
  - (h) stamp duty land tax,
  - (i) stamp duty reserve tax,
  - (j) petroleum revenue tax,
  - (k) aggregates levy,
  - (l) climate change levy,
  - [<sup>F87</sup>(la) apprenticeship levy,]
  - (m) landfill tax, and
  - (n) any duty of excise other than vehicle excise duty.
- (2) “Construction industry deductions” means construction industry deductions under Chapter 3 of Part 3 of FA 2004.
- (3) “Corporation tax” includes an amount assessable or chargeable as if it were corporation tax.
- (4) “VAT” means—
- (a) value added tax charged in accordance with VATA 1994,
  - (b) amounts recoverable under paragraph 5(2) of Schedule 11 to that Act (amounts shown on invoices as VAT), and
  - (c) amounts treated as VAT by virtue of regulations under section 54 of that Act (farmers etc).

#### Textual Amendments

**F87** Sch. 38 para. 37(1)(la) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), s. 115 (with s. 117)

#### Commencement Information

**I64** Sch. 38 para. 37 in force at 1.4.2013 by [S.I. 2013/279](#), art. 2

### *General interpretation*

- 38 In this Schedule—
- “appointed” includes engaged;
  - “client” (except in paragraph 17)—
    - (a) has the meaning given in paragraph 2(1), and
    - (b) in relation to a particular tax agent, means a client of that tax agent;
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “conduct notice” has the meaning given in paragraph 4;
  - “the document-holder” has the meaning given in paragraph 8;
  - “document” includes a copy of a document (see also section 114 of FA 2008);
  - “file access notice” has the meaning given in paragraph 8;
  - “HMRC” means Her Majesty’s Revenue and Customs;
  - “organisation” includes any person or firm carrying on a business;
  - “specify” includes describe;

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“tax period” means a tax year, accounting period or other period in respect of which tax is charged;

“the tribunal” means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.

**Commencement Information**

**I65** Sch. 38 para. 38 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 39 (1) A reference in this Schedule to clients of a tax agent (or to a tax agent's clients) is a reference to the persons whom the agent assists with their tax affairs.
- (2) Sub-paragraph (1) applies even if—
- (a) the agent works for an organisation, and
  - (b) it is the organisation that is appointed to give the assistance.

**Commencement Information**

**I66** Sch. 38 para. 39 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 40 A loss of tax revenue is taken for the purposes of this Schedule to be (or to be capable of being) brought about by dishonest conduct despite the fact that the loss can be recovered or properly accounted for (following discovery of the conduct or otherwise).

**Commencement Information**

**I67** Sch. 38 para. 40 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 41 A reference in this Schedule to working for an organisation includes being a partner or member of an organisation.

**Commencement Information**

**I68** Sch. 38 para. 41 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 42 A reference in a provision of this Schedule to an authorised officer is to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purposes of that provision.

**Commencement Information**

**I69** Sch. 38 para. 42 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Relationship with other enactments*

- 43 Nothing in this Schedule limits—
- (a) any liability a person may have under any other enactment in respect of conduct in respect of which a person is liable to a penalty under this Schedule, or



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- (b) any power a person may have under any other enactment to obtain relevant documents.

**Commencement Information**

**I70** Sch. 38 para. 43 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

**PART 7**

CONSEQUENTIAL PROVISIONS

*TMA 1970*

- 44 TMA 1970 is amended as follows.

**Commencement Information**

**I71** Sch. 38 para. 44 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#) (with [art. 3](#))

- 45 Omit—
- (a) section 20A (power to call for papers of tax accountant),
  - (b) section 20B (restrictions on powers under section 20A), and
  - (c) section 99 (assisting in preparation of incorrect return etc).

**Commencement Information**

**I72** Sch. 38 para. 45 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#) (with [art. 3](#))

- 46 (1) Section 20BB (falsification etc of documents) is amended as follows.
- (2) In subsection (1)—
- (a) for “subsections (2) to (4)” substitute “ subsections (2) and (3) ”,
  - (b) in paragraph (a), omit “a notice under section 20A above or”,
  - (c) at the end of that paragraph, omit “or”, and
  - (d) omit paragraph (b).
- (3) In subsection (2)—
- (a) in paragraph (a), omit “, the inspector”,
  - (b) at the end of that paragraph, insert “ or ”,
  - (c) at the end of paragraph (b), omit “or”, and
  - (d) omit paragraph (c).
- (4) In subsection (3), for the words from “the notice is given” to the end substitute “ the order is made, unless before the end of that period an officer of Revenue and Customs has notified the person in writing that the order has not been complied with to the officer's satisfaction ”.
- (5) Omit subsection (4).

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**Commencement Information**

**I73** Sch. 38 para. 46 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#) (with [art. 3](#))

- 47 In section 20D (interpretation of sections 20 to 20CC)—
- (a) in subsection (1), for “sections 20A and 20BA” substitute “ section 20BA ”, and
  - (b) omit subsection (2).

**Commencement Information**

**I74** Sch. 38 para. 47 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#) (with [art. 3](#))

- 48 In section 103 (time limits for penalties)—
- (a) omit subsection (3), and
  - (b) in subsection (4), for “neither subsection (1) nor subsection (3) above applies” substitute “ subsection (1) does not apply ”.

**Commencement Information**

**I75** Sch. 38 para. 48 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 49 In section 103ZA (disapplication of sections 100 to 103)—
- (a) omit “or” at the end of paragraph (e), and
  - (b) at the end of paragraph (f) insert “, or
  - (g) Schedule 38 to FA 2012 (tax agents: dishonest conduct).”

**Commencement Information**

**I76** Sch. 38 para. 49 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 50 In section 118 (interpretation), in the definition of “tax”, omit the words from “except that” to the end.

**Commencement Information**

**I77** Sch. 38 para. 50 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*OTA 1975*

- 51 In Schedule 2 to OTA 1975 (management and collection of petroleum revenue tax), in the Table in paragraph 1(1), omit the entry relating to section 99 of TMA 1970.

**Commencement Information**

**I78** Sch. 38 para. 51 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

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*IHTA 1984*

- 52 In section 247 of IHTA 1984 (provision of incorrect information), omit subsection (4).

**Commencement Information**

**I79** Sch. 38 para. 52 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Social Security Contributions and Benefits Act 1992*

- 53 In section 16 of the Social Security Contributions and Benefits Act 1992 (applications of Income Tax Acts and destination of Class 4 contributions), in subsection (1)(c), after “2009” insert “ and of Schedule 38 to the Finance Act 2012 ”.

**Commencement Information**

**I80** Sch. 38 para. 53 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

- 54 In paragraph 7B of Schedule 1 to that Act (collection of contributions other than through PAYE system), the reference in sub-paragraph (5A) to Part 10 of TMA 1970 includes a reference to this Schedule.

**Commencement Information**

**I81** Sch. 38 para. 54 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Social Security Contributions and Benefits (Northern Ireland) Act 1992*

- 55 In paragraph 7B of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (collection of contributions other than through PAYE system), the reference in sub-paragraph (5A) to Part 10 of TMA 1970 includes a reference to this Schedule.

**Commencement Information**

**I82** Sch. 38 para. 55 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Social Security Administration Act 1992*

- 56 In section 110ZA of the Social Security Administration Act 1992 (Class 1, 1A, 1B or 2 contributions: powers to call for documents etc), after subsection (2) insert—
- “(2A) Part 3 of Schedule 38 to the Finance Act 2012 (power to obtain tax agent’s files etc) applies in relation to relevant contributions as in relation to tax and, accordingly—
- (a) the cases described in paragraph 7 of that Schedule (case A and case B) include cases involving conduct or an offence relating to relevant contributions,

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- (b) (whether the case involves conduct or an offence relating to tax or relevant contributions) the papers and other documents that may be sought under that Part include ones relating to relevant contributions, and
- (c) the other Parts of that Schedule apply so far as necessary to give effect to the application of Part 3 by virtue of this subsection.”

**Commencement Information**

**I83** Sch. 38 para. 56 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*Social Security Administration (Northern Ireland) Act 1992*

57 In section 104ZA of the Social Security Administration (Northern Ireland) Act 1992 (Class 1, 1A, 1B or 2 contributions: powers to call for documents etc), after subsection (2) insert—

“(2A) Part 3 of Schedule 38 to the Finance Act 2012 (power to obtain tax agent's files etc) applies in relation to relevant contributions as in relation to tax and, accordingly—

- (a) the cases described in paragraph 7 of that Schedule (case A and case B) include cases involving conduct or an offence relating to relevant contributions,
- (b) (whether the case involves conduct or an offence relating to tax or relevant contributions) the papers and other documents that may be sought under that Part include ones relating to relevant contributions, and
- (c) the other Parts of that Schedule apply so far as necessary to give effect to the application of Part 3 by virtue of this subsection.”

**Commencement Information**

**I84** Sch. 38 para. 57 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

*FA 2003*

- 58 (1) FA 2003 is amended as follows.
- (2) In section 93 (information powers)—
- (a) in subsection (2), omit the entries relating to Parts 3 and 4 of Schedule 13, and
  - (b) omit subsections (3) to (6).
- (3) Omit section 96 (penalty for assisting in preparation of incorrect return etc).
- (4) In Schedule 13 (stamp duty land tax: information powers)—
- (a) omit Parts 3 and 4, and
  - (b) for paragraph 53 substitute—
- “53 (1) A person commits an offence if the person intentionally—

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- (a) falsifies, conceals, destroys or otherwise disposes of a relevant document, or
  - (b) causes or permits the falsification, concealment, destruction or disposal of a relevant document.
- (2) A relevant document is a document that the person has been required by an order under Part 6 of this Schedule to deliver.
- (3) A person does not commit an offence under this paragraph if the person acts—
  - (a) with the written permission of the tribunal or an officer of Revenue and Customs, or
  - (b) after the document has been delivered.
- (4) A person does not commit an offence under this paragraph if the person acts after the end of the period of 2 years beginning with the date on which the order is made, unless before the end of that period an officer of Revenue and Customs has notified the person in writing that the order has not been complied with to the officer's satisfaction.
- (5) A person guilty of an offence under this paragraph is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or to both.”

**Commencement Information**

**I85** Sch. 38 para. 58 in force at 1.4.2013 by [S.I. 2013/279](#), [art. 2](#)

SCHEDULE 39

Section 227

REPEAL OF MISCELLANEOUS RELIEFS ETC

**PART 1**

STAMP DUTY AND STAMP DUTY LAND TAX

*Nationalisation schemes*

- 1 (1) Section 52 of FA 1946 (exemption from stamp duty of documents connected with nationalisation schemes) is repealed.
- (2) In consequence of the provision made by sub-paragraph (1)—
  - (a) section 67 of that Act (short title, construction, etc) is repealed,
  - (b) in section 41(1) of the Transport Act 1962 (exemptions from stamp duty), omit the words from “, or in section fifty-two” to “schemes)”, and
  - (c) in section 160(1) of the Transport Act 1968 (stamp duty), omit the words from “or in section 52” to “schemes)”.

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*Visiting forces and allied headquarters*

- 2 Section 74 of FA 1960 (visiting forces and allied headquarters: stamp duty exemptions) is repealed.

*Shared ownership transactions*

- 3 (1) The following provisions are repealed—
- (a) section 97 of FA 1980,
  - (b) section 108 of FA 1981, and
  - (c) section 54 of FA 1987.
- (2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—
- (a) in Schedule 2 to the Housing (Consequential Provisions) Act 1985, paragraph 43;
  - (b) in FA 1988, section 142(1);
  - (c) in Schedule 14 to FA 1999, paragraph 6.

*Instruments subject to duty of fixed amount*

- 4 (1) Section 87 of FA 1985 (certificates) is amended as follows.
- (2) Omit subsection (2) (power to exempt instruments chargeable to stamp duty of a fixed amount).
- (3) In subsection (5), omit “or Treasury (as the case may be)”.

*Acquisitions*

- 5 (1) The following provisions are repealed—
- (a) section 76 of FA 1986 (rate of stamp duty payable on acquisitions), and
  - (b) section 113 of, and Schedule 35 to, FA 2002 (withdrawal of relief for company acquisitions).
- (2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—
- (a) in section 98(5) of TMA 1970, in the Table—
    - (i) in the first column, the entry relating to paragraph 11 of Schedule 35 to FA 2002, and
    - (ii) in the second column, the entry relating to paragraph 7 of that Schedule;
  - (b) in Schedule 14 to FA 1999, paragraph 15;
  - (c) in section 127 of FA 2000, subsection (4);
  - (d) in FA 2002, section 112;
  - (e) in FA 2003—
    - (i) section 127, and
    - (ii) in Schedule 19, paragraph 6(3);
  - (f) in Schedule 21 to the Legal Services Act 2007, paragraph 136;
  - (g) in Schedule 1 to CTA 2010, paragraphs 196, 372 and 376.

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*Transfers to registered social landlords*

- 6 (1) Section 130 of FA 2000 (transfers to registered social landlords etc) is repealed.
- (2) In consequence of the provision made by sub-paragraph (1), in section 131 of that Act (relief for certain instruments executed before 28 July 2000), omit subsection (1)(b).

*Land in disadvantaged areas*

- 7 (1) Sections 92 to 92B of, and Schedule 30 to, FA 2001 (exemption for land in disadvantaged areas) are repealed.
- (2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—
- (a) in FA 2002, section 110;
  - (b) in Schedule 9 to FA 2005, paragraphs 2, 3 and 5;
  - (c) in Schedule 1 to CTA 2010, paragraph 366.
- (3) Despite the repeal of section 92 of FA 2001, any regulations made under subsection (4) of that section continue to have effect for the purposes of section 72DA of the Insolvency Act 1986 (exception from prohibition of appointment of administrative receiver in respect of urban regeneration projects).
- 8 (1) Section 57 of, and Schedule 6 to, FA 2003 (disadvantaged areas relief) are repealed.
- (2) In consequence of the provision made by sub-paragraph (1), omit the following provisions—
- (a) in section 360C of CAA 2001, subsection (2)(b) (and the “or” before it);
  - (b) in FA 2003—
    - (i) section 112(2),
    - (ii) in Schedule 15, paragraph 26, and
    - (iii) in paragraph 18A of Schedule 17A, sub-paragraph (5)(b) (and the “or” before it);
  - (c) in FA 2004, section 298(5);
  - (d) in FA 2005—
    - (i) section 96, and
    - (ii) in Schedule 9, paragraphs 1 and 4;
  - (e) in FA 2008—
    - (i) section 95(6),
    - (ii) in Schedule 30, paragraph 6, and
    - (iii) in Schedule 31, paragraphs 4 and 9;
  - (f) in Schedule 22 to FA 2011, paragraph 4.
- (3) In Schedule 15 to FA 2003, in paragraph 25(2), for “paragraphs 26 to 28” substitute “paragraphs 27 and 28”.

*Leases granted by registered social landlords*

- 9 (1) In Part 5 of FA 2003 (stamp duty), the following provisions are repealed—
- (a) section 128 (exemption of certain leases granted by registered social landlords);
  - (b) section 129 (relief for certain leases granted before section 128 had effect);

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- (c) in section 130 (registered social landlords: treatment of certain leases granted between 1 January 1990 and 27 March 2000), subsections (3) to (6) and (9).
- (2) In consequence of the provision made by sub-paragraph (1), in Schedule 4 to CRCA 2005, omit paragraphs 125 to 127.

*Application and transitional provision*

- 10 (1) The amendments made by paragraphs 1 to 5, 6(1), 7 and 9(1)(a) of this Schedule have effect in relation to instruments executed on or after 6 April 2013.
- (2) The amendments made by—
  - (a) paragraphs 6(2) and 9(1)(b) of this Schedule, and
  - (b) paragraph 9(1)(c) and (2) of this Schedule, so far as relating to the repeal of section 129 of FA 2003,
 have effect in relation to instruments stamped on or after 6 April 2013.
- (3) The amendments made by paragraph 9(1)(c) and (2), so far as not relating to that repeal, come into force on 6 April 2013.
- (4) The amendments made by paragraph 8 of this Schedule have effect in relation to transactions of which the effective date is on or after 6 April 2013.
- (5) This paragraph is subject to paragraphs 11 and 12.
- 11 The amendments made by paragraph 7 do not have effect in relation to an instrument giving effect to a contract entered into on or before 16 March 2005, unless—
  - (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract, because of an assignment (or assignation) or further contract made after that date.
- 12 (1) The amendments made by paragraph 8 do not have effect in relation to—
  - (a) any transaction that is effected in pursuance of a contract entered into and substantially performed on or before 16 March 2005, or
  - (b) (subject to sub-paragraph (2)) any other transaction that is effected in pursuance of a contract entered into on or before that date.
- (2) The exclusion by sub-paragraph (1)(b) of transactions effected in pursuance of any contract entered into on or before 16 March 2005 does not apply if—
  - (a) there is any variation of the contract or assignment of rights under the contract after that date,
  - (b) the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (c) after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.
- 13 (1) Any claim for relief under Schedule 6 to FA 2003 (disadvantaged areas relief) which is made in respect of a transaction of which the effective date is on or before 5 April 2013 must be made before 6 May 2014.
- (2) Sub-paragraph (1) applies—



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- (a) whether or not the claim is made in a land transaction return or an amendment of such a return, and
- (b) whether the effective date of the transaction is before or after the day on which this Act comes into force.

## PART 2

### REPEAL OF HARBOUR REORGANISATION SCHEME RELIEFS

- 14 Section 45 of FA 1966 (harbour reorganisation schemes: stamp duty) is repealed.
- 15 Section 221 of TCGA 1992 (harbour reorganisation schemes: transfer of assets) is repealed.
- 16 Sections 991 to 995 of CTA 2010 (harbour reorganisation schemes) are repealed.
- 17 In consequence of the provision made by paragraph 15—
  - (a) in section 288(3A)(a) of TCGA 1992, for “221” substitute “ 220 ”, and
  - (b) in Schedule 1 to CTA 2010, omit paragraph 251.
- 18 (1) The amendment made by paragraph 14 has effect in relation to instruments executed on or after 1 April 2013.
- (2) The amendments made by paragraphs 15 to 17 have effect in relation to any transfer occurring on or after 1 April 2013.

## PART 3

### PAYMENTS RELATING TO REDUCTIONS IN POOL BETTING DUTY

- 19 (1) Section 126 of FA 1990 (capital allowances and IHT: pools payments for football ground improvements) is repealed.
- (2) Accordingly, the following are also repealed—
  - (a) paragraph 72 of Schedule 2 to CAA 2001;
  - (b) paragraph 416 of Schedule 1 to ITTOIA 2005.
- (3) The repeals made by this paragraph—
  - (a) for corporation tax purposes, have effect in relation to payments made on or after 1 April 2013,
  - (b) for income tax purposes, have effect in relation to payments made on or after 6 April 2013, and
  - (c) for inheritance tax purposes, come into force on 6 April 2013 (and have effect in relation to payments whenever made).
- 20 (1) Section 121 of FA 1991 (inheritance tax: pools payments to support games etc) is repealed.
- (2) The repeal made by this paragraph comes into force on 6 April 2013 (and has effect in relation to payments whenever made).
- 21 (1) In ITTOIA 2005, the following provisions are repealed—
  - (a) section 162 (deductions in respect of payments by persons liable to pool betting duty);

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- (b) section 748 (exemption for payments by persons liable to pool betting duty).
  - (2) Accordingly, section 683(4)(g) of that Act is also repealed.
  - (3) The repeals made by this paragraph have effect in relation to payments made on or after 6 April 2013.
- 22 (1) In CTA 2009, the following provisions are repealed—
- (a) section 138 (deductions in respect of payments by companies liable to pool betting duty);
  - (b) section 978 (exemption for payments by persons liable to pool betting duty).
- (2) Accordingly, section 976(1)(b) of that Act (and the “and” before it) are also repealed.
- (3) The repeals made by this paragraph have effect in relation to payments made on or after 1 April 2013.

## PART 4

### LIFE ASSURANCE

#### *Abolition of income tax relief for life assurance premiums under section 266 of ICTA*

- 23 Section 266 of ICTA (income tax relief for life assurance premiums paid by eligible individuals) applies in relation to a premium or part of a premium only if the premium or part of a premium—
- (a) becomes due and payable before 6 April 2015, and
  - (b) is actually paid before 6 July 2015.
- 24 No claim for relief may be made under paragraph 6 of Schedule 14 to ICTA (provisions ancillary to section 266) after 5 April 2016.
- 25 (1) The Income Tax (Life Assurance Premium Relief) Regulations 1978 (S.I. 1978/1159) (“the 1978 Regulations”) have effect in accordance with this paragraph.
- (2) Subject to sub-paragraph (3), an annual claim for the financial year of a life office must be made no later than—
- (a) the end of the six-year period allowed by regulation 9(1), or
  - (b) if earlier, the end of the relevant 6-month period,
- and regulation 9(8) has effect accordingly.
- (3) An annual claim which a life office is required to make under regulation 9(2) must be made no later than—
- (a) the end of the one-year period specified in regulation 9(2), or
  - (b) if earlier, the end of the relevant 6-month period,
- and regulation 9(6) has effect accordingly.
- (4) In sub-paragraphs (2) and (3) “the relevant 6-month period” means the period of 6 months after the end of the life office's first financial year to end after 5 April 2015.
- (5) The Board must decide all claims made under the 1978 Regulations no later than 5 April 2017.

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- (6) Terms used in this paragraph have the same meaning as they have in the 1978 Regulations.
- 26 (1) In this paragraph—
- (a) “the 1980 Regulations” means the Friendly Societies (Life Assurance Premium Relief) (Change of Rate) Regulations 1980 (S.I. 1980/1947), and
  - (b) terms have the same meaning as they have in the 1980 Regulations.
- (2) This paragraph applies in relation to a friendly society which has adopted the prescribed scheme or an approved scheme in accordance with the provisions of the 1977 Regulations.
- (3) The prescribed scheme or the approved scheme, and the 1977 Regulations and the 1980 Regulations, have effect in relation to the friendly society on the following basis.
- (4) That basis is—
- (a) paragraph 23 above does not remove any person's entitlement to relief under section 266 of ICTA but does change the authorised percentage to 0%,
  - (b) the effective date in relation to that change is 6 April 2015,
  - (c) as well as having effect in relation to gross contributions due and payable on or after 6 April 2015, that change has effect in relation to gross contributions due and payable before that date so far as they are actually paid on or after 6 July 2015 (and, in particular, regulations 3(1) and 4(1) of the 1980 Regulations are to be read accordingly), and
  - (d) a resolution under regulation 3(1) of the 1980 Regulations may be passed in relation to that change at any time before 6 April 2015.
- (5) For regulation 5 of the 1980 Regulations substitute—
- “5 (1) This regulation applies if a gross contribution is amended under regulation 4.
- (2) The friendly society may notify the Financial Services Authority of a proposal to amend the sum assured or guaranteed by the contract by an amount determined in accordance with rules which have been certified by an actuary to be fair in relation to the gross contribution payable.
  - (3) The proposed amendment may be made at any time after the expiry of the period of 3 months beginning with the day on which the proposal is notified to the Financial Services Authority.”
- (6) For regulation 8 of the 1980 Regulations substitute—
- “8 (1) This regulation applies if a friendly society adopted an approved scheme under regulation 7 of the 1977 Regulations.
- (2) The friendly society may notify the Financial Services Authority of a proposal to amend the approved scheme in consequence of any prospective change in the authorised percentage.
  - (3) The proposed amendment—
    - (a) may be made at any time after the expiry of the period of 3 months beginning with the day on which the proposal is notified to the Financial Services Authority, but
    - (b) must be made before 6 April 2015.”

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- 27 (1) In this paragraph—
- (a) “the 1980 Regulations” means the Industrial Assurance (Life Assurance Premium Relief) (Change of Rate) Regulations 1980 (S.I. 1980/1948), and
  - (b) terms have the same meaning as they have in the 1980 Regulations.
- (2) This paragraph applies in relation to an industrial assurance company or collecting society which has adopted the prescribed scheme or an approved scheme in accordance with the provisions of the 1977 Regulations.
- (3) The prescribed scheme or the approved scheme, and the 1977 Regulations and the 1980 Regulations, have effect in relation to the industrial assurance company or collecting society on the following basis.
- (4) That basis is—
- (a) paragraph 23 above does not remove any person's entitlement to relief under section 266 of ICTA but does change the authorised percentage to 0%,
  - (b) the effective date in relation to that change is 6 April 2015,
  - (c) as well as having effect in relation to gross premiums due and payable on or after 6 April 2015, that change has effect in relation to gross premiums due and payable before that date so far as they are actually paid on or after 6 July 2015 (and, in particular, regulations 3(1) and 4(1) of the 1980 Regulations are to be read accordingly), and
  - (d) a resolution under regulation 3(1) of the 1980 Regulations may be passed in relation to that change at any time before 6 April 2015.
- (5) For regulation 5 of the 1980 Regulations substitute—
- “5 (1) This regulation applies if a gross premium is amended under regulation 4.
- (2) The industrial assurance company or collecting society may notify the Financial Services Authority of a proposal to amend the sum assured or guaranteed by the policy or contract by an amount determined in accordance with rules which have been certified by an actuary to be fair in relation to the gross premium payable.
  - (3) The proposed amendment may be made at any time after the expiry of the period of 3 months beginning with the day on which the proposal is notified to the Financial Services Authority.”
- (6) For regulation 8 of the 1980 Regulations substitute—
- “8 (1) This regulation applies if an industrial assurance company or collecting society adopted an approved scheme under regulation 7 of the 1977 Regulations.
- (2) The industrial assurance company or collecting society may notify the Financial Services Authority of a proposal to amend the approved scheme in consequence of any prospective change in the authorised percentage.
  - (3) The proposed amendment—
    - (a) may be made at any time after the expiry of the period of 3 months beginning with the day on which the proposal is notified to the Financial Services Authority, but
    - (b) must be made before 6 April 2015.”

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- 28 (1) The following repeals are made in consequence of the provision made by paragraph 23 above.

<i>Act</i>	<i>Provision repealed</i>
ICTA	Sections 266, 266A and 274. Section 824(2D)(b) and (3)(ad). Schedule 14. In paragraph 8 of Schedule 15, the words from “but” (in the second place it occurs) to the end.
FA 1988	Section 29. Paragraph 9 of Schedule 3.
FA 1996	Section 167(5) and (6). Paragraph 11 of Schedule 18. Paragraph 20 of Schedule 20.
ITEPA 2003	Paragraphs 36 and 119 of Schedule 6.
FA 2004	Paragraphs 9 and 10 of Schedule 35.
ITA 2007	Section 811(6)(e) and the “and” before it. Paragraph 232 of Schedule 1.
FA 2009	Paragraphs 3 to 5 of Schedule 1. Paragraph 9D of Schedule 54.

- (2) In section 989 of ITA 2007 (definitions for the purposes of the Income Tax Acts) for the definition of “qualifying policy” substitute—
- ““qualifying policy” is to be read in accordance with Schedule 15 to ICTA,”.
- (3) The amendments made by sub-paragraphs (1) and (2) come into force on the day appointed by the Treasury by order made by statutory instrument.
- (4) An order under sub-paragraph (3) may make transitional provision and savings.
- (5) A statutory instrument containing an order under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the House of Commons.
- 29 (1) This paragraph applies if—
- a policy which is a qualifying policy (within the meaning of the Income Tax Acts) is varied or another policy is substituted for such a policy, and
  - the variation or substitution is made for the sole purpose of dealing with the consequences of the restrictions placed on relief under section 266 of ICTA by virtue of paragraph 23 above.
- (2) In the case of a variation, the variation does not itself affect the policy's status as a qualifying policy.
- (3) In the case of a substitution, the new policy is to be a qualifying policy.

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- 30 (1) In this paragraph “relevant variation” means a variation made for the sole purpose of dealing with the consequences of the restrictions placed on relief under section 266 of ICTA by virtue of paragraph 23 above.
- (2) A relevant variation of a policy is not to be treated as a variation for the purposes of—
- (a) paragraph 8(1) or (4) of Schedule 14 to ICTA, or
  - (b) section 485(6) of ITTOIA 2005 (disregard of certain events in relation to qualifying policies).
- (3) A relevant variation of a policy or contract does not itself cause the breaching of a limit set out in—
- (a) section 460(2)(c)(iii) or 464 of ICTA, or
  - (b) section 155(3) (so far as relating to contracts made before 14 March 1984) or 160 of this Act.

*Removal of claw-backs on relief given under section 266 of ICTA*

- 31 (1) In ICTA omit sections 268 to 272 (which provide for the “claw-back” of income tax relief given under section 266 of ICTA).
- (2) In consequence of the provision made by sub-paragraph (1), omit—
- (a) section 824(2D)(a) of ICTA,
  - (b) paragraph 11 of Schedule 35 to FA 2004,
  - (c) paragraph 123 of Schedule 1 to ITTOIA 2005, and
  - (d) paragraph 21 of Schedule 39 to FA 2008.
- (3) The amendments made by this paragraph have effect in relation to events occurring in relation to policies on or after 6 April 2015.

*Abolition of income tax relief relating to certain payments made for benefit of family members etc*

- 32 (1) In Chapter 6 of Part 8 of ITA 2007 omit section 459 (which provides income tax relief in relation to certain payments made by individuals for the benefit of family members).
- (2) In ITA 2007—
- (a) in sections 26(1)(a) and 27(5) omit “section 459 of this Act or section 273 of ICTA (payments for benefit of family members),”,
  - (b) in section 423(5)—
    - (i) after paragraph (b) insert “ and ”, and
    - (ii) omit paragraph (d) (and the “and” before it),
  - (c) in section 460—
    - (i) omit subsection (1)(b) (and the “or” before it), and
    - (ii) in subsection (4) for “, 458 or 459” substitute “ or 458 ”,
  - (d) in section 809G(2)(c) for “, 458 or 459” substitute “ or 458 ”, and
  - (e) omit section 811(6)(d) (but not the “and” after it).
- (3) Section 609 of ITEPA 2003 (annuities for the benefit of dependants) is amended as follows.
- (4) In subsection (1), for the words from the second “which” to the end substitute “—

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- (a) which, in the tax year 2012-13 or an earlier tax year, satisfied the conditions for relief under section 273 of ICTA or section 459 of ITA 2007 (obligatory contributions to secure an annuity for the benefit of dependants), or
  - (b) which fall within subsection (3)”.
- (5) After subsection (2) insert—
- “(3) A sum falls within this subsection if—
- (a) in the tax year 2013-14 or a later tax year, the sum is paid by an individual, or is deducted from an individual's earnings, under an Act or the individual's terms and conditions of employment,
  - (b) the sum is for the purpose of—
    - (i) securing a deferred annuity after the individual's death for the individual's surviving spouse or civil partner, or
    - (ii) making provision after the individual's death for the individual's children, and
  - (c) the individual—
    - (i) is UK resident for the tax year in which the sum is paid or deducted, or
    - (ii) at any time in that tax year, falls within any of paragraphs (a) to (f) of section 460(3) of ITA 2007 (matters relating to residence).
- (4) Subsection (3)(a) does not cover contributions paid by a person under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (5) In subsection (3)(a) “earnings” has the meaning given by section 62.”
- (6) The amendments made by this paragraph have effect for the tax year 2013-14 and subsequent tax years.

## PART 5

### CAPITAL ALLOWANCES

#### *Safety at sports grounds*

- 33 The following provisions of Part 2 of CAA 2001 (plant and machinery allowances) are repealed—
- (a) section 30 (safety at designated sports grounds),
  - (b) section 31 (safety at regulated stands at sports grounds), and
  - (c) section 32 (safety at other sports grounds).
- 34 (1) In consequence of the provision made by paragraph 33, CAA 2001 is amended as follows.
- (2) In section 23(2) (expenditure unaffected by sections 21 and 22), omit—
- (a) the entry relating to section 30,
  - (b) the entry relating to section 31, and

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- (c) the entry relating to section 32.
- (3) In section 27 (application of Part 2 to thermal insulation, safety measures, etc)—
- (a) in subsection (1)(a), for “any of sections 28 to 33” substitute “ section 28 or 33 ”, and
  - (b) in the heading, for “, **safety measures, etc**” substitute “ **and personal security** ”,
- and, in the italic heading before that section, for “, *safety measures, etc*” substitute “ *and personal security* ”.
- 35 The amendments made by paragraphs 33 and 34 have effect—
- (a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2013, and
  - (b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2013.

*Flat conversion allowances*

- 36 Part 4A of CAA 2001 (flat conversion allowances) does not apply—
- (a) for corporation tax purposes, in relation to expenditure incurred on or after 1 April 2013, and
  - (b) for income tax purposes, in relation to expenditure incurred on or after 6 April 2013.
- 37 Part 4A of CAA 2001 is repealed.
- 38 (1) In consequence of the provision made by paragraph 37, CAA 2001 is amended as follows.
- (2) In section 1(2) (allowances for which Act provides), omit paragraph (ca).
  - (3) In section 2(3) (giving effect to capital allowances), omit the entry relating to section 393T.
  - (4) In section 567(1) (sales treated as being for alternative amount: introductory), omit “4A,”.
  - (5) In section 570(1) (elections under section 569: supplementary), omit “or 4A”.
  - (6) In section 570A(1) (avoidance affecting proceeds of balancing event), omit “4A,”.
  - (7) In section 573(1) (transfers treated as sales), omit “, 4A”.
  - (8) In Part 2 of Schedule 1 (list of defined expressions), omit the entries for the following defined expressions—
    - “balancing adjustment (in Part 4A)”,
    - “balancing event (in Part 4A)”,
    - “dwelling (in Part 4A)”,
    - “flat (in Part 4A)”,
    - “lease and related expressions (in Part 4A)”,
    - “proceeds from a balancing event (in Part 4A)”,
    - “qualifying building (in Part 4A)”,
    - “qualifying flat (in Part 4A)”,
    - “relevant interest (in Part 4A)”, and



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“residue of qualifying expenditure (in Part 4A)”.

- (9) In Part 2 of that Schedule, in the entry for “sale, transfers under Parts 3A, 4A and 10 treated as”, omit “, 4A”.
- 39 In consequence of the provision made by paragraphs 37 and 38, the following provisions are repealed—
- (a) in FA 2001, section 67 and Schedule 19,
  - (b) in ITTOIA 2005, paragraphs 559 and 560 of Schedule 1, and
  - (c) in CTA 2009, paragraphs 505 to 507 of Schedule 1.
- 40 (1) The amendments made by paragraphs 37 to 39 have effect—
- (a) for corporation tax purposes, in relation to chargeable periods beginning on or after 1 April 2013, and
  - (b) for income tax purposes, in relation to chargeable periods beginning on or after 6 April 2013.
- (2) But see also—
- (a) paragraph 41 (which deals with the case of a company's chargeable period for corporation tax purposes straddling 1 April 2013), and
  - (b) paragraph 42 (which saves the continued operation of certain provisions).
- 41 (1) This paragraph applies if, for corporation tax purposes, the chargeable period of a company begins before, and ends on or after, 1 April 2013.
- (2) The company is entitled only to the relevant proportion of any writing-down allowance for that chargeable period to which it would, but for this paragraph, have been entitled under section 393J of CAA 2001.
- (3) The relevant proportion is—

$$\frac{A}{B}$$

where—

A is the number of days in the chargeable period falling before 1 April 2013, and

B is the number of days in the chargeable period.

- 42 (1) Nothing in paragraph 37 or 40(1) is to affect the operation of—
- (a) section 393I of CAA 2001 (withdrawal of allowance if flat not qualifying flat or if relevant interest sold before flat first let), or
  - (b) sections 393M to 393P of CAA 2001 (balancing adjustments),
- for chargeable periods beginning on or after the relevant date in relation to expenditure incurred before that date.
- (2) The relevant date is—
- (a) for corporation tax purposes, 1 April 2013, and
  - (b) for income tax purposes, 6 April 2013.

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## PART 6

### MINERAL LEASES OR AGREEMENTS

#### *Income tax*

- 43 (1) The following provisions of ITTOIA 2005 (which provide for income tax relief in relation to mineral royalties) are repealed—
- (a) section 157 (mineral royalties included as receipts of a trade),
  - (b) section 319 (mineral royalties included as receipts of a UK property business), and
  - (c) sections 340 to 343 (mineral royalties receivable in connection with mines, quarries and other concerns).
- (2) In consequence of the provision made by sub-paragraph (1)—
- (a) in ITTOIA 2005—
    - (i) in section 337, omit the entry relating to section 340 (and the “and” before that entry), and
    - (ii) in section 339, omit subsection (3), and
  - (b) in CRCA 2005, in Schedule 4, omit paragraph 132(3)(a).
- (3) The amendments made by this paragraph have effect in relation to mineral royalties which a person is entitled to receive on or after 6 April 2013.

#### *Corporation tax on income*

- 44 (1) The following provisions of CTA 2009 (which provide for corporation tax relief on income in relation to mineral royalties) are repealed—
- (a) section 135 (mineral royalties included as receipts of a trade),
  - (b) section 258 (mineral royalties included as receipts of a UK property business), and
  - (c) sections 273 to 276 (mineral royalties receivable in connection with mines, quarries and other concerns).
- (2) In consequence of the provision made by sub-paragraph (1)(c), in section 272 of CTA 2009, omit subsection (3).
- (3) The amendments made by this paragraph have effect in relation to mineral royalties which a company is entitled to receive on or after 1 April 2013.

#### *Chargeable gains*

- 45 (1) Section 201 of TCGA 1992 (mineral leases: royalties) is repealed.
- (2) In consequence of the provision made by sub-paragraph (1), in section 203 of TCGA 1992—
- (a) in subsection (1), for “sections 201 and 202” substitute “ section 202 ”, and
  - (b) in the heading, for “**sections 201 and 202**” substitute “ **section 202** ”.
- (3) The amendments made by this paragraph have effect—
- (a) for the purposes of capital gains tax, in relation to mineral royalties which a person is entitled to receive on or after 6 April 2013, and

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- (b) for the purposes of corporation tax in respect of chargeable gains, in relation to mineral royalties which a company is entitled to receive on or after 1 April 2013.
- 46 (1) Section 202 of TCGA 1992 (mineral leases: capital losses) is amended as follows.
- (2) In subsection (1)—
- (a) after “currency of a mineral lease or agreement” insert “ entered into before the relevant date ”, and
- (b) after “in relation to a mineral lease or agreement” insert “ entered into before that date ”.
- (3) After that subsection insert—
- “(1A) For the purposes of this section “the relevant date” means—
- (a) for the purposes of capital gains tax, 6 April 2013; and
- (b) for the purposes of corporation tax in respect of chargeable gains, 1 April 2013.”
- (4) In subsection (3), after “termination of a mineral lease or agreement” insert “ entered into before the relevant date ”.
- 47 In section 203 of TCGA 1992 (provisions supplementary to sections 201 and 202), in subsection (1), for “as they apply for the interpretation of Chapter 7 of Part 4 of CTA 2009” substitute “ (despite their repeal by paragraph 44(1)(c) of Schedule 39 to the Finance Act 2012) ”.

## PART 7

### MISCELLANEOUS

#### *Deeply discounted securities: incidental expenses*

- 48 (1) In section 455 of ITTOIA 2005 (listed securities held since 26 March 2003: calculating the profit or loss on disposals)—
- (a) in subsection (1), after “incurred” insert “ before 6 April 2015 ”, and
- (b) in subsection (3)(b), after “incurred” insert “ before 6 April 2015 ”.
- (2) The amendments made by this paragraph have effect for the tax year 2015-16 and subsequent tax years.

#### *Grants for giving up agricultural land*

- 49 (1) Section 249 of TCGA 1992 (grants for giving up agricultural land) is repealed.
- (2) Accordingly, the italic heading before that section becomes “ *Woodlands* ”.
- (3) The amendments made by this paragraph have effect in relation to disposals made on or after 6 April 2013.

#### *Reduction for meal vouchers*

- 50 (1) Section 89 of ITEPA 2003 (reduction for meal vouchers) is repealed.

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- (2) Accordingly, in that Act—
- (a) in section 87 (benefit of non-cash voucher treated as earnings), omit subsection (6), and
  - (b) in Schedule 7 (transitionals and savings), omit paragraph 18.
- (3) The amendments made by this paragraph have effect for the tax year 2013-14 and subsequent tax years.

*Black beer*

- 51 (1) ALDA 1979 is amended as follows.
- (2) In section 1 (alcoholic liquors dutiable under ALDA 1979)—
- (a) in subsection (3), omit from “, but” to the end of the subsection, and
  - (b) in subsection (5), omit “black beer.”.
- (3) In section 4(1) (interpretation), omit the definition of “black beer”.
- (4) In section 55(5)(b) (made-wine: exception to requirement for excise licence), omit “or black beer”.
- (5) The amendments made by sub-paragraphs (2) and (3) come into force on 1 April 2013.
- (6) The amendment made by sub-paragraph (4) has effect in relation to the use on or after 1 April 2013 of ingredients that include black beer.

*Angostura bitters*

- 52 (1) In ALDA 1979, omit—
- (a) section 1(7) (angostura bitters deemed not to be spirits), and
  - (b) section 6 (power to exempt angostura bitters from duty).
- (2) In Schedule 5 to FA 1994 (decisions subject to review and appeal), omit paragraph 3(1)(a).
- (3) The amendments made by this paragraph come into force on 1 April 2013.

*Tax reserve certificates*

- 53 (1) The following provisions are repealed—
- (a) section 750 of ITTOIA 2005 (interest from tax reserve certificates);
  - (b) section 1283 of CTA 2009 (interest from tax reserve certificates).
- (2) In consequence of the provision made by sub-paragraph (1), in section 369 of ITTOIA 2005 (charge to tax on interest), in subsection (3)(e), omit “tax reserve certificates.”.
- (3) The repeals made by sub-paragraphs (1)(a) and (2) have effect in relation to tax reserve certificates redeemed on or after 6 April 2013.
- (4) The repeal made by sub-paragraph (1)(b) has effect in relation to tax reserve certificates redeemed on or after 1 April 2013.

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*Tax assessors*

- 54 (1) Section 62(2) and (3) of FA 1946 (compensation for former land tax assessors and income tax assessors, etc) is repealed.
- (2) In consequence of the provision made by sub-paragraph (1), in Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), in paragraph 34, omit “or section 62 of the Finance Act 1946”.
- (3) The amendments made by this paragraph come into force on 6 April 2013.

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