SCHEDULES

SCHEDULE 1

Section 5

ABOLITION OF DIVIDEND TAX CREDITS ETC

Main repeals

1 (1) In ITTOIA 2005 omit sections 397 to 398, 400, 414 and 421 (distributions: tax credits, and tax treated as paid).

(2) In CTA 2010 omit section 1109 (tax credits for certain distributions).

Further amendments in ITTOIA 2005

2 ITTOIA 2005 is further amended as follows.

3 In the heading of Chapter 3 of Part 4, for "credits etc" substitute "treated as paid".

4 In section 382(2) (other contents of Chapter 3 of Part 4)—

(a) omit "tax credits,", and

(b) for "397" substitute "399".

5 Omit section 384(3) (which refers to section 398).

6 Omit section 393(5) (determining entitlement to tax credit).

7 In section 394 (which deems a distribution to be made)—

(a) omit subsection (5) (determining entitlement to tax credit), and

(b) in subsection (6), for "But for" substitute "For".

8 In section 395(3) (interpretation of section 395(2)) omit the words from "after" to the end.

9 For section 396A(2)(b) (alternative receipt treated as qualifying distribution for the purposes of sections 397 and 399 and for the purposes of section 1100 of CTA 2010) substitute—

"(b) for the purposes of sections 1100 to 1103 of CTA 2010 (statements and returns of details of distributions) it is treated as a distribution that—

(i) is so made, and

(ii) is one to which section 1100 of CTA 2010 applies."

10 In the italic heading before section 397, omit "Tax credits and".

11 (1) Section 399 (qualifying distribution received by person not entitled to tax credits) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies if—

(a) a person's income for a tax year includes a distribution of a company, and

(b) the person is non-UK resident."

(3) In subsection (2) omit "(but see subsection (7))".

(4) Omit subsections (3) to (5) (amount of dividend received by non-UK resident to be treated as its grossed-up amount).

(5) Omit subsection (5A) (amounts treated as qualifying distributions for purposes of the section).

(6) Omit subsection (7) (which provides for subsection (2) to be subject to repealed provisions).

(7) For the heading substitute "Tax treated as paid on distributions received by non-UK resident persons".

12 (1) Section 401 (relief: qualifying distribution after linked non-qualifying distribution) is amended as follows.

(2) For subsections (1) to (6) substitute—

"(1) Where a person is liable to income tax on a CD distribution, the person's liability to income tax on a subsequent non-CD distribution is reduced in accordance with this section if the non-CD distribution consists of a repayment of—

(a) the share capital, or

(b) the principal of the security,

which constituted the CD distribution.

(1A) The reduction is—

(a) the amount of income tax to which the person is liable on the CD distribution, or

(b) if lower, the amount of income tax to which the person is liable on the non-CD distribution.

(1B) For the purposes of calculating the amounts mentioned in subsection (1A)(a) and (b) assume—

(a) that the CD distribution is the lowest part of the person's dividend income in the tax year ("year 1") in which it is made,

(b) that the non-CD distribution, if it is made in year 1, is the part of the person's dividend income in year 1 that is next lowest after the CD distribution, and

(c) that the non-CD distribution, if it is made after year 1, is the lowest part of the person's dividend income in the tax year in which it is made."

(3) In subsection (7) (interpretation), for ""security"" substitute "—

"CD distribution" means a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) of CTA 2010 (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company),

"non-CD distribution" means a distribution which is not a CD distribution, and

"security"".

(4) In the heading, for "qualifying distribution after linked non-qualifying distribution" substitute "distribution repaying shares or security issued in earlier distribution".

13 Omit section 401A (recovery of overpaid tax credit etc).

14 In section 401B (power to obtain information for the purposes of section 397), for "section 397", in each place it occurs, substitute "this Chapter".

15 Omit sections 406(4A) and 407(4A) (determining entitlement to tax credit).

16 In section 408(2A) (interpretation of section 408(2)) omit the words from "after" to the end.

17 In section 411(2) (stock dividends: amount on which tax charged) omit ", grossed up by reference to the dividend ordinary rate for the tax year".

18 In section 416 (released debts: amount on which tax charged)—

(a) in subsection (1) (tax charged on gross amount) omit "gross", and

(b) omit subsection (2) (meaning of "gross amount").

19 In section 418(3) (release of loan: tax only on grossed-up amount of excess where part previously charged) omit ", grossed up by reference to the dividend ordinary rate".

20 In section 651 (meaning of "UK estate" and "foreign estate")—

(a) in subsection (4), for "680(3) or (4) (sums" substitute "664(2)(c) or (d) or 680(4) (sums not liable to tax and sums", and

(b) in subsection (5), for "680(3) or (4)" substitute "664(2)(c) or (d) or 680(4)".

21 In section 657 (tax charged on estate income from foreign estates), for "680(3) or (4)", in both places, substitute "680(4)".

22 In section 663 (applicable rate for purposes of grossing-up under sections 656 and 657), after subsection (4) insert—

"(5) The aggregate income of the estate, so far as it consists of income within section 664(2)(c) or (d), is treated for the purposes of this section as bearing income tax at 0%."

23 In section 670 (applicable rate for purposes of Step 2 in section 665(1)), after subsection (4) insert—

"(4A) The aggregate income of the estate, so far as it consists of income within section 664(2)(c) or (d), is treated for the purposes of this section as bearing income tax at 0%."

24 In section 680 (income of an estate that is treated as bearing income tax)—

(a) in subsection (2) omit "(3) or", and

(b) omit subsection (3) (sums treated as bearing tax at the dividend ordinary rate).

25 In section 680A (estate income treated as dividend income), in each of subsections (1)(a) and (4)(a), after "at the dividend ordinary rate" insert "or as bearing tax at 0% because of section 663(5)".

26 In section 854(6) (carrying on by partner of notional business: meaning of "untaxed income")—

(a) omit the "or" at the end of paragraph (b), and

(b) after paragraph (c) insert—

"(d) income chargeable under Chapter 5 of Part 4 (stock dividends from UK resident companies), or

(e) income chargeable under Chapter 6 of Part 4 (release of loan to participator in closed company)."

27 Omit section 858(3) (partnerships with foreign element: entitlement to tax credit).

Further amendments in CTA 2010

28 CTA 2010 is further amended as follows.

29 (1) Section 279F (ring fence profits: related 51% group company) is amended as follows.

(2) In subsection (7)(c) (conditions to be met by a company's dividend income in order for company to be a passive company), in sub-paragraph (ii) (dividends must be franked investment income) for "franked investment income" substitute "exempt ABGH distributions".

(3) After subsection (9) insert—

"(10) In subsection (7)(c) "exempt ABGH distribution" means a distribution which—

(a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and

(b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions)."

30 (1) Section 279G (ring fence profits: meaning of "augmented profits") is amended as follows.

(2) In subsection (1)(b) (franked investment income is part of augmented profits unless excluded)—

(a) for "franked investment income" substitute "exempt ABGH distributions", and

(b) for "is" substitute "are".

(3) In subsection (3) (exclusion of franked investment income received from certain subsidiaries etc), for "franked investment income" substitute "exempt ABGH distribution".

(4) After subsection (4) insert—

"(5) In this section "exempt ABGH distribution" means a distribution which—

(a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and

(b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions)."

31 For section 463(7) (loan to trustees of settlement which has ended: amount on which debtor taxed when all or part of loan released or written off) substitute—

"(7) The amount which Y is treated as receiving is equal to the amount released or written off."

32 (1) Section 549 (distributions: supplementary) is amended as follows.

(2) Omit subsection (2) (which excludes entitlement to tax credits).

(3) In subsection (2A) (which disapplies sections 409 to 414 of ITTOIA 2005), for "414" substitute "413A".

33 (1) Section 751 (interpretation of Part 15 (transactions in securities)) is amended as follows.

(2) The existing text becomes subsection (1).

(3) In that subsection, in the definition of "dividends", omit "qualifying".

(4) After that subsection insert—

"(2) In the definition of "dividends" given by subsection (1), "other distributions" does not include a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company)."

34 Omit section 814D(8) (which excludes entitlement to tax credits).

35 Omit section 997(5) (which introduces sections 1109 to 1111).

36 In sections 1026(1)(b) and 1027(2)(b) (cases where amount paid up in respect of bonus shares does not fall to be treated as a qualifying distribution) omit "qualifying".

37 (1) Section 1070 (distributions by company carrying on mutual business) is amended as follows.

(2) In subsection (2) (provisions about distributions apply to company's distributions only where made out of taxed profits or franked investment income), for paragraph (b) (franked investment income) substitute—

"(b) income of the company consisting of exempt ABGH distributions."

(3) After subsection (5) insert—

"(5A) In subsection (2) "exempt ABGH distribution" means a distribution which—

(a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and

(b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions)."

38 (1) Section 1071 (company not carrying on business) is amended as follows.

(2) In subsection (5) (provisions about distributions apply to company's distributions only where made out of taxed profits or franked investment income), for paragraph (b) (franked investment income) substitute—

"(b) income of the company consisting of exempt ABGH distributions."

(3) After subsection (5) insert—

"(5A) In subsection (5) "exempt ABGH distribution" means a distribution which—

(a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1), and

(b) is exempt for the purposes of Part 9A of CTA 2009 (company distributions)."

39 (1) Section 1100 (qualifying distribution: right to request a statement) is amended as follows.

(2) In subsection (1) (requests for statement)—

(a) for "qualifying distribution" substitute "distribution to which this section applies", and

(b) omit paragraph (b) (amount of any tax credit), and the "and" preceding it.

(3) After subsection (4) insert—

"(4A) This section applies to any distribution other than one which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company)."

(4) Omit subsections (2) and (5) (interpretation of subsection (1)(b)).

(5) In subsection (7) (section to be read with section 396A(2) of ITTOIA 2005)—

(a) for "needs" substitute ", and sections 1101 to 1103, need", and

(b) for "as "qualifying distributions" for the purposes of this section" substitute "as distributions to which this section applies".

(6) In the heading, for "Qualifying" substitute "Certain".

40 (1) Section 1101 (non-qualifying distributions etc: returns and information) is amended as follows.

(2) In subsection (1) (duty to make return), for "which is not a qualifying distribution" substitute "to which section 1100 does not apply".

(3) In subsection (4) (duty to make return where not clear whether distribution is non-qualifying), for "which is not a qualifying distribution" substitute "to which section 1100 does not apply".

(4) In the heading, and in the heading of section 1102, for "Non-qualifying" substitute "Other".

41 In section 1103 (regulations about information about non-qualifying distributions)—

(a) in subsection (2) (purpose for which sections 1101 and 1102 may be rewritten), for "which are not qualifying distributions" substitute "to which section 1100 does not apply",

(b) in subsection (4) (special arrangements about matters specified in subsection (5)), for "matters" substitute "matter", and

(c) in subsection (5)—

(i) for "Those matters are" substitute "That matter is", and

(ii) omit paragraph (b) (tax credits), and the "and" preceding it.

42 (1) Section 1106 (interpretation of sections 1104 and 1105) is amended as follows.

(2) In subsection (4) (meaning of "tax certificate")—

(a) after paragraph (a) insert "and", and

(b) omit paragraph (c) (tax credits), and the "and" preceding it.

(3) Omit subsections (5) and (6) (interpretation of subsection (4)(c)).

43 Omit sections 1110 and 1111 (recovery of overpaid tax credits etc).

44 (1) Section 1115 (meaning of "new consideration" in Part 23) is amended as follows.

(2) In subsections (5)(a) and (6)(b) for "qualifying" substitute "non-CD".

(3) After subsection (6) insert—

"(7) In this section "non-CD distribution" means any distribution other than one which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company)."

45 In section 1119 (definitions for the purposes of the Corporation Tax Acts) omit the entries for "franked investment income", "qualifying distribution" and "tax credit".

46 Omit section 1126 (meaning of "franked investment income").

47 Omit section 1136 (meaning of "qualifying distribution").

48 Omit section 1139(4) ("relief" includes tax credit).

49 In Schedule 2 (transitionals and savings etc) omit paragraph 106(1) (operation of sections 1026 and 1027 in relation to share capital issued before 7 April 1973).

50 In Schedule 4 (index of defined expressions) omit the entries for "franked investment income", "qualifying distribution" and "tax credit".

Other amendments

51 (1) TMA 1970 is amended as follows.

(2) In section 8(1AA)(b) (payable income tax is chargeable amount less tax deducted at source and tax credits) omit the words after "source".

(3) In section 8A(1AA)(b) (payable income tax is chargeable amount less tax deducted at source and tax credits) omit the words after "source".

(4) In section 9(1) (self-assessment)—

(a) in paragraph (b) (payable income tax is assessed amount less tax deducted at source and tax credits) omit the words after "source", and

(b) in the words after paragraph (b) omit ", 400(2), 414(1), 421(1)".

(5) In section 12AA(1A)(b) (partner's payable income tax is chargeable amount less tax deducted at source and tax credits) omit the words after "source".

(6) In section 12AB (partnership statement in partnership return)—

(a) in subsection (1)(a)—

(i) after sub-paragraph (ia) insert "and", and

(ii) omit sub-paragraph (iii) (tax credits), and the "and" preceding it,

(b) in subsection (1)(b) for ", tax or credit" substitute "or tax", and

(c) in subsection (5) omit the definition of "tax credit".

(7) In section 12B(4A)(a)(i) (statements themselves must be preserved if of amount of qualifying distribution and tax credit), after "amount" insert "of distribution, formerly amount".

(8) In section 59A(8)(b) (amounts included in annual total of deductions at source) omit "or are tax credits to which section 397(1) or 397A(1) of ITTOIA 2005 applies,".

(9) In section 59B (payment of income tax and capital gains tax)—

(a) in subsection (1) omit ", 400(2), 414(1), 421(1)", and

(b) in subsection (2)(b) omit "or is a tax credit to which section 397(1) or 397A(1) of ITTOIA 2005 applies,".

(10) Omit section 87A(5) (interest on assessments under section 1110 of CTA 2010 on overpaid tax credits etc).

(11) In section 98 (special returns), in the first column of the table omit the entry for section 1109 of CTA 2010.

52 (1) ICTA is amended as follows.

(2) Omit section 231B (arrangements to pass on value of tax credit).

(3) Omit section 824(2) (repayment supplements: tax credits).

(4) In section 824(4A) omit paragraph (b) (repayment supplements: tax credit treated as income tax deducted at source), and the "and" preceding it.

(5) In section 825(1) (repayment supplements: companies) omit paragraph (c) (tax credits comprised in franked investment income), and the "or" preceding it.

(6) In section 826 (interest on tax overpaid by companies)—

(a) in subsection (1) omit paragraph (c) (tax credits), including the "or" at the end, and

(b) in subsection (3)—

(i) omit "or a payment of the whole or part of a tax credit falling within subsection (1)(c) above", and

(ii) omit "or, as the case may be, the franked investment income referred to in subsection (1)(c) above".

53 In FA 1988, in Schedule 13 omit paragraph 7(c) (post-consolidation amendment of section 824(2) of ICTA).

54 In FA 1989—

(a) omit section 115 (double taxation: tax credits), and

(b) in section 179(1)(b)(i) (amendments of provisions of TMA 1970 including section 87A(1) and (5)) omit "and (5)".

55 In FA 1993 omit section 171(2B) (which excludes entitlement to tax credits).

56 In FA 1994 omit section 219(4B) (which excludes entitlement to tax credits).

57 (1) F(No.2)A 1997 is amended as follows.

(2) Omit section 22(1) (which inserted section 171(2B) of FA 1993).

(3) Omit section 28 (which inserted section 231B of ICTA).

(4) Omit section 30(9) and (10) (effect of double taxation arrangements in relation to tax credits).

(5) In Schedule 6 (repeal of provisions relating to foreign income dividends), in paragraph 23 (transitional provision for certain foreign income dividends paid before 6 April 1999 but received on or after that date) omit—

(a) "qualifying", and

(b) "nine tenths of".

58 (1) FA 1998 is amended as follows.

(2) Omit section 76(3) (regulations about tax credits where non-UK residents have invested in individual savings accounts).

(3) In Schedule 18 (company tax returns etc)—

(a) omit paragraph 9(3) (certain claims by companies for payment of tax credits),

(b) in paragraphs 22(3)(a)(i) and 23(3)(a)(i) (which relate to a statement as to amount of qualifying distribution and tax credit), after "amount" insert "of distribution, but formerly amount", and

(c) in paragraph 52(2)(a) omit "or payment of a tax credit".

59 In the Commonwealth Development Corporation Act 1999, in Schedule 3 omit paragraph 6(2)(b) (provisions about tax credits do not apply in relation to distributions by the Corporation).

60 In the Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629)—

(a) omit article 82(a), and

(b) in article 87(a) omit "and (4B)".

61 (1) ITEPA 2003 is amended as follows.

(2) Omit sections 58(6) and 61H(6) (tax credits to be reduced in line with reductions in distributions).

(3) In Part 2 of Schedule 1 (index of defined expressions) omit the entry for "tax credit".

62 In ITTOIA 2005, in Schedule 1 (minor and consequential amendments) omit paragraphs 116, 331(2), 359, 360, 361(a), 363, 364, 376, 377(3), 464(3), 496, 503 and 510(2).

63 (1) ITA 2007 is amended as follows.

(2) In section 26(1)(b) (list of provisions giving tax reductions), in the entry for section 401 of ITTOIA 2005, for "qualifying distribution after linked non-qualifying distribution" substitute "distribution repaying shares or security issued in earlier distribution".

(3) In section 31 (calculation of total income)—

(a) omit subsection (3) (dividend etc treated as increased by amount of tax credit), and

(b) in subsection (4), for "Subsections (2) and (3) apply" substitute "Subsection (2) applies".

(4) In section 425(5) (deductions in calculating total amount of income tax for gift aid purposes)—

(a) in paragraph (a)—

(i) in sub-paragraph (i) omit "or 400(2)", and

(ii) omit sub-paragraphs (ii) and (iii),

(b) after paragraph (a) insert "and",

(c) in paragraph (b), for "680(3)(b) or (4)" substitute "680(4)", and

(d) omit paragraph (c), and the "and" before it.

(5) In section 482 (types of amount charged at special rates for trustees), in the entry for Type 1 amounts, omit "qualifying".

(6) In section 487(6) (non-UK resident trustees: disregarded income which is not included in untaxed income)—

(a) after paragraph (a) insert "or", and

(b) omit paragraph (c) (income in respect of which there is a tax credit), and the "or" preceding it.

(7) In section 498 (discretionary payments by trustees: types of tax to be included in trustees' tax pool)—

(a) in subsection (1)—

(i) in Type 1 (tax at special rates for trustees on income not attracting tax credits), omit "2, 3 or",

(ii) omit Types 2 and 3 (tax at dividend trust rate on income attracting dividend tax credits), and

(iii) in Type 4 (tax charged at basic rate as a result of section 491), omit "at the basic rate", and

(b) omit subsection (2) (interpretation of Types 2 and 3).

(8) In section 502(3) (non-UK resident beneficiaries: disregarded income which is not included in untaxed income)—

(a) after paragraph (a) insert "or", and

(b) omit paragraph (c) (income in respect of which there is a tax credit), and the "or" preceding it.

(9) In section 614ZD (treatment of recipient of manufactured payment)—

(a) in subsection (3), for "to (6)" substitute "and (5)", and

(b) omit subsection (6) (which excludes entitlement to tax credits).

(10) In section 687 (transactions in securities: meaning of "income tax advantage")—

(a) omit "qualifying" in each place, and

(b) in subsection (4), after "In this section" insert "—

(a) distribution" does not include a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) of CTA 2010 (redeemable share capital or security issued as bonus in respect of shares in, or securities of, the company), and

(b)".

(11) In section 713 (interpretation of Chapter 1 (transactions in securities))—

(a) the existing text becomes subsection (1),

(b) in that subsection, in the definition of "dividends", omit "qualifying", and

(c) after that subsection insert—

"(2) In the definition of "dividends" given by subsection (1), "other distributions" does not include a distribution which is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph C or D in section 1000(1) (redeemable share

capital or security issued as bonus in respect of shares in, or securities of, the company).”

(12) In section 745(1) (transfer of assets abroad: same rate of tax not to be charged twice)—

(a) after “at the basic rate,” insert “or”, and

(b) omit “or the dividend ordinary rate”.

(13) In section 809S(4) (meaning of “income tax advantage”) omit the words after paragraph (d).

(14) In section 811(4) (limit on liability to income tax of non-UK residents)—

(a) after paragraph (a) insert “and”, and

(b) omit paragraph (c) (tax credits), and the “and” preceding it.

(15) In section 815(3) (limit on liability to income tax of non-UK resident companies)—

(a) after paragraph (a) insert “and”, and

(b) omit paragraph (c) (tax credits), and the “and” preceding it.

(16) In section 989 (definitions for the purposes of the Income Tax Acts) omit the entries for “qualifying distribution” and “tax credit”.

(17) In section 1026 (“non-qualifying income” includes income on which tax treated as paid)—

(a) in paragraph (a) (deemed payment under sections 399 and 400 of ITTOIA 2005)—

(i) omit “or 400(2)”, and

(ii) for “from UK resident companies on which there is no tax credit” substitute “to non-UK resident persons”, and

(b) omit paragraphs (b) and (c) (deemed payment under sections 414 and 421 of ITTOIA 2005).

(18) In Schedule 1 (minor and consequential amendments) omit paragraphs 26, 245(2)(a) and (3), 446(27), 515(3), 516, 517(2), 520 and 522.

(19) In Schedule 4 (index of defined expressions) omit the entries for “qualifying distribution” and “tax credit”.

64 In FA 2008, in Schedule 12 (amendments relating to tax credits) omit paragraphs 3, 5, 6, 8 to 16, 19, 20, 24(b) and 31.

65 (1) CTA 2009 is amended as follows.

(2) In section 1222 (company with investment business: amount deductible for management expenses to be reduced by income from sources not charged to tax)—

(a) in subsection (1) (UK resident company), for paragraph (c) (franked investment income does not reduce deductibles) substitute—

“(c) the income does not consist of exempt ABGH distributions.”,

(b) in subsection (2) (non-UK resident company), for paragraph (d) (franked investment income does not reduce deductibles) substitute—

“(d) the income does not consist of exempt ABGH distributions.”, and

(c) after subsection (3) insert—

"(4) In this section "exempt ABGH distribution" means a distribution which—

(a) is a distribution for the purposes of the Corporation Tax Acts only because it falls within paragraph A, B, G or H in section 1000(1) of CTA 2010, and

(b) is exempt for the purposes of Part 9A (company distributions)."

(3) Omit section 1266(3) (partnerships with foreign element: entitlement to tax credit).

(4) In Schedule 4 (index of defined expressions) omit the entry for "qualifying distribution".

66 (1) FA 2009 is amended as follows.

(2) In Schedule 19 (amendments relating to tax credits) omit paragraphs 2(2) and (3), 3, 5, 6(2)(a), (3) and (4), 7, 9, 10(a), 11, 12 and 13(c).

(3) In paragraph 14 of Schedule 19 (amendments made by the Schedule have effect in relation to distributions etc arising or paid on or after 22 April 2009), after sub-paragraph (2) insert—

"(3) Section 873(4) of ITTOIA 2005 (inserted by paragraph 8), so far as relating to any order or regulations made after the passing of FA 2016 under any provision of ITTOIA 2005 other than section 397BA of that Act, has effect as if sub-paragraph (1) did not apply in relation to it."

(4) In Schedule 53 (late payment interest) omit—

(a) paragraph 6 (late payment interest start date in relation to assessments of overpaid tax credits etc under section 1110 of CTA 2010), and

(b) the italic heading preceding it.

(5) In paragraph 9B of Schedule 54 (repayment interest start date: companies: income tax and certain tax credits)—

(a) in sub-paragraph (1) omit paragraph (b) (tax credit comprised in franked investment income), and the "and" preceding it, and

(b) in sub-paragraph (2)—

(i) omit "or payment", and

(ii) omit "or the franked investment income mentioned in sub-paragraph (1)(b)".

(6) In paragraph 14 of Schedule 54 (interpretation) omit paragraph (b) (tax deducted at source treated as including tax credits), and the "and" preceding it.

67 In Schedule 1 to CTA 2010 (minor and consequential amendments) omit paragraphs 19, 153, 156(3), 282, 303(2), 456, 562(7), 704(27) and 722.

68 (1) TIOPA 2010 is amended as follows.

(2) In section 6(2) (effect of double taxation arrangements)—

(a) after paragraph (e) insert "or", and

(b) omit paragraph (g) (tax credits), and the "or" preceding it.

(3) In section 187A (excess interest treated as a qualifying distribution), in subsection (2), and the heading, omit "qualifying".

(4) Omit section 234(2) ("relief" includes tax credit).

(5) In Schedule 8 (minor and consequential amendments) omit paragraphs 38, 51, 52, 66 and 67.

69 In FA 2011—

(a) in Part 6 of Schedule 23 (consequential provisions) omit paragraph 64(3), and

(b) in Schedule 26 omit paragraph 1(2)(a)(i) (which amended section 231B of ICTA), including the "and" at the end.

70 In FA 2012, in section 169(2) (payments by certain friendly societies treated as qualifying distributions) omit "qualifying".

71 In FA 2013—

(a) in paragraph 6(2) of Schedule 19 (which amends section 549 of CTA 2010), for "subsections (2) and" substitute "subsection", and

(b) in Part 3 of Schedule 29 (manufactured dividends: consequential etc amendments) omit paragraphs 13, 14(a) and 44(3).

72 In FA 2015, in section 19—

(a) in subsection (1), for "credits etc" substitute "treated as paid", and

(b) omit subsections (5) and (6) (which insert sections 397(5A) and 399(5A) of ITTOIA 2005).

Commencement

73 (1) Subject to the following sub-paragraphs of this paragraph, the amendments made by this Schedule have effect in relation to dividends paid or arising (or treated as paid), and other distributions made (or treated as made), in the tax year 2016-17 or at any later time.

(2) The following have effect for the tax year 2016-17 and subsequent tax years—

(a) the amendments in sections 8 to 9, 12AA and 59B of TMA 1970,

(b) the amendments in section 854(6) of ITTOIA 2005,

(c) the amendments in section 425 except the amendment in section 425(5)(b), and the amendments in sections 498, 745 and 1026, of ITA 2007,

(d) the repeals of paragraphs 359, 360, 361(a), 363 and 377(3) of Schedule 1 to ITTOIA 2005,

(e) the repeals of paragraphs 8 to 11 and 14 of Schedule 12 to FA 2008, and

(f) the repeals of the following provisions of Schedule 19 to FA 2009—

(i) paragraph 9(a) and (b),

(ii) paragraph 9(c) so far as relating to section 12AA of TMA 1970, and

(iii) paragraph 9(d) so far as relating to section 59B of TMA 1970.

(3) The amendment in paragraph 23 of Schedule 6 to F(No.2)A 1997 has effect in relation to foreign income dividends received on or after 6 April 2016.

(4) The amendments in sections 393 and 406 of ITTOIA 2005, and the repeal of paragraph 19 of Schedule 12 to FA 2008, have effect in relation to cash dividends paid over in the tax year 2016-17 or at any later time.

(5) The amendment in section 396A of ITTOIA 2005 has effect in relation to things received on or after 6 April 2016 (even if the choice to receive them was made before that date).

(6) The amendments in section 401 of ITTOIA 2005 have effect where the subsequent distribution is made in the tax year 2016-17 or at any later time, even if the prior distribution is made before 6 April 2016.

(7) The amendments in sections 411 and 414 of ITTOIA 2005, and the repeal of paragraph 520 of Schedule 1 to ITA 2007, have effect in relation to stock dividend income treated as arising in the tax year 2016-17 or at any later time.

(8) The amendments in sections 651 to 680A of ITTOIA 2005 (but not the repeal of section 680(3)(a) of that Act) and the amendment in section 425(5)(b) of ITA 2007—

(a) so far as they relate to income within section 664(2)(c) of ITTOIA 2005 (stock dividends), have effect in relation to stock dividend income treated as arising in the tax year 2016-17 or at any later time, and

(b) so far as they relate to income within section 664(2)(d) of ITTOIA 2005 (release of loans), have effect in relation to amounts released or written off in the tax year 2016-17 or at any later time.

(9) The amendments in Chapter 6 of Part 4 of ITTOIA 2005 and in section 463 of CTA 2010, and the repeal of paragraph 522 of Schedule 1 to ITA 2007, have effect in relation to amounts released or written off in the tax year 2016-17 or at any later time.

(10) The amendments in section 614ZD of ITA 2007 have effect in relation to manufactured payments made on or after 6 April 2016.

(11) The amendments in section 687 of ITA 2007 have effect where the relevant consideration is received in the tax year 2016-17 or at any later time.

(12) The amendments in section 1222 of CTA 2009 have effect in relation to income arising in the tax year 2016-17 or at any later time.

(13) The amendment in section 1026(1) of CTA 2010 has effect where the bonus share capital is issued on or after 6 April 2016.

(14) Sub-paragraph (1) does not apply in relation to—

(a) the amendments in section 401B of ITTOIA 2005;

(b) the amendment in paragraph 14 of Schedule 19 to FA 2009.

SCHEDULE 2

Section 12

SPORTING TESTIMONIAL PAYMENTS

Income tax: sporting testimonial payments treated as earnings

1 After section 226D of ITEPA 2003 (shareholder or connected person having material interest in company) insert—

"Sporting testimonial payments

226E Sporting testimonial payments

(1) This section applies in relation to an individual who is or has been employed as a professional sportsperson ("S").

(2) In this section "sporting testimonial" means—

(a) a series of relevant events or activities which each have the same controller, or

(b) a single relevant event or activity not forming part of such a series.

(3) An event or activity is (subject to subsection (4)(b)) a relevant event or activity if—

(a) its purpose (or one of its purposes) is to raise money for or for the benefit of S, and

(b) the only or main reason for doing that is to recognise S's service as a professional sportsperson who is or has been employed as such.

(4) An activity that meets the conditions in subsection (3)(a) and (b) and consists solely of inviting and collecting donations for or for the benefit of S—

(a) is a relevant activity if it is one of a series of relevant events or activities for the purposes of subsection (2)(a), but

(b) is not a relevant activity for the purposes of subsection (2)(b) so long as both conditions in subsection (5) are met while the activity takes place.

(5) The conditions are—

(a) that any person who is responsible (alone or with others) for collecting the donations or who is the controller (or a member of a committee which is the controller) of the activity is not—

(i) S,

(ii) a person who is (or has been) the controller of any other relevant event or activity for or for the benefit of S,

(iii) a person connected with S or a person mentioned in sub-paragraph (ii),

(iv) a person acting for or on behalf of a person mentioned in sub-paragraphs (i) to (iii), and

(b) that the donations collected do not include any sums paid (directly or indirectly) out of money raised by any other relevant event or activity.

(6) A "sporting testimonial payment" is a payment made by (or on behalf of) the controller of a sporting testimonial out of money raised for or for the benefit of S which—

(a) is made to S, to a member of S's family or household, to a prescribed person, to S's order or otherwise for S's benefit, and

(b) does not (apart from this section) constitute earnings from an employment.

(7) A sporting testimonial payment is to be treated as earnings of S from the employment or former employment to which the sporting testimonial is most closely linked.

(8) For the purposes of this section if at any material time S is dead—

(a) anything done for or for the benefit of S's estate is to be regarded as done for or for the benefit of S; and

(b) a payment made to S's personal representatives or to their order is to be treated as a payment to S or to S's order.

(9) In this section—

"controller", in relation to an event or activity which meets the conditions in subsection (3)(a) and (b), means the person who controls the disbursement of any money raised for or for the benefit of S from that event or activity,

"money" includes money's worth and "payment" includes the transfer of money's worth or the provision of any benefit,

"prescribed person" means a person prescribed in regulations made by the Treasury.

(10) Section 993 of ITA 2007 (meaning of "connected" persons) has effect for the purposes of this section."

Income tax: limited exemption for sporting testimonial payments

2 After section 306A of ITEPA 2003 (exemption for carers) insert—

"Professional sportspersons

306B Limited exemption for sporting testimonial payments

(1) This section applies to any sporting testimonial payments which are—

(a) made out of money raised by a sporting testimonial ("the sporting testimonial"), and

(b) treated by virtue of section 226E as earnings of a person ("S").

(2) No liability to income tax arises in respect of sporting testimonial payments to which this section applies.

(3) Subsection (2) has effect subject to and in accordance with the following provisions.

(4) It only applies—

(a) if the controller of the relevant event or activity (or of all the relevant events or activities in a series) constituting the sporting testimonial is an independent person,

(b) if S has not already benefitted from an exemption under this section in relation to one or more sporting testimonial payments made out of money raised by another sporting testimonial, and

(c) where the sporting testimonial consists of a series of relevant events or activities taking place over more than a year, if the sporting testimonial payment is made out of money raised by events or

activities taking place within the period of one year beginning with the day on which the first event or activity in the series took place.

(5) It only applies to the first £100,000 of sporting testimonial payments made out of money raised by the sporting testimonial.

(6) If sporting testimonial payments are made (out of money raised by the sporting testimonial) in two or more tax years, any part of the exempt amount that is not used in the first of those years is to be carried forward to the next tax year (and so on).

(7) This section applies to sporting testimonial payments made to or to the order of the personal representatives of S (where S has died) but only if the payments are made within the period of 24 months beginning with the date of death.

(8) In subsection (4)(a) "independent person" means a person who is not (or where the controller is a committee, a committee none of whose members are)—

(a) S or a person connected with S,

(b) an employer or former employer of S or a person connected with an employer or former employer of S, or

(c) a person acting for or on behalf of a person mentioned in paragraph (a) or (b).

(9) If the first relevant event or activity in a series took place before 6 April 2017, subsection (4)(c) has effect as if it referred to the year beginning with 6 April 2017.

(10) Section 993 of ITA 2007 (meaning of "connected" persons) has effect for the purposes of this section.

(11) Terms used in this section and section 226E have the same meaning as in that section."

Corporation tax: deductions from total profits for sporting testimonial payments and associated payments

3 After section 996 of CTA 2010 (miscellaneous provisions: use of different accounting periods within a group of companies) insert—

"Sporting testimonial payments and associated payments

996A Deductions from total profits for sporting testimonial payments and associated payments

(1) This section applies where a company, in any accounting period—

(a) is the controller of a relevant event or activity that constitutes or is part of a sporting testimonial, and

(b) makes a relevant sporting testimonial payment out of money raised by the sporting testimonial.

(2) In this section "relevant sporting testimonial payment" means a sporting testimonial payment that is (or so much of it as is) made out of proceeds of a

relevant event or activity which are brought into account in determining the company's total profits or any component of its total profits.

(3) In calculating the amount of corporation tax chargeable for the accounting period, an amount equal to the aggregate of the following amounts is allowed as a deduction from the company's total profits—

(a) so much of the relevant sporting testimonial payment as is paid to or for the benefit of the sportsperson to whom the sporting testimonial relates,

(b) any income tax or employee's national insurance contributions deducted at source from that payment, and

(c) any employer's national insurance contributions relating to that payment.

(4) The amount is deducted—

(a) from the company's total profits for the accounting period in which the relevant sporting testimonial payment is made, and

(b) if a claim by the company for relief so requires, previous accounting periods.

(5) A claim under subsection (4)(b) must be made within 2 years after the end of the accounting period in which the relevant sporting testimonial payment is made.

(6) If for an accounting period deductions under subsection (4) are to be made for relevant sporting testimonial payments made in more than one accounting period, the deductions are to be made in the order in which the payments were made (starting with the earliest of them).

(7) The amount of the deduction to be made under subsection (4) for an accounting period is the amount that cannot be deducted under that subsection for a subsequent accounting period.

(8) The amount of the deduction to be made for any accounting period is limited to the amount that reduces the company's taxable total profits for that period to nil.

(9) The deduction is only available if and to the extent that the amount mentioned in subsection (3) is not otherwise deductible in calculating the company's total profits or any component of its total profits.

(10) Terms used in this section and in section 226E of ITEPA 2003 have the same meaning as in that section."

Application of this Schedule

4 (1) The amendments made by this Schedule have effect in relation to a sporting testimonial payment made out of money raised by a sporting testimonial if—

(a) the sporting testimonial was made public on or after 25 November 2015, and

(b) the payment is made out of money raised by one or more relevant events or activities which take place on or after 6 April 2017.

(2) Terms used in sub-paragraph (1) and section 226E of ITEPA 2003 (as inserted by paragraph 1) have the same meaning as in that section.

SCHEDULE 3

Section 16

EMPLOYEE SHARE SCHEMES: MINOR AMENDMENTS

Enterprise management incentives and employee ownership trusts

1 (1) In section 534 of ITEPA 2003 (disqualifying events relating to relevant company), at the end insert—

"(7) Subsection (1)(a) and (b) do not apply where the relevant company is subject to an employee-ownership trust (within the meaning of paragraph 27(4) to (6) of Schedule 2)."

(2) The amendment made by this paragraph is treated as having come into force on 1 October 2014.

Share incentive plans

2 (1) Schedule 2 to ITEPA 2003 (share incentive plans) is amended as follows.

(2) In paragraph 1 (introduction), after sub-paragraph (4) insert—

"(5) Sub-paragraph (A1) is also subject to Part 10A of this Schedule (disqualifying events)."

(3) After Part 10 insert—

"**PART 10A**

DISQUALIFYING EVENTS

85A (1) A SIP ceases to be a Schedule 2 SIP if (and with effect from the time when) a disqualifying event occurs.

(2) The following are disqualifying events—

(a) an alteration being made in—

(i) the share capital of a company any of whose shares are subject to the plan trust, or

(ii) the rights attaching to any shares of such a company,

that materially affects the value of the shares that are subject to the plan trust;

(b) shares of a class of shares that is subject to the plan trust receiving different treatment in any respect from the other shares of that class.

(3) Sub-paragraph (2)(b) applies in particular to different treatment in respect of—

(a) the dividend payable,

(b) repayment, or

(c) any offer of substituted or additional shares, securities or rights of any description in respect of the shares.

(4) Sub-paragraph (2)(b) does not however apply where the difference in treatment arises from—

(a) a key feature of the plan, or

(b) any of the participants' shares being subject to any restriction.

(5) Nor does sub-paragraph (2)(b) apply as a result only of the fact that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which they were issued, treatment less favourable than that accorded to shares issued before that date.

(6) For the purposes of this paragraph a "key feature" of a plan is a provision of it that is necessary to meet the requirements of this Schedule.

(7) This paragraph does not affect the operation of the SIP code in relation to shares awarded to participants in the plan before the disqualifying event occurred."

(4) The amendments made by this paragraph have effect in relation to disqualifying events occurring on or after the day on which this Act is passed.

Notification of plans and schemes to HMRC

3 (1) In Schedule 2 to ITEPA 2003 (share incentive plans), Part 10 (notification of plans etc) is amended as follows.

(2) In paragraph 81A (notice of SIP to be given to HMRC), after sub-paragraph (5) insert—

"(5A) Sub-paragraph (5) does not apply if the company satisfies HMRC (or, on an appeal under paragraph 81K, the tribunal) that there is a reasonable excuse for failing to give notice on or before the initial notification deadline.

(5B) Paragraph 81C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).

(5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the company of their decision within the period of 45 days beginning with the day on which HMRC received the company's request to consider the excuse.

(5D) Where HMRC are required to notify the company as specified in sub-paragraph (5C) but do not do so—

(a) HMRC are to be treated as having decided that there was no reasonable excuse, and

(b) HMRC must notify the company of the decision which they are treated as having made."

(3) In paragraph 81K (appeals)—

(a) at the beginning insert—

"(A1) The company may appeal against a decision of HMRC under paragraph 81A(5A) that there was no reasonable excuse for its failure to give notice on or before the initial notification deadline.";

(b) in sub-paragraph (6), before paragraph (a) insert—

"(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC's decision is given to the company;";

(c) in sub-paragraph (7), after "sub-paragraph" insert "(A1),".

(4) The amendments made by this paragraph have effect in relation to notices given under paragraph 81A of Schedule 2 to ITEPA 2003 on or after 6 April 2016.

4 (1) In Schedule 3 to ITEPA 2003 (SAYE option schemes), Part 8 (notification of schemes etc) is amended as follows.

(2) In paragraph 40A (notice of scheme to be given to HMRC), after sub-paragraph (5) insert—

"(5A) Sub-paragraph (5) does not apply if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the tribunal) that there is a reasonable excuse for the failure to give notice on or before the initial notification deadline.

(5B) Paragraph 40C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).

(5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the scheme organiser of their decision within the period of 45 days beginning with the day on which HMRC received the scheme organiser's request to consider the excuse.

(5D) Where HMRC are required to notify the scheme organiser as specified in sub-paragraph (5C) but do not do so—

(a) HMRC are to be treated as having decided that there was no reasonable excuse, and

(b) HMRC must notify the scheme organiser of the decision which they are treated as having made."

(3) In paragraph 40K (appeals)—

(a) at the beginning insert—

"(A1) The scheme organiser may appeal against a decision of HMRC under paragraph 40A(5A) that there was no reasonable excuse for the failure to give notice on or before the initial notification deadline.";

(b) in sub-paragraph (5), before paragraph (a) insert—

"(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC's decision is given to the scheme organiser;";

(c) in sub-paragraph (6), after "sub-paragraph" insert "(A1),".

(4) The amendments made by this paragraph have effect in relation to notices given under paragraph 40A of Schedule 3 to ITEPA 2003 on or after 6 April 2016.

5 (1) In Schedule 4 to ITEPA 2003 (CSOP schemes), Part 7 (notification of schemes etc) is amended as follows.

(2) In paragraph 28A (notice of scheme to be given to HMRC), after sub-paragraph (5) insert—

"(5A) Sub-paragraph (5) does not apply if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 28K, the tribunal) that there is a reasonable excuse for the failure to give notice on or before the initial notification deadline.

(5B) Paragraph 28C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).

(5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the scheme organiser of their decision within the period of 45 days beginning with the day on which HMRC received the scheme organiser's request to consider the excuse.

(5D) Where HMRC are required to notify the scheme organiser as specified in sub-paragraph (5C) but do not do so—

(a) HMRC are to be treated as having decided that there was no reasonable excuse, and

(b) HMRC must notify the scheme organiser of the decision which they are treated as having made."

(3) In paragraph 28K (appeals)—

(a) at the beginning insert—

"(A1) The scheme organiser may appeal against a decision of HMRC under paragraph 28A(5A) that there was no reasonable excuse for the failure to give notice on or before the initial notification deadline.";

(b) in sub-paragraph (5), before paragraph (a) insert—

"(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC's decision is given to the scheme organiser;";

(c) in sub-paragraph (6), after "sub-paragraph" insert "(A1),".

(4) The amendments made by this paragraph have effect in relation to notices given under paragraph 28A of Schedule 4 to ITEPA 2003 on or after 6 April 2016.

Price for acquisition of shares under share option

6 (1) In Schedule 3 to ITEPA 2003 (SAYE option schemes), paragraph 28 (requirements as to price for acquisition of shares) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (b), for "at that time" substitute "—

(i) at that time, or

(ii) at such earlier time as may be determined in accordance with guidance issued by the Commissioners for Her Majesty's Revenue and Customs."

(b) for "sub-paragraphs (2) and (3)" substitute "sub-paragraph (3)".

(3) Omit sub-paragraph (2).

7 (1) In Schedule 4 to ITEPA 2003 (CSOP schemes), paragraph 22 (requirements as to price for acquisition of shares) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (b), for "at the time when the option is granted" substitute "—

(i) at the time when the option is granted, or

(ii) at such earlier time as may be determined in accordance with guidance issued by the Commissioners for Her Majesty's Revenue and Customs.";

(b) for "sub-paragraphs (2) and (3)" substitute "sub-paragraph (3)".

(3) Omit sub-paragraph (2).

Tag-along rights

8 (1) In Schedule 5 to ITEPA 2003 (enterprise management incentives), in paragraph 39 (company reorganisations: introduction), in sub-paragraph (2)(c), after "982" insert "or 983 to 985".

(2) The amendment made by this paragraph is treated as having come into force on 17 July 2013.

Exercise of EMI options

9 (1) In section 238A of TCGA 1992 (share schemes and share incentives), in subsection (2), omit paragraph (d) and the preceding "and".

(2) In Schedule 7D to TCGA 1992 (share schemes and share incentives), omit Part 4.

(3) In section 527 of ITEPA 2003 (enterprise management incentives: qualifying options), in subsection (3)—

(a) after paragraph (a) insert "and";

(b) omit paragraph (c) and the preceding "and".

(4) The amendments made by this paragraph do not affect—

(a) the application of paragraph 14(4) of Schedule 7D to TCGA 1992 in relation to a disqualifying event occurring before 6 April 2016, or

(b) the application of paragraph 16 of that Schedule in relation to an allotment for payment mentioned in section 126(2)(a) of that Act taking place before 6 April 2016.

SCHEDULE 4

Section 19

PENSIONS: LIFETIME ALLOWANCE: TRANSITIONAL PROVISION

PART 1

"FIXED PROTECTION 2016"

The protection

1 (1) Sub-paragraph (2) applies at any particular time on or after 6 April 2016 in the case of an individual if—

(a) each of the conditions specified in paragraph 2 is met,

(b) there is no protection-cessation event (see paragraph 3) in the period beginning with 6 April 2016 and ending with the particular time,

(c) paragraph 1(2) of Schedule 6 to FA 2014 ("individual protection 2014") does not apply in the individual's case at the particular time, and

(d) at the particular time or any later time, the individual has a reference number (see Part 3 of this Schedule) for the purposes of sub-paragraph (2).

(2) Part 4 of FA 2004 has effect in relation to the individual as if the standard lifetime allowance were the greater of the standard lifetime allowance and £1,250,000.

The initial conditions

2 The conditions mentioned in paragraph 1(1)(a) are—

(a) that, on 6 April 2016, the individual has one or more arrangements under—

(i) a registered pension scheme, or

(ii) a relieved non-UK pension scheme of which the individual is a relieved member,

(b) that paragraph 7 of Schedule 36 to FA 2004 (primary protection) does not make provision for a lifetime allowance enhancement factor in relation to the individual,

(c) that paragraph 12 of that Schedule (enhanced protection) does not apply in the individual's case on 6 April 2016,

(d) that paragraph 14 of Schedule 18 to FA 2011 (transitional provision relating to new standard lifetime allowance for the tax year 2012-13) does not apply in the individual's case on 6 April 2016, and

(e) that paragraph 1 of Schedule 22 to FA 2013 ("fixed protection 2014" relating to new standard lifetime allowance for the tax year 2014-15) does not apply in the individual's case on 6 April 2016.

Protection-cessation events

3 There is a protection-cessation event if—

(a) there is benefit accrual in relation to the individual under an arrangement under a registered pension scheme,

(b) there is an impermissible transfer into any arrangement under a registered pension scheme relating to the individual,

(c) a transfer of sums or assets held for the purposes of, or representing accrued rights under, any such arrangement is made that is not a permitted transfer, or

(d) an arrangement relating to the individual is made under a registered pension scheme otherwise than in permitted circumstances.

Protection-cessation events: interpretation: "benefit accrual"

4 (1) For the purposes of paragraph 3(a) there is benefit accrual in relation to the individual under an arrangement—

(a) in the case of a money purchase arrangement that is not a cash balance arrangement, if a relevant contribution is paid under the arrangement on or after 6 April 2016,

(b) in the case of a cash balance arrangement or defined benefits arrangement, if there is an increase in the value of the individual's rights under the arrangement at any time on or after that date (but subject to sub-paragraph (5)), and

(c) in the case of a hybrid arrangement—

(i) where the benefits that may be provided to or in respect of the individual under the arrangement include money purchase benefits other than cash balance benefits, if a relevant contribution is paid under the arrangement on or after 6 April 2016, and

(ii) in any case, if there is an increase in the value of the individual's rights under the arrangement at any time on or after that date (but subject to sub-paragraph (5)).

(2) For the purposes of sub-paragraphs (1)(b) and (c)(ii) and (5) whether there is an increase in the value of the individual's rights under an arrangement (and its amount if there is) is to be determined—

(a) in the case of a cash balance arrangement (or a hybrid arrangement under which cash balance benefits may be provided to or in respect of the individual under the arrangement), by reference to whether there is an increase in the amount that would, on the valuation assumptions, be available for the provision of benefits to or in respect of the individual (and, if there is, the amount of the increase), and

(b) in the case of a defined benefits arrangement (or a hybrid arrangement under which defined benefits may be provided to or in respect of the individual under the arrangement), by reference to whether there is an increase in the benefits amount.

(3) For the purposes of sub-paragraph (2)(b) "the benefits amount" is—

$$(P \times RVF) + LS$$

where—

LS is the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension),

P is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement, and

RVF is the relevant valuation factor.

(4) Paragraph 14 of Schedule 36 to FA 2004 (when a relevant contribution is paid under an arrangement) applies for the purposes of sub-paragraph (1)(a) and (c)(i).

(5) Increases in the value of the individual's rights under an arrangement are to be ignored for the purposes of sub-paragraph (1)(b) or (c)(ii) if in no tax year do they exceed the relevant percentage.

(6) The relevant percentage, in relation to a tax year, means—

(a) where the arrangement (or a predecessor arrangement) includes provision for the value of the rights of the individual to increase during the tax year at an annual rate specified in the rules of the pension scheme (or a predecessor registered pension scheme) on 9 December 2015—

(i) that percentage (or, where more than one arrangement includes such provision, the higher or highest of the percentages specified), plus

(ii) the relevant statutory increase percentage;

(b) otherwise—

(i) the percentage by which the consumer prices index for the month of September in the previous tax year is higher than it was for the September before that (or 0% if it is not higher), or

(ii) if higher, the relevant statutory increase percentage.

(7) In sub-paragraph (6)(a)—

"predecessor arrangement", in relation to an arrangement, means another arrangement (under the same or another registered pension scheme) from which some or all of the sums or assets held for the purposes of the arrangement directly or indirectly derive;

"predecessor registered pension scheme", in relation to a registered pension scheme, means another registered pension scheme from which some or all of the sums or assets held for the purposes of the arrangement under the pension scheme directly or indirectly derive.

(8) In sub-paragraph (6) "the relevant statutory increase percentage", in relation to a tax year, means the percentage increase in the value of the individual's rights under the arrangement during the tax year so far as it is attributable solely to one or more of the following—

(a) an increase in accordance with section 15 of the Pension Schemes Act 1993 or section 11 of the Pension Schemes (Northern Ireland) Act 1993 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed);

(b) a revaluation in accordance with section 16 of the Pension Schemes Act 1993 or section 12 of the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of earnings factors);

(c) a revaluation in accordance with Chapter 2 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: revaluation of accrued benefits);

(d) a revaluation in accordance with Chapter 3 of Part 4 of the Pension Schemes Act 1993 or the Pension Schemes (Northern Ireland) Act 1993 (early leavers: protection of increases in guaranteed minimum pensions);

(e) the application of section 67 of the Equality Act 2010 (sex equality rule for occupational pension schemes).

(9) Sub-paragraph (10) applies in relation to a tax year if—

(a) the arrangement is a defined benefits arrangement which is under an annuity contract treated as a registered pension scheme under section 153(8) of FA 2004,

(b) the contract provides for the value of the rights of the individual to be increased during the tax year at an annual rate specified in the contract, and

(c) the contract limits the annual rate to the percentage increase in the retail prices index over a 12 month period specified in the contract.

(10) Sub-paragraph (6)(b)(i) applies as if it referred instead to the annual rate of the increase in the value of the rights during the tax year.

(11) For the purposes of sub-paragraph (9)(c) the 12 month period must end during the 12 month period preceding the month in which the increase in the value of the rights occurs.

Protection-cessation events: interpretation: "impermissible transfer"

5 Paragraph 17A of Schedule 36 to FA 2004 (impermissible transfers) applies for the purposes of paragraph 3(b) but as if—

(a) the references to a relevant existing arrangement were to the arrangement, and

(b) the reference in sub-paragraph (2) to 5 April 2006 were to 5 April 2016.

Protection-cessation events: interpretation: "permitted transfer"

6 Sub-paragraphs (7) to (8B) of paragraph 12 of Schedule 36 to FA 2004 (when there is a permitted transfer) apply for the purposes of paragraph 3(c).

Protection-cessation events: interpretation: "permitted circumstances"

7 Sub-paragraphs (2A) to (2C) of paragraph 12 of Schedule 36 to FA 2004 ("permitted circumstances") apply for the purposes of paragraph 3(d).

Protection-cessation events: interpretation: relieved non-UK pension schemes

8 (1) Subject to sub-paragraphs (2) to (4), paragraph 3 applies in relation to an individual who is a relieved member of a relieved non-UK pension scheme as if the relieved non-UK pension scheme were a registered pension scheme; and the other paragraphs of this Part of this Schedule apply accordingly.

(2) Sub-paragraphs (3) and (4) apply for the purposes of paragraph 3(a) (instead of paragraph 4(1)) in determining if there is benefit accrual in relation to an individual under an arrangement under a relieved non-UK pension scheme of which the individual is a relieved member.

(3) There is benefit accrual in relation to the individual under the arrangement if there is a pension input amount under sections 230 to 237 of FA 2004 (as applied by Schedule 34 to that Act) greater than nil in respect of the arrangement for a tax year; and, in such a case, the benefit accrual is treated as occurring at the end of the tax year.

(4) There is also benefit accrual in relation to the individual under the arrangement if—

(a) in a tax year there occurs a benefit crystallisation event in relation to the individual (whether in relation to the arrangement or to any other arrangement under any pension scheme or otherwise), and

(b) had the tax year ended immediately before the benefit crystallisation event, there would have been a pension input amount under sections 230 to 237 of FA 2004 greater than nil in respect of the arrangement for the tax year,

and, in such a case, the benefit accrual is treated as occurring immediately before the benefit crystallisation event.

PART 2

"INDIVIDUAL PROTECTION 2016"

The protection

9 (1) Sub-paragraph (2) applies at any particular time on or after 6 April 2016 in the case of an individual if—

(a) the individual has one or more relevant arrangements (see sub-paragraph (3)) on 5 April 2016,

(b) the individual's relevant amount at the particular time is greater than £1,000,000 (see sub-paragraphs (4) and (7)),

(c) paragraph 7 of Schedule 36 to FA 2004 (primary protection) does not make provision for a lifetime allowance enhancement factor in relation to the individual,

(d) none of the provisions listed in sub-paragraph (5) applies in the individual's case at the particular time, and

(e) at the particular time or any later time, the individual has a reference number (see Part 3 of this Schedule) for the purposes of sub-paragraph (2).

(2) Part 4 of FA 2004 has effect in relation to the individual as if the standard lifetime allowance were—

(a) if the individual's relevant amount at the particular time is greater than £1,250,000, the greater of the standard lifetime allowance and £1,250,000, or

(b) otherwise, the greater of the individual's relevant amount at the particular time and the standard lifetime allowance.

(3) "Relevant arrangement", in relation to an individual, means an arrangement relating to the individual under—

(a) a registered pension scheme of which the individual is a member, or

(b) a relieved non-UK pension scheme of which the individual is a relieved member.

(4) An individual's "relevant amount" is the sum of amounts A, B, C and D (see paragraphs 10 to 13, but see also sub-paragraph (7)).

(5) The provisions mentioned in sub-paragraph (1)(d) are—

(a) paragraph 12 of Schedule 36 to FA 2004 (enhanced protection);

(b) paragraph 14 of Schedule 18 to FA 2011 (fixed protection 2012);

(c) paragraph 1 of Schedule 22 to FA 2013 (fixed protection 2014);

(d) paragraph 1(2) of Schedule 6 to FA 2014 (individual protection 2014);

(e) paragraph 1(2) of this Schedule (fixed protection 2016).

(6) Sub-paragraph (7) applies if rights of an individual under a relevant arrangement become subject to a pension debit where the transfer day falls on or after 6 April 2016.

(7) For the purpose of applying sub-paragraph (2) in the case of the individual on and after the transfer day, the individual's relevant amount is reduced (or further reduced) by the following amount—

$$X - (Y \times Z)$$

where—

X is the appropriate amount,

Y is 5% of X, and

Z is the number of tax years beginning after 5 April 2016 and ending on or before the transfer day.

(If the formula gives a negative amount, it is to be taken to be nil.)

(8) In sub-paragraphs (6) and (7) "appropriate amount" and "transfer day", in relation to a pension debit, have the same meaning as in section 29 of WRPA 1999 or Article 26 of WRP(NI)O 1999 (as the case may be).

Amount A (pre-6 April 2006 pensions in payment)

10 (1) To determine amount A—

(a) apply sub-paragraph (2) if a benefit crystallisation event has occurred in relation to the individual during the period beginning with 6 April 2006 and ending with 5 April 2016;

(b) otherwise, apply sub-paragraph (6).

(2) If this sub-paragraph is to be applied, amount A is—

$$25 \times ARP \times \frac{£1{,}250{,}000}{SLT}$$

where—

ARP is (subject to sub-paragraph (3)) an amount equal to—

(a) the annual rate at which any relevant existing pension was payable to the individual at the time immediately before the benefit crystallisation event occurred, or

(b) if more than one relevant existing pension was payable to the individual at that time, the sum of the annual rates at which each of the relevant existing pensions was so payable, and

SLT is an amount equal to what the standard lifetime allowance was at the time the benefit crystallisation event occurred.

(3) Paragraph 20(4) of Schedule 36 to FA 2004 applies for the purposes of the definition of "ARP" in sub-paragraph (2) (and, for this purpose, in paragraph 20(4) any reference to "the time" is to be read as a reference to the time immediately before the benefit crystallisation event occurred).

(4) If the time immediately before the benefit crystallisation event occurred falls before 6 April 2015, in sub-paragraph (3) references to paragraph 20(4) are to be read as

references to that provision as it had effect in relation to benefit crystallisation events occurring at the time immediately before the benefit crystallisation event occurred.

(5) If more than one benefit crystallisation event has occurred, in sub-paragraphs (2) to (4) references to the benefit crystallisation event are to be read as references to the first benefit crystallisation event.

(6) If this sub-paragraph is to be applied, amount A is—

$$25 \times \text{ARP}$$

where ARP is (subject to sub-paragraph (7)) an amount equal to—

(a) the annual rate at which any relevant existing pension is payable to the individual at the end of 5 April 2016, or

(b) if more than one relevant existing pension is payable to the individual at the end of 5 April 2016, the sum of the annual rates at which each of the relevant existing pensions is so payable.

(7) Paragraph 20(4) of Schedule 36 to FA 2004 applies for the purposes of the definition of "ARP" in sub-paragraph (6) (and, for this purpose, in paragraph 20(4) any reference to "the time" is to be read as a reference to 5 April 2016).

(8) In this paragraph "relevant existing pension" means (subject to sub-paragraph (9)) a pension, annuity or right—

(a) which was, at the end of 5 April 2006, a "relevant existing pension" as defined by paragraph 10(2) and (3) of Schedule 36 to FA 2004, and

(b) to the payment of which the individual had, at the end of 5 April 2006, an actual (rather than a prospective) right.

(9) If—

(a) before 6 April 2016, there was a recognised transfer of sums or assets representing a relevant existing pension, and

(b) those sums or assets were, after the transfer, applied towards the provision of a scheme pension ("the new scheme pension"),

the new scheme pension is also to be a "relevant existing pension" (including for the purposes of this sub-paragraph).

Amount B (pre-6 April 2016 benefit crystallisation events)

11 (1) To determine amount B—

(a) identify each benefit crystallisation event that has occurred in relation to the individual during the period beginning with 6 April 2006 and ending with 5 April 2016,

(b) determine the amount that was crystallised by each of those benefit crystallisation events (applying paragraph 14 of Schedule 34 to FA 2004 if relevant), and

(c) multiply each crystallised amount by the following fraction—

$$\frac{1{,}250{,}000}{\text{SLT}}$$

where SLT is an amount equal to what the standard lifetime allowance was at the time when the benefit crystallisation event in question occurred.

(2) Amount B is the sum of the crystallised amounts determined under sub-paragraph (1)(b) as adjusted under sub-paragraph (1)(c).

Amount C (uncrystallised rights at end of 5 April 2016 under registered pension schemes)

12 Amount C is the total value of the individual's uncrystallised rights at the end of 5 April 2016 under arrangements relating to the individual under registered pension schemes of which the individual is a member as determined in accordance with section 212 of FA 2004.

Amount D (uncrystallised rights at end of 5 April 2016 under relieved non-UK schemes)

13 (1) To determine amount D—

(a) identify each relieved non-UK pension scheme of which the individual is a relieved member at the end of 5 April 2016, and

(b) in relation to each such scheme—

(i) assume that a benefit crystallisation event occurs in relation to the individual at the end of 5 April 2016, and

(ii) in accordance with paragraph 14 of Schedule 34 to FA 2004, determine what the untested portion of the relevant relieved amount would be immediately before the assumed benefit crystallisation event.

(2) Amount D is the sum of the untested portions determined under sub-paragraph (1)(b)(ii).

PART 3

REFERENCE NUMBERS ETC

Issuing of reference numbers for fixed or individual protection 2016

14 (1) An individual has a reference number for the purposes of paragraph 1(2), or for the purposes of paragraph 9(2), if a reference number—

(a) has been issued by or on behalf of the Commissioners in respect of the individual for the purposes concerned, and

(b) has not been withdrawn.

(2) Such a reference number—

(a) may include, or consist of, characters other than figures, and

(b) may be issued only if a valid application for its issue is received by or on behalf of the Commissioners.

(3) A valid application is an application—

(a) made by or on behalf of the individual concerned,

(b) made on or after 6 April 2016,

(c) made by means of a digital service provided for the purpose by or on behalf of the Commissioners, or by other means authorised in a particular case by an officer of Revenue and Customs,

(d) containing—

(i) the following details for the individual and, where the individual is not the applicant, also for the applicant: title, full name, full postal address and e-mail address,

(ii) the individual's date of birth,

(iii) the individual's national insurance number, or the reason why the individual does not qualify for a national insurance number, and

(iv) a declaration that everything stated in the application is true and complete to the best of the applicant's knowledge and belief,

(e) containing also in the case of an application for a reference number for the purposes of paragraph 1(2)—

(i) a declaration that the conditions specified in paragraph 2 are met in the individual's case, and

(ii) a declaration that there has been no protection-cessation event (see paragraph 3) in the individual's case in the period beginning with 6 April 2016 and ending with the making of the application, and

(f) containing also in the case of an application for a reference number for the purposes of paragraph 9(2)—

(i) the individual's relevant amount (see paragraph 9(4) and (7)),

(ii) amounts A, B, C and D for the individual (see paragraphs 10 to 13),

(iii) if rights of the individual under a relevant arrangement have become subject to a relevant pension debit, the appropriate amount and transfer day for each such pension debit,

(iv) a declaration that the condition in paragraph 9(1)(c) is met in the individual's case, and

(v) a declaration that paragraph 1(2) of Schedule 6 to FA 2014 ("individual protection 2014") does not apply in the individual's case.

(4) Where an application for a reference number for the purposes of paragraph 1(2) or 9(2) is unsuccessful, or is successful on a dormant basis, that must be notified to the applicant by or on behalf of the Commissioners.

(5) In sub-paragraph (3)(f)(iii) and this sub-paragraph—

"relevant arrangement" has the meaning given by paragraph 9(3);

"relevant pension debit", in relation to an application for a reference number, means a pension debit where—

(a) the transfer day falls on or after 6 April 2016 and before the day on which the application is made, and

(b) the individual has, before the day on which the application is made, received notice under regulation 8(2) or (3) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048) relating to discharge of liability in respect of the pension credit corresponding to the pension debit;

"appropriate amount" and "transfer day", in relation to a pension debit, have the same meaning as in paragraph 9(6) and (7) (see paragraph 9(8)).

(6) Sub-paragraph (3)(c) is not to be read as requiring a digital service to be provided and available for the purpose referred to.

(7) For the purposes of this Part of this Schedule, an application for a reference number for the purposes of paragraph 1(2) is successful on a dormant basis if the decision on the application is that—

(a) the application would have been unconditionally successful but for the fact that paragraph 1(2) of Schedule 6 to FA 2014 ("individual protection 2014") applies in the case of the individual concerned, and

(b) a reference number for the purposes of paragraph 1(2) will be issued in response to the application but only when paragraph 1(2) of Schedule 6 to FA 2014 does not apply in the individual's case.

(8) For the purposes of this Part of this Schedule, an application for a reference number for the purposes of paragraph 9(2) is successful on a dormant basis if the decision on the application is that—

(a) the application would have been unconditionally successful but for the fact that a prior provision applies in the case of the individual concerned, and

(b) a reference number for the purposes of paragraph 9(2) will be issued in response to the application but only when no prior provision applies in the individual's case.

(9) For the purposes of sub-paragraph (8), the prior provisions are—

(a) paragraph 12 of Schedule 36 to FA 2004 (enhanced protection),

(b) paragraph 14 of Schedule 18 to FA 2011 (fixed protection 2012),

(c) paragraph 1 of Schedule 22 to FA 2013 (fixed protection 2014), and

(d) paragraph 1(2) of this Schedule (fixed protection 2016).

Withdrawal of reference numbers

15 (1) This paragraph applies where a reference number for the purposes of paragraph 1(2) or 9(2) has been issued by or on behalf of the Commissioners in respect of an individual.

(2) The number may be withdrawn by an officer of Revenue and Customs.

(3) The number may be withdrawn only if—

(a) something contained in the application for the number was incorrect, or

(b) where the number was for the purposes of paragraph 1(2)—

(i) there has been a protection-cessation event (see paragraph 3) in the individual's case since the making of the application, or

(ii) paragraph 1(2) of Schedule 6 to FA 2014 has come to apply in the individual's case, or

(c) where the number was for the purposes of paragraph 9(2)—

(i) a provision listed in paragraph 9(5) has come to apply in the individual's case, or

(ii) paragraph 9(2) has ceased to apply in the individual's case as a result of the operation of paragraph 9(7), or

(d) the individual—

(i) has been given a notice under paragraph 1 of Schedule 36 to FA 2008 (information and inspection powers: taxpayer notice) in connection with (as the case may be) Part 1 or 2 of this Schedule, and

(ii) fails to comply with the notice within the period specified in the notice.

(4) Where the number is withdrawn—

(a) notice of the withdrawal, and

(b) reasons for the withdrawal,

are to be given by an officer of Revenue and Customs to the individual.

(5) Where the number is withdrawn, the effect of the withdrawal is as follows—

(a) in the case of withdrawal in reliance on sub-paragraph (3)(a), the number is treated as never having been issued,

(b) in the case of withdrawal in reliance on paragraph (b) or (c) of sub-paragraph (3), the number is treated as having been withdrawn at the time of the event mentioned in sub-paragraph (i) or (ii) of that paragraph, and

(c) in the case of withdrawal in reliance on sub-paragraph (3)(d), the number is treated as having been withdrawn at the time specified in the notice of the withdrawal as the effective time of the withdrawal, which may be any time not earlier than the time of issue of the number.

Appeals against non-issue or withdrawal of reference numbers

16 (1) Where—

(a) an application is made for a reference number for the purposes of paragraph 1(2) or 9(2) in respect of an individual, and

(b) the application is unsuccessful (see sub-paragraph (9)),

the individual may appeal against the decision on the application.

(2) Where a reference number issued in respect of an individual for the purposes of paragraph 1(2) or 9(2) is withdrawn, the individual may appeal against the withdrawal.

(3) Where a reference number issued in respect of an individual for the purposes of paragraph 1(2) or 9(2) is withdrawn in reliance on paragraph 15(3)(d), the individual may appeal against the time specified (in the notice of the withdrawal) as the effective time of the withdrawal.

(4) Where an appeal under sub-paragraph (1) is notified to the tribunal, the tribunal—

(a) must allow the appeal if satisfied—

(i) that the application was a valid application,

(ii) that everything in the application was correct, and

(iii) that, at the time of deciding the appeal, paragraph 15(3)(b), (c) or (d) does not authorise withdrawal of the requested number (assuming it had been issued), and

(b) must otherwise dismiss the appeal.

(5) Where an appeal under sub-paragraph (2) is notified to the tribunal, the tribunal—

(a) must allow the appeal if satisfied that the withdrawal was not authorised by paragraph 15(3), and

(b) must otherwise dismiss the appeal.

(6) Where an appeal under sub-paragraph (3) is notified to the tribunal, the tribunal must decide whether it was just and reasonable to specify the particular time specified and—

(a) if the tribunal decides that it was, the tribunal must dismiss the appeal, and

(b) otherwise—

(i) the tribunal must decide what time it would have been just and reasonable to specify, and

(ii) the withdrawal has effect as if the notice of the withdrawal had specified the time decided by the tribunal.

(7) Notice of an appeal under this paragraph must be given to Her Majesty's Revenue and Customs before the end of 30 days beginning with the date on which notice under paragraph 14(4) or 15(4) (as the case may be) is given.

(8) In this paragraph "the tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

(9) The references in sub-paragraph (1) and paragraph 17(3)(b)(ii) to an application being unsuccessful do not include a case where an application for a reference number for the purposes of paragraph 1(2) or 9(2) is successful on a dormant basis (see paragraph 14(7) and (8)).

Notification of subsequent protection-cessation events

17 (1) Sub-paragraph (2) applies if, in the case of an individual, there is a protection-cessation event (see paragraphs 3 to 8) at a time when—

(a) the individual has a reference number for the purposes of paragraph 1(2),

(b) there is a pending application for a reference number for those purposes in respect of the individual, or

(c) an appeal under paragraph 16(2) or (3) is in progress in connection with withdrawal of a reference number issued for those purposes in respect of the individual.

(2) The individual—

(a) must notify the Commissioners of the event, and

(b) must do so—

(i) before the end of 90 days beginning with the day on which the individual could first reasonably be expected to have known that the event had occurred, and

(ii) by means of a digital service provided for the purpose by or on behalf of the Commissioners, or by other means authorised in a particular case by an officer of Revenue and Customs.

(3) For the purposes of this paragraph—

(a) an application is pending if—

(i) it has been made,

(ii) no reference number has been issued in response to the application, and

(iii) the applicant has not been notified that the application has been unsuccessful;

(b) an application is also pending if—

(i) it has been made,

(ii) it has been unsuccessful, and

(iii) an appeal under paragraph 16(1) is in progress against the decision on the application;

(c) an appeal under paragraph 16(1), (2) or (3) is in progress until one of the following happens—

(i) it, or any further appeal, is withdrawn, or

(ii) it and any further appeal brought have been determined, and there is no prospect of further appeal.

Notification of subsequent pension debits

18 (1) Sub-paragraph (2) applies if an individual receives a discharge notice related to a pension debit at a time when—

(a) the individual has a reference number for the purposes of paragraph 9(2),

(b) there is a pending application for a reference number for those purposes in respect of the individual, or

(c) an appeal under paragraph 16(2) or (3) is in progress in connection with withdrawal of a reference number issued for those purposes in respect of the individual.

(2) The individual—

(a) must notify the Commissioners of the appropriate amount and transfer day for the pension debit, and

(b) must do so—

(i) before the end of 60 days beginning with the date of the discharge notice related to the pension debit, and

(ii) by means of a digital service provided for the purpose by or on behalf of the Commissioners, or by other means authorised in a particular case by an officer of Revenue and Customs.

(3) For the purposes of this paragraph—

(a) a notice is a discharge notice related to a pension debit if it is notice under regulation 8(2) or (3) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048) relating to discharge of liability in respect of the pension credit corresponding to the pension debit;

(b) an application is pending if—

(i) it has been made,

(ii) no reference number has been issued in response to the application,

(iii) the applicant has not been notified that the application has been unsuccessful, and

(iv) the applicant has not been notified that the application has been successful on a dormant basis (see paragraph 14(8));

(c) an application is also pending if—

(i) it has been made,

(ii) it has been unsuccessful, and

(iii) an appeal under paragraph 16(1) is in progress against the decision on the application;

(d) an appeal under paragraph 16(1), (2) or (3) is in progress until one of the following happens—

(i) it, or any further appeal, is withdrawn, or

(ii) it and any further appeal brought have been determined, and there is no prospect of further appeal.

Personal representatives

19 If an individual dies—

(a) anything which could have been done under or by virtue of this Part of this Schedule by the individual may be done by the individual's personal representatives,

(b) paragraph 14(3)(d)(ii) has effect in relation to an application made in respect of the individual after the individual's death as if it also required a valid application to contain the individual's date of death, and

(c) any notice or reasons given under paragraph 15(4) after the individual's death are to be given to the individual's personal representatives.

Penalties for non-supply, or fraudulent etc supply, of information under paragraph 17 or 18

20 In column 2 of the Table in section 98 of TMA 1970 (provisions about information where non-compliance etc attracts penalties), at the appropriate place insert—

	"paragraph 17 or 18 of Schedule 4 to FA 2016;"

PART 4

INFORMATION

Preservation of records in connection with individual protection 2016

21 If an individual is issued with a reference number for the purposes of paragraph 9(2), the individual must preserve, for the period of 6 years beginning with the date the application for the reference number was made, all such records as were required for the purpose of enabling the individual's relevant amount (see paragraph 9), and amounts A, B, C and D for the individual (see paragraphs 10 to 13), to be correctly calculated.

Amendments of regulations

22 (1) The Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567) are amended in accordance with paragraphs 23 to 26.

(2) The amendments made by those paragraphs are to be treated as having been made by the Commissioners under such of the powers cited in the instrument containing the Regulations as are applicable.

23 In regulation 2(1) (interpretation)—

(a) after the entry for "fixed protection 2014" insert—

""fixed protection 2016" means protection under paragraph 1(2) of Schedule 4 to FA 2016;", and

(b) after the entry for "individual protection 2014" insert—

""individual protection 2016" means protection under paragraph 9(2) of Schedule 4 to FA 2016;".

24 (1) In the table in regulation 3(1) (provision of event reports by scheme administrators to HM Revenue and Customs), the entry for reportable event 6 (report where benefit crystallisation event occurs in relation to member of scheme) is amended as follows.

(2) In column 1 of the entry, in paragraph (b)—

(a) omit the "or" at the end of sub-paragraph (iv), and

(b) after sub-paragraph (v) insert ", or

(vi) fixed protection 2016 or individual protection 2016."

(3) In column 2 of the entry—

(a) in the words before paragraph (a), before "the Commissioners" insert "or on behalf of",

(b) omit the "or" at the end of paragraph (c), and

(c) after paragraph (d) insert ", or

(e) Schedule 4 to the Finance Act 2016 (where the member relies on fixed protection 2016 or individual protection 2016)."

(4) In the heading of the entry, for the words after "Benefit crystallisation events and" substitute "non-standard lifetime allowances".

25 (1) Regulation 11 (information provided to scheme administrator by member intending to rely on transitional protection in connection with lifetime allowance) is amended as follows.

(2) In paragraph (1)—

(a) omit the "or" at the end of sub-paragraph (b),

(b) after sub-paragraph (c) (but before the closing words of paragraph (1)) insert ", or

(d) fixed protection 2016 by virtue of Part 1 of Schedule 4 to the Finance Act 2016,", and

(c) in those closing words—

(i) before "the Commissioners" insert "or on behalf of", and

(ii) before "in respect of that entitlement" insert "or Schedule 4 to the Finance Act 2016".

(3) After paragraph (2) insert—

"(3) If the member of a registered pension scheme intends to rely on individual protection 2016 by virtue of Part 2 of Schedule 4 to the Finance Act 2016, the member must notify the scheme administrator of—

(a) the reference number in respect of the member issued by or on behalf of the Commissioners for the purposes of paragraph 9(2) of that Schedule, and

(b) the member's relevant amount calculated in accordance with Part 2 of that Schedule."

(4) In the heading—

(a) for the "or" substitute a comma, and

(b) at the end insert ", fixed protection 2016 or individual protection 2016".

26 After regulation 14B insert—

"**14C Individual protection 2016: provision of information by scheme administrator to member on request**

(1) Where—

(a) an individual is a member of a registered pension scheme on 5 April 2016,

(b) the individual makes a written request to the scheme administrator for the information mentioned in paragraph (2), and

(c) the request is received by the scheme administrator before 6 April 2020,

the scheme administrator must provide the individual with the information within 3 months following receipt of the request.

(2) The information is such information relating to the member's rights under the scheme as is necessary for calculating, in accordance with Part 2 of Schedule 4 to the Finance Act 2016 (individual protection 2016), the member's relevant amount for the purposes of paragraph 9(2) of that Schedule."

27 In consequence of paragraph 24(4), in each of—

(a) the Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2013 (S.I. 2013/1742), and

(b) the Registered Pension Schemes (Provision of Information) (Amendment) Regulations 2014 (S.I. 2014/1843),

omit regulation 4(2)(a).

PART 5

AMENDMENTS IN CONNECTION WITH PROTECTION OF PRE-6 APRIL 2006 RIGHTS

28 (1) In Part 1 of Schedule 29 to FA 2004 (pension schemes: interpretation of the lump sum rule), in paragraph 2 (permitted maximum amount of pension commencement lump sums, calculated in certain cases by deducting adjusted value of previously crystallised amounts from current standard lifetime allowance), in sub-paragraph (10) (modified adjustments where member has protection under paragraph 7 or 12 of Schedule 36 by reference to pre-6 April 2006 rights), after "have effect" insert "—

(a) where the member becomes entitled to the lump sum on or after 6 April 2014, as if PSLA in the case of any previous benefit crystallisation event which occurs on or after 6 April 2014 were £1,500,000 if that is greater than PSLA in that case, and

(b)".

(2) In paragraph 28(3) of Schedule 36 to FA 2004 (transitional provision for pre-6 April 2006 rights: modified version of paragraph 2 of Schedule 29 that applies in certain

cases), in the sub-paragraph (7) treated as substituted in paragraph 2 of Schedule 29 to FA 2004, in the definition of "PSLA", after "became entitled to the lump sum" insert "if that occurred before 6 April 2012 but, if that occurred on or after 6 April 2012, PSLA is the greater of £1,800,000 and the standard lifetime allowance at the time the individual became entitled to the lump sum".

(3) The amendment made by sub-paragraph (1) is treated as having come into force on 6 April 2014.

(4) The amendment made by sub-paragraph (2) is treated as having come into force on 6 April 2012.

PART 6

INTERPRETATION AND REGULATIONS

Interpretation of Parts 1, 2 and 3

29 (1) Expressions used in Part 1, 2 or 3 of this Schedule, and in Part 4 of FA 2004 (pension schemes), have the same meaning in that Part of this Schedule as in that Part of that Act.

(2) In particular, references to a relieved non-UK pension scheme or a relieved member of such a scheme are to be read in accordance with paragraphs 13(3) and (4) and 18 of Schedule 34 to FA 2004 (application of lifetime allowance charge provisions to members of overseas pension schemes).

Interpretation of Parts 3 and 4 and this Part

30 In Parts 3 and 4, and this Part, of this Schedule "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

Regulations

31 (1) The Commissioners may by regulations amend Part 1, 2 or 3 of this Schedule.

(2) Regulations under this paragraph may (for example)—

(a) add to the cases in which paragraph 1(2) is to apply or is to cease to apply;

(b) add to the cases in which paragraph 9(2) is to apply.

(3) Regulations under this paragraph may include provision having effect in relation to a time before the regulations are made, but—

(a) the time must not be earlier than 6 April 2016, and

(b) the provision must not increase any person's liability to tax.

(4) Regulations under this paragraph may include—

(a) supplementary or incidental provision;

(b) consequential amendments of the Table in section 98 of TMA 1970 (information requirements: penalties).

(5) Power to make regulations under this paragraph is exercisable by statutory instrument.

(6) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 5

Section 22

PENSION FLEXIBILITY

Serious ill-health lump sums

1 (1) Part 4 of FA 2004 (registered pension schemes etc) is amended as follows.

(2) Omit section 205A (serious ill-health lump sum charge on payment to member who has reached 75).

(3) In Part 1 of Schedule 29 (interpretation of lump sum rule), paragraph 4 (serious ill-health lump sums) is amended in accordance with sub-paragraphs (4) and (5).

(4) In sub-paragraph (1) (meaning of "serious ill-heath lump sum")—

(a) at the end of paragraph (b) insert "and", and

(b) for paragraphs (c) and (d) substitute—

"(ca) either—

(i) it is paid in respect of an uncrystallised arrangement, and it extinguishes the member's entitlement to benefits under the arrangement, or

(ii) it is paid in respect of uncrystallised rights of the member under an arrangement other than an uncrystallised arrangement, and it extinguishes the member's uncrystallised rights under the arrangement."

(5) After sub-paragraph (2) insert—

"(2A) In subsection (1)(ca)(ii) "uncrystallised rights", in relation to the member, means rights of the member that are uncrystallised rights as defined by section 212(1) and (2)."

2 (1) Section 636A of ITEPA 2003 (exemption for certain lump sums under registered pension schemes) is amended as follows.

(2) In the heading, for "Exemption" substitute "Exemptions and liabilities".

(3) For subsection (3A) (serious ill-health lump sum paid to member who has reached 75 is taxed only under section 205A of FA 2004) substitute—

"(3A) Section 579A applies in relation to a serious ill-health lump sum which is paid under a registered pension scheme to a member who has reached the age of 75 as it applies to any pension under a registered pension scheme."

3 (1) In consequence of the amendment made by paragraph 1(2), in Part 4 of FA 2004—

(a) in section 164(2)(b) omit ", the serious ill-health lump sum charge",

(b) omit section 272A(7)(a)(ii),

(c) in section 280(2) omit the entry for "serious ill-health lump sum charge", and

(d) in Schedule 34—

(i) omit paragraph 1(3)(ca), and

(ii) in paragraph 5 omit ", serious ill-health lump sum charge".

(2) In consequence of the amendment made by paragraph 1(2), in section 30(1) of ITA 2007 omit the entry for section 205A of FA 2004.

(3) In consequence of the amendments made by paragraphs 1 and 2 and sub-paragraphs (1) and (2)—

(a) in Schedule 16 to FA 2011, omit paragraphs 28(2)(a), 40, 42(3), 63, 77(4), 81(2) and (4)(b) and 83, and

(b) omit section 2(4) of the Taxation of Pensions Act 2014.

4 The amendments made by paragraphs 1 to 3 have effect in relation to lump sums paid after the day on which this Act is passed.

Charity lump sum death benefits

5 (1) In paragraph 18(1A) of Schedule 29 to FA 2004 (when lump sum paid out of uncrystallised funds is charity lump sum death benefit), omit paragraph (a) (member must have died after reaching 75).

(2) The amendment made by sub-paragraph (1) has effect in relation to lump sums paid after the day on which this Act is passed.

Dependants' flexi-access drawdown funds

6 (1) Part 2 of Schedule 28 to FA 2004 (interpretation of pension death benefit rules) is amended as follows.

(2) In paragraph 15 (meaning of "dependant"), after sub-paragraph (2) insert—

"(2A) A child of the member is a dependant of the member if the child—

(a) has reached the age of 23, and

(b) is not within sub-paragraph (2)(b).

(2B) But this paragraph, so far as it has effect for the purpose of determining the meaning of "dependant"—

(a) in paragraphs 16 to 17 and 27A, and

(b) in paragraph 18 of Schedule 29,

has effect with the omission of sub-paragraph (2A)."

(3) In paragraph 22 (meaning of "dependant's drawdown pension fund")—

(a) in sub-paragraph (2)(a) and (aa) omit "to the dependant", and

(b) in sub-paragraph (3), after "representing a" insert "person's".

(4) The amendments made by this paragraph come into force on the day after the day on which this Act is passed.

(5) The sub-paragraphs inserted by sub-paragraph (2)—

(a) apply for the purpose of determining whether a payment of an annuity is a payment of a dependants' short-term annuity only if the annuity is purchased after the day on which this Act is passed, and

(b) apply for the purpose of determining whether a payment to a person is a payment of dependants' income withdrawal if, but only if, the person reaches the age of 23 after the day on which this Act is passed.

(6) In sub-paragraph (5) "dependants' short-term annuity" and "dependants' income withdrawal" have the same meaning as in Part 4 of FA 2004.

Trivial commutation lump sum

7 (1) Paragraph 7 of Schedule 29 to FA 2004 (interpretation of lump sum rule: meaning of "trivial commutation lump sum") is amended as follows.

(2) In sub-paragraph (1)(aa) (sum must be paid in respect of a defined benefits arrangement), after "arrangement," insert "or in respect of a scheme pension payable by the scheme administrator to which the member has become entitled under a money purchase arrangement (an "in-payment money-purchase in-house scheme pension"), or partly in respect of the former and partly in respect of the latter,".

(3) In sub-paragraph (1)(d) (sum must extinguish member's entitlement to defined benefits under the scheme), after "defined benefits" insert ", and any entitlement to payments of in-payment money-purchase in-house scheme pensions,".

8 (1) Section 636B of ITEPA 2003 (taxation of trivial commutation, and winding-up, lump sums) is amended as follows.

(2) In subsection (3) (taxation of lump sum where member has uncrystallised rights under the pension scheme)—

(a) in the words before paragraph (a) omit "(within the meaning of section 212 of FA 2004)", and

(b) in paragraph (b), for "the uncrystallised rights calculated in accordance with that section" substitute "any uncrystallised rights extinguished by the lump sum".

(3) After subsection (4) insert—

"(5) In this section "uncrystallised rights" has the same meaning as in section 212 of FA 2004; and the value for the purposes of this section of any uncrystallised rights is to be calculated in accordance with that section."

9 The amendments made by paragraphs 7 and 8 have effect in relation to lump sums paid after the day on which this Act is passed.

Top-up of dependants' death benefits

10 (1) In paragraph 15 of Schedule 29 to FA 2004 (uncrystallised funds lump sum death benefits), after sub-paragraph (2) insert—

"(2A) Where—

(a) the arrangement is a cash balance arrangement,

(b) under the arrangement, a dependant of the member is entitled to be paid after the member's death an amount by way of a lump sum,

(c) the dependant's entitlement to a lump sum of that amount under the arrangement comes into being at a time no later than the member's death,

(d) such of the sums and assets held for the purposes of the arrangement immediately after the member's death as are held for the purpose of meeting the liability to pay the lump sum are insufficient for that purpose (including where that is because none are held for that purpose), and

(e) a person who was an employer in relation to the member pays a contribution to the scheme—

(i) for or towards making good that insufficiency, and

(ii) of no more than is needed for making good the insufficiency,

the sums and assets held for the purposes of the arrangement that represent the contribution are to be treated as "relevant uncrystallised funds" for the purposes of this paragraph."

(2) The amendment made by sub-paragraph (1) has effect in relation to contributions paid after the day on which this Act is passed.

Inheritance tax as respects cash alternatives to annuities for dependants etc

11 (1) In section 152 of the Inheritance Tax Act 1984 (where annuity payable on person' death to dependant etc, person treated as not beneficially entitled to sum that could have been paid to personal representatives instead of being used for annuity), for "or dependant" substitute ", dependant or nominee".

(2) The amendment made by sub-paragraph (1)—

(a) is to be treated as having come into force on 6 April 2015, and

(b) has effect where the person on whose death an annuity is payable dies on or after that date.

SCHEDULE 6

Section 39

DEDUCTION OF INCOME TAX AT SOURCE

PART 1

ABOLITION OF DUTY TO DEDUCT TAX FROM INTEREST ON CERTAIN INVESTMENTS

1 In Chapter 2 of Part 15 of ITA 2007 (deduction of income tax at source by deposit-takers and building societies) omit—

(a) section 851 (duty to deduct when making payment of interest on relevant investment), and

(b) the italic heading preceding it.

PART 2

DEDUCTION OF TAX FROM YEARLY INTEREST: EXCEPTION FOR DEPOSIT-TAKERS

2 In section 876 of ITA 2007 (interest paid by deposit-takers), for subsections (1) and (2) substitute—

"(1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on an investment if—

(a) the payment is made by a deposit-taker, and

(b) when the payment is made, the investment is a relevant investment.

(1A) In this section "deposit-taker", "investment" and "relevant investment" have the meaning given by Chapter 2."

PART 3

AMENDMENTS OF OR RELATING TO CHAPTER 2 OF PART 15 OF ITA 2007

Amendments of Chapter 2 of Part 15 of ITA 2007

3 Chapter 2 of Part 15 of ITA 2007 (deduction of income tax at source by deposit-takers and building societies) is amended in accordance with paragraphs 4 to 18.

4 For the Chapter heading substitute "Meaning of "relevant investment" for purposes of section 876".

5 (1) Section 850 (overview of Chapter) is amended as follows.

(2) For subsection (1) substitute—

"(1) This Chapter has effect for the purposes of section 876 (duty under section 874 to deduct tax from payments of yearly interest: exception for deposit-takers)."

(3) Omit subsection (2) (which introduces sections 851 and 852).

(4) In subsection (4)(b) (which introduces sections 858 to 870), for "858" substitute "863".

(5) In subsection (5) (which introduces sections 871 to 873), for "871 to" substitute "872 and".

(6) In subsection (6) (interpretation), for the words from "Chapter—" to "crediting" substitute "Chapter, crediting".

6 Omit section 852 (power to disapply section 851).

7 In section 853(1) (meaning of "deposit-taker"), after "In this Chapter" insert "and section 876".

8 In section 854(3) (meaning of "relevant investment" in section 851(1)(b)), for "851(1)(b)" substitute "876(1)(b)".

9 For section 855(1) (meaning of "investment") substitute—

"(1) In this Chapter, and section 876, "investment" means a deposit with a deposit-taker."

10 (1) Section 856 (meaning of "relevant investment") is amended as follows.

(2) In subsection (1), for "this Chapter" substitute "section 876".

(3) In subsection (2) (exceptions), for "858" substitute "863".

11 In section 857 (treating investments as being or not being relevant investments) omit "or building society" in each place.

12 Omit—

(a) sections 858 to 861 (investments which are not relevant investments and in relation to which duty under section 874 does not apply), and

(b) the italic heading preceding section 858.

13 In the italic heading preceding section 863, for "Other investments" substitute "Investments".

14 In sections 863, 864, 865 and 868(4) (investments with deposit-takers or building societies) omit "or building society" in each place.

15 Omit sections 868(3), 869 and 870(2) (investments with building societies).

16 Omit section 871 (power to make regulations to give effect to Chapter).

17 In section 872 (power to amend Chapter)—

(a) in subsection (2) (different provision for different deposit-takers)—

(i) for "which amends this Chapter in its application to deposit-takers may do so" substitute "may amend this Chapter", and

(ii) in each of paragraphs (a) and (b), for "relation" substitute "its application", and

(b) omit subsections (4) and (5) (which refer to provisions repealed by this Act).

18 Omit section 873(3) to (6) (interpretation of section 861).

Amendments relating to Chapter 2 of Part 15 of ITA 2007

19 In Schedule 12 to FA 1988 (transfer of building society's business to a company), in paragraph 6(1) (treatment for tax purposes of benefits conferred in connection with a transfer) omit—

(a) "either", and

(b) paragraph (b) (benefit not to be subject to deduction of tax under Chapter 2 of Part 15 of ITA 2007), and the "or" preceding it.

20 (1) In section 564Q(1) of ITA 2007 (alternative finance return: deduction of income tax at source under Chapter 2 of Part 15)—

(a) after "Chapter 2 of Part 15" insert "and section 876",

(b) for "deduction by deposit-takers and building societies" substitute "exception for deposit-takers", and

(c) after "Chapter 2 of that Part" insert "and section 876".

(2) In section 564Q(5) of ITA 2007 (alternative finance return: deduction of income tax at source under Chapters 3 to 5 of Part 15)—

(a) after "of Part 15" insert "except section 876", and

(b) for "those Chapters" substitute "those provisions".

21 In section 847 of ITA 2007 (overview of Part 15)—

(a) in subsection (2) omit paragraph (a) (which introduces Chapter 2), and

(b) in subsection (5) (which introduces Chapters containing provision connected with the duties to deduct), before paragraph (a) insert—

"(za) Chapter 2 (interpretation of section 876 in Chapter 3: exception for deposit-takers),".

22 In section 946 of ITA 2007 (collection of tax deducted at source: payments to which Chapter applies) omit paragraph (a) (payments from which deductions required to be made under section 851).

23 In Schedule 2 to ITA 2007 omit paragraphs 154 to 156 (transitional provisions related to Chapter 2 of Part 15 of ITA 2007).

24 In Schedule 4 to ITA 2007 (index of defined expressions)—

(a) omit the entry for "beneficiary under a discretionary or accumulation settlement (in Chapter 2 of Part 15)",

(b) in the entry for "deposit-taker (in Chapter 2 of Part 15)", after "Part 15" insert "and section 876",

(c) omit the entry for "dividend (in Chapter 2 of Part 15)",

(d) in the entry for "investment (in Chapter 2 of Part 15)", after "Part 15" insert "and section 876", and

(e) omit the entry for "relevant investment (in Chapter 2 of Part 15)".

25 In consequence of the amendments made by Part 1 of this Schedule and the preceding provisions of this Part of this Schedule—

(a) in Schedule 1 to ITA 2007 omit paragraph 277,

(b) in Schedule 1 to FA 2008 omit paragraph 25,

(c) in Schedule 46 to FA 2013—

(i) in paragraph 68(1) omit paragraph (a) including the "and" at the end,

(ii) in paragraph 69(1) omit paragraph (a) including the "and" at the end,

(iii) omit paragraph 70(1), and

(iv) in paragraph 71(3) omit paragraph (b) and the "and" preceding it, and

(d) in FA 2014 omit section 3(4).

PART 4

DEDUCTION OF TAX FROM UK PUBLIC REVENUE DIVIDENDS

26 In section 877 of ITA 2007 (duty to deduct under section 874: exception relating to UK public revenue dividends)—

(a) for "in respect of" substitute "that is", and

(b) after "dividend" insert "(as defined by section 891)".

27 (1) Chapter 5 of Part 15 of ITA 2007 (deduction from payments of UK public revenue dividends) is amended as follows.

(2) In section 893(2) (securities which are gross-paying government securities)—

(a) before the "or" at the end of paragraph (a) insert—

"(aa) securities, so far as they are not gilt-edged securities, issued or treated as issued under—

(i) the National Loans Act 1939, or

(ii) the National Loans Act 1968,", and

(b) in paragraph (b), for "894(1) or (3)" substitute "894(3)".

(3) In section 894 (power to direct that securities are gross-paying government securities)—

(a) omit subsections (1) and (2) (power in relation to securities within the new section 893(2)(aa)), and

(b) in subsection (5) omit "(1) or".

PART 5

COMMENCEMENT

28 (1) The amendments made by Parts 1 and 3 of this Schedule have effect in relation to—

(a) interest paid or credited on or after 6 April 2016, and

(b) dividends or other distributions paid by a building society on or after that date.

(2) Sub-paragraph (1) does not apply to—

(a) the repeals in Schedule 12 to FA 1988;

(b) the amendments in section 564Q of ITA 2007;

(c) the repeal of paragraph 277 of Schedule 1 to ITA 2007.

(3) The repeals mentioned in sub-paragraph (2)(a) and (c) have effect in relation to benefits conferred on or after 6 April 2016.

(4) The amendments mentioned in sub-paragraph (2)(b) have effect in relation to alternative finance return paid on or after 6 April 2016.

(5) The amendments made by Part 2 of this Schedule, and the amendments made by this Schedule in sections 893 and 894 of ITA 2007, have effect in relation to interest paid on or after 6 April 2016.

SCHEDULE 7

Section 49

LOAN RELATIONSHIPS AND DERIVATIVE CONTRACTS

Introductory

1 CTA 2009 is amended as follows.

Non-market loans

2 In Chapter 15 of Part 5 (loan relationships: tax avoidance), after section 446 insert—

"Non-market loans

446A Non-market loans

(1) This section applies as respects any accounting period if—

(a) a company has a debtor relationship in the period,

(b) the amount recognised in the company's accounts in respect of the debt at the time the company became party to the debtor relationship was less than the transaction price,

(c) credits in respect of the whole or part of the discount were not brought into account for the purposes of this Part, and

(d) in a case where the creditor is a company, the non-qualifying territory condition is met.

(2) The debits which are to be brought into account for the accounting period for the purposes of this Part by the debtor company in respect of the loan relationship are not to include debits relating to the relevant discount amount, to the extent that that amount is referable to the accounting period.

(3) In this section "relevant discount amount" means—

(a) in a case where credits in respect of the whole of the discount were not brought into account for the purposes of this Part, an amount equal to the whole discount, and

(b) in a case where credits in respect of part of the discount were not brought into account for the purposes of this Part, an amount equal to that part of the discount.

(4) The non-qualifying territory condition referred to in subsection (1)(d) is that the creditor company is—

(a) resident for tax purposes in a non-qualifying territory at any time in the accounting period, or

(b) effectively managed in a non-taxing non-qualifying territory at any such time.

(5) In this section—

"discount" means the difference between the two amounts referred to in subsection (1)(b);

"non-qualifying territory" has the meaning given in section 173 of TIOPA 2010;

"non-taxing non-qualifying territory" means a non-qualifying territory under whose law companies are not liable to tax by reason of domicile, residence or place of management;

"resident for tax purposes" means liable, under the law of the non-qualifying territory, to tax there by reason of domicile, residence or place of management."

Transfer pricing

3 In section 446 (loan relationships: bringing transfer-pricing adjustments into account), after subsection (7) insert—

"(8) No credit is to be brought into account for the purposes of this Part to the extent that it corresponds to an amount which, as a result of the preceding provisions of this section, has not previously been brought into account as a debit."

4 In section 693 (derivative contracts: bringing transfer-pricing adjustments into account), after subsection (5) insert—

"(6) No credit is to be brought into account for the purposes of this Part to the extent that it corresponds to an amount which, as a result of the preceding provisions of this section, has not previously been brought into account as a debit."

Exchange gains and losses

5 In section 447 (exchange gains and losses on debtor relationships: loans disregarded under Part 4 of TIOPA 2010), after subsection (4) insert—

"(4A) If the debtor relationship is to any extent matched, subsections (2) and (3) apply to leave out of account only the lesser of—

(a) the amount of the exchange gain or loss (in the case of subsection (2)) or the proportion of the exchange gain or loss (in the case of subsection (3)) which would be left out of account apart from this subsection, and

(b) the amount of the exchange gain or loss arising in respect of a liability representing the debtor relationship to the extent that the debtor relationship is unmatched (an amount which may be nil)."

6 In section 448 (exchange gains and losses on debtor relationships: equity notes where holder associated with issuer), after subsection (2) insert—

"(3) If the debtor relationship is to any extent matched, subsection (2) applies to leave out of account only the amount of the exchange gain or loss arising in respect of a liability representing the debtor relationship to the extent that the debtor relationship is unmatched (an amount which may be nil)."

7 In section 449 (exchange gains and losses on creditor relationships: no corresponding debtor relationship), after subsection (4) insert—

"(4A) If the creditor relationship is to any extent matched, subsection (2) applies to leave out of account only the amount of the exchange gain or loss arising in respect of an asset representing the creditor relationship to the extent that the creditor relationship is unmatched (an amount which may be nil)."

8 In section 451 (exception to section 449 where loan exceeds arm's length amount), after subsection (4) insert—

"(4A) If the creditor relationship is to any extent matched, subsections (3) and (4) apply to leave out of account only the lesser of—

(a) the proportion of the exchange gain or loss which would be left out of account apart from this subsection, and

(b) the amount of the exchange gain or loss arising in respect of an asset representing the creditor relationship to the extent that the creditor relationship is unmatched (an amount which may be nil)."

9 (1) Section 452 (exchange gains and losses where loan not on arm's length terms) is amended as follows.

(2) For subsection (3) substitute—

"(3) Subsections (4) and (5) apply if, because of a claim made under section 192(1) of TIOPA 2010, or because of the claim that is assumed to be made under subsection (2)—

(a) one company is treated for any purpose as having a debtor relationship, or

(b) more than one company is treated for any purpose as having a debtor relationship represented by the same liability."

(3) In subsection (4)—

(a) after "exchange gains" insert "from that debtor relationship (in a subsection (3)(a) case) or";

(b) after "those debtor relationships" insert "(in a subsection (3)(b) case)";

(c) for the words from "debits" to the end substitute "exchange gains or the proportion of the exchange gains to be left out of account under section 447 by the issuing company in respect of the loan relationship".

(4) In subsection (5)—

(a) after "exchange losses" insert "from that debtor relationship (in a subsection (3)(a) case) or";

(b) after "those debtor relationships" insert "(in a subsection (3)(b) case)";

(c) for the words from "credits" to the end substitute "exchange losses or the proportion of the exchange losses to be left out of account under section 447 by the issuing company in respect of the loan relationship".

(5) After subsection (5) insert—

"(5A) In this section "issuing company" is to be construed in accordance with section 191(1)(a) of TIOPA 2010."

10 After section 475A insert—

"Meaning of "matched"

475B Meaning of "matched"

(1) This section applies for the purposes of this Part.

(2) A loan relationship of a company is matched if and to the extent that—

(a) it is in a matching relationship with another loan relationship or a derivative contract of the company, or

(b) exchange gains or losses arising in relation to an asset or liability representing the loan relationship are excluded from being brought into account under regulations under section 328(4),

and "unmatched" is to be construed accordingly.

(3) A loan relationship is in a matching relationship with another loan relationship or derivative contract if one is intended by the company to act to eliminate or substantially reduce the economic risk of the other.

(4) In this section "economic risk" means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time.

(5) In this section "derivative contract" has the same meaning as in Part 7 (see section 576)."

11 (1) Section 694 (derivative contracts: exchange gains and losses) is amended as follows.

(2) After subsection (3) insert—

"(3A) If the contract is to any extent matched, subsection (3) applies to leave out of account only the amount of the exchange gains or losses arising to the company in relation to the contract to the extent that the contract is unmatched (an amount which may be nil)."

(3) After subsection (7) insert—

"(7A) Subsections (5) to (7) apply only to the extent that the contract is unmatched."

(4) After subsection (10) insert—

"(11) For the purposes of this section a derivative contract of a company is matched if and to the extent that—

(a) it is in a matching relationship with another derivative contract or loan relationship of the company, or

(b) exchange gains or losses arising in relation to the derivative contract are excluded from being brought into account under regulations under section 606(4)(b),

and "unmatched" is to be construed accordingly.

(12) A derivative contract is in a matching relationship with another derivative contract or loan relationship if one is intended by the company to act to eliminate or substantially reduce the economic risk of the other.

(13) In this section "economic risk" means a risk which can be attributed to fluctuations in exchange rates between currencies over a period of time.

(14) In this section "loan relationship" has the same meaning as in Part 5 (see section 302)."

Commencement

12 (1) The amendments made by this Schedule have effect in relation to accounting periods beginning on or after 1 April 2016.

(2) For the purposes of sub-paragraph (1), where the accounting period of a company begins before 1 April 2016 and ends on or after that date (the "straddling period"), so much of the straddling period as falls before that date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods.

SCHEDULE 8

Section 54

TAX RELIEF FOR PRODUCTION OF ORCHESTRAL CONCERTS

PART 1

AMENDMENT OF CTA 2009

1 After Part 15C of CTA 2009 insert—

"**PART 15D**

ORCHESTRA TAX RELIEF

CHAPTER 1

INTRODUCTION

Overview

1217P Overview

(1) This Part is about the production of orchestral concerts, and applies for corporation tax purposes.

(2) This Chapter explains what is meant by "orchestral concert" and how a company comes to be treated as the production company in relation to a concert.

(3) Chapter 2 is about the taxation of the activities of a production company and includes—

(a) provision for the company's activities in relation to its concert, or its concert series, to be treated as a separate trade, and

(b) provision about the calculation of the profits and losses of that trade.

(4) Chapter 3 is about relief (called "orchestra tax relief") which may be given to a production company in relation to its concert or concert series—

(a) by way of additional deductions to be made in calculating the profits or losses of the company's separate trade, or

(b) by way of a payment (an "orchestra tax credit") to be made on the company's surrender of losses from that trade,

and describes the conditions a company must meet to qualify for orchestra tax relief.

(5) Chapter 4 contains provision about the use of losses of the separate trade (including provision about relief for terminal losses).

(6) Chapter 5 provides—

(a) for relief under Chapters 3 and 4 to be given on a provisional basis, and

(b) for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Interpretation

1217PA "Orchestral concert"

(1) In this Part "orchestral concert" means a concert by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the concert.

(2) But a concert is not an orchestral concert if—

(a) the main purpose, or one of the main purposes, of the concert is to advertise or promote any goods or services,

(b) the concert is to consist of or include a competition or contest, or

(c) the making of a relevant recording is the main object of the production company's activities in relation to the concert.

(3) A recording of a concert is a "relevant recording" if the recording is made for the purpose of using it (or an edited version of it) in any of the following ways—

(a) broadcast, at the time of the concert or later, to the general public;

(b) release, at the time of the concert or later, to the paying public (by digital or other means);

(c) use as a soundtrack (or part of a soundtrack) to a television, radio, theatre, video game or similar production for broadcast, exhibition or release to the general public;

(d) use in a film (or part of a film) for exhibition to the paying public at the commercial cinema.

(4) In this section—

"broadcast" means broadcast by any means (including television, radio or the internet);

"film" has the same meaning as in Part 15 (see section 1181).

1217PB Production company

(1) A company is the production company in relation to a concert if the company (acting otherwise than in partnership)—

(a) is responsible for putting on the concert from the start of the production process to the finish, including employing or engaging the performers,

(b) is actively engaged in decision-making in relation to the concert,

(c) makes an effective creative, technical and artistic contribution to the concert, and

(d) directly negotiates for, contracts for and pays for rights, goods and services in relation to the concert.

(2) No more than one company can be the production company in relation to a concert.

(3) If more than one company meets the conditions in subsection (1) in relation to a concert, the company that is most directly engaged in the activities mentioned in that subsection is the production company.

(4) If no company meets the conditions in subsection (1), there is no production company in relation to the concert.

CHAPTER 2

TAXATION OF ACTIVITIES OF PRODUCTION COMPANY

Separate orchestral trade

1217Q Separate orchestral trade

(1) Subsection (2) applies to a company in relation to a concert if—

(a) the company qualifies for orchestra tax relief in relation to the production of the concert (see section 1217RA(2)), and

(b) the concert is not included in a concert series in relation to which the company has made an election under subsection (4).

(2) The company's activities in relation to the production of the concert are treated as a trade separate from any other activities of the company (including activities in relation to the production of any other concert).

(3) Subsections (4) and (5) apply to a company in relation to concerts in a series if the conditions in section 1217RA(4)(a), (b), (c) and (d) are met in relation to the company and the concert series.

(4) The company may, for the purposes of this Part, make an election in relation to the concert series.

See section 1217QA for provision about making an election.

(5) Where the company makes an election in relation to a concert series (and accordingly qualifies for orchestra tax relief in relation to the production of the series), the company's activities in relation to the production of the concert series are treated as a trade separate from any other activities of the company (including activities in relation to the production of any other concert).

(6) In this Part the separate trade mentioned in subsection (2) or (5) is called the "separate orchestral trade".

(7) If the separate orchestral trade relates to a single concert, the company is treated as beginning to carry on that trade—

(a) at the beginning of the pre-performance stage of the concert, or

(b) if earlier, at the time of the first receipt by the company of any income from the production of the concert.

1217QA Election for concert series

(1) An election under section 1217Q(4) must be made by the company by notice in writing to an officer of Her Majesty's Revenue and Customs before the date of the first concert in the series.

(2) An election has effect in relation to the orchestral concerts specified in it, and must also specify which of those concerts (if any) are not to be qualifying orchestral concerts (see section 1217RA(3)).

(3) An election—

(a) may have effect in relation to concerts in two or more accounting periods, and

(b) is irrevocable.

(4) If the separate orchestral trade relates to a concert series, the company is treated as beginning to carry on that trade—

(a) at the beginning of the pre-performance stage of the first concert in the series, or

(b) if earlier, at the time of the first receipt by the company of any income from the production of the concert series.

Profits and losses of separate orchestral trade

1217QB Calculation of profits or losses of separate orchestral trade

(1) This section applies for the purpose of calculating the profits or losses of the separate orchestral trade.

(2) For the first period of account during which the separate orchestral trade is carried on, the following are brought into account—

(a) as a debit, the costs of the production of the concert or concert series incurred to date;

(b) as a credit, the proportion of the estimated total income from that production treated as earned at the end of that period.

(3) For subsequent periods of account the following are brought into account—

(a) as a debit, the difference between the amount ("C") of the costs of the production of the concert or concert series incurred to date and the amount corresponding to C for the previous period, and

(b) as a credit, the difference between the proportion ("PI") of the estimated total income from that production treated as earned at the end of that period and the amount corresponding to PI for the previous period.

(4) The proportion of the estimated total income treated as earned at the end of a period of account is—

$$\frac{C}{T} \times I$$

where—

C is the total to date of costs incurred;

T is the estimated total cost of the production of the concert or concert series;

I is the estimated total income from the production of the concert or concert series.

1217QC Income from the production

(1) References in this Chapter to income from a production of a concert or concert series are to any receipts by the company in connection with the production or exploitation of the concert or concert series.

(2) This includes—

(a) receipts from the sale of tickets or of rights in the concert or concert series;

(b) royalties or other payments for use of the concert or concert series;

(c) payments for rights to produce merchandise;

(d) receipts by the company by way of a profit share agreement.

(3) Receipts that (apart from this subsection) would be regarded as being of a capital nature are treated as being of a revenue nature.

1217QD Costs of the production

(1) References in this Chapter to the costs of a production of a concert or concert series are to expenditure incurred by the company on—

(a) activities involved in developing and putting on the concert or concert series, or

(b) activities with a view to exploiting the concert or concert series.

(2) This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.

(3) Expenditure which, apart from this subsection, would be regarded as being of a capital nature only because it is incurred on the creation of an asset (the concert or concert series) is treated as being of a revenue nature.

1217QE When costs are taken to be incurred

(1) For the purposes of this Chapter, the costs that have been incurred on a production of a concert or concert series at a given time do not include any amount that has not been paid unless it is the subject of an unconditional obligation to pay.

(2) Where an obligation to pay an amount is linked to income being earned from the production of the concert or concert series, the obligation is not treated as having become unconditional unless an appropriate amount of income is or has been brought into account under section 1217QB.

1217QF Pre-trading expenditure

(1) This section applies if, before the company begins to carry on the separate orchestral trade, it incurs expenditure on activities falling within section 1217QD(1)(a).

(2) The expenditure may be treated as expenditure of the separate orchestral trade and as if incurred immediately after the company begins to carry on that trade.

(3) If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return accordingly.

(4) Any amendment or assessment necessary to give effect to subsection (3) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1217QG Estimates

Estimates for the purposes of section 1217QB must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

CHAPTER 3

ORCHESTRA TAX RELIEF

Introduction

1217R Overview of orchestra tax relief

(1) Relief under this Chapter ("orchestra tax relief") is given by way of—
- (a) additional deductions (see sections 1217RD to 1217RF), and
- (b) orchestra tax credits (see sections 1217RG to 1217RJ).

(2) See Schedule 18 to FA 1998 (in particular, Part 9D) for provision about the procedure for making claims for orchestra tax relief.

Companies qualifying for orchestra tax relief

1217RA Companies qualifying for orchestra tax relief

(1) Subsection (2) applies in the case of an orchestral concert which is not included in a concert series in relation to which an election has been made under section 1217Q(4).

(2) A company qualifies for orchestra tax relief in relation to the production of a concert if—
- (a) the concert is a qualifying orchestral concert,
- (b) the company is the production company in relation to the concert,
- (c) the company intends that the concert should be performed live—
  - (i) before the paying public, or
  - (ii) for educational purposes, and
- (d) the EEA expenditure condition is met in relation to the concert (see section 1217RB).

(3) In this Part "qualifying orchestral concert" means an orchestral concert—
- (a) in which the instrumentalists number at least 12, and

(b) in which none of the musical instruments to be played, or a minority of those instruments, is electronically or directly amplified.

(4) A company qualifies for orchestra tax relief in relation to the production of a concert series if—

(a) the concert series is a qualifying orchestral concert series,

(b) the company is the production company in relation to every concert in the series,

(c) the company intends that all or a high proportion of the concerts in the series should be performed live—

(i) before the paying public, or

(ii) for educational purposes,

(d) the EEA expenditure condition is met in relation to the series, and

(e) the company has made an election under section 1217Q(4) in relation to the series.

(5) In this section "qualifying orchestral concert series" means two or more orchestral concerts, all or a high proportion of which are qualifying orchestral concerts.

(6) For the purposes of this section a concert is "live" if it is to an audience before whom the musicians are actually present.

(7) A concert is not regarded as performed for educational purposes if the production company is, or is associated with, a person who—

(a) has responsibility for the beneficiaries, or

(b) is otherwise connected with the beneficiaries (for instance, by being their employer).

(8) For the purposes of subsection (7), a production company is associated with a person ("P") if—

(a) P controls the production company, or

(b) P is a company which is controlled by the production company or by a person who also controls the production company.

(9) In this section—

"the beneficiaries" means persons for whose benefit the concert will or may be performed;

"control" has the same meaning as in Part 10 of CTA 2010 (see section 450 of that Act).

(10) There is further related provision in section 1217RL (tax avoidance arrangements).

1217RB The EEA expenditure condition

(1) The "EEA expenditure condition" is that at least 25% of the core expenditure on the production of the concert or concert series incurred by the company is EEA expenditure.

(2) In this Part "EEA expenditure" means expenditure on goods or services that are provided from within the European Economic Area.

(3) Any apportionment of expenditure as between EEA and non-EEA expenditure for the purposes of this Part is to be made on a just and reasonable basis.

(4) The Treasury may by regulations—

(a) amend the percentage specified in subsection (1);

(b) amend subsection (2).

(5) See also sections 1217T and 1217TA (which are about the giving of relief provisionally on the basis that the EEA expenditure condition will be met).

1217RC "Core expenditure"

(1) In this Part "core expenditure", in relation to the production of a concert or concert series, means expenditure on the activities involved in producing the concert or concert series.

(2) The reference in subsection (1) to "expenditure on the activities involved in producing the concert or concert series" includes expenditure on travel to and from a venue which is not a usual venue for concerts produced by the company.

(3) But that reference does not include—

(a) expenditure on any matters not directly involved with putting on the concert or concerts (for instance, financing, marketing, legal services or storage),

(b) speculative expenditure on activities not involved with putting on the concert or concerts, and

(c) expenditure on the actual performance or performances (for instance, payments to musicians for their performances in the concert or concert series).

Additional deduction

1217RD Claim for additional deduction

(1) A company which qualifies for orchestra tax relief in relation to the production of a concert or concert series may claim an additional deduction in relation to the production.

(2) A claim under subsection (1) is made with respect to an accounting period.

(3) Where a company has made a claim, the company is entitled to make an additional deduction, in accordance with section 1217RE, in calculating the profit or loss of the separate orchestral trade for the accounting period concerned.

(4) Where the company tax return in which a claim is made is for an accounting period later than that in which the company begins to carry on the separate orchestral trade, the company must make any amendments of company tax returns for earlier periods that may be necessary.

(5) Any amendment or assessment necessary to give effect to subsection (4) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1217RE Amount of additional deduction

(1) The amount of an additional deduction to which a company is entitled as a result of a claim under section 1217RD is calculated as follows.

(2) For the first period of account during which the separate orchestral trade is carried on, the amount of the additional deduction is E, where E is—

(a) so much of the qualifying expenditure incurred to date as is EEA expenditure, or

(b) if less, 80% of the total amount of qualifying expenditure incurred to date.

(3) For any period of account after the first, the amount of the additional deduction is—

$$E - P$$

where E is—

(a) so much of the qualifying expenditure incurred to date as is EEA expenditure, or

(b) if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

(4) The Treasury may by regulations amend the percentage specified in subsection (2) or (3).

1217RF "Qualifying expenditure"

(1) In this Chapter "qualifying expenditure", in relation to the production of a concert or concert series, means core expenditure (see section 1217RC) on the production that—

(a) falls to be taken into account under sections 1217QB to 1217QG in calculating the profit or loss of the separate orchestral trade for tax purposes, and

(b) is not expenditure which is otherwise relievable.

(2) For the purposes of this section expenditure is otherwise relievable if it is expenditure in respect of which (assuming a claim were made) the company would be entitled to—

(a) film tax relief under Chapter 3 of Part 15,

(b) television tax relief under Chapter 3 of Part 15A,

(c) video games tax relief under Chapter 3 of Part 15B,

(d) an additional deduction under Part 15C (theatrical productions), or

(e) a theatre tax credit under Part 15C.

Orchestra tax credits

1217RG Orchestra tax credit claimable if company has surrenderable loss

(1) A company which qualifies for orchestra tax relief in relation to the production of a concert or concert series may claim an orchestra tax credit in relation to the production for an accounting period in which the company has a surrenderable loss.

(2) Section 1217RH sets out how to calculate the amount of any surrenderable loss that the company has in the accounting period.

(3) A company making a claim may surrender the whole or part of its surrenderable loss in the accounting period.

(4) The amount of the orchestra tax credit to which a company making a claim is entitled for the accounting period is 25% of the amount of the loss surrendered.

(5) The company's available loss for the accounting period (see section 1217RH(2)) is reduced by the amount surrendered.

1217RH Amount of surrenderable loss

(1) The company's surrenderable loss in the accounting period is—

(a) the company's available loss for the period in the separate orchestral trade (see subsections (2) and (3)), or

(b) if less, the available qualifying expenditure for the period (see subsections (4) and (5)).

(2) The company's available loss for an accounting period is—

$$L + RUL$$

where—

L is the amount of the company's loss for the period in the separate orchestral trade, and

RUL is the amount of any relevant unused loss of the company (see subsection (3)).

(3) The "relevant unused loss" of a company is so much of any available loss of the company for the previous accounting period as has not been—

(a) surrendered under section 1217RG, or

(b) carried forward under section 45 of CTA 2010 and set against profits of the separate orchestral trade.

(4) For the first period of account during which the separate orchestral trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1217RE(2).

(5) For any period of account after the first, the available qualifying expenditure is—

$$E - S$$

where—

E is the amount that is E for that period for the purposes of section 1217RE(3), and

S is the total amount previously surrendered under section 1217RG.

(6) If a period of account of the separate orchestral trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

1217RI Payment in respect of orchestra tax credit

(1) If a company—

(a) is entitled to an orchestra tax credit for an accounting period, and

(b) makes a claim,

the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") must pay the amount of the credit to the company.

(2) An amount payable in respect of—

(a) an orchestra tax credit, or

(b) interest on an orchestra tax credit under section 826 of ICTA,

may be applied in discharging any liability of the company to pay corporation tax.

To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.

(3) If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of an orchestra tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).

In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.

(4) No payment need be made in respect of an orchestra tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period—

(a) under PAYE regulations,

(b) under section 966 of ITA 2007 (visiting performers), or

(c) in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(5) A payment in respect of an orchestra tax credit is not income of the company for any tax purpose.

1217RJ Limit on State aid

In accordance with Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market, the total amount of orchestra tax credits payable under section 1217RI in the case of any undertaking is not to exceed 50 million euros per year.

1217RK No account to be taken of amount if unpaid

(1) In determining for the purposes of this Chapter the amount of costs incurred on a production of a concert or concert series at the end of a period of account, ignore any amount that has not been paid 4 months after the end of that period.

(2) This is without prejudice to the operation of section 1217QE (when costs are taken to be incurred).

Anti-avoidance etc

1217RL Tax avoidance arrangements

(1) A company does not qualify for orchestra tax relief in relation to the production of a concert or concert series if there are any tax avoidance arrangements relating to the production.

(2) Arrangements are "tax avoidance arrangements" if their main purpose, or one of their main purposes, is the obtaining of a tax advantage.

(3) In this section—

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable;

"tax advantage" has the meaning given by section 1139 of CTA 2010.

1217RM Transactions not entered into for genuine commercial reasons

(1) A transaction is to be ignored for the purpose of determining orchestra tax relief so far as the transaction is attributable to arrangements (other than tax avoidance arrangements) entered into otherwise than for genuine commercial reasons.

(2) In this section "arrangements" and "tax avoidance arrangements" have the same meaning as in section 1217RL.

CHAPTER 4

LOSSES OF SEPARATE ORCHESTRAL TRADE

1217S Application of sections 1217SA to 1217SC

(1) Sections 1217SA to 1217SC apply to a company which is treated under section 1217Q(2) or (5) as carrying on a separate trade in relation to the production of a concert or concert series.

(2) In those sections—

(a) "the completion period" means the accounting period in which the company ceases to carry on the separate orchestral trade;

(b) "loss relief" includes any means by which a loss might be used to reduce the amount in respect of which a company, or any other person, is chargeable to tax.

1217SA Restriction on use of losses before completion period

(1) Subsection (2) applies if a loss is made by the company in the separate orchestral trade in an accounting period preceding the completion period.

(2) The loss is not available for loss relief, except to the extent that the loss may be carried forward under section 45 of CTA 2010 to be set against profits of the separate orchestral trade in a subsequent period.

1217SB Use of losses in the completion period

(1) Subsection (2) applies if a loss made in the separate orchestral trade is carried forward under section 45 of CTA 2010 to the completion period.

(2) So much (if any) of the loss as is not attributable to orchestra tax relief (see subsection (4)) may be treated for the purposes of loss relief as if it were a loss made in the completion period.

(3) If a loss is made in the separate orchestral trade in the completion period, the amount of the loss that may be—

(a) deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or

(b) surrendered as group relief under Part 5 of that Act,

is restricted to the amount (if any) that is not attributable to orchestra tax relief (see subsection (4)).

(4) The amount of a loss in any period that is attributable to orchestra tax relief is found by—

(a) calculating what the amount of the loss would have been if there had been no additional deduction under Chapter 3 in that or any earlier period, and

(b) deducting that amount from the total amount of the loss.

(5) This section does not apply to loss surrendered, or treated as carried forward, under section 1217SC (terminal losses).

1217SC Terminal losses

(1) This section applies if—

(a) the company ceases to carry on the separate orchestral trade, and

(b) if the company had not ceased to carry on that trade, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of that trade in a later period ("the terminal loss").

Below in this section the company is referred to as "company A" and the separate orchestral trade is referred to as "trade 1".

(2) If company A—

(a) is treated under section 1217Q(2) or (5) as carrying on a separate trade in relation to the production of another concert or concert series ("trade 2"), and

(b) is carrying on trade 2 when it ceases to carry on trade 1,

company A may (on making a claim) make an election under subsection (3).

(3) The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade 2 of the first accounting period beginning after the cessation and so on.

(4) Subsection (5) applies if—

(a) another company ("company B") is treated under section 1217Q(2) or (5) as carrying on a separate trade ("company B's trade") in relation to the production of another concert or concert series,

(b) company B is carrying on that trade when company A ceases to carry on trade 1, and

(c) company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).

(5) Company A may surrender the loss (or a part of it) to company B.

(6) On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of company B's trade of the first accounting period beginning after the cessation and so on.

(7) The Treasury may by regulations make administrative provision in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6).

(8) "Administrative provision" means provision corresponding, subject to such adaptations or other modifications as appear to the Treasury to be appropriate, to that made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

1217T Provisional entitlement to relief

(1) In relation to a company and the production of a concert or concert series, "interim accounting period" means any accounting period that—

(a) is one in which the company carries on a separate orchestral trade, and

(b) precedes the accounting period in which it ceases to do so.

(2) A company is not entitled to orchestra tax relief for an interim accounting period unless—

(a) its company tax return for the period states the amount of planned core expenditure on the production of the concert or concert series that is EEA expenditure (see section 1217RB(2)), and

(b) that amount is such as to indicate that the EEA expenditure condition (see section 1217RB) will be met in relation to the production.

If those requirements are met, the company is provisionally treated in relation to that period as if the EEA expenditure condition were met.

1217TA Clawback of provisional relief

(1) If a statement is made under section 1217T(2) but it subsequently appears that the EEA expenditure condition will not be met on the company's ceasing to carry on the separate orchestral trade, the company—

(a) is not entitled to orchestra tax relief for any period for which its entitlement depended on such a statement, and

(b) must amend accordingly its company tax return for any such period.

(2) When a company ceases to carry on the separate orchestral trade, the company's company tax return for the period in which that cessation occurs must—

(a) state that the company has ceased to carry on the separate orchestral trade, and

(b) be accompanied by a final statement of the amount of the core expenditure on the production of the concert or concert series that is EEA expenditure.

(3) If that statement shows that the EEA expenditure condition is not met—

(a) the company is not entitled to orchestra tax relief or to relief under section 1217SC (transfer of terminal losses) for any period, and

(b) must amend accordingly its company tax return for any period for which such relief was claimed.

(4) Any amendment or assessment necessary to give effect to this section may be made despite any limitation on the time within which an amendment or assessment may normally be made.

CHAPTER 6

INTERPRETATION

1217U Interpretation

In this Part—

"company tax return" has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1) of that Schedule);

"core expenditure" has the meaning given by section 1217RC;

"costs", in relation to a concert or concert series, has the meaning given by section 1217QD;

"EEA expenditure" has the meaning given by section 1217RB(2);

"EEA expenditure condition" has the meaning given by section 1217RB;

"income", in relation to a concert or concert series, has the meaning given by section 1217QC;

"orchestra tax relief" is to be read in accordance with Chapter 3 (see in particular section 1217R(1));

"orchestral concert" has the meaning given by section 1217PA;

"production company" has the meaning given by section 1217PB;

"qualifying expenditure" has the meaning given by section 1217RF;

"qualifying orchestral concert" has the meaning given by section 1217RA(3);

"qualifying orchestral concert series" has the meaning given by section 1217RA(5);

the "separate orchestral trade" is to be read in accordance with section 1217Q."

PART 2

CONSEQUENTIAL AMENDMENTS

ICTA

2 (1) Section 826 of ICTA (interest on tax overpaid) is amended as follows.

(2) In subsection (1), after paragraph (fc) insert—

"(fd) a payment of orchestra tax credit falls to be made to a company; or".

(3) In subsection (3C), for "or theatre tax credit" substitute ", theatre tax credit or orchestra tax credit".

(4) In subsection (8A)—

(a) in paragraph (a), for "or (fc)" substitute ", (fc) or (fd)", and

(b) in paragraph (b)(ii), after "theatre tax credit" insert "or orchestra tax credit".

(5) In subsection (8BA), after "theatre tax credit" (in both places) insert "or orchestra tax credit".

FA 1998

3 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.

4 In paragraph 10 (other claims and elections to be included in return), in sub-paragraph (4), for "or 15C" substitute ", 15C or 15D".

5 (1) Paragraph 52 (recovery of excessive repayments etc) is amended as follows.

(2) In sub-paragraph (2), after paragraph (bg) insert—

"(bh) orchestra tax credit under Part 15D of that Act,".

(3) In sub-paragraph (5)—

(a) after paragraph (ai) insert—

"(aj) an amount of orchestra tax credit paid to a company for an accounting period,", and

(b) in the words after paragraph (b), after "(ai)" insert ", (aj)".

6 In Part 9D (certain claims for tax relief)—

(a) in the heading, for "or 15C" substitute ", 15C or 15D", and

(b) in paragraph 83S (introduction), after sub-paragraph (e) insert—

"(f) orchestra tax relief."

CAA 2001

7 In Schedule A1 to CAA 2001 (first-year tax credits), in paragraph 11(4), omit the "and" at the end of paragraph (e) and after paragraph (f) insert ", and

(g) Chapter 3 of Part 15D of that Act (orchestra tax credits)."

FA 2007

8 In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa) (meaning of "corporation tax credit"), omit the "or" at the end of paragraph (ivc) and after that paragraph insert—

"(ivd) an orchestra tax credit under Chapter 3 of Part 15D of that Act, or".

CTA 2009

9 In Part 8 of CTA 2009 (intangible fixed assets), in Chapter 10 (excluded assets), after section 808C insert—

"**808D Assets representing expenditure incurred in course of separate orchestral trade**

(1) This Part does not apply to an intangible fixed asset held by an orchestral concert production company so far as the asset represents expenditure on an orchestral concert or orchestral concert series that is treated under Part

15D as expenditure of a separate trade (see particularly sections 1217Q and 1217QF).

(2) In this section—

"orchestral concert" has the same meaning as in Part 15D (see section 1217PA);

"orchestral concert production company" means a company which, for the purposes of that Part, is the production company in relation to a concert (see section 1217PB)."

10 In section 1310 of CTA 2009 (orders and regulations), in subsection (4), after paragraph (em) insert—

"(en) section 1217RB (EEA expenditure condition),

(eo) section 1217RE (amount of additional deduction),".

11 In Schedule 4 to CTA 2009 (index of defined expressions), insert at the appropriate places—

"company tax return (in Part 15D)	section 1217U"
"core expenditure (in Part 15D)	section 1217RC"
"costs, in relation to a concert or concert series (in Part 15D)	section 1217QD"
"EEA expenditure (in Part 15D)	section 1217RB(2)"
"EEA expenditure condition (in Part 15D)	section 1217RB"
"income, in relation to a concert or concert series (in Part 15D)	section 1217QC"
"orchestra tax relief (in Part 15D)	section 1217R(1)"
"orchestral concert (in Part 15D)	section 1217PA"
"production company (in Part 15D)	section 1217PB"
"qualifying expenditure (in Part 15D)	section 1217RF"
"qualifying orchestral concert (in Part 15D)	section 1217RA(3)"
"qualifying orchestral concert series (in Part 15D)	section 1217RA(5)"
"separate orchestral trade (in Part 15D)	section 1217Q"

FA 2009

12 In Schedule 54A to FA 2009 (which is prospectively inserted by F(No. 3)A 2010 and contains provision about the recovery of certain amounts of interest paid by HMRC), in paragraph 2—

(a) in sub-paragraph (2), omit the "or" at the end of paragraph (g) and after paragraph (h) insert ", or

(i) a payment of orchestra tax credit under Chapter 3 of Part 15D of CTA 2009 for an accounting period.";

(b) in sub-paragraph (4), for "(h)" substitute "(i)".

CTA 2010

13 In Part 8B of CTA 2010 (trading profits taxable at Northern Ireland rate), in section 357H(7) (introduction), after "Chapter 14 for provision about theatrical productions;" insert "Chapter 14A for provision about orchestra tax relief;".

14 In Part 8B of CTA 2010, after section 357UI insert—

"**CHAPTER 14A**

ORCHESTRA TAX RELIEF

Introductory

357UJ Introduction and interpretation

(1) This Chapter makes provision about the operation of Part 15D of CTA 2009 (orchestra tax relief) in relation to expenditure incurred by a company in an accounting period in which it is a Northern Ireland company.

(2) In this Chapter—

(a) "Northern Ireland expenditure" means expenditure incurred in a trade to the extent that the expenditure forms part of the Northern Ireland profits or Northern Ireland losses of the trade;

(b) the "separate orchestral trade" has the same meaning as in Part 15D of CTA 2009 (see section 1217Q(6) of that Act);

(c) "qualifying expenditure" has the same meaning as in Chapter 3 of that Part (see section 1217RF of that Act).

(3) References in Part 15D of CTA 2009 to "orchestra tax relief" include relief under this Chapter.

Orchestra tax relief

357UK Northern Ireland additional deduction

(1) In this Chapter "a Northern Ireland additional deduction" means so much of a deduction under section 1217RD of CTA 2009 (claim for additional deduction) as is calculated by reference to qualifying expenditure that is Northern Ireland expenditure.

(2) A Northern Ireland additional deduction forms part of the Northern Ireland profits or Northern Ireland losses of the separate orchestral trade.

357UL Northern Ireland supplementary deduction

(1) This section applies where—

(a) a company is entitled under section 1217RD of CTA 2009 to an additional deduction in calculating the profit or loss of the separate orchestral trade in an accounting period,

(b) the company is a Northern Ireland company in the period,

(c) the additional deduction is wholly or partly a Northern Ireland additional deduction, and

(d) any of the following conditions is met—

(i) the company does not have a surrenderable loss in the accounting period;

(ii) the company has a surrenderable loss in the accounting period, but does not make a claim under section 1217RG of CTA 2009 (orchestra tax credit claimable if company has surrenderable loss) for the period;

(iii) the company has a surrenderable loss in the accounting period and makes a claim under that section for the period, but the amount of Northern Ireland losses surrendered on the claim is less than the Northern Ireland additional deduction.

(2) The company is entitled to make another deduction ("a Northern Ireland supplementary deduction") in respect of qualifying expenditure.

(3) See section 357UM for provision about the amount of the Northern Ireland supplementary deduction.

(4) The Northern Ireland supplementary deduction—

(a) is made in calculating the profit or loss of the separate orchestral trade, and

(b) forms part of the Northern Ireland profits or Northern Ireland losses of the separate orchestral trade.

(5) In this section "surrenderable loss" has the meaning given by section 1217RH of CTA 2009.

357UM Northern Ireland supplementary deduction: amount

(1) This section contains provision for the purposes of section 357UL(2) about the amount of the Northern Ireland supplementary deduction.

(2) If the accounting period falls within only one financial year, the amount of the Northern Ireland supplementary deduction is—

$$(A - B) \times \left(\frac{(MR - NIR)}{NIR} \right)$$

where—

A is the amount of the Northern Ireland additional deduction brought into account in the accounting period;

B is the amount of Northern Ireland losses surrendered in any claim under section 1217RG of CTA 2009 for the accounting period;

MR is the main rate for the financial year;

NIR is the Northern Ireland rate for the financial year.

(3) If the accounting period falls within more than one financial year, the amount of the Northern Ireland supplementary deduction is determined by taking the following steps.

Step 1

Calculate, for each financial year, the amount that would be the Northern Ireland supplementary deduction for the accounting period if it fell within only that financial year (see subsection (2)).

Step 2

Multiply each amount calculated under step 1 by the proportion of the accounting period that falls within the financial year for which it is calculated.

Step 3

Add together each amount found under step 2.

357UN Orchestra tax credit: Northern Ireland supplementary deduction ignored

For the purpose of determining the available loss of a company under section 1217RH of CTA 2009 (amount of surrenderable loss) for any accounting period, any Northern Ireland supplementary deduction made by the company in the period (and any Northern Ireland supplementary deduction made in any previous accounting period) is to be ignored.

Losses of separate orchestral trade

357UO Restriction on use of losses before completion period

(1) Section 1217SA of CTA 2009 (restriction on use of losses before completion period) has effect subject as follows.

(2) The reference in subsection (1) of that section to a loss made in the separate orchestral trade in an accounting period preceding the completion period is, if the company is a Northern Ireland company in that period, a reference to—

(a) any Northern Ireland losses of the trade of the period, or

(b) any mainstream losses of the trade of the period;

and references to losses in subsection (2) of that section are to be read accordingly.

(3) Subsection (4) applies if a Northern Ireland company has, in an accounting period preceding the completion period—

(a) both Northern Ireland losses of the trade and mainstream profits of the trade, or

(b) both mainstream losses of the trade and Northern Ireland profits of the trade.

(4) The company may make a claim under section 37 (relief for trade losses against total profits) for relief for the losses mentioned in subsection (3)(a) or (b).

(5) But relief on such a claim is available only—

(a) in the case of a claim for relief for Northern Ireland losses, against mainstream profits of the trade of the same period;

(b) in the case of a claim for relief for mainstream losses, against Northern Ireland profits of the trade of the same period.

(6) In this section "the completion period" has the same meaning as in section 1217SA of CTA 2009 (see section 1217S(2) of that Act).

357UP Use of losses in the completion period

(1) Section 1217SB of CTA 2009 (use of losses in the completion period) has effect subject as follows.

(2) The reference in subsection (1) of that section to a loss made in the separate orchestral trade is, in relation to a loss made in a period in which the company is a Northern Ireland company, a reference to—

(a) any Northern Ireland losses of the trade of the period, or

(b) any mainstream losses of the trade of the period;

and references to losses in subsections (2) and (4) of that section are to be read accordingly.

(3) The references in subsection (3) of that section to a loss made in the separate orchestral trade in the completion period are, where the company is a Northern Ireland company in the period, references to—

(a) any Northern Ireland losses of the trade of the period, or

(b) any mainstream losses of the trade of the period;

and references to losses in subsection (4) of that section are to be read accordingly.

(4) Subsection (4) of that section has effect, in relation to Northern Ireland losses, as if the reference to an additional deduction under Chapter 3 of Part 15D of CTA 2009 included a reference to a Northern Ireland supplementary deduction under this Chapter.

357UQ Terminal losses

(1) Section 1217SC of CTA 2009 (terminal losses) has effect subject as follows.

(2) Where—

(a) a company makes an election under subsection (3) of that section (election to treat terminal loss as loss brought forward of different trade) in relation to all or part of a terminal loss, and

(b) the terminal loss is a Northern Ireland loss,

that subsection has effect as if the reference in it to a loss brought forward were to a Northern Ireland loss brought forward.

(3) Where—

(a) a company makes a claim under subsection (6) of that section (claim to treat terminal loss as loss brought forward by different company) in relation to part or all of a terminal loss, and

(b) the terminal loss is a Northern Ireland loss,

that subsection has effect as if the reference in it to a loss brought forward were to a Northern Ireland loss brought forward."

15 (1) Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.

(2) In the entry for "Northern Ireland expenditure"—

(a) for "14" substitute "14A", and

(b) for "and 357U(2)" substitute ", 357U(2) and 357UJ(2)".

(3) Insert at the appropriate places—

"qualifying expenditure (in Chapter 14A of Part 8B)	section 357UJ(2)"
"the separate orchestral trade (in Chapter 14A of Part 8B)	section 357UJ(2)".

PART 3

COMMENCEMENT

16 Any power to make regulations conferred on the Treasury by virtue of this Schedule comes into force on the day on which this Act is passed.

17 (1) The amendments made by the following provisions of this Schedule have effect in relation to accounting periods beginning on or after 1 April 2016—

(a) Part 1, and

(b) in Part 2, paragraphs 2 to 12.

(2) Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2016 and ending on or after that date ("the straddling period").

(3) For the purposes of Part 15D of CTA 2009—

(a) so much of the straddling period as falls before 1 April 2016, and so much of that period as falls on or after that date, are separate accounting periods, and

(b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a trade for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

18 (1) The amendments made by paragraphs 13 to 15 of this Schedule have effect in relation to accounting periods beginning on or after the first day of the financial year appointed by the Treasury by regulations under section 5(3) of the Corporation Tax (Northern Ireland) Act 2015 ("the commencement day").

(2) Sub-paragraph (3) applies where a company has an accounting period beginning before the commencement day and ending on or after that day ("the straddling period").

(3) For the purposes of Chapter 14A of Part 8B of CTA 2010—

(a) so much of the straddling period as falls before the commencement day, and so much of that period as falls on or after that day, are separate accounting periods, and

(b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a trade for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

SCHEDULE 9

Section 64

PROFITS FROM THE EXPLOITATION OF PATENTS ETC: CONSEQUENTIAL

1 CTA 2010 is amended in accordance with this Schedule.

2 In section 357B (meaning of "qualifying company"), in subsection (3)(b)(ii), for "section 357A" substitute "section 357A(1)".

3 In the heading of Chapter 3 of Part 8A, after "profits" insert ": cases mentioned in section 357A(7): no income from new IP".

4 (1) Section 357C (relevant IP profits) is amended as follows.

(2) Before subsection (1) insert—

"(A1) This section applies for the purposes of determining the relevant IP profits of a trade of a company for an accounting period in a case where—

(a) the accounting period began before 1 July 2021,

(b) the company is not a new entrant (see section 357A(11)), and

(c) none of the amounts of relevant IP income brought into account as credits in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP).

But see also section 357D (alternative method of calculating relevant IP profits in such a case)."

(3) In subsection (1)—

(a) in the words before Step 1, omit "of a trade of a company for an accounting period",

(b) in Step 2, for "357CC and 357CD" substitute "357BH to 357BHC",

(c) in Step 4, after "routine return figure" insert "in relation to the trade for the accounting period",

(d) in Step 5, for "elected" substitute "made an election under section 357CL", and

(e) in Step 6, after "marketing assets return figure" insert "in relation to the trade for the accounting period".

5 In section 357CA (total gross income of a trade), in subsection (2), for "section 357CB" substitute "section 357BG".

6 Omit sections 357CB to 357CF.

7 (1) Section 357CG (adjustments in calculating profits of trade) is amended as follows.

(2) In subsection (1) after "determining" insert "under section 357C".

(3) In subsection (4), in the words after paragraph (b), for "section 357CB" substitute "section 357BG".

(4) In subsection (6), in paragraph (a)(ii) of the definition of "relevant accounting period", for "section 357A" substitute "section 357A(1)".

8 In section 357CI (routine return figure), in Step 1 in subsection (1), for "sections 357CJ and 357CK" substitute "sections 357BJA and 357BJB".

9 Omit sections 357CJ and 357CK.

10 (1) Section 357CL (companies eligible to elect for small claims treatment) is amended as follows.

(2) In subsection (1) for "elect" substitute "make an election under this section".

(3) In subsection (6) for "section 357A" substitute "section 357A(1)".

11 In section 357CM (small claims amount), in subsection (1), for "elects" substitute "makes an election under section 357CL".

12 (1) Section 357D (alternative method of calculating relevant IP profits: "streaming") is amended as follows.

(2) In subsection (1) at the end insert "in a case where—

(a) the accounting period began before 1 July 2021,

(b) the company is not a new entrant (see section 357A(11)), and

(c) none of the amounts of relevant IP income brought into account as credits in calculating the profits of the trade for the accounting period is properly attributable to a new qualifying IP right (see section 357BP)."

(3) For subsection (4) substitute—

"(4) A company must apply section 357DA (instead of section 357C) for the purposes of determining the relevant IP profits of a trade of the company for an accounting period in a case mentioned in subsection (1) if any of the mandatory streaming conditions in section 357DC is met in relation to the trade for the period."

13 (1) Section 357DA (relevant IP profits) is amended as follows.

(2) In subsection (1)—

(a) in Step 1—

(i) for "section 357CB" substitute "section 357BG", and

(ii) for "sections 357CC and 357CD" substitute "sections 357BH to 357BHC",

(b) in Step 4, after "routine return figure" insert "in relation to the trade for the accounting period",

(c) in Step 5, for "elected" substitute "made an election under section 357CL", and

(d) in Step 6, after "marketing assets return figure" insert "in relation to the trade for the accounting period".

(3) In subsection (4), in the words after paragraph (b), for "sections 357CJ and 357CK" substitute "sections 357BJA and 357BJB".

14 (1) Section 357DC (the mandatory streaming conditions) is amended as follows.

(2) In subsection (8)(a) for "section 357CC" substitute "section 357BH".

(3) In subsection (9)(a) for "section 357CC(6)" substitute "section 357BH(6)".

15 In section 357EB (allocation of set-off amount within a group) in subsection (3)(a) for "section 357A" substitute "section 357A(1)".

16 In section 357ED (company ceasing to carry on trade etc) in subsection (2)(c) for "section 357A" substitute "section 357A(1)".

17 In section 357FA (incorporation of qualifying items), in subsection (2), for "357CC(2)" substitute "357BH(2)".

18 In section 357FB (tax advantage schemes) in subsection (4)(b) for "section 357A" substitute "section 357A(1)".

19 (1) Section 357G (making an election under section 357A) is amended as follows.

(2) In the heading, for "section 357A" substitute "section 357A(1) or (11)(b)".

(3) In subsection (1) for "section 357A" substitute "section 357A(1) or (11)(b)".

20 (1) Section 357GA (revocation of election made under section 357A) is amended as follows.

(2) In the heading, for "section 357A" substitute "section 357A(1)".

(3) In subsection (1) for "section 357A" substitute "section 357A(1)".

(4) In subsection (5) for "section 357A" substitute "section 357A(1)".

21 (1) Section 357GB (application of Part 8A in relation to partnerships) is amended as follows.

(2) In subsection (11)—

(a) in the words before paragraph (a), after "Sections" insert "357BK, 357BKA", and

(b) in paragraph (a) after "section" insert "357BK or".

(3) In subsection (12) for "section 357CB(1)(c)" substitute "section 357BG(1)(c)".

22 In section 357GC (application of Part 8A in relation to cost-sharing arrangements), in subsection (3), for "section 357CB(1)(c)" substitute "section 357BG(1)(c)".

23 (1) Section 357GE (other interpretation) is amended as follows.

(2) In subsection (1)—

(a) at the appropriate place insert—

""payment" includes payment in money's worth.", and

(b) omit the definition of "qualifying residual profit".

(3) After subsection (1) insert—

"(1A) In Chapters 3 and 4 of this Part "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."

24 In Schedule 4 (index of defined expressions)—

(a) for the entry for "finance income (in Part 8A)" substitute—

"finance income (in Part 8A)	section 357BG",

(b) after the entry for "new consideration (in Part 23)" insert—

"new entrant (in Part 8A)	section 357A(11)",

(c) in the entry for "qualifying residual profit of a trade (in Part 8A)", in the left hand column, after "in" insert "Chapters 3 and 4 of", and

(d) for the entry for "relevant IP income (in Part 8A)" substitute—

"relevant IP income (in Part 8A)	section 357BH".

SCHEDULE 10

Section 66

HYBRID AND OTHER MISMATCHES

PART 1

MAIN PROVISIONS

1 In TIOPA 2010, after Part 6 insert—

"PART 6A

HYBRID AND OTHER MISMATCHES

CHAPTER 1

INTRODUCTION

259A Overview of Part

(1) This Part has effect for the purposes of counteracting certain cases that it is reasonable to suppose would otherwise give rise to—

(a) a deduction/non-inclusion mismatch, or

(b) a double deduction mismatch.

(2) A deduction/non-inclusion mismatch arises where an amount is deductible from a person's income—

(a) without a corresponding amount of ordinary income arising to another person, or

(b) where an amount of ordinary income does arise to a person but is under taxed.

(3) A double deduction mismatch arises where—

(a) an amount is deductible from more than one person's income, or

(b) an amount is deductible from a person's income for the purposes of more than one tax.

(4) The cases with which this Part is concerned involve—

(a) payments or quasi-payments under or in connection with financial instruments or repos, stock lending arrangements or other transfers of financial instruments,

(b) hybrid entities,

(c) companies with permanent establishments, or

(d) dual resident companies.

(5) This Part counteracts mismatches that would otherwise arise by making certain adjustments to a person's treatment for corporation tax purposes.

(6) Chapter 2 contains some key definitions for the purposes of this Part, see in particular—

(a) section 259B which provides that "tax" means income tax, corporation tax on income, the diverted profits tax, the CFC charge, foreign tax or a foreign CFC charge,

(b) section 259BB which defines "payment", "quasi-payment", "payment period", "relevant deduction", "payer", "payee", and "payee jurisdiction",

(c) section 259BC which defines "ordinary income" and "taxable profits", in relation to taxes other than the CFC charge and foreign CFC charges,

(d) section 259BD which contains corresponding provision for the CFC charge and foreign CFC charges,

(e) section 259BE which defines "hybrid entity" and other related terms, and

(f) section 259BF which defines "permanent establishment".

(7) Chapter 3 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments under, or in connection with, financial instruments.

(8) Chapter 4 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments and involving certain repos, stock lending arrangements or other arrangements for, or relating to, transfers of financial instruments.

(9) Chapter 5 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which the payer is a hybrid entity.

(10) Chapter 6 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising in relation to internal transfers of money or money's worth made, or treated as made, by a multinational company's

permanent establishment in the United Kingdom to the territory in which the company is resident for tax purposes.

(11) Chapter 7 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a hybrid entity.

(12) Chapter 8 contains provision for the counteraction of certain deduction/non-inclusion mismatches arising from payments or quasi-payments in relation to which a payee is a multinational company.

(13) Chapter 9 contains provision for the counteraction of certain double deduction mismatches arising from a company being a hybrid entity.

(14) Chapter 10 contains provision for the counteraction of certain double deduction mismatches involving dual resident companies or relevant multinational companies.

(15) Chapter 11 contains provision about imported mismatches.

(16) Chapter 12 contains provision—

(a) for adjustments to be made where a reasonable supposition made for the purposes of this Part turns out to be mistaken or otherwise ceases to be reasonable, and

(b) for deductions from taxable total profits to be made where a relevant deduction has been denied under certain provisions of this Part and amounts of ordinary income arise later than is permitted.

(17) Chapter 13 contains anti-avoidance provision.

(18) Chapter 14 contains definitions and other provision about the interpretation of this Part.

(19) Each of Chapters 3 to 10 contains provision specifying that some or all of this Part (and any corresponding provision under the law of a territory outside the United Kingdom) is to be disregarded when determining whether a mismatch arises for the purposes of that Chapter and, if so, in what amount, see—

(a) section 259CA(4) and (5),

(b) section 259DA(5),

(c) section 259EA(5) and (6),

(d) section 259FA(4), (5) and (6),

(e) section 259GA(5) and (6),

(f) section 259HA(6) and (7),

(g) section 259IA(2) and (3), and

(h) section 259JA(5).

(20) The effect of the provisions mentioned in subsection (19) is that Chapters 3 to 10 (or any corresponding provision under the law of a territory outside the United Kingdom) have effect in the following sequence—

(a) Chapter 4,

(b) Chapter 3,

(c) Chapter 5,

(d) Chapter 6,

(e) Chapter 7,

(f) Chapter 8,
(g) Chapter 9, and
(h) Chapter 10.

CHAPTER 2

KEY DEFINITIONS

Meaning of "tax"

259B "Tax" means certain taxes on income and includes foreign tax etc

(1) In this Part "tax" means—
(a) income tax,
(b) the charge to corporation tax on income,
(c) diverted profits tax,
(d) the CFC charge,
(e) foreign tax, or
(f) a foreign CFC charge.

(2) In subsection (1) "foreign tax" means a tax chargeable under the law of a territory outside the United Kingdom so far as it—
(a) is charged on income and corresponds to United Kingdom income tax, or
(b) is charged on income and corresponds to the United Kingdom charge to corporation tax on income.

(3) A tax is not outside the scope of subsection (2) by reason only that it—
(a) is chargeable under the law of a province, state or other part of a country, or
(b) is levied by or on behalf of a municipality or other local body.

(4) In this Part—

"CFC" and "the CFC charge" have the same meaning as in Part 9A (see section 371VA);

"foreign CFC charge" means a charge (by whatever name known) under the law of a territory outside the United Kingdom which is similar to the CFC charge (and reference to a "foreign CFC" is to be read accordingly).

Equivalent provision to this Part under foreign law

259BA References to equivalent provision to this Part under the law of a territory outside the United Kingdom

(1) A reference in this Part to provision under the law of a territory outside the United Kingdom that is equivalent to—
(a) this Part, or
(b) a provision of this Part,

is to be read in accordance with subsection (2).

(2) The reference is to provision under the law of a territory outside the United Kingdom that it is reasonable to suppose—

(a) is based on the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development ("OECD") on 5 October 2015 or any replacement or supplementary publication, and

(b) has effect for the same, or similar, purposes to this Part or (as the case may be) the provision of this Part.

(3) In paragraph (a) of subsection (2) "replacement or supplementary publication" means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that paragraph (or any replacement of, or supplement to, it).

Payments and quasi-payments etc

259BB Meaning of "payment", "quasi-payment", "payer", "payee" etc

(1) In this Part "payment" means any transfer—

(a) of money or money's worth directly or indirectly from one person ("the payer") to one or more other persons, and

(b) in relation to which (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) an amount (a "relevant deduction") may be deducted from the payer's income for a taxable period (the "payment period") for the purposes of calculating the payer's taxable profits.

(2) For the purposes of this Part, there is a "quasi-payment", in relation to a taxable period (the "payment period") of a person ("the payer"), if (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom)—

(a) an amount (a "relevant deduction") may be deducted from the payer's income for that period for the purposes of calculating the payer's taxable profits, and

(b) making the assumptions in subsection (4), it would be reasonable to expect an amount of ordinary income to arise to one or more other persons as a result of the circumstances giving rise to the relevant deduction.

(3) But a quasi-payment does not arise under subsection (2) if—

(a) the relevant deduction is an amount that is deemed, under the law of the payer jurisdiction, to arise for tax purposes, and

(b) the circumstances giving rise to the relevant deduction do not include any economic rights, in substance, existing between the payer and a person mentioned in subsection (2)(b).

(4) The assumptions are that (so far as would not otherwise be the case)—

(a) any question as to whether an entity is a distinct and separate person from the payer is determined in accordance with the law of the payer jurisdiction,

(b) any persons to whom amounts arise, or potentially arise, as a result of the circumstances giving rise to the relevant deduction adopt the same approach to accounting for those circumstances as the payer, and

(c) any persons to whom amounts arise, or potentially arise, as a result of those circumstances—

(i) are, under the law of the payer jurisdiction, resident in that jurisdiction for tax purposes, and

(ii) carry on a business, in connection with which those circumstances arise, in the payer jurisdiction.

(5) In this Part—

(a) references to a quasi-payment include all the circumstances giving rise to the relevant deduction mentioned in subsection (2)(a), and

(b) references to a quasi-payment being made are to those circumstances arising.

(6) In this Part "payee" means—

(a) in the case of a payment, any person—

(i) to whom the transfer is made as mentioned in subsection (1)(a), or

(ii) to whom an amount of ordinary income arises as a result of the payment, and

(b) in the case of a quasi-payment, any person—

(i) to whom it would be reasonable to expect an amount of ordinary income to arise as mentioned in subsection (2)(b), or

(ii) to whom an amount of ordinary income arises as a result of the quasi-payment.

(7) For the purposes of this Part, in the case of a quasi-payment, the payer is "also a payee" if—

(a) an entity is not a distinct and separate person from the payer for the purposes of a tax charged under the law of the United Kingdom,

(b) that entity is a distinct and separate person from the payer for the purposes of a tax charged under the law of the payer jurisdiction, and

(c) it would be reasonable to expect an amount of ordinary income to arise to that entity as mentioned in subsection (2)(b).

(8) In this section "payer jurisdiction" means the jurisdiction under the law of which the relevant deduction may (disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom) be deducted.

(9) In this Part "payee jurisdiction", in relation to a payee, means a territory in which—

(a) the payee is resident for tax purposes under the law of that territory, or

(b) the payee has a permanent establishment.

Ordinary income

259BC The basic rules

(1) This section has effect for the purposes of this Part.

(2) "Ordinary income" means income that is brought into account, before any deductions, for the purposes of calculating the income or profits on which a relevant tax is charged ("taxable profits").

(3) But an amount of income is not brought into account for those purposes to the extent that it is excluded, reduced or offset by any exemption, exclusion, relief or credit—

(a) that applies specifically to all or part of the amount of income (as opposed to ordinary income generally), or

(b) that arises as a result of, or otherwise in connection with, a payment or quasi-payment that gives rise to the amount of income.

(4) If all the relevant tax charged on taxable profits is, or falls to be, refunded, none of the income brought into account in calculating those taxable profits is "ordinary income".

(5) If a proportion of the relevant tax charged on taxable profits is, or falls to be, refunded, the amount of any income brought into account in calculating those taxable profits that is "ordinary income" is proportionally reduced.

(6) For the purposes of subsections (4) and (5) an amount of relevant tax is refunded if and to the extent that—

(a) any repayment of relevant tax, or any payment in respect of a credit for relevant tax, is made to any person, and

(b) that repayment or payment is directly or indirectly in respect of the whole or part of the amount of relevant tax,

but an amount refunded is to be ignored if and to the extent that it results from qualifying loss relief.

(7) In subsection (6) "qualifying loss relief" means—

(a) any means by which a loss might be used for corporation tax or income tax purposes to reduce the amount in respect of which a person is liable to tax, or

(b) any corresponding means by which a loss corresponding to a relevant tax loss might be used for the purposes of a relevant tax other than corporation tax or income tax to reduce the amount in respect of which a person is liable to tax,

(and in paragraph (b) "relevant tax loss" means a loss that might be used as mentioned in paragraph (a)).

(8) References to an amount of ordinary income being "included in" taxable profits are to that amount being brought into account for the purposes of calculating those profits.

(9) In this section "relevant tax" means a tax other than the CFC charge or a foreign CFC charge.

(10) Section 259BD contains provision for ordinary income to arise to chargeable companies by virtue of the CFC charge or a foreign CFC charge.

259BD Chargeable companies in respect of CFCs and foreign CFCs

(1) This section has effect for the purposes of this Part.

(2) Subsections (3) to (7) apply where an amount of income arises to an entity ("C") that is a CFC, a foreign CFC or both and all or part of that amount (the "relevant income")—

(a) is not ordinary income of C under section 259BC, or

(b) arises as a result of a payment or quasi-payment under, or in connection with, a financial instrument or hybrid transfer arrangement and—

(i) is (disregarding subsection (4)) ordinary income of C under section 259BC for a taxable period, but

(ii) under taxed.

(3) The following steps determine whether, and to what extent, the relevant income is "ordinary income" of a chargeable company in relation to the CFC charge or a foreign CFC charge.

Step 1

Determine—

(a) whether any of the relevant income is brought into account in calculating C's chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and

(b) if so, the amount of the relevant income that is so brought into account for the purposes of each relevant charge.

If none of the relevant income is so brought into account, then none of it is "ordinary income" of a chargeable company and no further steps are to be taken.

See subsections (10) to (12) for further provision about how this step is to be taken.

For the purposes of this section—

"relevant chargeable profits" are chargeable profits in relation to the calculation of which, for the purposes of the CFC charge or a foreign CFC charge, any of the relevant income is brought into account;

"relevant charge" means a charge in relation to which any of the relevant income is brought into account in calculating chargeable profits.

Step 2

In relation to each relevant charge, determine the proportion of C's relevant chargeable profits, for the purposes of that charge, that is apportioned to each chargeable company.

For the purposes of this section, each chargeable company to which 25% or more of C's relevant chargeable profits for the purposes of a relevant charge are apportioned is a "relevant chargeable company".

If there are no relevant chargeable companies in relation to any relevant charges, then none of the relevant income is "ordinary income" of a chargeable company and no further steps are to be taken.

Step 3

In relation to each relevant chargeable company, determine what is the appropriate proportion of the relevant income brought into account in calculating relevant chargeable profits, for the purposes of the relevant charge concerned.

That proportion of that income is "ordinary income" of that company for the taxable period for which that charge is charged on it by reference to those profits.

For the purposes of this step, the "appropriate proportion", in relation to a relevant chargeable company, is the same as the proportion of the relevant chargeable profits that is apportioned to it for the purposes of the relevant charge.

(4) An amount of relevant income that is ordinary income of a relevant chargeable company in accordance with subsection (3) is not ordinary income of C (so far as it otherwise would be).

(5) Relevant chargeable profits apportioned to a relevant chargeable company for the purposes of a relevant charge are "taxable profits" of that company for the taxable period for which the charge is charged on it by reference to those profits.

(6) The amount of the relevant income that is ordinary income of that relevant chargeable company under subsection (3), by virtue of being brought into account in calculating those relevant chargeable profits, is "included in" those taxable profits.

(7) References to tax charged on taxable profits include a relevant charge charged by reference to relevant chargeable profits that are taxable profits under subsection (5).

(8) For the purposes of subsection (2)(b), an amount of ordinary income is "under taxed" if the highest rate at which tax is charged, for C's taxable period, on the taxable profits in which the amount is included, taking into account on a just and reasonable basis any credit for underlying tax, is less than C's full marginal rate for that period.

(9) In subsection (8)—

(a) C's "full marginal rate" means the highest rate at which the tax that is chargeable on those taxable profits could be charged on taxable profits, of C for the taxable period, which include ordinary income that arises from, or in connection with, a financial instrument, and

(b) "credit for underlying tax" means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment mentioned in subsection (2)(b).

(10) For the purposes of step 1 in subsection (3), section 259BC(3) applies for the purposes of determining the extent to which an amount of relevant income

is brought into account in calculating chargeable profits as it applies for the purposes of determining the extent to which an amount of income is brought into account for the purposes of calculating taxable profits.

(11) Subsection (12) applies for the purposes of step 1 in subsection (3), if—

(a) the amount of income arising to C mentioned in subsection (2)—

(i) is not all relevant income, and

(ii) is only partly brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge, and

(b) accordingly, it falls to be determined whether, and to what extent, the relevant income is brought into account in calculating those profits for the purposes of the charge concerned.

(12) The relevant income is to be taken to be brought into account (if at all) only to the extent that the total amount of income mentioned in subsection (2) that is brought into account exceeds the amount of income mentioned in that subsection that is not relevant income.

(13) In this section—

"chargeable company"—

(a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and

(b) in relation to a foreign CFC charge, means an entity (by whatever name known) corresponding to a chargeable company within the meaning of that Part;

"chargeable profits"—

(a) in relation to the CFC charge, has the same meaning as in that Part (see that section), and

(b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part;

"hybrid transfer arrangement" has the meaning given by section 259DB.

Hybrid entity etc

259BE Meaning of "hybrid entity", "investor" and "investor jurisdiction"

(1) For the purposes of this Part, an entity is "hybrid" if it meets conditions A and B.

(2) Condition A is that the entity is regarded as being a person for tax purposes under the law of any territory.

(3) Condition B is that—

(a) some or all of the entity's income or profits are treated (or would be if there were any) for the purposes of a tax charged under the law of any territory, as the income or profits of a person or persons other than the person mentioned in subsection (2), or

(b) under the law of a territory other than the one mentioned in subsection (2), the entity is not regarded as a distinct and separate

person to an entity or entities that are distinct and separate persons under the law of the territory mentioned in that subsection.

(4) For the purposes of this Part—

(a) where subsection (3)(a) applies, a person who is treated as having the income or profits of the hybrid entity is an "investor" in it,

(b) where subsection (3)(b) applies, an entity that—

(i) is regarded as a distinct and separate person to the hybrid entity under the law of the territory mentioned in subsection (2), but

(ii) is not regarded as a distinct and separate person to the hybrid entity under the law of another territory,

is an "investor" in the hybrid entity, and

(c) any territory under the law of which an investor is within the charge to a tax is an "investor jurisdiction" in relation to that investor.

Permanent establishments

259BF Meaning of "permanent establishment"

(1) In this Part "permanent establishment" means anything that is—

(a) a permanent establishment of a company within the meaning of the Corporation Tax Acts (see section 1119 of CTA 2010), or

(b) within any similar concept under the law of a territory outside the United Kingdom.

(2) A concept is not outside the scope of subsection (1)(b) by reason only that it is not based on Article 5 of a Model Tax Convention on Income and Capital published by the Organisation for Economic Cooperation and Development.

CHAPTER 3

HYBRID AND OTHER MISMATCHES FROM FINANCIAL INSTRUMENTS

Introduction

259C Overview of Chapter

(1) This Chapter contains provision that counteracts hybrid or otherwise impermissible deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments under, or in connection with, financial instruments.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

(3) Section 259CA contains the conditions that must be met for this Chapter to apply.

(4) Section 259CB defines "hybrid or otherwise impermissible deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259CC contains definitions of certain terms used in section 259CB.

(6) Section 259CD contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(7) Section 259CE contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.

(8) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee", and

(b) section 259N for the meaning of "financial instrument".

Application of Chapter

259CA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to D are met.

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, a financial instrument.

(3) Condition B is that—

(a) the payer is within the charge to corporation tax for the payment period, or

(b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(4) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5), there would be a hybrid or otherwise impermissible deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259CB).

(5) The provisions are—

(a) this Chapter and Chapters 5 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(6) Condition D is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),

(b) the payer and a payee are related (see section 259NC) at any time in the period—

(i) beginning with the day on which any arrangement is made by the payer or a payee in connection with the financial instrument, and

(ii) ending with the last day of the payment period, or

(c) the financial instrument, or any arrangement connected with it, is a structured arrangement.

(7) The financial instrument, or an arrangement connected with it, is a "structured arrangement" if it is reasonable to suppose that—

(a) the financial instrument, or arrangement, is designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch, or

(b) the terms of the financial instrument or arrangement share the economic benefit of the mismatch between the parties to the instrument or arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(8) The financial instrument or arrangement may be designed to secure a hybrid or otherwise impermissible deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(9) Sections 259CD (cases where the payer is within the charge to corporation tax for the payment period) and 259CE (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid or otherwise impermissible deduction/non-inclusion mismatch.

259CB Hybrid or otherwise impermissible deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid or otherwise impermissible deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

(2) Case 1 applies where—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of the terms, or any other feature, of the financial instrument.

(3) So far as the excess arises by reason of a relevant debt relief provision, it is to be taken not to arise by reason of the terms, or any other feature, of the financial instrument (whether or not it would have arisen by reason of the terms, or any other feature, of the financial instrument regardless of the relevant debt relief provision).

(4) Subject to that and subsection (9), for the purposes of subsection (2)(b)—

(a) it does not matter whether the excess or part arises for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have arisen for that other reason regardless of the terms, or any other feature, of the financial instrument), and

(b) an excess or part of an excess is to be taken to arise by reason of the terms, or any other feature, of the financial instrument (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsections (5) and (6)), it could arise by reason of the terms, or any other feature, of the financial instrument.

(5) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;

(c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—

(i) resident for the purposes of a tax charged under the law of that territory, or

(ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,

assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

(6) Where the relevant assumption in subsection (5)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (4)(b)—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);

(b) section 690 of that Act (derivative contracts for unallowable purposes);

(c) Part 4 (transfer pricing);

(d) this Part;

(e) Part 7 (tax treatment of financing costs and income).

(7) Case 2 applies where there are one or more amounts of ordinary income ("under-taxed amounts") that—

(a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and

(b) are under taxed by reason of the terms, or any other feature, of the financial instrument.

(8) Subject to subsection (9), for the purposes of subsection (7)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well as the terms, or any other feature, of the financial instrument (even if it would have been under taxed for that other reason regardless of the terms, or any other feature, of the financial instrument).

(9) For the purposes of this section disregard—

(a) any excess or part of an excess mentioned in subsection (2), and

(b) any under-taxed amount,

that arises as a result of a payee being a relevant investment fund (see section 259NA).

(10) Where case 1 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).

(11) Where case 2 applies, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$\frac{(UTA \times (FMR - R))}{FMR}$$

where—

"UTA" is the under-taxed amount;

"FMR" is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

"R" is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

(12) Where cases 1 and 2 both apply, the amount of the hybrid or otherwise impermissible deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).

(13) See section 259CC for the meaning of "permitted taxable period", "relevant debt relief provision" and "under taxed".

259CC Interpretation of section 259CB

(1) This section has effect for the purposes of section 259CB.

(2) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

(3) Each of these is a "relevant debt relief provision"—

(a) section 322 of CTA 2009 (release of debts: cases where credits not required to be brought into account),

(b) section 357 of that Act (insolvent creditors),

(c) section 358 of that Act (exclusion of credits on release of connected companies' debts: general),

(d) section 359 of that Act (exclusion of credits on release of connected companies' debts during creditor's insolvency),

(e) section 361C of that Act (the equity-for-debt exception),

(f) section 361D of that Act (corporate rescue: debt released shortly after acquisition), and

(g) section 362A of that Act (corporate rescue: debt released shortly after connection arises).

(4) An amount of ordinary income of a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.

(5) The payee's "full marginal rate" means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (4) could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

(6) A "credit for underlying tax" means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.

Counteraction

259CD Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

259CE Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259CD nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD applies, but does not fully counteract the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259CD does not fully counteract that mismatch if (and only if)—

(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid or otherwise impermissible deduction/non-inclusion mismatch mentioned in section 259CA(4), or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259CD, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—

(a) to any arrangements as to profit sharing that may exist between some or all of the payees,

(b) to whom any under-taxed amounts (within the meaning given by section 259CB(7)) arise, and

(c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) The "counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 4

HYBRID TRANSFER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259D Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments as a consequence of hybrid transfer arrangements.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

(3) Section 259DA contains the conditions that must be met for this Chapter to apply.

(4) Section 259DB defines "hybrid transfer arrangement".

(5) Section 259DC defines "hybrid transfer deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(6) Section 259DD contains definitions of certain terms used in section 259DC.

(7) Section 259DE contains provision in connection with excluding mismatches from counteraction by the Chapter where they arise as a consequence of the tax treatment of a financial trader.

(8) Section 259DF contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(9) Section 259DG contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom fully counteracts the mismatch.

(10) See also section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee".

Application of Chapter

259DA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that there is a hybrid transfer arrangement in relation to an underlying instrument (see section 259DB).

(3) Condition B is that a payment or quasi-payment is made under or in connection with—

(a) the hybrid transfer arrangement, or

(b) the underlying instrument.

(4) Condition C is that—

(a) the payer is within the charge to corporation tax for the payment period, or

(b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(5) Condition D is that it is reasonable to suppose that, disregarding this Part and any equivalent provision under the law of a territory outside the United Kingdom, there would be a hybrid transfer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259DC).

(6) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (3) and the payer is also a payee (see section 259BB(7)),

(b) the payer and a payee are related (see section 259NC) at any time in the period—

(i) beginning with the day on which the hybrid transfer arrangement is made, and

(ii) ending with the last day of the payment period, or

(c) the hybrid transfer arrangement is a structured arrangement.

(7) The hybrid transfer arrangement is a "structured arrangement" if it is reasonable to suppose that—

(a) the hybrid transfer arrangement is designed to secure a hybrid transfer deduction/non-inclusion mismatch, or

(b) the terms of the hybrid transfer arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(8) The hybrid transfer arrangement may be designed to secure a hybrid transfer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(9) Sections 259DF (cases where the payer is within the charge to corporation tax for the payment period) and 259DG (cases where a payee is within the charge to corporation tax) make provision for the counteraction of the hybrid transfer deduction/non-inclusion mismatch.

259DB Meaning of "hybrid transfer arrangement", "underlying instrument" etc

(1) This section has effect for the purposes of this Chapter.

(2) A "hybrid transfer arrangement" means—

(a) a repo,

(b) a stock lending arrangement, or

(c) any other arrangement,

that is an arrangement within subsection (3).

(3) An arrangement is within this subsection if it provides for, or relates to, the transfer of a financial instrument ("the underlying instrument") and—

(a) the dual treatment condition is met in relation to the arrangement, or

(b) a substitute payment could be made under the arrangement.

(4) The dual treatment condition is met in relation to the arrangement if—

(a) in relation to a person, for the purposes of a tax—

(i) the arrangement is regarded as equivalent, in substance, to a transaction for the lending of money at interest, and

(ii) a payment or quasi-payment made under, or in connection with, the arrangement or the underlying instrument could be treated so as to reflect the fact the arrangement is so regarded, and

(b) in relation to another person, for the purposes of a tax (whether or not the same one), such a payment or quasi-payment would not be treated so as to reflect the arrangement being regarded as equivalent, in substance, to a transaction for the lending of money at interest.

(5) A payment or quasi-payment is a "substitute payment" if—

(a) it consists of or involves—

(i) an amount being paid, or

(ii) a benefit being given (including the release of the whole or part of any liability to pay an amount),

(b) that amount, or the value of that benefit, is representative of a return of any kind ("the underlying return") that arises on, or in connection with, the underlying instrument, and

(c) the amount is paid, or the benefit is given, to someone other than the person to whom the underlying return arises.

(6) For the purposes of subsection (3) where there is an arrangement, to which a person ("P") and another person ("Q") are party, under which—

(a) a financial instrument ("the first instrument") ceases to be owned by P (whether or not because it ceases to exist), and

(b) Q comes to own a financial instrument ("the second instrument") under which Q has the same, or substantially the same, rights and liabilities as P had under the first instrument,

the second instrument is to be treated as being transferred from P to Q.

259DC Hybrid transfer deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid transfer deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if either or both of case 1 or 2 applies.

(2) Case 1 applies where—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises for a reason mentioned in subsection (8).

(3) Subject to subsection (9), for the purposes of subsection (2)(b)—

(a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of any reasons mentioned in subsection (8)), and

(b) an excess or part of an excess is to be taken to arise for a reason mentioned in subsection (8) (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsections (4) and (5))), it could arise for a reason mentioned in subsection (8).

(4) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business;

(c) where a payee is not within the charge to a tax under the law of any territory because there is no territory where the payee is—

(i) resident for the purposes of a tax charged under the law of that territory, or

(ii) within the charge to a tax under the law of that territory as a result of having a permanent establishment in that territory,

assume that the payee is a company that is resident for tax purposes, and carries on a business in connection with which the payment or quasi-payment is made, in the United Kingdom.

(5) Where the relevant assumption in subsection (4)(c) applies in relation to a payee the following provisions are to be disregarded in relation to that payee for the purposes of subsection (3)(b)—

(a) section 441 of CTA 2009 (loan relationships for unallowable purposes);

(b) Part 4 (transfer pricing);

(c) this Part;

(d) Part 7 (tax treatment of financing costs and income).

(6) Case 2 applies where there are one or more amounts of ordinary income ("under-taxed amounts") that—

(a) arise, by reason of the payment or quasi-payment, to a payee for a permitted taxable period, and

(b) are under taxed for a reason mentioned in subsection (8).

(7) Subject to subsection (9), for the purposes of subsection (6)(b) it does not matter whether an amount of ordinary income is under taxed for another reason as well (even if it would have been under taxed for that other reason regardless of any reason mentioned in subsection (8)).

(8) The reasons are—

(a) the dual treatment condition being met in relation to a hybrid transfer arrangement under, or in connection with, which the payment or quasi-payment is made (see section 259DB(4));

(b) the payment or quasi-payment being a substitute payment.

(9) For the purposes of this section, disregard—

(a) any excess or part of an excess mentioned in subsection (2), and

(b) any under-taxed amount,

in relation to which the financial trader exclusion applies (see section 259DE) or that arises as a result of a payee being a relevant investment fund (see section 259NA).

(10) Where case 1 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (2)(b).

(11) Where case 2 applies, the amount of the hybrid transfer deduction/non-inclusion mismatch is equal to the sum of the amounts given in respect of each under-taxed amount by—

$$\frac{(UTA \times (FMR - R))}{FMR}$$

where—

"UTA" is the under-taxed amount;

"FMR" is the payee's full marginal rate (expressed as a percentage) for the permitted taxable period for which the under-taxed amount arises;

"R" is the highest rate (expressed as a percentage) at which tax is charged on the taxable profits in which the under-taxed amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax.

(12) Where cases 1 and 2 both apply, the amount of the hybrid transfer deduction/non-inclusion mismatch is the sum of the amounts given by subsections (10) and (11).

(13) See section 259DD for the meaning of "permitted taxable period" and "under taxed".

259DD Interpretation of section 259DC

(1) This section has effect for the purposes of section 259DC.

(2) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

(3) An amount of ordinary income of a payee, for a permitted taxable period, is "under taxed" if the highest rate at which tax is charged on the taxable profits of the payee in which the amount is included, taking into account on a just and reasonable basis the effect of any credit for underlying tax, is less than the payee's full marginal rate for that period.

(4) The payee's "full marginal rate" means the highest rate at which the tax that is chargeable on the taxable profits mentioned in subsection (3) could be charged on taxable profits, of the payee for the permitted taxable period, which include ordinary income that arises from, or in connection with, a financial instrument.

(5) A "credit for underlying tax" means a credit or relief given to reflect tax charged on profits that are wholly or partly used to fund (directly or indirectly) the payment or quasi-payment.

259DE The financial trader exclusion

(1) This section has effect for the purposes of section 259DC(9).

(2) The financial trader exclusion applies, in relation to an excess or part of an excess mentioned in section 259DC(2) or an under-taxed amount, where conditions A to C are met.

(3) Condition A is that the excess or part arises, or the under-taxed amount is under taxed, because the payment or quasi-payment—

(a) is a substitute payment,

(b) is treated, for the purposes of tax charged on a person, so as to reflect the fact that it is representative of the underlying return, and

(c) is brought into account by another person ("the financial trader") in calculating the profits of a trade under—

(i) Part 3 of CTA 2009 (trading income), or

(ii) an equivalent provision of the law of a territory outside the United Kingdom.

(4) Condition B is that the financial trader also brings any associated payments into account as mentioned in subsection (3)(c).

(5) In subsection (4) "associated payment" means a payment or quasi-payment—

(a) in relation to which the financial trader is the payer or a payee, and

(b) that is made under, or in connection with, the underlying instrument or an arrangement that relates to the underlying instrument.

(6) Condition C is that—

(a) if the underlying return were to arise, and be paid directly, to the payee or payees in relation to the substitute payment, neither Chapter 3 (hybrid and other mismatches from financial instruments) nor any equivalent provision under the law of a territory outside the United Kingdom would apply, and

(b) the hybrid transfer arrangement under, or in connection with, which the substitute payment is made is not a structured arrangement (within the meaning given by section 259DA(7) and (8)).

Counteraction

259DF Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

259DG Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259DF nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF applies, but does not fully counteract the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259DF does not fully counteract that mismatch if (and only if)—

(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid transfer deduction/non-inclusion mismatch mentioned in section 259DA(5), or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision under the law of a territory outside the United Kingdom that is equivalent to section 259DF, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, the relevant amount is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to the payee's share of the relevant amount is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—

(a) to any arrangements as to profit sharing that may exist between some or all of the payees,

(b) to whom any under-taxed amounts (within the meaning given by section 259DC(6)) arise, and

(c) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) The "counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period.

CHAPTER 5

HYBRID PAYER DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259E Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because the payer is a hybrid entity.

(2) The Chapter counteracts mismatches where the payer or a payee is within the charge to corporation tax and does so by altering the corporation tax treatment of the payer or a payee.

(3) Section 259EA contains the conditions that must be met for this Chapter to apply.

(4) Section 259EB defines "hybrid payer deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259EC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(6) Section 259ED contains provision that counteracts the mismatch where a payee is within the charge to corporation tax and the mismatch is not fully

counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC.

(7) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee", and

(b) section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259EA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that the payer is a hybrid entity ("the hybrid payer").

(4) Condition C is that—

(a) the hybrid payer is within the charge to corporation tax for the payment period, or

(b) a payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period.

(5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payer deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259EB).

(6) The provisions are—

(a) this Chapter and Chapters 6 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(7) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the hybrid payer is also a payee (see section 259BB(7)),

(b) the hybrid payer and a payee are in the same control group (see section 259NB) at any time in the period—

(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and

(ii) ending with the last day of the payment period, or

(c) that arrangement is a structured arrangement.

(8) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a hybrid payer deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(9) The arrangement may be designed to secure a hybrid payer deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(10) Sections 259EC (cases where the hybrid payer is within the charge to corporation tax for the payment period) and 259ED (cases where a payee is within the charge to corporation tax) contain provision for the counteraction of the hybrid payer deduction/non-inclusion mismatch.

259EB Hybrid payer deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid payer deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of the hybrid payer being a hybrid entity.

(2) The amount of the hybrid payer deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

(3) For the purposes of subsection (1)(b)—

(a) it does not matter whether the excess or part arises for another reason as well (even if it would have arisen for that other reason regardless of whether the hybrid payer is a hybrid entity), and

(b) an excess or part of an excess is to be taken to arise by reason of the hybrid payer being a hybrid entity (so far as would not otherwise be the case) if, on making such of the relevant assumptions in relation to each payee as apply in relation to that payee (see subsection (4)), it could arise by reason of the hybrid payer being a hybrid entity.

(4) These are the "relevant assumptions"—

(a) where a payee is not within the charge to a tax under the law of a payee jurisdiction because the payee benefits from an exclusion, immunity, exemption or relief (however described) under that law, assume that the exclusion, immunity, exemption or relief does not apply;

(b) where an amount of income is not included in the ordinary income of a payee for the purposes of a tax charged under the law of a payee jurisdiction because the payment or quasi-payment is not made in connection with a business carried on by the payee in that jurisdiction, assume that the payment or quasi-payment is made in connection with such a business.

(5) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Counteraction

259EC Counteraction where the hybrid payer is within the charge to corporation tax for the payment period

(1) This section applies where the hybrid payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction so far as it does not exceed the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5) ("the restricted deduction") may not be deducted from the hybrid payer's income for the payment period unless it is deducted from dual inclusion income for that period.

(3) So much of the restricted deduction (if any) as, by virtue of subsection (2), cannot be deducted from the payer's income for the payment period—

(a) is carried forward to subsequent accounting periods of the payer, and

(b) for corporation tax purposes, may be deducted from dual inclusion income for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) In this section "dual inclusion income" of the payer for an accounting period means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—

(a) ordinary income of the payer for that period for corporation tax purposes, and

(b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.

(5) A taxable period of an investor is "permitted" for the purposes of paragraph (b) of subsection (4) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

259ED Counteraction where a payee is within the charge to corporation tax

(1) This section applies in relation to a payee where—

(a) the payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) no provision under the law of a territory outside the United Kingdom that is equivalent to section 259EC applies, or

(ii) such a provision does apply, but does not fully counteract the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC does not fully counteract that mismatch if (and only if)—

(a) the amount of the relevant deduction that the provision prevents from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, is less than the amount of the mismatch, and

(b) the hybrid payer is still able to deduct some of the relevant deduction from income, for the payment period, that is not dual inclusion income.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payer deduction/non-inclusion mismatch mentioned in section 259EA(5), or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount of the relevant deduction that it is reasonable to suppose is prevented, by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259EC, from being deducted from income of the hybrid payer, for the payment period, other than dual inclusion income, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the payee is the only payee, an amount equal to—

(a) the relevant amount, less

(b) any dual inclusion income,

is to be treated as income arising to the payee for the counteraction period.

(5) If there is more than one payee, an amount equal to—

(a) the payee's share of the relevant amount, less

(b) the relevant proportion of any dual inclusion income,

is to be treated as income arising to the payee for the counteraction period.

(6) The payee's share of the relevant amount is to be determined by apportioning that amount between all the payees on a just and reasonable basis, having regard (in particular)—

(a) to any arrangements as to profit sharing that may exist between some or all of the payees, and

(b) to whom any amounts of ordinary income that it would be reasonable to expect to arise as a result of the payment or quasi-payment, but that do not arise, would have arisen.

(7) The "relevant" proportion of any dual inclusion income for the payment period is the same as the proportion of the relevant amount apportioned to the payee in accordance with subsection (6).

(8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(9) In this section—

"counteraction period" means—

(a) if an accounting period of the payee coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the payee that is wholly or partly within the payment period;

"dual inclusion income" means an amount that arises in connection with the arrangement mentioned in section 259EA(2) and is both—

(a) ordinary income of the payer for the payment period, and

(b) ordinary income of an investor in the payer for a permitted taxable period for the purposes of a tax charged under the law of an investor jurisdiction.

(10) A taxable period of an investor is "permitted" for the purposes of subsection (9) if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

CHAPTER 6

DEDUCTION/NON-INCLUSION MISMATCHES RELATING TO TRANSFERS BY PERMANENT ESTABLISHMENTS

Introduction

259F Overview of Chapter

(1) This Chapter contains provision that counteracts certain excessive deductions that arise in relation to transfers of money or money's worth made, or taken to be made, by a multinational company's permanent establishment in the United Kingdom to the company in the parent jurisdiction.

(2) The Chapter counteracts such deductions by altering the corporation tax treatment of the company.

(3) Section 259FA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (3) of that section defines "multinational company" and "the parent jurisdiction".

(5) Subsection (8) of that section defines "the excessive PE deduction".

(6) Section 259FB contains provision for the counteraction of the excessive PE deduction.

(7) See also section 259BF for the meaning of "permanent establishment".

Application of Chapter

259FA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to C are met.

(2) Condition A is that a company is a multinational company.

(3) For the purposes of this Chapter, a company is a multinational company if—

(a) it is resident in a territory outside the United Kingdom ("the parent jurisdiction") for the purposes of a tax charged under the law of that territory, and

(b) it is within the charge to corporation tax because it carries on a business in the United Kingdom through a permanent establishment in the United Kingdom.

(4) Condition B is that, disregarding the provisions mentioned in subsection (5), there is an amount ("the PE deduction") that—

(a) may (in substance) be deducted from the company's income for the purposes of calculating the company's taxable profits for an accounting period ("the relevant PE period") for corporation tax purposes, and

(b) is in respect of a transfer of money or money's worth from the company in the United Kingdom to the company in the parent jurisdiction that—

(i) is actually made, or

(ii) is (in substance) treated as being made for corporation tax purposes.

(5) The provisions are—

(a) this Chapter and Chapters 7 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(6) Condition C is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (5)—

(a) the circumstances giving rise to the PE deduction will not result in—

(i) an increase in the taxable profits of the company for any permitted taxable period, or

(ii) a reduction of a loss made by the company for any permitted taxable period,

for the purposes of a tax charged under the law of the parent jurisdiction, or

(b) those circumstances will result in such an increase or reduction for one or more permitted taxable periods, but the PE deduction exceeds the aggregate effect on taxable profits.

(7) "The aggregate effect on taxable profits" is the sum of—

(a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.

(8) In this Chapter "the excessive PE deduction" means—

(a) where paragraph (a) of subsection (6) applies, the PE deduction, or

(b) where paragraph (b) of subsection (6) applies, the PE deduction so far as it is reasonable to suppose that it exceeds the aggregate effect on taxable profits.

(9) For the purposes of subsections (6) and (7) a taxable period of the company, for the purposes of a tax charged under the law of the parent jurisdiction, is "permitted" if—

(a) the period begins before the end of 12 months after the end of the relevant PE period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period for the purposes of subsections (6) and (7), and

(ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

(10) Section 259FB contains provision for counteracting the excessive PE deduction.

Counteraction

259FB Counteraction of the excessive PE deduction

(1) For corporation tax purposes, the excessive PE deduction may not be deducted from the company's income for the relevant PE period unless it is deducted from dual inclusion income for that period.

(2) So much of the excessive PE deduction (if any) as, by virtue of subsection (1), cannot be deducted from the company's income for the relevant PE period—

(a) is carried forward to subsequent accounting periods of the company, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(3) In this section "dual inclusion income" of the company for an accounting period means an amount that is both—

(a) ordinary income of the company for that period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of the parent jurisdiction.

(4) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (3) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

CHAPTER 7

HYBRID PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259G Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments because a payee is a hybrid entity.

(2) The Chapter counteracts mismatches by—

(a) altering the corporation tax treatment of the payer for the payment period,

(b) treating income chargeable to corporation tax as arising to an investor who is within the charge to corporation tax, or

(c) treating income chargeable to corporation tax as arising to a payee that is a hybrid entity and a limited liability partnership.

(3) Section 259GA contains the conditions that must be met for this Chapter to apply.

(4) Section 259GB defines "hybrid payee deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(5) Section 259GC contains provision that counteracts the mismatch where the payer is within the charge to corporation tax for the payment period.

(6) Section 259GD contains provision that counteracts the mismatch where an investor in the payee is within the charge to corporation tax and the mismatch is not fully counteracted by section 259GC or an equivalent provision under the law of a territory outside the United Kingdom.

(7) Section 259GE contains provision that counteracts the mismatch where a payee is a hybrid entity and limited liability partnership and the mismatch is not otherwise fully counteracted.

(8) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee";

(b) section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259GA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that a payee is a hybrid entity (a "hybrid payee").

(4) Condition C is that—

(a) the payer is within the charge to corporation tax for the payment period,

(b) an investor in a hybrid payee is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, or

(c) a hybrid payee is a limited liability partnership.

(5) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (6), there would be a hybrid payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259GB).

(6) The provisions are—

(a) this Chapter and Chapters 8 to 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(7) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a hybrid payee (see section 259BB(7)),

(b) the payer and a hybrid payee or an investor in a hybrid payee are in the same control group (see section 259NB) at any time in the period—

(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and

(ii) ending with the last day of the payment period, or

(c) that arrangement is a structured arrangement.

(8) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a hybrid payee deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(9) The arrangement may be designed to secure a hybrid payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(10) The following provisions contain provision for the counteraction of the hybrid payee deduction/non-inclusion mismatch—

(a) section 259GC (cases where the payer is within the charge to corporation tax for the payment period),

(b) section 259GD (cases where an investor in a hybrid payee is within the charge to corporation tax), and

(c) section 259GE (cases where a hybrid payee is a limited liability partnership).

259GB Hybrid payee deduction/non-inclusion mismatches and their extent

(1) There is a "hybrid payee deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of one or more payees being hybrid entities.

(2) The extent of the hybrid payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

(3) A relevant amount of the excess is to be taken (so far as would not otherwise be the case) to arise as mentioned in subsection (1)(b) where—

(a) a payee is a hybrid entity,

(b) there is no territory—

(i) where that payee is resident for the purposes of a tax charged under the law of that territory, or

(ii) under the law of which ordinary income arises to that payee, by reason of the payment or quasi-payment, for the purposes of a tax that is charged on that payee by virtue of that payee having a permanent establishment in that territory, and

(c) no income arising to that payee, by reason of the payment or quasi-payment, is brought into account in calculating chargeable profits for the purposes of the CFC charge or a foreign CFC charge.

(4) For the purposes of subsection (3), the "relevant amount" of the excess is the lesser of—

(a) the amount of the excess, and

(b) an amount equal to the amount of ordinary income that it is reasonable to suppose would, by reason of the payment or quasi-payment, arise to the payee for corporation tax purposes, if—

(i) the payee were a company, and

(ii) the payment or quasi-payment were made in connection with a trade carried on by the payee in the United Kingdom through a permanent establishment in the United Kingdom.

(5) In subsection (3)(c) "chargeable profits"—

(a) in relation to the CFC charge, has the same meaning as in Part 9A (see section 371VA), and

(b) in relation to a foreign CFC charge, means the concept (by whatever name known) corresponding to chargeable profits within the meaning of that Part.

(6) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Counteraction

259GC Counteraction where the payer is within the charge to corporation tax for the payment period

(1) This section applies where the payer is within the charge to corporation tax for the payment period.

(2) For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

259GD Counteraction where the investor is within the charge to corporation tax

(1) This section applies in relation to an investor in a hybrid payee where—

(a) the investor is within the charge to corporation tax for an accounting period some or all of which falls within the payment period, and

(b) it is reasonable to suppose that—

(i) neither section 259GC nor any equivalent provision under the law of a territory outside the United Kingdom applies, or

(ii) a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC applies, but does not fully counteract the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5).

(2) A provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC does not fully counteract that mismatch if (and only if)—

(a) it does not reduce the relevant deduction by the full amount of the mismatch, and

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(b)(i) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch, or

(b) in a case where subsection (1)(b)(ii) applies, the lesser of—

(i) the amount by which that mismatch exceeds the amount by which it is reasonable to suppose the relevant deduction is reduced by a provision of the law of a territory outside the United Kingdom that is equivalent to section 259GC, and

(ii) the amount of the relevant deduction that may still be deducted as mentioned in subsection (2)(b).

(4) If the investor is the only investor in the hybrid payee, the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.

(5) If there is more than one investor in the hybrid payee, an amount equal to the investor's share of the appropriate proportion of the relevant amount is to be treated as income arising to the investor for the counteraction period.

(6) For the purposes of subsections (4) and (5) the "appropriate proportion of the relevant amount"—

(a) if the hybrid payee is the only hybrid payee, is all of the relevant amount, or

(b) if there is more than one hybrid payee, is the proportion of the relevant amount apportioned to the hybrid payee upon an apportionment of that amount between all the hybrid payees on a just and reasonable basis having regard (in particular) to—

(i) any arrangements as to profit sharing that may exist between some or all of the payees, and

(ii) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.

(7) The investor's share of the appropriate proportion of the relevant amount is to be determined by apportioning that proportion of that amount between all the investors in the hybrid payee on a just and reasonable basis, having regard (in particular) to any arrangements as to profit sharing that may exist between some or all of those investors.

(8) An amount of income that is treated as arising under subsection (4) or (5) is chargeable under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(23) of that Act).

(9) The "counteraction period" means—

(a) if an accounting period of the investor coincides with the payment period, that accounting period, or

(b) otherwise, the first accounting period of the investor that is wholly or partly within the payment period.

259GE Counteraction where a hybrid payee is an LLP

(1) This section applies in relation to a hybrid payee where the hybrid payee is a limited liability partnership and it is reasonable to suppose that—

(a) none of the following provisions applies—

(i) section 259GC;

(ii) section 259GD;

(iii) any provision under the law of a territory outside the United Kingdom that is equivalent to either of those sections, or

(b) one or more of those provisions apply, but the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) is not fully counteracted.

(2) The mismatch is not fully counteracted if (and only if), after the application of such of those provisions as apply—

(a) the relevant deduction is not reduced by the full amount of the mismatch,

(b) the payer is still able to deduct some of the relevant deduction from income in calculating taxable profits, and

(c) the lesser of—

(i) the difference between the amount of the mismatch and the amount by which it is reasonable to suppose the relevant deduction is reduced, and

(ii) the amount of the relevant deduction that may still be deducted,

exceeds the sum of any amounts of income treated as arising under section 259GD or any equivalent provision under the law of a territory outside the United Kingdom.

(3) In this section "the relevant amount" is—

(a) in a case where subsection (1)(a) applies, an amount equal to the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5), or

(b) in a case where subsection (1)(b) applies, an amount equal to the excess mentioned in subsection (2)(c).

(4) If the hybrid payee is the only hybrid payee, an amount equal to the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

(5) If there is more than one hybrid payee, an amount equal to the hybrid payee's share of the relevant amount is to be treated as income arising to the hybrid payee on the last day of the payment period.

(6) The hybrid payee's share of the relevant amount is to be determined by apportioning that amount between all the hybrid payees on a just and reasonable basis, having regard (in particular) to—

(a) any arrangements as to profit sharing that may exist between some or all of the payees, and

(b) the extent to which it is reasonable to suppose that the hybrid payee deduction/non-inclusion mismatch mentioned in section 259GA(5) arises by reason of each hybrid payee being a hybrid entity.

(7) An amount of income that is treated as arising under subsection (4) or (5) is chargeable to corporation tax on the hybrid payee (as opposed to being chargeable to tax on any of its members) under Chapter 8 of Part 10 of CTA 2009 (income not otherwise charged) (despite section 979(2) of that Act).

(8) Section 863 of ITTOIA 2005 (treatment of certain limited liability partnerships for income tax purposes) and section 1273 of CTA 2009 (treatment of certain limited liability partnerships for corporation tax purposes) are disapplied in relation to the hybrid payee to the extent necessary for the purposes of subsection (7).

(9) This section is to be disregarded for the purposes of determining whether the hybrid payee is within the charge to corporation tax for the purposes of any other provision of this Part, except section 259M (anti-avoidance).

CHAPTER 8

MULTINATIONAL PAYEE DEDUCTION/NON-INCLUSION MISMATCHES

Introduction

259H Overview of Chapter

(1) This Chapter contains provision that counteracts deduction/non-inclusion mismatches that it is reasonable to suppose would otherwise arise from payments or quasi-payments, where the payer is within the charge to corporation tax, because a payee is multinational company.

(2) The Chapter counteracts mismatches by altering the corporation tax treatment of the payer.

(3) Section 259HA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (4) of that section defines "multinational company", "parent jurisdiction" and "PE jurisdiction".

(5) Section 259HB defines "multinational payee deduction/non-inclusion mismatch" and provides how the amount of the mismatch is to be calculated.

(6) Section 259HC contains provision that counteracts the mismatch.

(7) See also—

(a) section 259BB for the meaning of "payment", "quasi-payment", "payment period", "relevant deduction", "payer" and "payee";

(b) section 259BF for the meaning of "permanent establishment".

Application of Chapter

259HA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to E are met.

(2) Condition A is that a payment or quasi-payment is made under, or in connection with, an arrangement.

(3) Condition B is that a payee is a multinational company.

(4) For the purposes of this Chapter, a company is a "multinational company" if—

(a) it is resident in a territory ("the parent jurisdiction") for tax purposes under the law of that territory, and

(b) it is regarded as carrying on a business in another territory ("the PE jurisdiction") through a permanent establishment in that territory (whether it is so regarded under the law of the parent jurisdiction, the PE jurisdiction or any other territory).

(5) Condition C is that the payer is within the charge to corporation tax for the payment period.

(6) Condition D is that it is reasonable to suppose that, disregarding the provisions mentioned in subsection (7), there would be a multinational payee deduction/non-inclusion mismatch in relation to the payment or quasi-payment (see section 259HB).

(7) The provisions are—

(a) this Chapter and Chapters 9 and 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(8) Condition E is that—

(a) it is a quasi-payment that is made as mentioned in subsection (2) and the payer is also a payee (see section 259BB(7)),

(b) the payer and the multinational company are in the same control group (see section 259NB) at any time in the period—

(i) beginning with the day on which the arrangement mentioned in subsection (2) is made, and

(ii) ending with the last day of the payment period, or

(c) that arrangement is a structured arrangement.

(9) The arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure a multinational company deduction/non-inclusion mismatch, or

(b) the terms of the arrangement share the economic benefit of the mismatch between the parties to the arrangement or otherwise reflect the fact that the mismatch is expected to arise.

(10) The arrangement may be designed to secure a multinational payee deduction/non-inclusion mismatch despite also being designed to secure any commercial or other objective.

(11) Section 259HC contains provision for the counteraction of the multinational payee deduction/non-inclusion mismatch.

259HB Multinational payee deduction/non-inclusion mismatches and their extent

(1) There is a "multinational payee deduction/non-inclusion mismatch", in relation to a payment or quasi-payment, if—

(a) the relevant deduction exceeds the sum of the amounts of ordinary income that, by reason of the payment or quasi-payment, arise to each payee for a permitted taxable period, and

(b) all or part of that excess arises by reason of one or more payees being multinational companies.

(2) The extent of the multinational payee deduction/non-inclusion mismatch is equal to the excess that arises as mentioned in subsection (1)(b).

(3) For the purposes of subsection (1)(b)—

(a) where the law of a PE jurisdiction in relation to a payee that is a multinational company makes no provision for charging tax on any companies, so much of the excess as arises as a result is to be taken not to arise by reason of that payee being a multinational company, but

(b) subject to that, it does not matter whether the excess or part arises for another reason as well as one or more payees being multinational companies (even if it would have arisen for that other reason regardless of whether any payees are multinational companies).

(4) A taxable period of a payee is "permitted" in relation to an amount of ordinary income that arises as a result of the payment or quasi-payment if—

(a) the period begins before the end of 12 months after the end of the payment period, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

Counteraction

259HC Counteraction of the multinational payee deduction/non-inclusion mismatch

For corporation tax purposes, the relevant deduction that may be deducted from the payer's income for the payment period is reduced by an amount equal to the multinational payee deduction/non-inclusion mismatch mentioned in section 259HA(6).

CHAPTER 9

HYBRID ENTITY DOUBLE DEDUCTION MISMATCHES

Introduction

259I Overview of Chapter

(1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise by reason of a person being a hybrid entity.

(2) The Chapter counteracts mismatches where the hybrid entity, or an investor in the hybrid entity, is within the charge to corporation tax and does so by altering the corporation tax treatment of the entity or investor.

(3) Section 259IA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (4) of that section defines "hybrid entity double deduction amount".

(5) Section 259IB contains provision that counteracts the mismatch where an investor in the hybrid entity is within the charge to corporation tax.

(6) Section 259IC contains provision that, in certain circumstances, counteracts the mismatch where the hybrid entity is within the charge to corporation tax and the mismatch is not fully counteracted by provision under the law of a territory outside the United Kingdom that is equivalent to section 259IB.

(7) See also section 259BE for the meaning of "hybrid entity", "investor" and "investor jurisdiction".

Application of Chapter

259IA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to C are met.

(2) Condition A is that there is an amount or part of an amount that, disregarding the provisions mentioned in subsection (3), it is reasonable to suppose—

(a) could be deducted from the income of a hybrid entity for the purposes of calculating the taxable profits of that entity for a taxable period ("the hybrid entity deduction period"), and

(b) could also be deducted, under the law of the investor jurisdiction, from the income of an investor in the hybrid entity for the purposes of calculating the taxable profits of that investor for a taxable period ("the investor deduction period").

(3) The provisions are—

(a) this Chapter and Chapter 10, and

(b) any equivalent provision under the law of a territory outside the United Kingdom.

(4) In this Chapter the amount or part of an amount mentioned in subsection (2) is referred to as "the hybrid entity double deduction amount".

(5) Condition B is that—

(a) the investor is within the charge to corporation tax for the investor deduction period, or

(b) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period.

(6) Condition C is that—

(a) the hybrid entity and any investor in it are related (see section 259NC) at any time—

(i) in the hybrid entity deduction period, or

(ii) in the investor deduction period, or

(b) an arrangement, to which the hybrid entity or any investor in it is party, is a structured arrangement.

(7) An arrangement is "structured" if it is reasonable to suppose that—

(a) the arrangement is designed to secure the hybrid entity double deduction amount, or

(b) the terms of the arrangement share the economic benefit of that amount being deductible by both the hybrid entity and the investor between the parties to the arrangement or otherwise reflect the fact that the amount is expected to arise.

(8) The arrangement may be designed to secure the hybrid entity double deduction amount despite also being designed to secure any commercial or other objective.

(9) Sections 259IB (cases where the investor is within the charge to corporation tax for the investor deduction period) and 259IC (cases where the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period) contain provision for the counteraction of the hybrid entity double deduction amount.

Counteraction

259IB Counteraction where the investor is within the charge to corporation tax

(1) This section applies in relation to the investor in the hybrid entity where the investor is within the charge to corporation tax for the investor deduction period.

(2) For corporation tax purposes, the hybrid entity double deduction amount may not be deducted from the investor's income for the investor deduction period unless it is deducted from dual inclusion income of the investor for that period.

(3) So much of the hybrid entity double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the investor's income for the investor deduction period—

(a) is carried forward to subsequent accounting periods of the investor, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the investor for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) If the Commissioners are satisfied that the investor will have no dual inclusion income—

(a) for an accounting period after the investor deduction period ("the relevant period"), nor

(b) for any accounting period after the relevant period,

any of the hybrid entity double deduction amount that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the investor's taxable total profits of the relevant period—

(a) is carried forward to subsequent accounting periods of the investor, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(6) Subsection (7) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the investor for an accounting period.

(7) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the investor in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the investor, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the investor.

(8) In this section "dual inclusion income" of the investor for an accounting period means an amount that is both—

(a) ordinary income of the investor for that period for corporation tax purposes, and

(b) ordinary income of the hybrid entity for a permitted taxable period for the purposes of any tax under the law of a territory outside the United Kingdom.

(9) A taxable period of the hybrid entity is "permitted" for the purposes of paragraph (b) of subsection (8) if—

(a) the period begins before the end of 12 months after the end of the accounting period of the investor mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

259IC Counteraction where the hybrid entity is within the charge to corporation tax

(1) This section applies where—

(a) the hybrid entity is within the charge to corporation tax for the hybrid entity deduction period,

(b) it is reasonable to suppose that—

(i) no provision under the law of an investor jurisdiction that is equivalent to section 259IB applies, or

(ii) such a provision does apply, but the hybrid entity double deduction amount exceeds the amount that, under that provision, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period, and

(c) the secondary counteraction condition is met.

(2) The secondary counteraction condition is met if—

(a) the hybrid entity and any investor in it are in the same control group (see section 259NB) at any time in—

(i) the hybrid entity deduction period, or

(ii) the investor deduction period, or

(b) there is an arrangement, to which the hybrid entity or any investor in it is party, that is a structured arrangement (within the meaning given by section 259IA(7) and (8)).

(3) In this section "the restricted deduction" means—

(a) in a case where subsection (1)(b)(i) applies, the hybrid entity double deduction amount, or

(b) in a case where subsection (1)(b)(ii) applies, the hybrid entity double deduction amount so far as it exceeds the amount that it is reasonable to suppose, under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259IB, cannot be deducted from income, for the investor deduction period, other than dual inclusion income of the hybrid entity for the hybrid entity deduction period.

(4) For corporation tax purposes, the restricted deduction may not be deducted from the hybrid entity's income for the hybrid entity deduction period unless it is deducted from dual inclusion income for that period.

(5) So much of the restricted deduction (if any) as, by virtue of subsection (4), cannot be deducted from the hybrid entity's income for the hybrid entity deduction period—

(a) is carried forward to subsequent accounting periods of the hybrid entity, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the hybrid entity for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(6) If the Commissioners are satisfied that the hybrid entity will have no dual inclusion income—

(a) for an accounting period after the hybrid entity deduction period ("the relevant period"), nor

(b) for any accounting period after the relevant period,

any of the restricted deduction that has not been deducted from dual inclusion income for an accounting period before the relevant period in accordance with subsection (4) or (5) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period.

(7) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (6), at step 2 in section 4(2) of CTA 2010 in calculating the hybrid entity's taxable total profits of the relevant period—

(a) is carried forward to subsequent accounting periods of the hybrid entity, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(8) Subsection (9) applies if it is reasonable to suppose that all or part of the hybrid entity double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the hybrid entity for an accounting period.

(9) For the purposes of determining how much of the hybrid entity double deduction amount may be deducted (if any) for the accounting period of the hybrid entity in which the taxable period mentioned in subsection (8) ends, and any subsequent accounting periods of the hybrid entity, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the hybrid entity.

(10) In this section "dual inclusion income" of the hybrid entity for an accounting period means an amount that is both—

(a) ordinary income of the hybrid entity for that period for corporation tax purposes, and

(b) ordinary income of an investor in the hybrid entity for a permitted taxable period for the purposes of any tax charged under the law of an investor jurisdiction.

(11) A taxable period of an investor is "permitted" for the purposes of paragraph (b) of subsection (10) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

CHAPTER 10

DUAL TERRITORY DOUBLE DEDUCTION CASES

Introduction

259J Overview of Chapter

(1) This Chapter contains provision that counteracts double deduction mismatches that it is reasonable to suppose would otherwise arise as a result of a company—

(a) being a dual resident company, or

(b) being a relevant multinational company.

(2) The counteraction operates by altering the corporation tax treatment of the company.

(3) Section 259JA contains the conditions that must be met for this Chapter to apply.

(4) Subsection (3) of that section defines "dual resident company".

(5) Subsection (4) of that section defines "relevant multinational company", "parent jurisdiction" and "PE jurisdiction".

(6) Subsection (5) of that section defines "dual territory double deduction amount".

(7) Section 259JB contains provision that counteracts the mismatch where the company is a dual resident company.

(8) Section 259JC contains provision that counteracts the mismatch where the company is a multinational company and the United Kingdom is the parent jurisdiction.

(9) Section 259JD contains provision that counteracts the mismatch where the company is a relevant multinational company, the United Kingdom is the PE jurisdiction and the mismatch is not counteracted under a provision of the law of a territory outside the United Kingdom that is equivalent to section 259JC.

(10) See also section 259BF for the meaning of "permanent establishment".

Application of Chapter

259JA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A and B are met.

(2) Condition A is that a company is a—

(a) dual resident company, or

(b) relevant multinational company.

(3) For the purposes of this Chapter a company is a "dual resident company" if—

(a) it is UK resident, and

(b) it is also within the charge to a tax under the law of a territory outside the United Kingdom because—

(i) it derives its status as a company from that law,

(ii) its place of management is in that territory, or

(iii) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.

(4) For the purposes of this Chapter a company is a "relevant multinational company" if—

(a) it is within the charge to a tax, under the law of a territory ("the PE jurisdiction") in which it is not resident for tax purposes, because it carries on business in that territory through a permanent establishment in that territory, and

(b) either—

(i) the PE jurisdiction is the United Kingdom, or

(ii) the territory in which the company is resident for tax purposes ("the parent jurisdiction") is the United Kingdom.

(5) Condition B is that there is an amount ("the dual territory double deduction amount") that, disregarding this Chapter and any equivalent provision under the law of a territory outside the United Kingdom, it is reasonable to suppose could, by reason of the company being a dual resident company or a relevant multinational company—

(a) be deducted from the company's income for an accounting period ("the deduction period") for corporation tax purposes, and

(b) also be deducted from the company's income for a taxable period ("the foreign deduction period") for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(6) The following provisions provide for the counteraction of the dual territory double deduction amount—

(a) section 259JB (cases where a company is dual resident),

(b) section 259JC (cases where a company is a relevant multinational and the United Kingdom is the parent jurisdiction), and

(c) section 259JD (cases where a company is a relevant multinational, the United Kingdom is the PE jurisdiction and the amount is not counteracted in the parent jurisdiction).

Counteraction

259JB Counteraction where mismatch arises because of a dual resident company

(1) This section applies where the dual territory double deduction amount arises by reason of the company being a dual resident company.

(2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.

(3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—

(a) is carried forward to subsequent accounting periods of the company, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) If the Commissioners are satisfied that the company has ceased to be a dual resident company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a dual resident company.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a dual resident company—

(a) is carried forward to subsequent accounting periods of the company, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the company for an accounting period.

(7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

(8) In this section "dual inclusion income" of the company for an accounting period means an amount that is both—

(a) ordinary income of the company for that period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(9) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (8) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

259JC Counteraction where mismatch arises because of a relevant multinational and the UK is the parent jurisdiction

(1) This section applies where—

(a) the dual territory double deduction amount arises by reason of the company being a relevant multinational company, and

(b) the United Kingdom is the parent jurisdiction.

(2) If some or all of the dual territory double deduction amount is (in substance) deducted ("the impermissible overseas deduction"), for the purposes of a tax under the law of a territory outside the United Kingdom, from the income of any person, for any taxable period, that is not dual inclusion income of the company—

(a) the dual territory double deduction amount that may be deducted, for corporation tax purposes, from the company's income for the deduction period is reduced by the amount of the impermissible overseas deduction, and

(b) such just and reasonable adjustments (if any) as are required to give effect to that reduction, for corporation tax purposes, are to be made.

(3) Any adjustment required to be made under subsection (2) may be made (whether or not by an officer of Revenue and Customs)—

(a) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise, and

(b) despite any time limit imposed by or under any enactment.

(4) In this section "dual inclusion income" of the company means an amount that is both—

(a) ordinary income of the company for an accounting period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(5) A taxable period is "permitted" for the purposes of paragraph (b) of subsection (4) if—

(a) the period begins before the end of 12 months after the end of the accounting period of the company mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

259JD Counteraction where mismatch arises because of a relevant multinational and is not counteracted in the parent jurisdiction

(1) This section applies where—

(a) the dual territory double deduction amount arises as a result of the company being a relevant multinational company,

(b) the United Kingdom is the PE jurisdiction, and

(c) it is reasonable to suppose that no provision of the law of the parent jurisdiction that is equivalent to section 259JC applies.

(2) For corporation tax purposes, the dual territory double deduction amount may not be deducted from the company's income for the deduction period unless it is deducted from dual inclusion income of the company for that period.

(3) So much of the dual territory double deduction amount (if any) as, by virtue of subsection (2), cannot be deducted from the company's income for the deduction period—

(a) is carried forward to subsequent accounting periods of the company, and

(b) for corporation tax purposes, may be deducted from dual inclusion income of the company for any such period (and not from any other income), so far as it cannot be deducted under this paragraph for an earlier period.

(4) If the Commissioners are satisfied that the company has ceased to be a relevant multinational company, any of the dual territory double deduction amount that has not been deducted from dual inclusion income in accordance with subsection (2) or (3) ("the stranded deduction") may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which it ceased to be a relevant multinational company.

(5) So much of the stranded deduction (if any) as cannot be deducted, in accordance with subsection (4), at step 2 in section 4(2) of CTA 2010 in calculating the company's taxable total profits of the accounting period in which the company ceased to be a relevant multinational company—

(a) is carried forward to subsequent accounting periods of the company, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(6) Subsection (7) applies if it is reasonable to suppose that all or part of the dual territory double deduction amount is (in substance) deducted ("the illegitimate overseas deduction"), under the law of a territory outside the United Kingdom, from income of any person, for a taxable period, that is not dual inclusion income of the company for an accounting period.

(7) For the purposes of determining how much of the dual territory double deduction amount may be deducted (if any) for the accounting period of the company in which the taxable period mentioned in subsection (6) ends, and any subsequent accounting periods of the company, an amount of it equal to the illegitimate overseas deduction is to be taken to have already been deducted for a previous accounting period of the company.

(8) In this section "dual inclusion income" of the company for an accounting period means an amount that is both—

(a) ordinary income of the company for that period for corporation tax purposes, and

(b) ordinary income of the company for a permitted taxable period for the purposes of a tax charged under the law of a territory outside the United Kingdom.

(9) A taxable period of the company is "permitted" for the purposes of paragraph (b) of subsection (8) if—

(a) the period begins before the end of 12 months after the end of the accounting period mentioned in paragraph (a) of that subsection, or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period in relation to the amount of ordinary income, and

(ii) it is just and reasonable for the amount of ordinary income to arise for that taxable period rather than an earlier period.

CHAPTER 11

IMPORTED MISMATCHES

Introduction

259K Overview of Chapter

(1) This Chapter contains provision denying deductions in connection with payments or quasi-payments that are made under, or in connection with, imported mismatch arrangements where the payer is within the charge to corporation tax for the payment period.

(2) Section 259KA contains the conditions that must be met for this Chapter to apply and defines "imported mismatch payment" and "imported mismatch arrangement".

(3) Section 259KB defines "dual territory double deduction", "excessive PE deduction" and "PE jurisdiction".

(4) Section 259KC contains provision for denying some or all of a relevant deduction in relation to an imported mismatch payment.

(5) See also section 259BB for the meaning of "payment", "quasi-payment", "relevant deduction", "payment period" and "payer".

Application of Chapter

259KA Circumstances in which the Chapter applies

(1) This Chapter applies if conditions A to G are met.

(2) Condition A is that a payment or quasi-payment ("the imported mismatch payment") is made under, or in connection with, an arrangement ("the imported mismatch arrangement").

(3) Condition B is that, in relation to the imported mismatch payment, the payer ("P") is within the charge to corporation tax for the payment period.

(4) Condition C is that the imported mismatch arrangement is one of a series of arrangements.

(5) A "series of arrangements" means a number of arrangements that are each entered into (whether or not one after the other) in pursuance of, or in relation to, another arrangement ("the over-arching arrangement").

(6) Condition D is that—

(a) under an arrangement in the series other than the imported mismatch arrangement, there is a payment or quasi-payment ("the mismatch payment") in relation to which it is reasonable to suppose that there is or will be—

(i) a hybrid or otherwise impermissible deduction/non-inclusion mismatch (see section 259CB),

(ii) a hybrid transfer deduction/non-inclusion mismatch (see section 259DC),

(iii) a hybrid payer deduction/non-inclusion mismatch (see section 259EB),

(iv) a hybrid payee deduction/non-inclusion mismatch (see section 259GB),

(v) a multinational payee deduction/non-inclusion mismatch (see section 259HB),

(vi) a hybrid entity double deduction amount (see section 259IA(4)), or

(vii) a dual territory double deduction (see section 259KB), or

(b) as a consequence of an arrangement in the series other than the imported mismatch arrangement, there is or will be an excessive PE deduction (see section 259KB),

and in this Chapter "the relevant mismatch" means the mismatch, amount or deduction concerned.

(7) Condition E is that it is reasonable to suppose—

(a) where subsection (6)(a) applies, that no provision of any of Chapters 3 to 5 or 7 to 10 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of any person in respect of the mismatch payment, or

(b) where subsection (6)(b) applies, that no provision of Chapter 6 nor any equivalent provision under the law of a territory outside the United Kingdom applies, or will apply, in relation to the tax treatment of the company in relation to which the excessive PE deduction arises.

(8) Condition F is that—

(a) subsection (6)(a) applies and it is reasonable to suppose that a provision of any of Chapters 3 to 5 or 7 to 10, or an equivalent provision under the law of a territory outside the United Kingdom, would apply in relation to the tax treatment of P if—

(i) P were the payer in relation to the mismatch payment,

(ii) P were a payee in relation to the mismatch payment, or

(iii) where the relevant mismatch is a hybrid payee deduction/non-inclusion mismatch or a hybrid entity double deduction amount, P were an investor in the hybrid entity concerned, or

(b) the relevant mismatch is an excessive PE deduction.

(9) Condition G is that—

(a) subsection (6)(a) applies and P is in the same control group (see section 259NB) as the payer, or a payee, in relation to the mismatch payment, at any time in the period—

(i) beginning with the day the over-arching arrangement is made, and

(ii) ending with the last day of the payment period in relation to the imported mismatch payment,

(b) subsection (6)(b) applies and P is in the same control group as the company in relation to whom the excessive PE deduction arises at any time in that period, or

(c) the imported mismatch arrangement, or the over-arching arrangement, is a structured arrangement.

(10) The imported mismatch arrangement, or the over-arching arrangement, is a "structured arrangement" if it is reasonable to suppose that—

(a) the arrangement concerned is designed to secure the relevant mismatch, or

(b) the terms of the arrangement concerned share the economic benefit of the relevant mismatch between the parties to that arrangement or otherwise reflect the fact that the relevant mismatch is expected to arise.

(11) An arrangement may be designed to secure the relevant mismatch despite also being designed to secure any commercial or other objective.

(12) Section 259KC contains provision for denying all or part of the relevant deduction in relation to the imported mismatch payment by reference to the relevant mismatch.

259KB Meaning of "dual territory double deduction", "excessive PE deduction" and "PE jurisdiction"

(1) This section has effect for the purposes of this Chapter.

(2) A "dual territory double deduction" means an amount that can be deducted by a company both—

(a) from income for the purposes of a tax charged under the law of one territory, and

(b) from income for the purposes of a tax charged under the law of another territory.

(3) A "PE deduction" is an amount that—

(a) may (in substance) be deducted from a company's income for the purposes of calculating the company's taxable profits, for a taxable period, for the purposes of a tax that is charged on the company, under the law of a territory ("the PE jurisdiction"), by virtue of the company having a permanent establishment in that territory, and

(b) is in respect of a transfer of money or money's worth, from the company in the PE jurisdiction to the company in another territory ("the parent jurisdiction") in which it is resident for the purposes of a tax, that—

(i) is actually made, or

(ii) is (in substance) treated as being made for tax purposes.

(4) A PE deduction is "excessive" so far as it exceeds the sum of—

(a) any increases, resulting from the circumstances giving rise to the PE deduction, in the taxable profits of the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, and

(b) any amounts by which a loss made by the company, for a permitted taxable period, for the purposes of a tax charged under the law of the parent jurisdiction, is reduced as a result of the circumstances giving rise to the PE deduction.

(5) A taxable period of the company is "permitted" for the purposes of subsection (4) if—

(a) the period begins before the end of 12 months after the end of the taxable period mentioned in subsection (3)(a), or

(b) where the period begins after that—

(i) a claim has been made for the period to be a permitted period for the purposes of subsection (4), and

(ii) it is just and reasonable for the circumstances giving rise to the PE deduction to affect the profits or loss made for that period rather than an earlier period.

Counteraction

259KC Denial of the relevant deduction in relation to the imported mismatch payment

(1) If, in addition to the imported mismatch payment, there are, or will be, one or more relevant payments in relation to the relevant mismatch, subsection (3) applies.

(2) Otherwise, for corporation tax purposes, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by the amount of the relevant mismatch.

(3) For corporation tax purposes, where this subsection applies, in relation to the imported mismatch payment, the relevant deduction that may be deducted from P's income for the payment period is to be reduced by P's share of the relevant mismatch.

(4) P's share of the relevant mismatch is to be determined by apportioning the relevant mismatch between P and every payer in relation to a relevant payment on a just and reasonable basis—

(a) where subsection (6)(a) applies, having regard (in particular) to the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the mismatch payment, or

(b) where the relevant mismatch is an excessive PE deduction, having regard (in particular) to—

(i) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, the extent to which the imported mismatch payment and each relevant payment funds (directly or indirectly) the transfer, or

(ii) if the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, the extent to which the imported mismatch payment and each relevant payment would have funded (directly or indirectly) the transfer if it had actually been made.

(5) For the purposes of subsection (4)(a) and (b)(i), the imported mismatch payment is to be taken to fund the mismatch payment or transfer to the extent that the mismatch payment or transfer cannot be shown instead to be funded (directly or indirectly) by one or more relevant payments.

(6) For the purposes of subsection (4)(b)(ii), it is to be assumed that the imported mismatch payment would have funded the transfer if it had actually been made to the extent that it cannot be shown by P that, if it had been made, the transfer would have instead been funded (directly or indirectly) by one or more relevant payments.

(7) For the purposes of this section, a payment or quasi-payment, other than the imported mismatch payment or any mismatch payment, is a "relevant payment" in relation to the relevant mismatch if it is made under an arrangement in the series of arrangements mentioned in section 259KA(4) and—

(a) where subsection (6)(a) applies, it funds (directly or indirectly) the mismatch payment,

(b) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is actually made, it funds (directly or indirectly) that transfer, or

(c) where the relevant mismatch is an excessive PE deduction and the transfer of money or money's worth mentioned in section 259KB(3)(b) is (in substance) treated as being made, it would have funded (directly or indirectly) that transfer had that transfer actually been made.

(8) In proceedings before a court or tribunal in connection with this section—

(a) in relation to subsection (1), it is for P to show that, in addition to the imported mismatch payment, there are one or more relevant payments in relation to the relevant mismatch, and

(b) in relation to subsection (5), it is for P to show that the mismatch payment or transfer is funded (directly or indirectly) by one or more relevant payments instead of by the imported mismatch payment.

CHAPTER 12

ADJUSTMENTS IN LIGHT OF SUBSEQUENT EVENTS ETC

259L Adjustments where suppositions cease to be reasonable

(1) Where—

(a) a reasonable supposition is made for the purposes of any provision of this Part, and

(b) the supposition turns out to be mistaken or otherwise ceases to be reasonable,

such consequential adjustments as are just and reasonable may be made.

(2) The adjustments may be made (whether or not by an officer of Revenue and Customs) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(3) But the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.

(4) No adjustment is to be made under this section on the basis that an amount of ordinary income arises, as a result of a payment or quasi-payment, to a payee after that payee's last permitted taxable period in relation to the payment or quasi-payment (see section 259LA, which makes provision about certain such cases).

259LA Deduction from taxable total profits where an amount of ordinary income arises late

(1) This section applies where—

(a) a relevant deduction in respect of a payment or quasi-payment is reduced by section 259CD, 259DF, 259GC or 259HC or by more than one of those sections,

(b) no other provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, applies or will apply to the tax treatment of any person in respect of the payment or quasi-payment,

(c) the section or sections had effect because it was reasonable to suppose that the relevant deduction exceeded, or would exceed, the sum of the amounts of ordinary income arising, by reason of the payment or quasi-payment, to each payee for a permitted taxable period, and

(d) an amount of ordinary income ("the late income") arises—

(i) by reason of the payment or quasi-payment, but

(ii) not as a consequence of any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom,

to a payee for a taxable period ("the late period") that is not a permitted taxable period.

(2) An amount equal to the late income may be deducted at step 2 in section 4(2) of CTA 2010 in calculating the payer's taxable total profits of the accounting period in which the late period ends.

(3) So much of that amount (if any) as cannot be deducted, in accordance with subsection (2), at step 2 in section 4(2) of CTA 2010 in calculating the taxable total profits of the accounting period in which the late period ends—

(a) is carried forward to subsequent accounting periods of the payer, and

(b) may be so deducted for any such period, so far as it cannot be deducted under this paragraph for an earlier period.

(4) But the total amount deducted from taxable total profits under this section, in relation to a payment or quasi-payment, may not exceed the total amount by which the relevant deduction is reduced as mentioned in (1)(a).

(5) In this section "permitted taxable period"—

(a) where the relevant deduction was reduced under section 259CD, has the meaning given by section 259CC(2),

(b) where the relevant deduction was reduced under section 259DF, has the meaning given by section 259DD(2),

(c) where the relevant deduction was reduced under section 259GC, has the meaning given by section 259GB(6),

(d) where the relevant deduction was reduced under section 259HC, has the meaning given by section 259HB(4), or

(e) where the relevant deduction was reduced under two or more of the sections mentioned in the preceding paragraphs of this subsection, includes any taxable period that is a permitted period under a provision mentioned in the paragraphs concerned.

CHAPTER 13

ANTI-AVOIDANCE

259M Countering the effect of avoidance arrangements

(1) This section applies where—

(a) relevant avoidance arrangements exist,

(b) as a result of those arrangements, any person (whether party to the arrangements or not) would, apart from this section, obtain a relevant tax advantage, and

(c) that person is—

(i) within the charge to corporation tax at the time the person would obtain the relevant tax advantage, or

(ii) would be within the charge to corporation tax at that time but for the relevant avoidance arrangements.

(2) The relevant tax advantage is to be counteracted by making such adjustments to the person's treatment for corporation tax purposes as are just and reasonable.

(3) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(4) A person obtains a "relevant tax advantage" if—

(a) the person avoids, to any extent, any provision of this Part, or any equivalent provision of the law of a territory outside the United Kingdom, restricting whether or how that person may make a deduction from income for the purposes of calculating taxable profits, or

(b) the person avoids, to any extent, an amount being treated as income of that person under any provision of this Part or any equivalent provision of the law of a territory outside the United Kingdom.

(5) "Relevant avoidance arrangements" means arrangements the main purpose, or one of the main purposes, of which is to enable any person to obtain a relevant tax advantage.

(6) But arrangements are not "relevant avoidance arrangements" if the obtaining of the relevant tax advantage can reasonably be regarded as consistent with the principles on which the provisions of this Part, or the equivalent provisions under the law of a territory outside the United Kingdom, that are relevant to the arrangements are based (whether express or implied) and the policy objectives of those provisions.

(7) For the purposes of determining the principles and policy objectives mentioned in subsection (6), regard may, where appropriate, be had to the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the Organisation for Economic Cooperation and Development

("OECD") on 5 October 2015 or any replacement or supplementary publication.

(8) In subsection (7) "replacement or supplementary publication" means any document that is approved and published by the OECD in place of, or to update or supplement, the report mentioned in that subsection (or any replacement of, or supplement to, it).

CHAPTER 14

INTERPRETATION

Financial instruments

259N Meaning of "financial instrument"

(1) A "financial instrument" means—

(a) an arrangement profits or deficits arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 5 or 6 of CTA 2009 (loan relationships and relationships treated as loan relationships),

(b) a contract profits or losses arising from which would, on the assumption that the person to whom they arise is within the charge to corporation tax, fall to be brought into account for corporation tax purposes in accordance with Part 7 of CTA 2009 (derivative contracts),

(c) a type 1, type 2 or type 3 finance arrangement for the purposes of Chapter 2 of Part 16 of CTA 2010 (factoring of income etc: finance arrangements),

(d) a share forming part of a company's issued share capital or any arrangement that provides a person with economic rights corresponding to those provided by holding such a share, or

(e) anything else that is a financial instrument.

(2) In subsection (1)(e) "financial instrument" has the meaning that it has for the purposes of UK generally accepted accounting practice.

(3) But "financial instrument" does not include—

(a) a hybrid transfer arrangement (within the meaning given by section 259DB), or

(b) anything that is a regulatory capital security for the purposes of the Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209) (as amended from time to time).

(4) Subsection (3)(b) is subject to any provision to the contrary that may be made by regulations under section 221 of FA 2012 (tax consequences of financial sector regulation).

Relevant investment funds

259NA Meaning of "relevant investment fund"

(1) "Relevant investment fund" means—

(a) an open-ended investment company within the meaning of section 613 of CTA 2010,

(b) an authorised unit trust within the meaning of section 616 of that Act, or

(c) an offshore fund within the meaning of section 354 of this Act (see section 355),

which meets the genuine diversity of ownership condition (whether or not a clearance has been given to that effect).

(2) "The genuine diversity of ownership condition" means—

(a) in the case of an offshore fund, the genuine diversity of ownership condition in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), and

(b) in the case of an open-ended investment company or an authorised unit trust, the genuine diversity of ownership condition in regulation 9A of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964).

Control groups and related persons

259NB Control groups

(1) A person ("A") is in the same control group as another person ("B")—

(a) throughout any period for which they are consolidated for accounting purposes,

(b) on any day on which the participation condition is met in relation to them, or

(c) on any day on which the 50% investment condition is met in relation to them.

(2) A and B are consolidated for accounting purposes for a period if—

(a) their financial results for the period are required to be comprised in group accounts,

(b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or

(c) their financial results for the period are in fact comprised in group accounts.

(3) In subsection (2), "group accounts" means accounts prepared under—

(a) section 399 of the Companies Act 2006, or

(b) any corresponding provision of the law of a territory outside the United Kingdom.

(4) The participation condition is met in relation to A and B ("the relevant parties") on a day if, within the period of 6 months beginning with the day—

(a) one of the relevant parties directly or indirectly participates in the management, control or capital of the other, or

(b) the same person or persons directly or indirectly participate in the management, control or capital of each of the relevant parties.

(5) For the interpretation of subsection (4), see sections 157(1), 158(4), 159(1) and 160(1) (which have the effect that references in subsection (4) to direct or indirect participation are to be read in accordance with provisions of Chapter 2 of Part 4).

(6) The 50% investment condition is met in relation to A and B if—

(a) A has a 50% investment in B, or

(b) a third person has a 50% investment in each of A and B.

(7) Section 259ND applies for the purposes of determining whether a person has a "50% investment" in another person.

259NC Related persons

(1) Two persons are "related" on any day that—

(a) they are in the same control group (see section 259NB), or

(b) the 25% investment condition is met in relation to them.

(2) The 25% investment condition is met in relation to a person ("A") and another person ("B") if—

(a) A has a 25% investment in B, or

(b) a third person has a 25% investment in each of A and B.

(3) Section 259ND applies for the purposes of determining whether a person has a "25% investment" in another person.

259ND Meaning of "50% investment" and "25% investment"

(1) Where this section applies for the purposes of determining whether a person has a "50% investment" in another person for the purposes of section 259NB(6), references in this section to X% are to be read as references to 50%.

(2) Where this section applies for the purposes of determining whether a person has a "25% investment" in another person for the purposes of section 259NC(2), references in this section to X% are to be read as references to 25%.

(3) A person ("P") has an X% investment in a company ("C") if it is reasonable to suppose that—

(a) P possesses or is entitled to acquire X% or more of the share capital or issued share capital of C,

(b) P possesses or is entitled to acquire X% or more of the voting power in C, or

(c) if the whole of C's share capital were disposed of, P would receive (directly or indirectly and whether at the time of disposal or later) X % or more of the proceeds of the disposal.

(4) A person ("P") has an X% investment in another person ("Q") if it is reasonable to suppose that—

(a) if the whole of Q's income were distributed, P would receive (directly or indirectly and whether at the time of the distribution or later) X% or more of the distributed amount, or

(b) in the event of a winding-up of Q or in any other circumstances, P would receive (directly or indirectly and whether or not at the time of the winding-up or other circumstances or later) X% or more of Q's assets which would then be available for distribution.

(5) In this section, references to a person receiving any proceeds, amount or assets include references to the proceeds, amount or assets being applied (directly or indirectly) for that person's benefit.

(6) For the purposes of subsections (3) and (4), in determining what percentage investment a person ("P") has in another person ("U"), where P acts together with a third person ("T") in relation to U, P is to be taken to have all of T's rights and interests in relation to U.

(7) P is to be taken to "act together" with T in relation to U if (and only if)—

(a) P and T are connected (within the meaning given by section 163),

(b) for the purposes of influencing the conduct of U's affairs—

(i) P is able to secure that T acts in accordance with P's wishes,

(ii) T can reasonably be expected to act, or typically acts, in accordance with P's wishes,

(iii) T is able to secure that P acts in accordance with T's wishes, or

(iv) P can reasonably be expected to act, or typically acts, in accordance with T's wishes,

(c) P and T are party to any arrangement that—

(i) it is reasonable to suppose is designed to affect the value of any of T's rights or interests in relation to U, or

(ii) relates to the exercise of any of T's rights in relation to U, or

(d) the same person manages—

(i) some or all of P's rights or interests in relation to U, and

(ii) some or all of T's rights or interests in relation to U.

(8) But P does not "act together" with T in relation to U under paragraph (d) of subsection (7) where—

(a) the person who manages the rights or interests of P mentioned in sub-paragraph (i) of that paragraph, does so as the operator of a collective investment scheme,

(b) that person manages the rights or interests of T mentioned in sub-paragraph (ii) of that paragraph as the operator of a different collective investment scheme, and

(c) the Commissioners are satisfied that the management of the schemes is not coordinated for the purpose of influencing the conduct of U 's affairs.

(9) In subsection (8) "collective investment scheme" and "operator" have the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see sections 235 and 237 of that Act).

Partnerships

259NE Treatment of a person who is a member of a partnership

(1) This section applies where a person is a member of a partnership.

(2) Any reference in this Part to income, profits or an amount of the person includes a reference to the person's share of (as the case may be) income, profits or an amount of the partnership.

(3) For this purpose "the person's share" of income, profits or an amount is determined by apportioning the income, profits or amount between the partners on a just and reasonable basis.

(4) In this section—

(a) "partnership" includes an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership, and

(b) "member" of a partnership is to be read accordingly.

Definitions

259NF Definitions

In this Part—

"arrangement" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"CFC" and "CFC charge" have the meaning given by section 259B(4);

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"control group" has the meaning given by section 259NB;

"financial instrument" has the meaning given by section 259N;

"foreign CFC" and "foreign CFC charge" have the meaning given by section 259B(4);

"hybrid entity" has the meaning given by section 259BE;

"investor", in relation to a hybrid entity, has the meaning given by section 259BE(4);

"investor jurisdiction" has the meaning given by section 259BE(4);

"ordinary income" is to be read in accordance with sections 259BC and 259BD;

"payee"—

(a) in relation to a payment, has the meaning given by section 259BB(6)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(6)(b);

"payee jurisdiction" has the meaning given by 259BB(9);

"payer"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(a), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2);

"payment" has the meaning given by section 259BB(1);

"payment period"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(b), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2);

"permanent establishment" has the meaning given by section 259BF;

"quasi-payment" has the meaning given by section 259BB(2) to (5);

"related" has the meaning given by section 259NC;

"relevant deduction"—

(a) in relation to a payment, has the meaning given by section 259BB(1)(b), and

(b) in relation to a quasi-payment, has the meaning given by section 259BB(2)(a);

"relevant investment fund" has the meaning given by section 259NA;

"tax" has the meaning given by section 259B;

"taxable period" means—

(a) in relation to corporation tax, an accounting period,

(b) in relation to income tax, a tax year,

(c) in relation to the CFC charge, a relevant corporation tax accounting period (within the meaning given by section 371BC(3)),

(d) in relation to a foreign CFC charge, a period (by whatever name known) that corresponds to a relevant corporation tax accounting period, and

(e) in relation to any other tax, a period for which the tax is charged;

"taxable profits" is to be read in accordance with sections 259BC(2) and 259BD(5)."

PART 2

CONSEQUENTIAL AMENDMENTS

FA 1998

2 Schedule 18 to FA 1998 (company tax returns) is amended as follows.

3 In paragraph 25(3)—

(a) insert "or" at the end of paragraph (b), and

(b) omit paragraph (d) and the "or" preceding it.

4 In paragraph 42(4)—

(a) insert "or" at the end of paragraph (a), and

(b) omit paragraph (c) and the "or" preceding it.

CTA 2009

5 In section A1 of CTA 2009 (overview of the Corporation Tax Acts), in subsection (2)—

(a) omit paragraph (h), and

(b) after that paragraph insert—

"(ha) Part 6A of that Act (hybrid and other mismatches),".

CTA 2010

6 CTA 2010 is amended as follows.

7 In section 938N (group mismatch schemes: priority)—

(a) omit paragraph (d), and

(b) after that paragraph insert—

"(da) Part 6A of that Act (hybrid and other mismatches);".

8 In section 938V (tax mismatch schemes: priority)—

(a) omit paragraph (c), and

(b) after that paragraph insert—

"(ca) Part 6A of TIOPA 2010 (hybrid and other mismatches);".

TIOPA 2010

9 TIOPA 2010 is amended as follows.

10 In section 1 (overview of Act), in subsection (1)—

(a) omit paragraph (c), and

(b) after that paragraph insert—

"(ca) Part 6A (hybrid and other mismatches),".

11 In section 157 (direct participation), in subsection (1)—

(a) omit the "and" at the end of paragraph (b), and

(b) after paragraph (c) insert ", and

(d) in Part 6A, section 259NB(4)."

12 In section 158 (indirect participation: defined by sections 159 to 162), in subsection (4)—

(a) omit the "and" at the end of paragraph (b), and

(b) after paragraph (c) insert ", and

(d) in Part 6A, section 259NB(4),".

13 In section 159 (indirect participation: potential direct participant), in subsection (1)—

(a) omit the "and" at the end of paragraph (b), and

(b) after paragraph (c) insert ", and

(d) in Part 6A, section 259NB(4)."

14 In section 160 (indirect participation: one of several major participants), in subsection (1)—

(a) omit the "and" at the end of paragraph (b), and

(b) after paragraph (c) insert ", and

(d) in Part 6A, section 259NB(4)."

15 Omit Part 6 (tax arbitrage).

16 Omit Part 4 of Schedule 11 (tax arbitrage: index of defined expressions used in Part 6).

17 After that Part of that Schedule insert—

"**PART 4A**

HYBRID AND OTHER MISMATCHES: INDEX OF DEFINED EXPRESSIONS USED IN PART 6A

arrangement (in Part 6A)	section 259NF
CFC and CFC charge (in Part 6A)	section 259B(4)
the Commissioners (in Part 6A)	section 259NF
control group (in Part 6A)	section 259NB
deduction period (in Chapter 10 of Part 6A)	section 259JA(5)(a)
dual resident company (in Chapter 10 of Part 6A)	section 259JA(3)
dual territory double deduction amount (in Chapter 10 of Part 6A)	section 259JA(5)
dual territory double deduction (in Chapter 11 of Part 6A)	section 259KB
excessive PE deduction (in Chapter 6 of Part 6A)	section 259FA(8)
excessive PE deduction (in Chapter 11 of Part 6A)	section 259KB
financial instrument (in Part 6A)	section 259N

foreign CFC and foreign CFC charge (in Part 6A)	section 259B(4)
foreign deduction period (in Chapter 10 of Part 6A)	section 259JA(5)(b)
hybrid entity (in Part 6A)	section 259BE
hybrid entity deduction period (in Chapter 9 of Part 6A)	section 259IA(2)(a)
hybrid entity double deduction amount (in Chapter 9 of Part 6A)	section 259IA(4)
hybrid or otherwise impermissible deduction/non-inclusion mismatch (in Chapter 3 of Part 6A)	section 259CB
hybrid payee (in Chapter 7 of Part 6A)	section 259GA(3)
hybrid payee deduction/non-inclusion mismatch (in Chapter 7 of Part 6A)	section 259GB
hybrid payer (in Chapter 5 of Part 6A)	section 259EA(3)
hybrid payer deduction/non-inclusion mismatch (in Chapter 5 of Part 6A)	section 259EB
hybrid transfer arrangement (in Chapter 4 of Part 6A)	section 259DB
hybrid transfer deduction/non-inclusion mismatch (in Chapter 4 of Part 6A)	section 259DC
imported mismatch payment (in Chapter 11 of Part 6A)	section 259KA(2)
imported mismatch arrangement (in Chapter 11 of Part 6A)	section 259KA(2)
investor (in Part 6A)	section 259BE(4)
investor deduction period (in Chapter 9 of Part 6A)	section 259IA(2)(b)
investor jurisdiction (in Part 6A)	section 259BE(4)
mismatch payment (in Chapter 11 of Part 6A)	section 259KA(6)
multinational company (in Chapter 6 of Part 6A)	section 259FA(3)
multinational company (in Chapter 8 of Part 6A)	section 259HA(4)
multinational payee deduction/non-inclusion mismatch (in Chapter 8 of Part 6A)	section 259HB
ordinary income (in Part 6A)	sections 259BC and 259BD

over-arching arrangement (in Chapter 11 of Part 6A)	section 259KA(5)
P (in Chapter 11 of Part 6A)	section 259KA(3)
parent jurisdiction (in Chapter 6 of Part 6A)	section 259FA(3)(a)
parent jurisdiction (in Chapter 8 of Part 6A)	section 259HA(4)(a)
parent jurisdiction (in Chapter 10 of Part 6A)	section 259JA(4)(b)(ii)
payee (in Part 6A)	section 259BB(6)
payee jurisdiction (in Part 6A)	section 259BB(9)
payer (in Part 6A)	section 259BB(1)(a) or (2)
payment (in Part 6A)	section 259BB(1)
payment period (in Part 6A)	section 259BB(1)(b) or (2)
PE jurisdiction (in Chapter 8 of Part 6A)	section 259HA(4)(b)
PE jurisdiction (in Chapter 10 of Part 6A)	section 259JA(4)(a)
PE jurisdiction (in Chapter 11 of Part 6A)	section 259KB(3)(a)
permanent establishment (in Part 6A)	section 259BF
quasi-payment (in Part 6A)	section 259BB(2) to (5)
related (in Part 6A)	section 259NC
relevant deduction (in Part 6A)	section 259BB(1)(b) or (2)(a)
relevant investment fund (in Part 6A)	section 259NA
relevant mismatch (in Chapter 11 of Part 6A)	section 259KA(6)
relevant multinational company (in Chapter 10 of Part 6A)	section 259JA(4)
relevant PE period (in Chapter 6 of Part 6A)	section 259FA(4)
series of arrangements (in Chapter 11 of Part 6A)	section 259KA(5)
substitute payment (in Chapter 4 of Part 6A)	section 259DB(5)
tax (in Part 6A)	section 259B
taxable period (in Part 6A)	section 259NF
taxable profits (in Part 6A)	sections 259BC(2) and 259BD(5)
underlying instrument (in Chapter 4 of Part 6A)	section 259DB(3)

underlying return (in Chapter 4 of Part 6A)	section 259DB(5)(b)"

PART 3

COMMENCEMENT

18 Chapters 3 to 5 and 7 and 8 of Part 6A of TIOPA 2010 (counteraction of deduction/non-inclusion mismatches arising from payments and quasi-payments) have effect in relation to—

(a) payments made on or after the commencement date, and

(b) quasi-payments in relation to which the payment period begins on or after the commencement date.

19 Chapter 6 of Part 6A of TIOPA 2010 (counteraction of deduction/non-inclusion mismatches relating to intra-company transfers from permanent establishments) has effect in relation to excessive PE deductions in relation to which the relevant PE period begins on or after the commencement date.

20 Chapters 9 and 10 of Part 6A of TIOPA 2010 (counteraction of double deduction mismatches) have effect for accounting periods beginning on or after the commencement date.

21 Chapter 11 of Part 6A of TIOPA 2010 (imported mismatch payments) has effect in relation to imported mismatch payments that are—

(a) payments made on or after the commencement date, or

(b) quasi-payments in relation to which the payment period begins on or after the commencement date.

22 The following provisions of this Schedule have effect in relation to accounting periods beginning on or after the commencement date—

(a) paragraphs 2 to 4, and

(b) paragraphs 5(a), 7(a), 8(a), 10(a), 15 and 16.

23 For the purposes of paragraph 18 and 21, where a payment period begins before the commencement date and ends on or after that date ("the straddling period")—

(a) so much of the straddling period as falls before the commencement date, and so much of that period as falls on or after that date, are to be treated as separate taxable periods, and

(b) where it is necessary to apportion an amount for the straddling period to the two separate taxable periods, it is to be apportioned—

(i) on a time basis according to the respective length of the separate taxable periods, or

(ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

24 For the purposes of paragraphs 19, 20 and 22(b), where a company has an accounting period beginning before the commencement date and ending on or after that date ("the straddling period")—

(a) so much of the straddling period as falls before the commencement date, and so much of the straddling period as falls on or after that date, are to be treated as separate accounting periods, and

(b) where it is necessary to apportion an amount for the straddling period to the two separate accounting periods, it is to be apportioned—

(i) in accordance with section 1172 of CTA 2010 (time basis), or

(ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

25 In this Part of this Schedule "the commencement date" means 1 January 2017.

SCHEDULE 11

Section 83

DISPOSALS OF NON-UK RESIDENTIAL PROPERTY INTERESTS

1 TCGA 1992 is amended in accordance with this Schedule.

2 In section 14B(1) (meaning of "non-resident CGT disposal"), in paragraph (a) after "disposal of a UK residential property interest" insert "(within the meaning given by Schedule B1)".

3 Omit section 14C (which introduces Schedule B1 and is superseded by the section 4BB inserted by section 83 of this Act).

4 In Schedule B1 (disposals of UK residential property interests), in paragraph 1—

(a) in sub-paragraph (4) for "6 April 2015" substitute "the relevant date";

(b) after that sub-paragraph insert—

"(4A) In sub-paragraph (4) "the relevant date" means—

(a) for the purpose of determining whether a disposal is a non-resident CGT disposal, 6 April 2015;

(b) for any other purpose, 31 March 1982."

5 After Schedule B1 insert—

"SCHEDULE BA1

Section 4BB.

DISPOSALS OF NON-UK RESIDENTIAL PROPERTY INTERESTS

Meaning of "disposal of a non-UK residential property interest"

1 (1) For the purposes of this Act, the disposal by a person ("P") of an interest in non-UK land (whether made before or after this Schedule comes into force) is a "disposal of a non-UK residential property interest" if the first or second condition is met.

(2) The first condition is that—

(a) the land has at any time in the relevant ownership period consisted of or included a dwelling, or

(b) the interest in non-UK land subsists for the benefit of land that has at any time in the relevant ownership period consisted of or included a dwelling.

(3) The second condition is that the interest in non-UK land subsists under a contract for an off-plan purchase.

(4) In sub-paragraph (2) "relevant ownership period" means the period—

(a) beginning with the day on which P acquired the interest in non-UK land or 31 March 1982 (whichever is later), and

(b) ending with the day before the day on which the disposal occurs.

(5) If the interest in non-UK land disposed of by P as mentioned in sub-paragraph (1) results from interests in non-UK land which P has acquired at different times ("the acquired interests"), P is regarded for the purposes of sub-paragraph (4)(a) as having acquired the interest when P first acquired any of the acquired in-terests.

(6) In this paragraph—

"contract for an off-plan purchase" means a contract for the acquisition of land consisting of, or including, a building or part of a building that is to be constructed or adapted for use as a dwelling;

"dwelling" is to be read in accordance with paragraph 4.

(7) Paragraphs 6 and 20 of Schedule 4ZZC contain further provision about interests under contracts for off-plan purchases.

"Interest in non-UK land"

2 (1) In this Schedule "interest in non-UK land" means—

(a) an estate, interest, right or power in or over land outside the United Kingdom, or

(b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,

other than an excluded interest.

(2) The following are excluded interests—

(a) any security interest;

(b) a licence to use or occupy land.

(3) In sub-paragraph (2) "security interest" means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

(4) The Treasury may by regulations—

(a) provide that any other description of interest or right in relation to land outside the United Kingdom is an excluded interest;

(b) exclude from sub-paragraph (2) such interests or rights as may be prescribed in the regulations.

(5) Regulations under sub-paragraph (4) may make incidental, consequential, supplementary or transitional provision or savings.

Grants of options

3 (1) Sub-paragraph (2) applies where—

(a) a person ("P") grants at any time an option binding P to sell an interest in non-UK land, and

(b) a disposal by P of that interest in non-UK land at that time would be a disposal of a non-UK residential property interest by virtue of paragraph 1.

(2) The grant of the option is regarded for the purposes of this Schedule as the disposal of an interest in the land in question (if it would not be so regarded apart from this paragraph).

(3) Nothing in this paragraph affects the operation of section 144 in relation to the grant of the option (or otherwise).

(4) Subsection (6) of section 144 (interpretation of references to "sale" etc) applies for the purposes of this paragraph as it applies for the purposes of that section.

Meaning of "dwelling"

4 (1) Paragraph 4 of Schedule B1 (meaning of "dwelling"), read with paragraphs 6 to 10 of that Schedule, applies for the purposes of this Schedule as it applies for the purposes of Schedule B1, but as if—

(a) in paragraph 4, sub-paragraphs (5) and (6) were omitted,

(b) in paragraphs 6 and 8—

(i) any reference to an interest in UK land were to an interest in non-UK land within the meaning of this Schedule, and

(ii) any reference to paragraph 1(4) of that Schedule were a reference to paragraph 1(4) of this Schedule, and

(c) in paragraphs 7 to 9 any reference to planning permission or development consent were to any permission or consent corresponding to planning permission or development consent within the meaning of that Schedule.

(2) In paragraph 5 of Schedule B1 (power to amend), the reference to paragraph 4 includes paragraph 4 as applied by this paragraph.

(3) The Treasury may by regulations under this sub-paragraph make provision changing or clarifying the cases where a building outside the United Kingdom counts as a dwelling for the purposes of this Schedule (and sub-paragraph (1) has effect subject to any such regulations).

(4) Provision made under sub-paragraph (3) may include provision corresponding to paragraph 4(5) of Schedule B1.

Interpretation

5 In this Schedule "land" includes a building."

SCHEDULE 12

Section 83

DISPOSALS OF RESIDENTIAL PROPERTY INTERESTS: GAINS AND LOSSES

1 TCGA 1992 is amended in accordance with this Schedule.

2 In section 57A(3) (gains and losses on relevant high value disposals: interaction with other provisions)—

(a) the words from "Part 4" to the end become paragraph (a), and

(b) after that paragraph insert "or,

(b) Part 3 of Schedule 4ZZC applies (other disposals of residential property interests which are or involve relevant high value disposals)."

3 After section 57B insert—

"**CHAPTER 7**

COMPUTATION OF GAINS AND LOSSES: DISPOSALS OF RESIDENTIAL PROPERTY INTERESTS

57C Gains and losses on disposals of residential property interests

Schedule 4ZZC makes provision about the computation of—

(a) residential property gains or losses, and

(b) other gains or losses,

on disposals of residential property interests which are not non-resident CGT disposals."

4 In Schedule B1 (disposals of UK residential property interests), in paragraph 1(7) after "Schedule 4ZZB" insert "and paragraphs 6 and 20 of Schedule 4ZZC".

5 After Schedule 4ZZB insert—

"SCHEDULE 4ZZC

Section 57C

DISPOSALS OF RESIDENTIAL PROPERTY INTERESTS: GAINS AND LOSSES

PART 1

INTRODUCTION AND INTERPRETATION

Introduction

1 (1) In this Schedule "RPI disposal" means a disposal of a residential property interest which is not a non-resident CGT disposal.

(2) This Schedule applies for the purpose of determining, in relation to an RPI disposal—

(a) whether a residential property gain or loss accrues on the disposal, and the amount of any such gain or loss, and

(b) whether a gain or loss other than a residential property gain or loss accrues on the disposal, and the amount of any such gain or loss.

(3) In this Schedule—

(a) Part 2 contains the main rules for computing the gains and losses;

(b) Part 3 contains the rules for computing the gains and losses in a case where the RPI disposal is, or involves, a relevant high value disposal (as defined in section 2C).

Interpretation

2 (1) For the purposes of this Schedule, a relevant high value disposal is "comprised in" an RPI disposal if—

(a) the RPI disposal is treated for the purposes of section 2C and Schedule 4ZZA as two or more disposals, and

(b) the relevant high value disposal is one of those.

(2) In this Schedule—

"chargeable interest" has the same meaning as in Part 3 of the Finance Act 2013 (annual tax on enveloped dwellings) (see section 107 of that Act);

"dwelling" has the meaning given by —

(a) paragraph 4 of Schedule B1, in relation to a disposal of a UK residential property interest;

(b) paragraph 4 of Schedule BA1, in relation to a disposal of a non-UK residential property interest;

"subject-matter", in relation to an interest in land (or a chargeable interest) means the land to which the interest relates.

PART 2

RPI DISPOSALS NOT INVOLVING RELEVANT HIGH VALUE DISPOSALS

Application of Part

3 (1) This Part of this Schedule applies where a person ("P") makes an RPI disposal of (or of part of) an interest in land.

(2) But this Part of this Schedule does not apply if the disposal is—

(a) a relevant high value disposal, or

(b) a disposal in which a relevant high value disposal is comprised.

(3) In this Part of this Schedule "the disposed of interest" means—

(a) the interest in land, or

(b) if the disposal is of part of that interest, the part disposed of.

Computation of residential property gains and losses

4 (1) The residential property gain or loss accruing on the disposal is computed as follows.

Step 1

Determine the amount of the gain or loss that accrues to P.

Step 2

The residential property gain or loss accruing on the disposal is an amount equal to the relevant fraction of that gain or loss (but see Step 3).

Step 3

If there has been mixed use of the subject matter of the disposed of interest on one or more days in the relevant ownership period, the residential property gain or loss accruing on the disposal is equal to the appropriate fraction of the amount given by Step 2.

(2) In Step 2 "the relevant fraction" means—

$$\frac{RD}{TD}$$

where—

"RD" is the number of days in the relevant ownership period on which the subject matter of the disposed of interest consists wholly or partly of a dwelling;

"TD" is the total number of days in the relevant ownership period.

(3) For the purposes of Step 3 there is "mixed use" of land on any day on which the land consists partly, but not exclusively, of one or more dwellings.

(4) In Step 3 "the appropriate fraction" means the fraction that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.

(5) In this paragraph the "relevant ownership period" means the period—

(a) beginning with the day on which P acquired the disposed of interest or, if later, 31 March 1982, and

(b) ending with the day before the day on which the disposal occurs.

Computation of balancing gains and loses

5 The gain or loss accruing on the disposal which is not a residential property gain or loss is computed as follows.

Step 1

In a case where there is a gain under Step 1 of paragraph 4(1), determine the amount of that gain remaining after the deduction of the residential property gain determined under that paragraph.

That remaining gain is the gain accruing on the disposal which is not a residential property gain.

Step 2

In a case where there is a loss under Step 1 of paragraph 4(1), determine the amount of that loss remaining after the deduction of the residential property loss determined under that paragraph.

That remaining loss is the loss accruing on the disposal which is not a residential property loss.

Interest subsisting under contract for off-plan purchase

6 (1) This paragraph applies where the disposal referred to in paragraph 3(1) is a disposal of a residential property interest only because of—

(a) the second condition in paragraph 1 of Schedule B1, or

(b) the second condition in paragraph 1 of Schedule BA1,

(interest subsisting under a contract for the acquisition of land that consists of, or includes, a building that is to be constructed for use as a dwelling).

(2) The land that is the subject of the contract concerned is treated for the purposes of this Part of this Schedule as consisting of (or, as the case requires, including) a dwelling throughout P's period of ownership of the disposed of interest.

PART 3

RPI DISPOSALS INVOLVING RELEVANT HIGH VALUE DISPOSALS

Application of Part

7 (1) This Part of this Schedule applies where—

(a) a person (other than an excluded person) ("P") makes an RPI disposal of (or of part of) an interest in land, and

(b) that disposal ("the disposal of land") is a relevant high value disposal or a relevant high value disposal is comprised in it.

(2) "Excluded person" has the meaning given by section 2B(2).

Interpretation of Part

8 (1) This paragraph applies for the interpretation of this Part of this Schedule.

(2) "The asset", in relation to a relevant high value disposal, means the chargeable interest which (or a part of which) is the subject of that disposal.

(3) "The disposed of interest", in relation to a relevant high value disposal, means the asset or, if only part of the asset is the subject of the relevant high value disposal, that part of the asset.

(4) A day is a "residential property chargeable day" in relation to a relevant high value disposal if—

(a) it is a day on which the subject matter of the disposed of interest consists wholly or partly of a dwelling, but

(b) it is not an ATED chargeable day (as defined in paragraph 3 of Schedule 4ZZA).

Computation of residential property gains or losses on the RPI disposal

9 (1) The residential property gain or loss accruing on the disposal of land is computed as follows.

Step 1

Determine in accordance with paragraphs 10 to 15 the amount of the residential property gain or loss accruing on each relevant high value disposal.

Step 2

Add together the amounts of any gains or losses determined under Step 1 (treating any amount which is a loss as a negative amount).

(2) If the result is a positive amount, that amount is the residential property gain on the disposal of land.

(3) If the result is a negative amount, that amount (expressed as a positive number) is the residential property loss on the disposal of land.

Computation of residential property gains or losses on relevant high value disposal not within Case 1, 2 or 3 (or where an election is made)

10 (1) This paragraph applies to a relevant high value disposal where—

(a) the disposal does not fall within any of Cases 1, 2 or 3 in paragraph 2 of Schedule 4ZZA, or

(b) P has made an election under paragraph 5 of that Schedule in respect of the asset.

(2) The residential property gain or loss accruing on the relevant high value disposal is computed as follows—

Step 1

Determine the amount of gain or loss which accrues to P.

(For the purpose of determining the amount of that gain or loss, no account is taken of section 57C or this Schedule.)

Step 2

The residential property gain or loss accruing on the relevant high value disposal is equal to the special fraction of that gain or loss.

(3) The "special fraction" is—

$$\frac{SD}{TD}$$

where—

"SD" is the number of residential property chargeable days in the relevant ownership period;

"TD" is the total number of days in the relevant ownership period.

(4) "Relevant ownership period" means the period—

(a) beginning with the day on which P acquired the disposed of interest or, if later, 31 March 1982, and

(b) ending with the day before the day on which the relevant high value disposal occurs.

Computation of residential property gains and losses on relevant high value disposal within Case 1, 2 or 3 (and no election made)

11 (1) This paragraph applies to a relevant high value disposal where—

(a) the disposal falls within Case 1, 2 or 3 in paragraph 2 of Schedule 4ZZA, and

(b) P has not made an election under paragraph 5 of that Schedule in respect of the asset.

(2) The residential property gain or loss accruing on the relevant high value disposal is computed in accordance with paragraphs 12 to 15.

(3) In those paragraphs "the relevant year" means—

(a) where the relevant high value disposal falls within Case 1 in paragraph 2 of Schedule 4ZZA, 2013,

(b) where it falls within Case 2 in that paragraph, 2015, and

(c) where it falls within Case 3 in that paragraph, 2016.

12 (1) Take the following steps—

Step 1

Determine the amount equal to the special fraction of the notional pre-ATED gain or loss (as the case may be) (see paragraph 13).

Step 2

Determine the amount equal to the special fraction of the notional post-ATED gain or loss (as the case may be) (see paragraph 14).

Step 3

Add (treating any amount which is a loss as a negative amount)—

(a) the amount of any gain or loss determined under Step 1, and

(b) the amount of any gain or loss determined under Step 2.

(2) If the result is a positive amount, that amount is the residential property gain on the relevant high value disposal.

(3) If the result is a negative amount, that amount (expressed as a positive number) is the residential property loss on the relevant high value disposal.

13 (1) This paragraph applies for the purposes of Step 1 in paragraph 12.

(2) "Notional pre-ATED gain or loss" means the gain or loss which would have accrued on 5 April of the relevant year had the disposed of interest been disposed of for a consideration equal to the market value of the interest on that date.

(3) The "special fraction" is—

$$\frac{SD}{TD}$$

where—

"SD" is the number of residential property chargeable days in the relevant ownership period;

"TD" is the total number of days in the relevant ownership period.

(4) The "relevant ownership period" is the period—

(a) beginning with the day on which P acquired the disposed of interest or, if later, 31 March 1982, and

(b) ending with 5 April of the relevant year.

14 (1) This paragraph applies for the purposes of Step 2 in paragraph 12.

(2) "Notional post-ATED gain or loss" means the gain or loss which would have accrued on the relevant high value disposal had P acquired the disposed of interest on 5 April of the relevant year for a consideration equal to its market value on that date (and see paragraph 15).

(3) The "special fraction" is—

$$\frac{SD}{TD}$$

where—

"SD" is the number of residential property chargeable days in the relevant ownership period;

"TD" is the total number of days in the relevant ownership period.

(4) The "relevant ownership period" is the period beginning with 6 April of the relevant year and ending with the day before the day on which the relevant high value disposal occurs.

15 (1) This paragraph applies for the purposes of computing the notional post-ATED gain or loss for the purposes of Step 2 in paragraph 12.

(2) In determining whether the asset which is the subject of the relevant high value disposal is a wasting asset (as defined for the purposes of Chapter 2 of Part 2), ignore the assumption that the asset was acquired on 5 April of the relevant year.

(3) Sections 41 (restriction of losses by reference to capital allowances and renewals allowances) and 47 (wasting assets subject to capital allowances) apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by P in acquiring or providing the asset as if that allowance were made in respect of the expenditure treated as incurred by P on 5 April of the relevant year.

Computation of balancing gains or losses on the RPI disposal

16 (1) The gain or loss on the disposal of land which is neither ATED-related nor a residential property gain or loss ("the balancing gain or loss") is computed as follows.

Step 1

Determine in accordance with paragraphs 17 and 18 the amount of the gain or loss accruing on each relevant high value disposal

which is neither ATED-related nor a residential property gain or loss.

This is the "balancing" gain or loss for each disposal.

Step 2

Add together the amounts of any balancing gains or losses determined under Step 1 (treating any amount which is a loss as a negative amount).

(2) If the result is a positive amount, that amount is the balancing gain on the disposal of land.

(3) If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the disposal of land.

Computation of balancing gains or losses on relevant high value disposal not within Case 1, 2 or 3 (or where an election is made)

17 (1) In the case of a relevant high value disposal to which paragraph 10 applies, the amount of the balancing gain or loss is determined as follows.

(2) Determine the number of balancing days in the relevant ownership period.

(3) "Balancing day" means a day which is neither—

(a) a residential property chargeable day, nor

(b) an ATED chargeable day (as defined in paragraph 3 of Schedule 4ZZA).

(4) The balancing gain or loss on the disposal is equal to the balancing fraction of the amount of the gain or (as the case may be) loss determined under Step 1 of paragraph 10(2).

(5) The "balancing fraction" is—

$$\frac{BD}{TD}$$

where—

"BD" is the number of balancing days in the relevant ownership period;

"TD" is the total number of days in the relevant ownership period.

(6) In this paragraph "relevant ownership period" has the same meaning as in paragraph 10.

Computation of balancing gains or losses on relevant high value disposal within Case 1, 2 or 3 (and no election made)

18 (1) The amount of the balancing gain or loss on a relevant high value disposal to which paragraph 11 applies is found by adding—

(a) the amount of the balancing gain or loss belonging to the notional pre-ATED gain or loss, and

(b) the amount of the balancing gain or loss belonging to the notional post-ATED gain or loss,

(treating any amount which is a loss as a negative amount).

(2) If the result is a positive amount, that amount is the balancing gain on the relevant high value disposal.

(3) If the result is a negative amount, that amount (expressed as a positive number) is the balancing loss on the relevant high value disposal.

(4) The balancing gain or loss belonging to the notional pre-ATED gain or loss is equal to the balancing fraction of the notional pre-ATED gain or loss.

(5) The balancing gain or loss belonging to the notional post-ATED gain or loss is equal to the balancing fraction of the notional post-ATED gain or loss.

(6) The balancing fraction is—

$$\frac{BD}{TD}$$

where—

"BD" is the number of balancing days in the appropriate ownership period;

"TD" is the total number of days in the appropriate ownership period.

(7) "Balancing day" means a day which is neither—

(a) a residential property chargeable day, nor

(b) an ATED chargeable day (as defined in paragraph 3 of Schedule 4ZZA).

(8) The appropriate ownership period is—

(a) for the purpose of computing the balancing gain or loss belonging to the notional pre-ATED gain or loss, the relevant ownership period mentioned in paragraph 13(4);

(b) for the purpose of computing the balancing gain or loss belonging to the notional post-ATED gain or loss, the relevant ownership period mentioned in paragraph 14(4).

(9) In this paragraph—

"notional pre-ATED gain or loss" means the same as in paragraph 13(2);

"notional post-ATED gain or loss" means the same as in paragraph 14(2).

Relevant high value disposal and "other" disposal are comprised in the disposal of land

19 (1) This paragraph applies where the disposals comprised in the disposal of land include a disposal (the "non-ATED related disposal") which is not a relevant high value disposal.

(2) This Part of this Schedule (apart from this paragraph) applies in relation to the non-ATED related disposal as if it were a relevant high value disposal.

(3) Sub-paragraph (4) applies if there has, at any time in the relevant ownership period, been mixed use of the subject matter of the disposed of interest.

(4) The amount of any residential property gain or loss on the non-ATED related disposal computed under this Part of this Schedule is taken to be the appropriate fraction of the amount that it would otherwise be.

(5) In sub-paragraph (4) "the appropriate fraction" means the fraction that is, on a just and reasonable apportionment, attributable to the dwelling or dwellings.

(6) In this paragraph the "relevant ownership period" means—

(a) where paragraph 10 applies, the relevant ownership period as defined in paragraph 10(4), or

(b) where paragraph 11 applies, the relevant ownership period as defined in paragraphs 13(4) and 14(4).

Interest subsisting under contract for off-plan purchase

20 (1) This paragraph applies where the RPI disposal made by P is a disposal of a residential property interest only because of—

(a) the second condition in paragraph 1 of Schedule B1, or

(b) the second condition in paragraph 1 of Schedule BA1,

(interest subsisting under a contract for the acquisition of land that consists of, or includes, a building that is to be constructed for use as a dwelling).

(2) The land that is the subject of the contract concerned is treated for the purposes of this Part of this Schedule as consisting of (or, as the case requires, including) a dwelling throughout P's period of ownership of the interest in land."

SCHEDULE 13

Section 86

ENTREPRENEURS' RELIEF: "TRADING COMPANY" AND "TRADING GROUP"

1 TCGA 1992 is amended as follows.

2 In section 169H(7) (introduction), for "Section 169S contains" substitute "Sections 169S and 169SA contain".

3 In section 169S (interpretation of Chapter), subsection (4A) is treated as never having had effect, and is omitted accordingly.

4 After section 169S insert—

"**169SA Meaning of "trading company" and "trading group"**

Schedule 7ZA gives the meaning in this Chapter of "trading company" and "trading group"."

After Schedule 7 insert—

"SCHEDULE 7ZA

Section 169SA

ENTREPRENEURS' RELIEF: "TRADING COMPANY" AND "TRADING GROUP"

PART 1

MEANING OF "TRADING COMPANY" AND "TRADING GROUP"

1 (1) This paragraph gives the meaning of "trading company" and "trading group" where used in the following provisions of Chapter 3 of Part 5 (entrepreneurs' relief)—

(a) in section 169I (material disposal of business assets)—

(i) paragraphs (a) and (b) of subsection (6) (which apply for the purposes of conditions A and B in that section), and

(ii) sub-paragraphs (i) and (ii) of subsection (7A)(c) (which apply for the purposes of conditions C and D in that section), and

(b) section 169J(4) (disposal of trust business assets).

(2) "Trading company" and "trading group" have the same meaning as in section 165 (see section 165A), but as modified by Part 2 of this Schedule.

(3) "Trading activities" (see section 165A(4) and (9)) is to be read in accordance with Part 3 of this Schedule.

2 In provisions of Chapter 3 of Part 5 not mentioned in paragraph 1(1), "trading company" and "trading group" have the same meaning as in section 165 (see section 165A), except that subsections (7) and (12) of section 165A are to be disregarded.

PART 2

JOINT VENTURE COMPANIES

Attribution of activities of a joint venture company

3 In relation to a disposal of assets consisting of (or of interests in) shares in or securities of a company ("company A"), activities of a joint venture company are to be attributed to a company under subsections (7) and (12) of section 165A only if P—

(a) passes the shareholding test in relation to the joint venture company (see paragraphs 5 to 8), and

(b) passes the voting rights test in relation to the joint venture company (see paragraphs 9 to 12).

Meaning of "investing company"

4 (1) For the purposes of this Part, a company is an "investing company" in relation to P and a joint venture company if it meets conditions 1 and 2.

(2) Condition 1 is that—

(a) the company is company A (see paragraph 3), or

(b) P directly owns some portion of the ordinary share capital of the company.

(3) Condition 2 is that the company owns some portion of the ordinary share capital of the joint venture company (whether it is owned directly, indirectly, or partly directly and partly indirectly).

(4) In sub-paragraph (3) the reference to a company owning share capital indirectly is to be read in accordance with section 1155 of CTA 2010.

Shareholding test

5 P passes the shareholding test in relation to a joint venture company if, throughout the relevant period, the sum of the percentages given by paragraphs (a) and (b) is at least 5%—

(a) the percentage of the ordinary share capital of the joint venture company that is owned directly by P, and

(b) P's indirect shareholding percentage (see paragraph 6).

6 P's "indirect shareholding percentage" is found by—

(a) calculating the percentage of the ordinary share capital of the joint venture company that is owned indirectly by P through a particular investing company (see paragraph 7), and

(b) where there are two or more investing companies, adding those percentages together.

7 The percentage of the ordinary share capital of a joint venture company that is owned indirectly by P through a particular investing company ("company IC") at a particular time is given by—

$$R \times S \times 100$$

where—

R is the fraction of company IC's ordinary share capital that is owned by P at that time, and

S is the fraction of the joint venture company's ordinary share capital that is owned by company IC at that time (whether it is owned directly, indirectly, or partly directly and partly indirectly) (see paragraph 8).

8 (1) The fraction of the joint venture company's ordinary share capital that is owned indirectly by company IC is calculated—

(a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, and

(b) on the assumptions specified in sub-paragraph (2).

(2) The assumptions are—

(a) where company IC directly owns more than 50% of the ordinary share capital of a company, company IC is taken to own the whole of the ordinary share capital of that company;

(b) where a company other than company IC ("company B") directly owns more than 50% of the ordinary share capital of another company ("company C") which is a member of a group of companies of which company IC is a member, company B is taken to own the whole of the ordinary share capital of company C.

Voting rights test

9 P passes the voting rights test in relation to a joint venture company if, throughout the relevant period, the sum of the percentages given by paragraphs (a) and (b) is at least 5%—

(a) the percentage of the voting rights that P holds directly in the joint venture company, and

(b) P's indirect voting rights percentage (see paragraph 10).

10 P's "indirect voting rights percentage" is found by—

(a) calculating the percentage of the voting rights in the joint venture company that P holds indirectly through a particular investing company (see paragraph 11), and

(b) where there are two or more investing companies, adding those percentages together.

11 The percentage of the voting rights in a joint venture company that P holds indirectly through a particular investing company ("company IC") at a particular time is given by—

$$T \times U \times 100$$

where—

T is the fraction of the voting rights in company IC that is held by P at that time, and

U is the fraction of the voting rights in the joint venture company that is held by company IC at that time (whether the voting rights are held directly, indirectly, or partly directly and partly indirectly) (see paragraph 12).

12 (1) The fraction of the voting rights in the joint venture company that is held indirectly by company IC is calculated—

(a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, as if references in those sections to owning the ordinary share capital of a company were references to holding voting rights in a company, and

(b) on the assumptions specified in sub-paragraph (2).

(2) The assumptions are—

(a) where company IC directly holds more than 50% of the voting rights in a company, company IC is taken to hold all the voting rights in that company;

(b) where a company other than company IC ("company B") directly holds more than 50% of the voting rights in another company ("company C") which is a member of a group of companies of which company IC is a member, company B is taken to hold all the voting rights in company C.

PART 3

PARTNERSHIPS

Activities of a company as a member of a partnership

13 (1) In relation to a disposal of assets consisting of (or of interests in) shares in or securities of a company ("company A"), activities carried on by a company as a member of a partnership are to be treated as not being trading activities of the company (see section 165A(4) and (9)) if P fails either or both of the following—

(a) the profits and assets test in relation to the partnership (see paragraphs 15 to 20);

(b) the voting rights test in relation to the partnership (see paragraphs 21 to 23).

(2) In relation to such a disposal, activities carried on by a company as a member of a partnership are also to be treated as not being trading activities of the company if the company is not a member of the partnership throughout the relevant period.

Meaning of "direct interest company" and "relevant corporate partner"

14 (1) This paragraph applies for the purposes of this Part.

(2) A company is a "direct interest company" in relation to P if—

(a) it is company A (see paragraph 13(1)), or

(b) P directly owns some portion of the ordinary share capital of the company.

(3) A company is a "relevant corporate partner" in relation to P and a partnership if—

(a) a direct interest company in relation to P ("company DIC") owns some portion of the ordinary share capital of the company (whether it is owned directly, indirectly or partly directly and partly indirectly),

(b) the company is a member of a group of companies of which company DIC is a member, and

(c) the company is a member of the partnership.

(4) In sub-paragraph (3) the reference to a company owning share capital indirectly is to be read in accordance with section 1155 of CTA 2010.

Profits and assets test

15 P passes the profits and assets test in relation to a partnership if, throughout the relevant period, the sum of the percentages given by paragraphs (a), (b) and (c) is at least 5%—

(a) the percentage which is P's direct interest in the assets of the partnership,

(b) the percentage which is P's share of the partnership through direct interest companies that are members of the partnership (see paragraph 16), and

(c) the percentage which is P's share of the partnership through direct interest companies and relevant corporate partners in the partnership (see paragraph 18).

16 P's "share of the partnership through direct interest companies that are members of the partnership" is found by—

(a) calculating the percentage which is P's indirect share of the partnership through each direct interest company that is a member of the partnership (see paragraph 17), and

(b) where there are two or more direct interest companies that are members of the partnership, adding those percentages together.

17 The percentage which is P's indirect share of the partnership through a particular direct interest company that is a member of the partnership ("company DICP") at a particular time is given by—

$$R \times V \times 100$$

where—

R is the fraction of company DICP's ordinary share capital that is owned by P at that time, and

V is the lower of—

(a) the fraction of the profits of the partnership in which company DICP has an interest at that time, and

(b) the fraction of the assets of the partnership in which company DICP has an interest at that time.

18 P's "share of the partnership through direct interest companies and relevant corporate partners in the partnership" is found by—

(a) calculating the percentage which is P's indirect share of the partnership through each direct interest company and each relevant corporate partner in the partnership (see paragraph 19), and

(b) where there are two or more direct interest companies or two or more relevant corporate partners, or both, adding those percentages together.

19 The percentage which is P's indirect share of the partnership through a particular direct interest company ("company DIC") and a particular relevant corporate partner in the partnership ("company CP") at a particular time is given by—

$$R \times V \times W \times 100$$

where—

R is the fraction of company DIC's ordinary share capital that is owned by P at that time,

V is the lower of—

(a) the fraction of the profits of the partnership in which company CP has an interest at that time, and

(b) the fraction of the assets of the partnership in which company CP has an interest at that time, and

W is the fraction of company CP's ordinary share capital that is owned by company DIC at that time (whether it is owned directly, indirectly, or partly directly and partly indirectly) (see paragraph 20).

20 (1) The fraction of a company's ordinary share capital that is owned indirectly by company DIC is calculated—

(a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, and

(b) on the assumptions specified in sub-paragraph (2).

(2) The assumptions are—

(a) where company DIC directly owns more than 50% of the ordinary share capital of a company, company DIC is taken to own the whole of the ordinary share capital of that company;

(b) where a company other than company DIC ("company B") directly owns more than 50% of the ordinary share capital of another company ("company C") which is a member of a group of companies of which company DIC is a member, company B is taken to own the whole of the ordinary share capital of company C.

Voting rights test

21 (1) P passes the voting rights test in relation to a partnership if, throughout the relevant period, the sum of P's direct voting rights percentage and P's indirect voting rights percentage is at least 5%.

(2) P's "direct voting rights percentage" is found by—

(a) taking the percentage of the voting rights that P holds directly in each direct interest company that is a member of the partnership, and

(b) where P directly holds voting rights in two or more direct interest companies that are members of the partnership, adding those percentages together.

(3) P's "indirect voting rights percentage" is found by—

(a) calculating the percentage which is P's indirect holding of voting rights in each relevant corporate partner in the partnership through each direct interest company (see paragraph 22), and

(b) where there are two or more relevant corporate partners or two or more direct interest companies, or both, adding those percentages together.

22 The percentage which is P's indirect holding of voting rights in a particular relevant corporate partner in the partnership ("company CP") through a particular direct interest company ("company DIC") at a particular time is given by—

$$T \times X \times 100$$

where—

T is the fraction of the voting rights in company DIC that is held by P at that time, and

X is the fraction of the voting rights in company CP that is held by company DIC at that time (whether the voting rights are held directly, indirectly, or partly directly and partly indirectly) (see paragraph 23).

23 (1) The fraction of the voting rights in a company that is held indirectly by company DIC is calculated—

(a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, as if references in those sections to owning the ordinary share capital of a company were references to holding voting rights in a company, and

(b) on the assumptions specified in sub-paragraph (2).

(2) The assumptions are—

(a) where company DIC directly holds more than 50% of the voting rights in a company, company DIC is taken to hold all the voting rights in that company;

(b) where a company other than company DIC ("company B") directly holds more than 50% of the voting rights in another company ("company C") which is a member of a group of companies of which company DIC is a member, company B is taken to hold all the voting rights in company C.

PART 4

INTERPRETATION OF THIS SCHEDULE

Meaning of "P"

24 (1) In the case of a material disposal of business assets, "P" means the individual making the disposal.

(2) In the case of a disposal of trust business assets—

(a) "P" means any relevant beneficiary, but

(b) in any reference to P passing or failing the tests mentioned in paragraphs 3 and 13(1), P is to be read as being a single body consisting of all the relevant beneficiaries (so that, for the purposes of determining if those tests are met, percentages are

to be calculated in respect of each relevant beneficiary and then aggregated).

(3) The following are "relevant beneficiaries"—

(a) the qualifying beneficiary in relation to the disposal (see section 169J(3)), and

(b) any other beneficiary who is, in relation to the disposal, a beneficiary mentioned in section 169O(1).

Meaning of "relevant period"

25 "The relevant period" means—

(a) for the purposes of conditions A and C in section 169I, the period of 1 year ending with the date of the disposal,

(b) for the purposes of conditions B and D in section 169I, the period of 1 year ending with the date mentioned in subsection (7)(a) or (b) or (7O)(a) or (b) of that section, and

(c) for the purposes of section 169J(4), a period of 1 year ending not earlier than 3 years before the date of the disposal.

Other interpretation provisions

26 (1) Terms used in this Schedule which are defined in subsection (14) of section 165A have the same meaning as they have in that subsection.

(2) References to a person holding voting rights include references to a person who has the ability to control the exercise of voting rights by another person.

(3) For the purposes of Part 3 of this Schedule, the assets of—

(a) a Scottish partnership, or

(b) a partnership under the law of any other country or territory under which assets of a partnership are regarded as held by or on behalf of the partnership as such,

are to be treated as held by the members of the partnership in the proportions in which they are entitled to share in the capital profits of the partnership.

References in Part 3 to a person's interest in the assets of a partnership are to be construed accordingly."

6 (1) The amendments made by this Schedule (except paragraph 3) have effect in relation to disposals made on or after 18 March 2015, but only for the purposes of determining what is a trading company or trading group at times on or after that date.

(2) In conditions B and D in section 169I of TCGA 1992 (material disposal of business assets)—

(a) a reference to a company ceasing to be a trading company does not include a case where, as a result of the coming into force of the amendments made by this Schedule, a company which was a trading company immediately before 18 March 2015 is treated as ceasing on that day to be a trading company, and

(b) a reference to a company ceasing to be a member of a trading group does not include a case where, as a result of the coming into force of the amendments

made by this Schedule, a company which was a member of a trading group immediately before 18 March 2015 is treated as ceasing on that day to be a member of a trading group.

(3) Sub-paragraph (2) is without prejudice to the operation of section 43(4) of FA 2015.

SCHEDULE 14

Section 87

INVESTORS' RELIEF

1 (1) In the heading to Part 5 of TGCA 1992, after "ASSETS" insert ", ENTREPRENEURS' RELIEF AND INVESTORS' RELIEF".

(2) In the heading to Chapter 1 of that Part, before "GENERAL PROVISIONS" insert "TRANSFER OF BUSINESS ASSETS:"

2 In Part 5 of TCGA 1992, after section 169V insert—

"**CHAPTER 5**

INVESTORS' RELIEF

Overview

169VA Overview of Chapter

(1) This Chapter provides for a relief, in the form of a lower rate of capital gains tax, in respect of disposals of (and disposals of interests in) certain ordinary shares in unlisted companies.

(2) Section 169VB defines "qualifying shares", "potentially qualifying shares" and "excluded shares".

(3) Section 169VC creates the relief, and relief under that section is to be known as "investors' relief".

(4) Section 169VD makes provision about disposals from holdings consisting partly of qualifying shares.

(5) Sections 169VE to 169VG contain rules for cases where there have been previous disposals from a holding, to determine which shares remain in the holding.

(6) Sections 169VH and 169VI make provision about disposals by trustees of a settlement.

(7) Section 169VJ makes provision about disposals of interests in shares.

(8) Sections 169VK and 169VL provide for a cap on the amount of investors' relief that can be claimed.

(9) Section 169VM makes provision about claims for investors' relief.

(10) Sections 169VN to 169VT make provision about how investors' relief applies following a company's reorganisation of its share capital, an exchange of shares or securities or a scheme of reconstruction.

(11) Sections 169VU to 169VY contain definitions for the purposes of this Chapter.

Qualifying shares

169VB Qualifying shares, potentially qualifying shares and excluded shares

(1) Where there is a disposal of all or part of (or of an interest in) a holding of shares in a company, this section applies to determine whether a share which is in the holding at the time immediately before the disposal ("the relevant time") is for the purposes of this Chapter—

(a) a qualifying share,

(b) a potentially qualifying share, or

(c) an excluded share.

(2) The share is a "qualifying share" at the relevant time if—

(a) the share was subscribed for, within the meaning given by section 169VU, by the person making the disposal ("the investor"),

(b) the investor has held the share continuously for the period beginning with the issue of the share and ending with the relevant time ("the share-holding period"),

(c) the share was issued on or after 17 March 2016,

(d) at the time the share was issued, none of the shares or securities of the company that issued it were listed on a recognised stock exchange,

(e) the share was an ordinary share when issued and is an ordinary share at the relevant time,

(f) the company that issued the share—

(i) was a trading company or the holding company of a trading group (as defined by section 169VV) when the share was issued, and

(ii) has been so throughout the share-holding period,

(g) at no time in the share-holding period was the investor or a person connected with the investor a relevant employee in respect of that company (within the meaning given by section 169VW), and

(h) the period beginning with the date the share was issued and ending with the date of the disposal is at least 3 years.

(3) The share is a "potentially qualifying share" at the relevant time if—

(a) the conditions in subsection (2)(a) to (g) are met, but

(b) the period beginning with the date the share was issued and ending with the date of the disposal is less than 3 years.

(4) The share is an "excluded share" at the relevant time if it is, at that time—

(a) not a qualifying share, and

(b) not a potentially qualifying share.

(5) This section is subject to Schedule 7ZB (disqualification of share where value received by investor).

(6) In relation to a share issued on or after 17 March 2016 but before 6 April 2016, any reference in subsection (2)(h) or (3) to "3 years" is to be read as a reference to the minimum period.

(7) In subsection (6) "the minimum period" means the period of 3 years extended by a period equal in length to the period beginning with the date the share was issued and ending with 5 April 2016.

The relief

169VC Investors' relief

(1) This section applies where—

(a) a qualifying person disposes of a holding, or part of a holding, of shares in a company, and

(b) immediately before that disposal some or all of the shares in the holding are qualifying shares.

(2) If—

(a) a chargeable gain accrues to the qualifying person on the disposal, and

(b) a claim for relief under this section is made,

the rate of capital gains tax in respect of the relevant gain is 10 per cent.

(3) In subsection (2) "the relevant gain" means—

(a) where immediately before the disposal all the shares in the holding are qualifying shares, the chargeable gain on the disposal;

(b) where at that time only some of the shares in the holding are qualifying shares, the appropriate part of that chargeable gain (defined by section 169VD).

(4) In this section—

(a) subsection (1) is subject to section 169VH (disposals by trustees of a settlement: further conditions for relief), and

(b) subsection (2) is subject to—

section 169VI (reduction of relief for certain disposals by trustees of a settlement), and

sections 169VK and 169VL (cap on investors' relief).

(5) A reference in subsection (3) to the chargeable gain on the disposal, or to the appropriate part of that gain, is a reference to that chargeable gain, or (as the case may be) that part, after any deduction of allowable losses which is made in accordance with this Act from that chargeable gain or from that part.

(6) For the application of this section to disposals of interests in shares, see section 169VJ.

(7) In this Chapter a "qualifying person" means—

(a) an individual, or

(b) the trustees of a settlement.

169VD Disposal where holding consists partly of qualifying shares

(1) This section applies where—

(a) a disposal ("the disposal concerned") is made as mentioned in section 169VC(1), and

(b) at the time immediately before the disposal, only some of the shares in the holding are qualifying shares.

(2) Where this section applies, for the purposes of section 169VC(3) "the appropriate part" of the chargeable gain on the disposal is so much of that chargeable gain as is found by multiplying it by the appropriate fraction.

(3) The appropriate fraction is—

$$\frac{Q}{T}$$

where—

Q is the number of qualifying shares found under subsection (4), and

T is the total number of shares disposed of in the disposal concerned.

(4) The number of qualifying shares found under this subsection is—

(a) all the qualifying shares in the holding at the time immediately before the disposal concerned, or

(b) if less, such number of those qualifying shares as equals the number of shares disposed of in that disposal.

169VE Which shares are in holding immediately before disposal

(1) This section applies where—

(a) a particular disposal is made as mentioned in section 169VC(1)(a) ("the current disposal"),

(b) there have been one or more previous disposals of shares from the holding mentioned in section 169VC(1) before the current disposal, and

(c) it is necessary to determine for the purposes of this Chapter which shares are to be treated as in the holding immediately before the current disposal (and, accordingly, which shares are to be treated as having been disposed of in those previous disposals).

(2) In the case of a previous disposal as regards which investors' relief has been claimed or is being claimed, the shares to be treated as disposed of in that previous disposal are to be determined in accordance with the rules in section 169VF.

(3) In the case of a previous disposal not falling within subsection (2), the shares to be treated as disposed of in that previous disposal are to be determined in accordance with the rules in section 169VG.

169VF Shares treated as disposed of in previous disposal where claim made

(1) The rules referred to in section 169VE(2) are as follows; and in this section "the disposal concerned" means the previous disposal mentioned in section 169VE(2).

(2) There are to be treated as having been disposed of in the disposal concerned—

(a) all the qualifying shares in the holding at the time immediately before that disposal ("the material time"), or

(b) if less, such number of those qualifying shares as equals the number of shares disposed of in that disposal.

(3) If—

(a) the number of qualifying shares in the holding at the material time was less than the total number of shares disposed of, and

(b) excluded shares were in the holding at the material time,

the available excluded shares are also to be treated as having been disposed of.

(4) "The available excluded shares" means—

(a) all the excluded shares in the holding at the material time, or

(b) if less, such number of those excluded shares as is equal to the difference between—

(i) the total number of shares disposed of, and

(ii) the number of qualifying shares in the holding at the material time.

(5) If the number of shares treated under subsections (2) to (4) as disposed of in the disposal concerned is less than the total number of shares disposed of, such number of the potentially qualifying shares in the holding at the material time as is equal to the difference are also to be treated as having been disposed of.

(6) Where the number of potentially qualifying shares in the holding at the material time exceeds the difference mentioned in subsection (5), under that subsection potentially qualifying shares acquired later are to be treated as disposed of in preference to ones acquired earlier.

(7) In this section "disposed of" (without more) means disposed of in the disposal concerned.

169VG Shares treated as disposed of in previous disposal: no claim made

(1) The rules referred to in section 169VE(3) are as follows; and in this section "the disposal concerned" means the previous disposal mentioned in section 169VE(3).

(2) If any excluded shares were in the holding at the time immediately before the disposal concerned ("the material time"), the maximum number of excluded shares are to be treated as having been disposed of in the disposal concerned.

(3) "The maximum number of excluded shares" means—

(a) all the excluded shares in the holding at the material time, or

(b) if less, such number of those excluded shares as is equal to the number of shares disposed of.

(4) If—

(a) there were no excluded shares in the holding at the material time, or the number of such shares was less than the total number of shares disposed of, and

(b) potentially qualifying shares were in the holding at the material time,

the available potentially qualifying shares are to be treated as having been disposed of.

(5) "The available potentially qualifying shares" means—

(a) all the potentially qualifying shares in the holding at the material time, or

(b) if less, such number of those potentially qualifying shares as is equal to the difference between—

(i) the total number of shares disposed of, and

(ii) the number of excluded shares in the holding at the material time.

(6) Where the number of potentially qualifying shares in the holding at the material time exceeds the difference mentioned in subsection (5), potentially qualifying shares acquired later are to be treated as disposed of in preference to ones acquired earlier.

(7) If the number of shares treated under subsections (2) to (5) as disposed of in the disposal concerned is less than the total number of shares disposed of, such number of the qualifying shares in the holding at the material time as is equal to the difference are to be treated as having been disposed of.

(8) In this section "disposed of" (without more) means disposed of in the disposal concerned.

Trustees of a settlement: special provision

169VH Disposals by trustees: further conditions for relief

(1) Where a disposal falling within section 169VC(1)(a) and (b) is made by the trustees of a settlement, section 169VC does not apply to the disposal unless there is at least one individual who is an eligible beneficiary in respect of the disposal.

(2) For the purposes of this section, an individual is an "eligible beneficiary" in respect of the disposal if—

(a) at the time immediately before the disposal, the individual has under the settlement an interest in possession in settled property that includes or consists of the holding of shares mentioned in section 169VC(1),

(b) the individual has had such an interest in possession under the settlement throughout the period of 3 years ending with the date of the disposal,

(c) at no time in that period has the individual been a relevant employee in respect of the company that issued the shares (within the meaning given by section 169VW), and

(d) the individual has (by the time of the claim under section 169VC in respect of the disposal) elected to be treated as an eligible beneficiary in respect of the disposal.

(3) For the purposes of subsection (2)(d), an individual elects to be treated as an eligible beneficiary in respect of a disposal if the individual tells the trustees (by whatever means) that he or she wishes to be so treated; and an election under subsection (2)(d) may be withdrawn by the individual at any time until the claim is made.

(4) In this section "interest in possession" does not include an interest in possession for a fixed term.

(5) In relation to a disposal made by the trustees of a settlement, any reference in section 169VB(2)(g) to the investor is to be read as a reference to any trustee of the settlement.

169VI Disposals by trustees: relief reduced in certain cases

(1) Subsection (2) applies where—

(a) a disposal falling within section 169VC(1)(a) and (b) is made by the trustees of a settlement,

(b) section 169VC applies to the disposal by reason of there being at least one individual who is an eligible beneficiary in respect of the disposal (see section 169VH), and

(c) at the time immediately before the disposal, there are two or more persons each of whom has under the settlement an interest in possession in the settled property.

(2) In such a case the reference in section 169VC(2) to the relevant gain is to be read as a reference—

(a) to the eligible beneficiary's share of the relevant gain (see subsections (3) to (6)), or

(b) if there is more than one individual who is an eligible beneficiary in respect of the disposal, to so much of the relevant gain as is equal to the aggregate of the eligible beneficiaries' shares of that gain.

(3) In this section—

"eligible beneficiary" has the meaning given by section 169VH(2);

"relevant gain" has the meaning given by section 169VC(3);

"the settled property" means settled property that includes or consists of the holding of shares mentioned in section 169VC(1).

(4) Subsection (5) applies to determine for the purposes of this Chapter, in relation to any individual who is an eligible beneficiary in respect of a disposal within section 169VC(1) made by the trustees of a settlement, that individual's share of the relevant gain.

(5) That individual's share of the relevant gain on the disposal is so much of the relevant gain on the disposal as bears to the whole of that gain the same proportion as X bears to Y, where—

X is the interest in possession (other than for a fixed term) which, at the time immediately before the disposal, that individual has under the settlement in the income from the holding of shares mentioned in section 169VC(1), and

Y is all the interests in that income that persons (including that individual) with interests in possession in that holding have under the settlement at that time.

Disposals of interests in shares

169VJ Disposals of interests in shares: joint holdings etc

(1) In section 169VC(1)(a), the reference to the case where a qualifying person disposes of a holding, or part of a holding, of shares in a company includes the case where a qualifying person disposes of an interest in a relevant holding.

(2) In this section a "relevant holding" means either—

(a) a number of shares in a company which are of the same class and were acquired in the same capacity jointly by the same two or more persons including the qualifying person, or

(b) a number of shares in a company which are of the same class and were acquired in the same capacity by the qualifying person solely.

(3) In this section—

(a) "an interest" in a relevant holding means any interests of the qualifying person, in any of the shares in the relevant holding, which are by virtue of section 104 to be regarded as a single asset, and

(b) references to an interest include part of an interest.

(4) Where section 169VC(1) applies by reason of this section, section 169VD(3) and (4) have effect as if any reference to the number of shares disposed of were a reference to the number of shares an interest in which is disposed of.

(5) In relation to a disposal by the trustees of a settlement of an interest in a relevant holding falling within subsection (2)(a), sections 169VH(2) and 169VI(3) and (5) have effect as if any reference to the holding of shares mentioned in section 169VC(1) were to the interest disposed of.

(6) In accordance with subsection (1)—

(a) in sections 169VN(1)(d), 169VP(1)(d) and 169VS(1)(d) (reorganisations), any reference to a disposal of all or part of a holding includes a disposal by the qualifying person of an interest in the holding, and

(b) the reference in section 169VT(2) to a disposal of the original shares is to be read, in relation to a case where the original shares fall within subsection (2)(a) above, as a reference to a disposal of the qualifying person's interest in those shares.

Cap on relief

169VK Cap on relief for disposal by an individual

(1) This section applies if, on a disposal within section 169VC(1) made by an individual ("the individual concerned"), the aggregate of—

(a) the amount of the relevant gain on the disposal ("the gain in question"),

(b) the total amount of any gains that, in relation to earlier disposals by the individual concerned, were charged at the rate in section 169VC(2), and

(c) the total amount of any reckonable trust gains that, on any previous trust disposals in respect of which the individual concerned was an eligible beneficiary, were charged at the rate in section 169VC(2),

exceeds £10 million.

(2) The rate in section 169VC(2) applies only to so much (if any) of the gain in question as, when added to the aggregate of the total amounts mentioned in subsection (1)(b) and (c), does not exceed £10 million.

(3) Section 4 (rates of capital gains tax) applies to so much of the gain in question as is not subject to the rate in section 169VC(2).

(4) In this section—

"eligible beneficiary", in relation to a disposal, is to be read in accordance with section 169VH(2);

"reckonable trust gain", in relation to a trust disposal in respect of which the individual concerned was an eligible beneficiary, means—

(a) if section 169VI(1)(c) applied in relation to the disposal, that individual's share of the relevant gain on that disposal, within the meaning given by section 169VI(4) and (5);

(b) otherwise, the relevant gain on that disposal;

"the relevant gain", in relation to a disposal, has the meaning given by section 169VC(3);

"trust disposal" means a disposal by the trustees of a settlement.

169VL Cap on relief for disposal by trustees of a settlement

(1) This section applies where—

(a) a disposal ("the disposal in question") is made by the trustees of a settlement,

(b) that disposal is within section 169VC(1), and

(c) there is an excess amount in relation to an individual who is an eligible beneficiary in respect of the disposal in question ("the individual concerned").

(2) For the purposes of this section there is an "excess amount" in relation to the individual concerned if the aggregate of—

(a) the amount of the current gain,

(b) the total amount of any gains that, in relation to earlier disposals made by the individual concerned, were charged at the rate in section 169VC(2), and

(c) the total amount of any reckonable trust gains that, on any previous trust disposals in respect of which the individual concerned was an eligible beneficiary, were charged at the rate in section 169VC(2),

exceeds £10 million.

(3) The rate in section 169VC(2) applies to the current gain only to the extent (if any) that the current gain when added to the aggregate of the total amounts mentioned in subsection (2)(b) and (c) does not exceed £10 million.

(4) Section 4 (rates of capital gains tax) applies to so much of the current gain as is not subject to the rate in section 169VC(2).

(5) In this section—

"the current gain" means the reckonable trust gain on the disposal in question;

"eligible beneficiary", in relation to a disposal, is to be read in accordance with section 169VH(2);

"reckonable trust gain", in relation to any trust disposal in respect of which the individual concerned is an eligible beneficiary, means—

(a) if section 169VI(1)(c) applies in relation to the disposal, that individual's share of the relevant gain on that disposal, within the meaning given by section 169VI(4) and (5);

(b) otherwise, the relevant gain on that disposal;

"the relevant gain", in relation to a disposal, has the meaning given by section 169VC(3);

"trust disposal" means a disposal by the trustees of a settlement.

Claims for relief

169VM Claims for relief

(1) Any claim for investors' relief must be made—

(a) in the case of a disposal by an individual, by that individual;

(b) in the case of a disposal by the trustees of a settlement, jointly by—

(i) the trustees, and

(ii) the eligible beneficiary in respect of the disposal, within the meaning given by section 169VH(2) (or, if more than one, all those eligible beneficiaries).

(2) Any claim for investors' relief in respect of a disposal must be made on or before the first anniversary of the 31 January following the tax year in which the disposal is made.

Reorganisations

169VN Reorganisations where no consideration given

(1) This section applies where—

(a) there is a reorganisation within the meaning of section 126,

(b) immediately before the reorganisation, a qualifying person holds ordinary shares which, in relation to that reorganisation, are original shares within the meaning of section 126,

(c) on the reorganisation that person does not give or become liable to give any consideration for, or for any part of, a new holding, and

(d) at a time after the reorganisation, there is a disposal of all or part of a new holding.

(2) In this section a "new holding" means—

(a) the holding that immediately after the reorganisation is (in relation to the original shares) the new holding within the meaning of section 126, or

(b) where the new holding within the meaning of section 126 consists of two or more actual holdings, any of those actual holdings.

(3) Subsections (4) and (5) apply for the purposes of determining (for any purpose of this Chapter) the status of shares that immediately before the disposal mentioned in subsection (1)(d) are in the new holding mentioned there ("the new holding concerned").

(4) Where a number of the original shares were—

(a) subscribed for by the qualifying person,

(b) issued on a particular date ("the relevant issue date"), and

(c) held continuously by that person for a particular period ending immediately before the reorganisation ("the period concerned"),

the following assumption is to be made.

(5) That assumption is that an appropriate number of the new shares were—

(a) subscribed for by the qualifying person,

(b) issued on the relevant issue date, and

(c) had by the time immediately after the reorganisation already been held continuously by that person for the period concerned.

(6) In subsections (4) and (5)—

"the appropriate number" has the meaning given by section 169VO;

"the original shares" means the shares held by the qualifying person immediately before the reorganisation that were original shares in relation to the reorganisation;

"the new shares" means the shares that immediately after the reorganisation were in the new holding concerned (including such, if any, of the original shares as remained after the reorganisation and were in that holding).

(7) In this section a reference to the "status" of a share is to whether it is qualifying, potentially qualifying or excluded.

(8) Section 169VE applies to determine, for the purposes of this Chapter, which shares are included in a holding immediately before a reorganisation as it applies for the purposes of determining which shares are included in a holding immediately before a particular disposal.

(9) References in this section to consideration are to be read in accordance with section 128(2).

169VO The appropriate number

(1) The "appropriate number" for the purposes of section 169VN(5) is the number found by multiplying the number of shares that are in the new holding concerned immediately after the reorganisation by the fraction—

$$\frac{A}{B}$$

where—

A is the number of the original shares that were—

(a) subscribed for by the qualifying person,

(b) issued on the relevant issue date, and

(c) continuously held by that person for the period concerned, and

B is the total number of the original shares.

(2) In this section—

"the new holding concerned" has the meaning given by section 169VN(3);

"the original shares" has the meaning given by section 169VN(6);

"the relevant issue date" has the meaning given by section 169VN(4);

"the period concerned" has the meaning given by section 169VN(4).

169VP Reorganisations where consideration given

(1) This section applies where—

(a) there is a reorganisation within the meaning of section 126,

(b) immediately before the reorganisation, a qualifying person holds ordinary shares which, in relation to that reorganisation, are original shares within the meaning of section 126,

(c) on the reorganisation that person gives or becomes liable to give consideration for shares ("shares issued for consideration") which—

(i) are issued to that person on the reorganisation, and

(ii) immediately after the reorganisation are in a new holding, and

(d) at a time after the reorganisation, there is a disposal of all or part of that new holding.

(2) In this section a "new holding" means—

(a) the holding that immediately after the reorganisation is (in relation to the original shares) the new holding within the meaning of section 126, or

(b) where the new holding within the meaning of section 126 consists of two or more actual holdings, any of those actual holdings.

(3) In determining, for any purpose of this Chapter, the status of shares that immediately before the disposal mentioned in subsection (1)(d) are in the new holding mentioned there—

(a) the date of issue of the shares issued for consideration is to be taken to be their actual date of issue (rather than the date of issue of any of the original shares), and

(b) in relation to any part of the new holding for which consideration was not given, sections 169VN(3) to (6) and 169VO apply but as if any reference to the new holding concerned were to that part of the new holding.

(4) Section 169VN(3) to (6) and 169VO also apply in relation to any other holding which is a new holding in relation to the reorganisation and as respects which the person did not, on the reorganisation, give or become liable to give any consideration.

(5) In this section a reference to the "status" of a share is to whether it is qualifying, potentially qualifying or excluded.

(6) References in this section to consideration are to be read in accordance with section 128(2).

169VQ Exchange of shares for those in another company

(1) This section applies where section 135 applies in relation to an issue of shares in a company ("company B") in exchange for shares in another company ("company A").

(2) For the purposes of sections 169VN to 169VP—

(a) companies A and B are to be treated as if they were the same company, and

(b) the exchange of shares is to be treated as if it were a reorganisation of that company's share capital.

169VR New shares issued on scheme of reconstruction

(1) This section applies where—

(a) section 136 applies in relation to an arrangement between a company ("company A") and the persons holding shares, or any class of shares, in company A, under which another company ("company B") issues shares to those persons, and

(b) under section 136(2)(a) those persons are treated as exchanging shares in company A for the shares held by them in consequence of the arrangement.

(2) For the purposes of sections 169VN to 169VP—

(a) companies A and B are to be treated as if they were the same company, and

(b) the exchange of shares is to be treated as if it were a reorganisation of that company's share capital.

(3) In the following provisions of this Chapter, any reference to an exchange of shares includes anything that section 136(2)(a) treats as an exchange of shares.

169VS Modification of conditions for being a qualifying share

(1) This section applies where—

(a) an ordinary share ("the original share") is subscribed for by a qualifying person ("the investor");

(b) the conditions in section 169VB(2)(c) and (d) are met in relation to the original share,

(c) the share is involved in an exchange of shares treated under section 169VQ or 169VR as a reorganisation of share capital, and accordingly is included in the original shares within the meaning of section 169VN(6), and

(d) subsequently there is a disposal of all or part of a holding of shares that in relation to that exchange is a new holding within the meaning given by section 169VN(2).

(2) As respects a share which is in that holding immediately before that disposal, the conditions in section 169VB(2)(f) and (g) are to be regarded as met if (and only if)—

(a) in relation to the period beginning with the issue of the original share and ending with the exchange of shares, those conditions were met by the original share, and

(b) in relation to the period beginning with the exchange of shares and ending with the disposal, those conditions were met by a share representing the original share.

(3) Accordingly—

(a) in section 169VB(2)(f) and (g) as they apply to the original share, any reference to the share-holding period is to be read as to the period mentioned in subsection (2)(a) above, and

(b) in section 169VB(2)(f) and (g) as they apply to a share representing the original share, any reference to the share-holding period is to be read as to the period mentioned in subsection (2)(b) above.

(4) In subsection (1)(c) "the share" includes a share that, following a reorganisation or following an exchange of shares in relation to which section 169VQ or 169VR applies, represents the original share, and subsections (2) and (3) apply in such a case with the necessary modifications.

169VT Election to disapply section 127

(1) This section applies where—

(a) there is—

(i) a reorganisation (within the meaning of section 126), or

(ii) an exchange of shares which is treated as such a reorganisation by virtue of section 135 or 136, and

(b) the original shares and the new holding would fall to be treated by virtue of section 127 as the same asset.

(2) If an election is made under this section, a claim for investors' relief may be made as if the reorganisation or exchange of shares involved a disposal of the original shares; and if such a claim is made section 127 and sections 169VN to 169VS do not apply.

(3) Any election under this section must be made—

(a) if the reorganisation or exchange of shares would (apart from section 127) involve a disposal by the trustees of a settlement, jointly by—

(i) the trustees, and

(ii) the person who if the disposal were made would be the eligible beneficiary in respect of the disposal, within the meaning given by section 169VH(2) (or, if more than one, all the persons who would be such eligible beneficiaries);

(b) otherwise, by the individual concerned.

(4) Any election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation or exchange of shares takes place.

(5) In this section "the original shares" and "the new holding" have the meaning given by section 126.

Supplemental

169VU "Subscribe" etc

(1) For the purposes of this Chapter (other than this subsection) a person "subscribes for" a share in a company if—

(a) that person subscribes for the share,

(b) the share is issued to that person by the company for consideration consisting wholly of cash,

(c) the share is fully paid up at the time it is issued,

(d) the share is subscribed for, and issued, for genuine commercial reasons and not as part of arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage to any person, and

(e) the share is subscribed for, and issued, by way of a bargain at arm's length.

(2) In subsection (1) "arrangements" and "tax advantage" have the same meaning as in section 16A.

(3) If—

(a) an individual ("A") subscribed for, or is treated under this subsection as having subscribed for, any shares,

(b) A transferred the shares to another individual ("B") during their lives, and

(c) A was living together with B as B's spouse or civil partner at the time of the transfer,

B is to be treated for the purposes of this Chapter as having subscribed for the shares.

(4) Accordingly, for the purposes of this Chapter any period for which A held the shares continuously is to be added to, and treated as part of, the period for which B held the shares continuously.

(5) In this Chapter, apart from subsections (3) and (4), references to a person's having subscribed for a share include the person's having subscribed for the share jointly with any other person (and references to a person's holding a share or to a share being issued to a person are to be read accordingly).

169VV "Trading company" etc

(1) In this Chapter "trading company" and "the holding company of a trading group" have the same meaning as in section 165 (see section 165A).

(2) For the purposes of this Chapter a company is not to be regarded as ceasing to be a trading company, or the holding company of a trading group, merely because of anything done in consequence of—

(a) the company, or any of its subsidiaries, being in administration or receivership, or

(b) a resolution having been passed, or an order made, for the winding up of the company or any of its subsidiaries.

(3) But subsection (2) applies only if—

(a) the entry into administration or receivership, or the resolution or order for winding up, and

(b) everything done as a result of the company concerned being in administration or receivership, or as a result of that resolution or order,

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.

169VW "Relevant employee"

(1) This section applies to determine for the purposes of—

(a) section 169VB(2)(g), or

(b) section 169VH(2)(c),

whether a particular person has at any time in the relevant period been a "relevant employee" in respect of the issuing company.

(2) A person who has at any time in the relevant period been an officer or employee of—

(a) the issuing company, or

(b) a connected company,

is to be regarded as having at that time been a relevant employee in respect of the issuing company, but this is subject to subsections (3) and (5).

(3) If—

(a) a person is an unremunerated director of the issuing company or a connected company at any time in the relevant period, and

(b) the condition in subsection (4) is met,

the fact that the person holds that directorship at that time does not make the person a relevant employee in respect of the issuing company at that time.

(4) The condition referred to in subsection (3) is that at no time before the relevant period had the person mentioned in that subsection, or a person connected with that person, been—

(a) connected with the issuing company, or

(b) involved in carrying on (whether on the person's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the issuing company or a company connected with that company.

(5) If—

(a) a person becomes an employee of the issuing company or a connected company at a time which is—

(i) within the relevant period, but

(ii) not within the first 180 days of that period,

(b) at the beginning of the relevant period, there was no reasonable prospect that the person would become such an employee within the relevant period, and

(c) the person is not at any time in the relevant period a director of the issuing company or a connected company,

that employment of the person does not make the person a relevant employee in respect of the issuing company at any time in the relevant period.

(6) For the purposes of subsection (5) there is a "reasonable prospect" of a thing if it is more likely than not.

(7) In this section—

"director" is to be read in accordance with section 452 of CTA 2010,

"connected company" means a company which at any time in the relevant period is connected with the issuing company (and it does not matter for this purpose whether that time is a time when the person in question is an officer or employee of either company);

"the issuing company" means the company mentioned in (as the case may be) section 169VB(2)(g) or section 169VH(2)(c);

"the relevant period" means the period mentioned in (as the case may be) section 169VB(2)(g) or section 169VH(2)(c);

"unremunerated director" has the meaning given by section 169VX.

169VX "Unremunerated director"

(1) For the purposes of section 169VW a person ("the person concerned") is an "unremunerated director" of the issuing company or a connected company at a particular time in the relevant period if that person is a director of that company at that time and—

(a) does not receive in the relevant period any disqualifying payment from the issuing company or a related person, and

(b) is not entitled to receive any such payment in respect of that period or any part of it.

(2) In this section "disqualifying payment" means any payment other than—

(a) a payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the person concerned in the performance of his or her duties as a director,

(b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,

(c) any dividend or other distribution which does not exceed a normal return on the investment to which the dividend or distribution relates,

(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 related person which does not exceed a reasonable and commercial rent for the property, or

(f) any necessary and reasonable remuneration which is—

(i) paid for qualifying services that are provided to the issuing company or a related person in the course of a trade or profession carried on wholly or partly in the United Kingdom, and

(ii) taken into account in calculating for tax purposes the profits of that trade or profession.

(3) In this section a "related person" means—

(a) a connected company of which the person concerned is a director, or

(b) any person connected with the issuing company or with a company within paragraph (a).

(4) In this section any reference to a payment to the person concerned includes a payment made to that person indirectly or to that person's order or for that person's benefit.

(5) In this section "qualifying services" means services which are—

(a) not secretarial or managerial services, and

(b) not services of a kind provided by the person to whom they are provided.

(6) In this section the following expressions have the same meaning as in section 169VW—

"connected company";

"director";

"issuing company";
"relevant period".

169VY General definitions

In this Chapter—

"employee" (except in the expression "relevant employee", which is to be read in accordance with section 169VW) has the meaning given by section 4 of ITEPA 2003;

"employment" has the meaning given by section 4 of ITEPA 2003;

"exchange of shares" is to be read in accordance with section 169VR(3);

"excluded share" has the meaning given by section 169VB;

a "holding" of shares in a company means a holding of such shares which by virtue of section 104(1) is to be regarded as a single asset;

"investors' relief" has the meaning given by section 169VA(3);

"office" has the meaning given by section 5(3) of ITEPA 2003;

"ordinary shares", in relation to a company, means any shares forming part of the company's ordinary share capital (within the meaning given by section 989 of ITA 2007);

"potentially qualifying share" has the meaning given by section 169VB;

"qualifying person" has the meaning given by section 169VC(7);

"qualifying share" has the meaning given by section 169VB;

"subscribe" is to be read in accordance with section 169VU;

"trading company" and "the holding company of a trading group" are to be read in accordance with section 169VV."

3 After Schedule 7ZA of TCGA 1992 (inserted by Schedule 13) insert—

"SCHEDULE 7ZB — Section 169VB

INVESTORS' RELIEF: DISQUALIFICATION OF SHARES

Disqualification of shares where value received in period of restriction

1 (1) Sub-paragraph (2) applies where—

(a) shares in a company are issued to a qualifying person ("the investor") on a particular date,

(b) any of those shares would, apart from this Schedule, be or be treated as being qualifying shares or potentially qualifying shares at a particular time ("the relevant time"), and

(c) the investor receives any value, other than insignificant value, from the company at any time in the period of restriction.

(2) The shares in question are to be treated for the purposes of this Chapter as being excluded shares at the relevant time.

(3) Where—

(a) the investor receives value ("the relevant receipt") from the company during the period of restriction,

(b) the investor has received from the 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 aggregate amount of the value of the receipts within paragraphs (a) and (b) is not an amount of insignificant value,

the investor is to be treated for the purposes of this Schedule as if the relevant receipt had been a receipt of an amount equal to that aggregate amount.

For this purpose a receipt does not fall within paragraph (b) in relation to the shares if it has previously been aggregated under this sub-paragraph in relation to them.

(4) In this Schedule "the period of restriction" means the period—

(a) beginning one year before the date the shares are issued, and

(b) ending immediately before the third anniversary of the date the shares are issued.

(5) In sub-paragraphs (3) and (4) and in the following provisions of this Schedule references to "the shares" are to the shares referred to in sub-paragraph (1)(a).

(6) This paragraph is subject to paragraph 4.

"Receives value"

2 (1) For the purposes of this Schedule the investor receives value from the company if the 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 a right to any of the 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, 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 the 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 the investor's right to any debt on its extinguishment,

(d) releases or waives any liability of the investor to the 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,

(f) provides a benefit or facility for the investor,

(g) disposes of an asset to the investor for no consideration or for a consideration which is or the value of which is less than the market value of the asset,

(h) acquires an asset from the investor for a consideration which is or the value of which is more than the market value of the asset, or

(i) makes any payment to the investor other than a qualifying payment.

(2) For the purposes of sub-paragraph (1)(e) there is to be treated as if it were a loan made by the company to the investor—

(a) the amount of any debt (other than an ordinary trade debt) incurred by the investor to the company, and

(b) the amount of any debt due from the investor to a third person which has been assigned to the company.

(3) For the purposes of this paragraph the investor also receives value from the company if any person connected with the company—

(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.

(4) In this paragraph "qualifying payment" means—

(a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment,

(b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the investor to whom the payment is made in the performance of duties as an officer or employee of that company,

(c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company,

(d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company,

(e) any payment for the supply of goods which does not exceed their market value,

(f) any payment for the acquisition of an asset which does not exceed its market value,

(g) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property,

(h) any reasonable and necessary remuneration which—

(i) is paid by any company for services rendered to that company in the course of a trade or profession carried on wholly or partly in the United Kingdom; and

(ii) is taken into account in calculating for tax purposes the profits of that trade or profession, or

(i) a payment in discharge of an ordinary trade debt.

(5) For the purposes of this paragraph a 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) In this paragraph—

(a) references to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment, and

(b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.

(7) In this paragraph and paragraph 3—

(a) any reference to a payment or disposal to the investor includes a reference to a payment or disposal made to the investor indirectly or to the investor's order or for the investor's benefit;

(b) any reference to the investor includes an associate of the investor;

(c) any reference to a company includes a person who at any time in the period of restriction is connected with the company, whether or not that person is connected at the material time.

(8) In this paragraph "ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—

(a) does not exceed six months, and

(b) is not longer than that normally given to customers of the person carrying on the trade or business.

Amount of value

3 (1) For the purposes of paragraph 1, the value received by the investor is—

(a) in a case within paragraph 2(1)(a), (b) or (c), the amount received by the investor or, if greater, the market value of the share capital, securities or debt in question;

(b) in a case within paragraph 2(1)(d), the amount of the liability;

(c) in a case within paragraph 2(1)(e), the amount of the loan or advance reduced by the amount of any repayment made before the issue of the shares;

(d) in a case within paragraph 2(1)(f), the cost to the company of providing the benefit or facility less any consideration given for it by the investor;

(e) in a case within paragraph 2(1)(g) or (h), the difference between the market value of the asset and the consideration (if any) given for it;

(f) in a case within paragraph 2(1)(i), the amount of the payment;

(g) in a case within paragraph 2(3), the amount received by the investor or, if greater, the market value of the share capital or securities in question.

(2) In this Schedule references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value.

This is subject to sub-paragraph (4).

(3) For the purposes of this Schedule "an amount of insignificant value" means an amount of value which does not exceed £1,000.

(4) For the purposes of this Schedule, if at any time in the period—

(a) beginning one year before the shares are issued, and

(b) expiring at the end of the issue date,

arrangements are in existence which provide for the investor to receive or to be entitled to receive, at any time in the period of restriction, any value from the company that issued the shares, no amount of value received by the investor is to be treated as a receipt of insignificant value.

(5) In sub-paragraph (4)—

(a) any reference to the investor includes a reference to any person who, at any time in the period of restriction, is an associate of the investor (whether or not that person is such an associate at the material time), and

(b) the reference to the company includes a reference to any person who, at any time in the period of restriction, is connected with the company (whether or not that person is so connected at the material time).

Receipt of replacement value

4 (1) Where—

(a) by reason of a receipt of value within sub-paragraph (1) (other than paragraph (b)) or sub-paragraph (3) of paragraph 2 ("the original value"), any shares would, in the absence of this paragraph, be treated under this Schedule as excluded shares at a particular time,

(b) at or before that time the original supplier receives value ("the replacement value") from the original recipient by reason of a qualifying receipt, and

(c) the amount of the replacement value is not less than the amount of the original value,

the receipt of the original value is to be disregarded for the purposes of this Schedule.

(2) This paragraph is subject to paragraph 5.

(3) For the purposes of this paragraph and paragraph 5—

(a) "the original recipient" means the person who receives the original value, and

(b) "the original supplier" means the person from whom that value was received.

(4) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) if it arises—

(a) by reason of the original recipient doing one or more of the following—

(i) making a payment to the original supplier, other than a payment which falls within paragraph (c) or to which sub-paragraph (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) where the receipt of the original value was within paragraph 2(1)(d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value, or

(c) where the receipt of the original value was within paragraph 2(3), by reason of the original recipient repurchasing the share capital or securities in question, or (as the case may be) reacquiring the right in question, for a consideration the amount or value of which is not less than the amount of the original value.

(5) This sub-paragraph applies to—

(a) any payment for any goods, services or facilities, provided (whether in the course of a trade or otherwise) by—

(i) the original supplier, or

(ii) any other person who, at any time in the period of restriction, is an associate of, or connected with, that supplier (whether or not that person is such an associate, or so connected, at the material time),

which is reasonable in relation to the market value of those goods, services or facilities,

(b) any payment of any interest which represents no more than a reasonable commercial return on money lent to—

(i) the original recipient, or

(ii) any person who, at any time in the period of restriction, is an associate of the original recipient (whether or not 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 the period of restriction, is an associate of the original recipient (whether or not 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 (within the meaning of paragraph 2(8)), and

(f) any payment for shares in or securities of any company in circumstances that do not fall within sub-paragraph (4)(a)(ii).

(6) For the purposes of this paragraph, the amount of the replacement value is—

(a) in a case within paragraph (a) of sub-paragraph (4), the aggregate 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 within sub-paragraph (ii) or (iii) of that paragraph and the amount or value of the consideration (if any) received for it,

(b) in a case within sub-paragraph (4)(b), the same as the amount of the original value, and

(c) in a case within sub-paragraph (4)(c), the amount or value of the consideration received by the original supplier,

and paragraph 3(1) applies for the purposes of determining the amount of the original value.

(7) In this paragraph 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.

5 (1) The receipt of the replacement value by the original supplier is to be disregarded for the purposes of paragraph 4, as it applies in relation to the shares, to the extent to which that receipt has previously been set (under that paragraph) against any receipts of value which are, in consequence, disregarded for the purposes of paragraph 4 as that paragraph applies in relation to those shares or any other shares subscribed for by the investor.

(2) The receipt of the replacement value by the original supplier ("the event") is also be disregarded for the purposes of paragraph 4 if—

(a) the event occurs before the start of the period of restriction, or

(b) in a case where 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.

But nothing in paragraph 4 or this paragraph requires the replacement value to be received after the original value.

(3) In this paragraph "the original value" and "the replacement value" are to be construed in accordance with paragraph 4.

Interpretation

6 In this Schedule—

"arrangements" includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);

"associate" has the meaning that would be given by section 448 of CTA 2010 if in that section "relative" did not include a brother or sister;

"period of restriction" has the meaning given by paragraph 1(4);

"the shares" has the meaning given by paragraph 1(5)."

SCHEDULE 15

Section 93

INHERITANCE TAX: INCREASED NIL-RATE BAND

1 IHTA 1984 is amended as follows.

2 (1) Section 8D (extra nil-rate band on death if interest in home goes to descendants etc) is amended as follows.

(2) In subsection (4), after "8G" insert "(and see also section 8M)".

(3) In subsection (9), before the definition of "tax year" insert—

""consumer prices index" means the all items consumer prices index published by the Statistics Board,".

3 (1) Section 8E (residence nil-rate amount: interest in home goes to descendants etc) is amended as follows.

(2) In subsection (6), after "(7)" insert "and sections 8FC and 8M(2B) to (2E)".

(3) In subsection (7), for paragraphs (a) and (b) substitute—

"(a) the person's residence nil-rate amount is equal to VT,

(b) where E is less than or equal to TT, an amount, equal to the difference between VT and the person's default allowance, is available for carry-forward, and

(c) where E is greater than TT, an amount, equal to the difference between VT and the person's adjusted allowance, is available for carry-forward."

(4) In subsection (8)—

(a) before the entry for section 8H insert—

"section 8FC (modifications of this section where there is entitlement to a downsizing addition),", and

(b) in the entry for section 8H, after ""qualifying residential interest"" insert ", "qualifying former residential interest" and "residential property interest"".

4 In section 8F(4) (list of other relevant sections)—

(a) before the entry for section 8H insert—

"section 8FD (which applies instead of this section where there is entitlement to a downsizing addition),", and

(b) in the entry for section 8H, after ""qualifying residential interest"" insert ", "qualifying former residential interest" and "residential property interest"".

5 After section 8F insert—

"**8FA Downsizing addition: entitlement: low-value death interest in home**

(1) There is entitlement to a downsizing addition in calculating the person's residence nil-rate amount if each of conditions A to F is met (see subsection (8) for the amount of the addition).

(2) Condition A is that—

(a) the person's residence nil-rate amount is given by section 8E(2) or (4), or

(b) the person's estate immediately before the person's death includes a qualifying residential interest but none of the interest is closely inherited, and—

(i) where E is less than or equal to TT, so much of VT as is attributable to the person's qualifying residential interest is less than the person's default allowance, or

(ii) where E is greater than TT, so much of VT as is attributable to the person's qualifying residential interest is less than the person's adjusted allowance.

Section 8E(6) and (7) do not apply, and any entitlement to a downsizing addition is to be ignored, when deciding whether paragraph (a) of condition A is met.

(3) Condition B is that not all of VT is attributable to the person's qualifying residential interest.

(4) Condition C is that there is a qualifying former residential interest in relation to the person (see sections 8H(4A) to (4F) and 8HA).

(5) Condition D is that the value of the qualifying former residential interest exceeds so much of VT as is attributable to the person's qualifying residential interest.

Section 8FE(2) explains what is meant by the value of the qualifying former residential interest.

(6) Condition E is that at least some of the remainder is closely inherited, where "the remainder" means everything included in the person's estate immediately before the person's death other than the person's qualifying residential interest.

(7) Condition F is that a claim is made for the addition in accordance with section 8L(1) to (3).

(8) Where there is entitlement as a result of this section, the addition—

(a) is equal to the lost relievable amount (see section 8FE) if that amount is less than so much of VT as is attributable to so much of the remainder as is closely inherited, and

(b) otherwise is equal to so much of VT as is attributable to so much of the remainder as is closely inherited.

(9) Subsection (8) has effect subject to section 8M(2G) (reduction of downsizing addition in certain cases involving conditional exemption).

(10) See also—

section 8FC (effect of an addition: section 8E case),

section 8FD (effect of an addition: section 8F case),

section 8H (meaning of "qualifying residential interest", "qualifying former residential interest" and "residential property interest"),

section 8J (meaning of "inherit"),

section 8K (meaning of "closely inherited"), and
section 8M (cases involving conditional exemption).

8FB Downsizing addition: entitlement: no residential interest at death

(1) There is also entitlement to a downsizing addition in calculating the person's residence nil-rate amount if each of conditions G to K is met (see subsection (7) for the amount of the addition).

(2) Condition G is that the person's estate immediately before the person's death ("the estate") does not include a residential property interest.

(3) Condition H is that VT is greater than nil.

(4) Condition I is that there is a qualifying former residential interest in relation to the person (see sections 8H(4A) to (4F) and 8HA).

(5) Condition J is that at least some of the estate is closely inherited.

(6) Condition K is that a claim is made for the addition in accordance with section 8L(1) to (3).

(7) Where there is entitlement as a result of this section, the addition—

(a) is equal to the lost relievable amount (see section 8FE) if that amount is less than so much of VT as is attributable to so much of the estate as is closely inherited, and

(b) otherwise is equal to so much of VT as is attributable to so much of the estate as is closely inherited.

(8) Subsection (7) has effect subject to section 8M(2G) (reduction of downsizing addition in certain cases involving conditional exemption).

(9) See also—

section 8FD (effect of an addition: section 8F case),
section 8H (meaning of "qualifying residential interest", "qualifying former residential interest" and "residential property interest"),
section 8J (meaning of "inherit"),
section 8K (meaning of "closely inherited"), and
section 8M (cases involving conditional exemption).

8FC Downsizing addition: effect: section 8E case

(1) Subsection (2) applies if—

(a) as a result of section 8FA, there is entitlement to a downsizing addition in calculating the person's residence nil-rate amount, and

(b) the person's residence nil-rate amount is given by section 8E.

(2) Section 8E has effect as if, in subsections (2) to (5) of that section, each reference to NV/100 were a reference to the total of—

(a) NV/100, and

(b) the downsizing addition.

8FD Downsizing addition: effect: section 8F case

(1) This section applies if—

(a) as a result of section 8FA or 8FB, there is entitlement to a downsizing addition in calculating the person's residence nil-rate amount, and

(b) apart from this section, the person's residence nil-rate amount is given by section 8F.

(2) Subsections (3) to (6) apply instead of section 8F.

(3) The person's residence nil-rate amount is equal to the downsizing addition.

(4) Where—

(a) E is less than or equal to TT, and the downsizing addition is equal to the person's default allowance, or

(b) E is greater than TT, and the downsizing addition is equal to the person's adjusted allowance,

no amount is available for carry-forward.

(5) Where—

(a) E is less than or equal to TT, and

(b) the downsizing addition is less than the person's default allowance,

an amount, equal to the difference between the downsizing addition and the person's default allowance, is available for carry-forward.

(6) Where—

(a) E is greater than TT, and

(b) the downsizing addition is less than the person's adjusted allowance,

an amount, equal to the difference between the downsizing addition and the person's adjusted allowance, is available for carry-forward.

8FE Calculation of lost relievable amount

(1) This section is about how to calculate the person's lost relievable amount for the purposes of sections 8FA(8) and 8FB(7).

(2) For the purposes of this section and section 8FA(5), the value of the person's qualifying former residential interest is the value of the interest at the time of completion of the disposal of the interest.

(3) In this section, the person's "former allowance" is the total of—

(a) the residential enhancement at the time of completion of the disposal of the qualifying former residential interest,

(b) any brought-forward allowance that the person would have had if the person had died at that time, having regard to the circumstances of the person at that time (see section 8G as applied by subsection (4)), and

(c) if the person's allowance on death includes an amount of brought-forward allowance which is greater than the amount of brought-forward allowance given by paragraph (b), the difference between those two amounts.

(4) For the purposes of calculating any brought-forward allowance that the person ("P") would have had as mentioned in subsection (3)(b)—

(a) section 8G (brought-forward allowance) applies, but as if references to the residential enhancement at P's death were references to the residential enhancement at the time of completion of the disposal of the qualifying former residential interest, and

(b) assume that a claim for brought-forward allowance was made in relation to an amount available for carry-forward from a related person's death if, on P's death, a claim was in fact made in relation to the amount.

(5) For the purposes of subsection (3)(c), where the person's allowance on death is equal to the person's adjusted allowance, the amount of brought-forward allowance included in the person's allowance on death is calculated as follows.

Step 1

Express the person's brought-forward allowance as a percentage of the person's default allowance.

Step 2

Multiply—

$$\frac{E - TT}{2}$$

by the percentage given by step 1.

Step 3

Reduce the person's brought-forward allowance by the amount given by step 2.

The result is the amount of brought-forward allowance included in the person's allowance on death.

(6) If completion of the disposal of the qualifying former residential interest occurs before 6 April 2017—

(a) for the purposes of subsection (3)(a), the residential enhancement at the time of completion of the disposal is treated as being £100,000, and

(b) for the purposes of subsection (3)(b), the amount of brought-forward allowance that the person would have had at that time is treated as being nil.

(7) In this section, the person's "allowance on death" means—

(a) where E is less than or equal to TT, the person's default allowance, or

(b) where E is greater than TT, the person's adjusted allowance.

(8) For the purposes of this section, "completion" of the disposal of a residential property interest occurs at the time of the disposal or, if the disposal is under a contract which is completed by a conveyance, at the time when the interest is conveyed.

(9) Where, as a result of section 8FA, there is entitlement to a downsizing addition in calculating the person's residence nil-rate amount, take the following steps to calculate the person's lost relievable amount.

Step 1

Express the value of the person's qualifying former residential interest as a percentage of the person's former allowance, but take that percentage to be 100% if it would otherwise be higher.

Step 2

Express QRI as a percentage of the person's allowance on death, where QRI is so much of VT as is attributable to the person's qualifying residential interest, but take that percentage to be 100% if it would otherwise be higher.

Step 3

Subtract the percentage given by step 2 from the percentage given by step 1, but take the result to be 0% if it would otherwise be negative.

The result is P%.

Step 4

The person's lost relievable amount is equal to P% of the person's allowance on death.

(10) Where, as a result of section 8FB, there is entitlement to a downsizing addition in calculating the person's residence nil-rate amount, take the following steps to calculate the person's lost relievable amount.

Step 1

Express the value of the person's qualifying former residential interest as a percentage of the person's former allowance, but take that percentage to be 100% if it would otherwise be higher.

Step 2

Calculate that percentage of the person's allowance on death.

The result is the person's lost relievable amount."

6 In section 8G (meaning of "brought-forward allowance"), in subsection (3)(a), for "and 8F" substitute ", 8F and 8FD".

7 (1) Section 8H (meaning of "qualifying residential interest") is amended as follows.

(2) In the heading, at the end insert ", "qualifying former residential interest" and "residential property interest"".

(3) In subsection (1), for "and 8F" substitute "to 8FE and section 8M".

(4) In subsection (2), for "In this section" substitute "A".

(5) After subsection (4) insert—

"(4A) Subsection (4B) or (4C) applies where—

(a) a person disposes of a residential property interest in a dwelling-house on or after 8 July 2015 (and before the person dies), and

(b) the person's personal representatives nominate—

(i) where there is only one such dwelling-house, that dwelling-house, or

(ii) where there are two or more such dwelling-houses, one (and only one) of those dwelling-houses.

(4B) Where—

(a) the person—

(i) disposes of a residential property interest in the nominated dwelling-house at a post-occupation time, or

(ii) disposes of two or more residential property interests in the nominated dwelling-house at the same post-occupation time or at post-occupation times on the same day, and

(b) the person does not otherwise dispose of residential property interests in the nominated dwelling-house at post-occupation times,

the interest disposed of is, or the interests disposed of are, a qualifying former residential interest in relation to the person.

(4C) Where—

(a) the person disposes of residential property interests in the nominated dwelling-house at post-occupation times on two or more days, and

(b) the person's personal representatives nominate one (and only one) of those days,

the interest or interests disposed of at post-occupation times on the nominated day is or are a qualifying former residential interest in relation to the person.

(4D) For the purposes of subsections (4A) to (4C)—

(a) a person is to be treated as not disposing of a residential property interest in a dwelling-house where the person disposes of an interest in the dwelling-house by way of gift and the interest is, in relation to the gift and the donor, property subject to a reservation within the meaning of section 102 of the Finance Act 1986 (gifts with reservation), and

(b) a person is to be treated as disposing of a residential property interest in a dwelling-house if the person is treated as making a potentially exempt transfer of the interest as a result of the operation of section 102(4) of that Act (property ceasing to be subject to a reservation).

(4E) Where—

(a) a transfer of value by a person is a conditionally exempt transfer of a residential property interest, and

(b) at the time of the person's death, no chargeable event has occurred with respect to that interest,

that interest may not be, or be included in, a qualifying former residential interest in relation to the person.

(4F) In subsections (4B) and (4C) "post-occupation time" means a time—

(a) on or after 8 July 2015,

(b) after the nominated dwelling-house first became the person's residence, and

(c) before the person dies.

(4G) For the purposes of subsections (4A) to (4C), if the disposal is under a contract which is completed by a conveyance, the disposal occurs at the time when the interest is conveyed."

8 After section 8H insert—

"**8HA Qualifying former residential interest": interests in possession**

(1) This section applies for the purposes of determining whether certain interests may be, or be included in, a qualifying former residential interest in relation to a person (see section 8H(4A) to (4C)).

(2) This section applies where—

(a) a person ("P") is beneficially entitled to an interest in possession in settled property, and

(b) the settled property consists of, or includes, an interest in a dwelling-house.

(3) Subsection (4) applies where—

(a) the trustees of the settlement dispose of the interest in the dwelling-house to a person other than P,

(b) P's interest in possession in the settled property subsists immediately before the disposal, and

(c) P's interest in possession—

(i) falls within subsection (7) throughout the period beginning with P becoming beneficially entitled to it and ending with the disposal, or

(ii) falls within subsection (8).

(4) The disposal is to be treated as a disposal by P of the interest in the dwelling-house to which P is beneficially entitled as a result of the operation of section 49(1).

(5) Subsection (6) applies where—

(a) P disposes of the interest in possession in the settled property, or P's interest in possession in the settled property comes to an end in P's lifetime,

(b) the interest in the dwelling-house is, or is part of, the settled property immediately before the time when that happens, and

(c) P's interest in possession—

(i) falls within subsection (7) throughout the period beginning with P becoming beneficially entitled to it and ending with the time mentioned in paragraph (b), or

(ii) falls within subsection (8).

(6) The disposal, or (as the case may be) the coming to an end of P's interest in possession, is to be treated as a disposal by P of the interest in the dwelling-house to which P is beneficially entitled as a result of the operation of section 49(1).

(7) An interest in possession falls within this subsection if—

(a) P became beneficially entitled to it before 22 March 2006 and section 71A does not apply to the settled property; or

(b) P becomes beneficially entitled to it on or after 22 March 2006 and the interest is—

(i) an immediate post-death interest,

(ii) a disabled person's interest, or

(iii) a transitional serial interest.

(8) An interest in possession falls within this subsection if P becomes beneficially entitled to it on or after 22 March 2006 and it falls within section 5(1B)."

9 In section 8J (meaning of "inherited"), in subsection (1), for "and 8F" substitute ", 8F, 8FA, 8FB and 8M".

10 In section 8K (meaning of "closely inherited"), in subsection (1), for "and 8F" substitute ", 8F, 8FA, 8FB and 8M".

11 In section 8L (claims for brought-forward allowance)—

(a) in the heading, at the end insert "and downsizing addition", and

(b) in subsection (1), after "(see section 8G)" insert "or for a downsizing addition for a person (see sections 8FA to 8FD)".

12 (1) Section 8M (residence nil-rate amount: cases involving conditional exemption) is amended as follows.

(2) For subsections (1) and (2) substitute—

"(1) This section applies where—

(a) a person ("D") dies on or after 6 April 2017,

(b) ignoring the application of this section, D's residence nil-rate amount is greater than nil, and

(c) some or all of the transfer of value under section 4 on D's death is a conditionally exempt transfer of property consisting of, or including, any of the following—

(i) some or all of a qualifying residential interest;

(ii) some or all of a residential property interest, at least some portion of which is closely inherited, and which is not, and is not included in, a qualifying residential interest;

(iii) one or more closely inherited assets that are not residential property interests.

(2) Subsections (2B) to (2E) apply for the purposes of sections 8E to 8FD if—

(a) ignoring the application of this section, D's residence nil-rate amount is given by section 8E, and

(b) some or all of the transfer of value under section 4 is a conditionally exempt transfer of property mentioned in subsection (1)(c)(i).

(2A) In subsections (2B) to (2E), but subject to subsection (3)(a), "the exempt percentage of the QRI" is given by—

$$\frac{X}{QRI} \times 100$$

where—

X is the attributable portion of the value transferred by the conditionally exempt transfer,

QRI is the attributable portion of the value transferred by the transfer of value under section 4, and

"the attributable portion" means the portion (which may be the whole) attributable to the qualifying residential interest.

(2B) If—

(a) the exempt percentage of the QRI is 100%, and

(b) D has no entitlement to a downsizing addition,

D's residence nil-rate amount and amount available for carry-forward are given by section 8F(2) and (3) (instead of section 8E).

(2C) If—

(a) the exempt percentage of the QRI is 100%, and

(b) D has an entitlement to a downsizing addition,

D's residence nil-rate amount and amount available for carry-forward are given by section 8FD(3) to (6) (instead of section 8E as modified by section 8FC(2)).

See also subsection (2G).

(2D) If—

(a) the exempt percentage of the QRI is less than 100%, and

(b) D has no entitlement to a downsizing addition,

D's residence nil-rate amount and amount available for carry-forward are given by section 8E but as if, in subsections (2) to (5) of that section, each reference to NV/100 were a reference to NV/100 multiplied by the percentage that is the difference between 100% and the exempt percentage of the QRI.

(2E) If—

(a) the exempt percentage of the QRI is less than 100%, and

(b) D has an entitlement to a downsizing addition,

D's residence nil-rate amount and amount available for carry-forward are given by section 8E as modified by section 8FC(2), but as if the reference to NV/100 in section 8FC(2)(a) were a reference to NV/100 multiplied by the percentage that is the difference between 100% and the exempt percentage of the QRI.

See also subsection (2G).

(2F) Subsection (2G) applies for the purposes of sections 8FA to 8FD if—

(a) some or all of the transfer of value under section 4 is a conditionally exempt transfer of property mentioned in subsection (1)(c)(ii) or (iii) (or both),

(b) D has an entitlement to a downsizing addition, and

(c) DA exceeds Y (see subsection (2H)).

(2G) Subject to subsection (3)(aa) and (ab), the amount of the downsizing addition is treated as reduced by whichever is the smaller of—

(a) the difference between DA and Y, and

(b) Z.

(2H) In subsections (2F) and (2G)—

DA is the amount of the downsizing addition to which D has an entitlement (ignoring the application of subsection (2G));

Y is so much (if any) of the value transferred by the transfer of value under section 4 as—

(a) is not transferred by a conditionally exempt transfer, and

(b) is attributable to—

(i) the closely inherited portion (which may be the whole) of any residential property interests that are not, and are not included in, a qualifying residential interest, or

(ii) closely inherited assets that are not residential property interests;

Z is the total of—

(a) the closely inherited conditionally exempt values of all residential property interests mentioned in subsection (1)(c)(ii), and

(b) so much of the value transferred by the conditionally exempt transfer as is attributable to property mentioned in subsection (1)(c)(iii).

(2I) For the purposes of the definition of "Z", "the closely inherited conditionally exempt value" of a residential property interest means—

(a) so much of the value transferred by the conditionally exempt transfer as is attributable to the interest, multiplied by

(b) the percentage of the interest which is closely inherited."

(3) In subsection (3), for the words before paragraph (b) substitute—

"(3) For the purposes of calculating tax chargeable under section 32 or 32A by reference to a chargeable event related to property forming the subject-matter of the conditionally exempt transfer where D is the relevant person for the purposes of section 33—

(a) where subsections (2B) to (2E) apply and the chargeable event relates to property mentioned in subsection (1)(c)(i), in calculating the exempt percentage of the QRI, X is calculated as if the attributable portion of the value transferred by the conditionally exempt transfer had not included the portion (which may be the whole) of the qualifying residential interest on which the tax is chargeable,

(aa) where subsection (2G) applies and the chargeable event relates to property mentioned in subsection (1)(c)(ii), Z is calculated as if it had not included the portion (which may be the whole) of the closely inherited conditionally exempt value of the residential property interest on which the tax is chargeable,

(ab) where subsection (2G) applies and the chargeable event relates to an asset mentioned in subsection (1)(c)(iii) ("the taxable asset"), Z is calculated as if it had not included so much of the value transferred by the conditionally exempt transfer as is attributable to the taxable asset,".

(4) In subsection (3)—

(a) at the beginning of paragraph (b) insert "in the cases mentioned in paragraphs (a), (aa) and (ab),",

(b) at the end of paragraph (b) omit "and",

(c) in paragraph (c), for "less" substitute "reduced (but not below nil) by", and

(d) after paragraph (c) insert ", and

(d) where the chargeable event relates to property mentioned in subsection (1)(c)(i) and subsections (2B) to (2E) do not apply, section 33 has effect as if in subsection (1)(b)(ii) after "in accordance with" there were inserted "section 8D(2) and (3) above and"."

(5) In subsection (5), for "the qualifying residential interest which" substitute "property which forms the subject-matter of the conditionally exempt transfer where the chargeable event".

(6) In subsection (6), for "the qualifying residential interest which" substitute "property which forms the subject-matter of the conditionally exempt transfer and the chargeable event".

(7) In subsection (7), for "the qualifying residential interest" substitute "property which forms the subject-matter of the conditionally exempt transfer".

SCHEDULE 16

Section 133

PROPERTY AUTHORISED INVESTMENT FUNDS AND CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

PART 1

CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

1 In FA 2003, after section 102 insert—

"**102A Co-ownership authorised contractual schemes**

(1) This section has effect for the purposes of this Part.

(2) This Part, with the exception of Schedule 7 (see subsection (10)), applies in relation to a co-ownership authorised contractual scheme as if—

(a) the scheme were a company, and

(b) the rights of the participants were shares in the company.

(3) An "umbrella COACS" means a co-ownership authorised contractual scheme—

(a) whose arrangements provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them ("pooling arrangements"), and

(b) under which the participants are entitled to exchange rights in one pool for rights in another.

(4) A "sub-scheme", in relation to an umbrella COACS, means such of the pooling arrangements as relate to a separate pool.

(5) Each of the sub-schemes of an umbrella COACS is regarded as a separate co-ownership authorised contractual scheme, and the umbrella COACS as a whole is not so regarded.

(6) In relation to a sub-scheme of an umbrella COACS—

(a) references to chargeable interests are references to such of the chargeable interests as under the pooling arrangements form part of the separate pool to which the sub-scheme relates, and

(b) references to the scheme documents are references to such parts of the documents as apply to the sub-scheme.

(7) References to a co-ownership authorised contractual scheme are treated as including a collective investment scheme which—

(a) is constituted under the law of an EEA State other than the United Kingdom by a contract,

(b) is managed by a body corporate incorporated under the law of an EEA State, and

(c) is authorised under the law of the EEA State mentioned in paragraph (a) in a way which makes it, under that law, the equivalent of a co-ownership authorised contractual scheme as defined in subsection (8),

provided that, apart from this section, no charge to tax is capable of arising to the scheme under this Part.

(8) Subject to any regulations under subsection (9)—

"co-ownership authorised contractual scheme" means a co-ownership scheme which is authorised for the purposes of FSMA 2000 by an authorisation order in force under section 261D(1) of that Act;

"co-ownership scheme" has the same meaning as in FSMA 2000 (see section 235A of that Act).

(9) The Treasury may by regulations provide that a scheme of a description specified in the regulations is to be treated as not being a co-ownership authorised contractual scheme for the purposes of this Part.

Any such regulations may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.

(10) A co-ownership authorised contractual scheme is not to be treated as a company for the purposes of Schedule 7 (group relief, reconstruction relief or acquisition relief).

(11) In relation to a land transaction in respect of which a co-ownership authorised contractual scheme is treated as the purchaser by virtue of this section, references to the purchaser in the following provisions are to be read as references to the operator of the scheme—

(a) sections 76, 80, 81, 81A and 108(2) and Schedule 10 (provisions about land transaction returns and further returns, enquiries, assessments and related matters),

(b) section 85 (liability for tax), and

(c) section 90 (application to defer payment in case of contingent or unascertained consideration).

(12) In this section—

"collective investment scheme" has the meaning given by section 235 of FSMA 2000;

"FSMA 2000" means the Financial Services and Markets Act 2000;

"operator"—

(a) in relation to a co-ownership authorised contractual scheme constituted under the law of the United Kingdom, has the meaning given by section 237(2) of FSMA 2000, and

(b) in relation to a collective investment scheme treated as a co-ownership authorised contractual scheme by virtue of subsection (7) (equivalent EEA schemes), means the corporate body responsible for the management of the scheme (however described);

"participant" is to be read in accordance with section 235 of FSMA 2000."

PART 2

SEEDING RELIEF FOR PROPERTY AUTHORISED INVESTMENT FUNDS AND CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

2 FA 2003 is amended in accordance with this Part.

3 After section 65 insert—

"**65A PAIF seeding relief and COACS seeding relief**

(1) Schedule 7A provides for relief from stamp duty land tax.

(2) In that Schedule—

(a) Part 1 makes provision for relief for property authorised investment funds (PAIF seeding relief), and

(b) Part 2 makes provision for relief for co-ownership authorised contractual schemes (COACS seeding relief).

(3) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return, and must be accompanied by a notice to HMRC referring to the claim.

(4) In the case of a claim for PAIF seeding relief, the notice must confirm that the purchaser is—

(a) a property AIF as defined in paragraph 2(2) of Schedule 7A, or

(b) a company treated as a property AIF by virtue of paragraph 2(5) of Schedule 7A (equivalent EEA funds).

(5) In the case of a claim for COACS seeding relief, the notice must confirm that the purchaser is—

(a) a co-ownership authorised contractual scheme as defined in section 102A(8), or

(b) an entity treated as a co-ownership authorised contractual scheme by virtue of section 102A(7) (equivalent EEA schemes).

(6) The notice must be in such form, and contain such further information, as HMRC may require."

4 After Schedule 7 insert—

"SCHEDULE 7A

Section 65A

PAIF SEEDING RELIEF AND COACS SEEDING RELIEF

PART 1

PROPERTY AUTHORISED INVESTMENT FUNDS

PAIF seeding relief

1 (1) A land transaction is exempt from charge if conditions A to D are met.

Relief under this paragraph is referred to in this Part of this Act as "PAIF seeding relief".

(2) Condition A is that the purchaser is a property AIF (see paragraph 2).

(3) Condition B is that the main subject-matter of the transaction consists of a major interest in land.

(4) Condition C is that the only consideration for the transaction is the issue of units in the property AIF to a person who is the vendor.

(5) Condition D is that the effective date of the transaction is a day within the seeding period (see paragraph 3).

(6) This paragraph is subject to paragraph 4 (restrictions on availability of relief) and paragraphs 5 to 8 (withdrawal of relief).

Meaning of "property AIF"

2 (1) This paragraph has effect for the purposes of this Schedule.

(2) A "property AIF" is an open-ended investment company to which Part 4A of the AIF (Tax) Regulations applies.

(3) In sub-paragraph (2) "open-ended investment company" is to be read in accordance with regulation 7(1) and (2) of those Regulations (part of an umbrella company is regarded as an open-ended investment company).

(4) Regulation 7(3)(a) of those Regulations applies for the purposes of this Schedule as it applies for the purposes of those Regulations but as if references to investments and scheme property were a reference to chargeable interests.

(5) References to a property AIF are treated as including a collective investment scheme which—

(a) is a company incorporated under the law of an EEA State other than the United Kingdom, and

(b) is authorised under the law of that EEA State in a way which makes it, under that law, the equivalent of a property AIF as defined in sub-paragraph (2).

(6) In sub-paragraph (5) "collective investment scheme" has the meaning given by section 235 of FSMA 2000.

Meaning of "seeding period"

3 (1) In this Part of this Schedule, subject to sub-paragraph (2), the "seeding period" means—

(a) the period beginning with the first property seeding date and ending with the date of the first external investment into the property AIF, or

(b) if shorter, the period of 18 months beginning with the first property seeding date.

(2) The property AIF may elect to bring the seeding period to an end sooner than it would otherwise end under sub-paragraph (1).

Where an election is made, the seeding period is the period beginning with the first property seeding date and ending with the date specified in the election.

(3) An election under sub-paragraph (2) may be made—

(a) by being included in a notice accompanying a claim for PAIF seeding relief (see section 65A), or

(b) by separate notice in writing to HMRC.

(4) In sub-paragraphs (1) and (2), "the first property seeding date" means the earliest effective date of a transaction in respect of which conditions A to C in paragraph 1 are met.

(5) In this paragraph—

"external investment" means a non-land transaction in which the vendor is an external investor;

"external investor" means a person other than a person who has been a vendor in a transaction—

(a) the effective date of which is on or before the date of the non-land transaction, and

(b) in respect of which conditions A to C in paragraph 1 are met;

"non-land transaction" means a transaction by which the property AIF acquires assets which do not consist of or include a chargeable interest.

Restrictions on availability of relief

4 (1) This paragraph restricts the availability of PAIF seeding relief for a transaction in respect of which conditions A to D in paragraph 1 are met.

(2) PAIF seeding relief is not available unless, at the effective date of the transaction, the property AIF has arrangements in place requiring a person who is the vendor to notify the authorised corporate director of the property AIF of the following matters—

(a) the identity of the beneficial owner of the units in the property AIF received in consideration of the transaction, and

(b) any disposal of units in the property AIF on or after the effective date of that transaction by that owner (or, where that person is a company, by a group company) which is or could be a relevant disposal (see paragraph 7).

In paragraph (b) "group company" means a company which is a member of the same group of companies as the person mentioned in paragraph (a) for the purposes mentioned in paragraph 1(2) of Schedule 7 (group relief).

(3) PAIF seeding relief is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person who is the vendor makes or could make a disposal of units in the property AIF which is or could be a relevant disposal (see paragraph 7).

(4) PAIF seeding relief is not available if the transaction—

(a) is not effected for bona fide commercial reasons, or

(b) forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

"Tax" here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.

Withdrawal of relief: ceasing to be property AIF

5 (1) Where PAIF seeding relief has been allowed in respect of a transaction ("the relevant transaction"), and the purchaser ceases to be a property AIF—

(a) at any time after the effective date of that transaction but within the seeding period,

(b) at any time in the control period (see paragraph 21), or

(c) in pursuance of, or in connection with, arrangements made before the end of the control period,

then, subject to sub-paragraph (2), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.

(2) Relief is withdrawn only if, at the time when the purchaser ceases to be a property AIF, the purchaser holds—

(a) the chargeable interest that was acquired by the purchaser under the relevant transaction, or

(b) a chargeable interest that is derived from that interest.

(3) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for PAIF seeding relief or, as

the case may be, an appropriate proportion of the tax that would have been so chargeable.

(4) In sub-paragraphs (1) and (3) an "appropriate proportion" means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the purchaser at the time it ceases to be a property AIF.

Withdrawal of relief: portfolio test not met

6 (1) Where PAIF seeding relief has been allowed in respect of a transaction, and the portfolio test is not met immediately before the end of the seeding period, the relief is withdrawn and tax is chargeable in accordance with sub-paragraph (2).

See sub-paragraph (7) for the meaning of "portfolio test".

(2) The amount chargeable is the amount that would have been chargeable in respect of the transaction but for PAIF seeding relief.

(3) Where PAIF seeding relief has been allowed in respect of a transaction ("the relevant transaction"), and the portfolio test is met immediately before the end of the seeding period, but is not met—

(a) at a time in the control period, or

(b) at a time after the end of the control period, where the failure is pursuant to or in connection with arrangements made before the end of that period,

then, subject to sub-paragraph (4), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with sub-paragraph (5).

(4) The requirement to meet the portfolio test at a time mentioned in sub-paragraph (3)(a) or (b) applies only to times when the property AIF holds—

(a) the chargeable interest that was acquired by the property AIF under the relevant transaction, or

(b) a chargeable interest that is derived from that interest.

(5) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for PAIF seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(6) In sub-paragraphs (3) and (5) an "appropriate proportion" means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the property AIF at the time when the portfolio test is not met.

(7) The portfolio test is a requirement that the property AIF meets—

(a) the non-residential portfolio test (see sub-paragraph (8)), or

(b) the residential portfolio test (see sub-paragraph (9)).

(8) The "non-residential portfolio test" is met at any time if—

(a) the property AIF holds at least 10 seeded interests at that time,

(b) so much of the total chargeable consideration as is attributable to all the seeded interests held by the property AIF at that time ("the seeded portfolio") is at least £100 million, and

(c) so much of the total chargeable consideration as is attributable to so many of those seeded interests as are interests in or over residential property (if any) does not exceed 10% of the seeded portfolio.

(9) The "residential portfolio test" is met at any time if—

(a) so much of the total chargeable consideration as is attributable to all the seeded interests held by the property AIF at that time is at least £100 million, and

(b) at least 100 of the seeded interests held by the property AIF at that time are interests in or over residential property.

(10) In sub-paragraphs (8) and (9)—

"seeded interest" means a chargeable interest acquired by the property AIF in a transaction for which PAIF seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent) (a "seeding transaction"), and

"total chargeable consideration" means the total of the chargeable consideration for all seeding transactions.

(11) For the purposes of this paragraph, section 116(7) does not apply (modification of what counts as residential property).

Withdrawal of relief: units disposed of

7 (1) This paragraph applies where—

(a) a person ("V") makes a relevant disposal of one or more units in a property AIF—

(i) at any time in the seeding period,

(ii) at any time in the control period, or

(iii) in pursuance of, or in connection with, arrangements made before the end of the control period, and

(b) there is, in relation to that disposal, a relevant seeding transaction (see sub-paragraph (6)).

(2) In respect of a transaction which is, in relation to the relevant disposal, a relevant seeding transaction—

(a) PAIF seeding relief is withdrawn to the extent set out in this paragraph, and

(b) tax is chargeable in accordance with this paragraph.

(3) V's disposal of units in a property AIF is a "relevant disposal" for the purposes of this paragraph if, in relation to the disposal, A exceeds B.

(4) In this paragraph—

"A" means—

(a) where the value of V's investment in the property AIF immediately before the disposal is equal to or greater than the total of the chargeable consideration for all

relevant seeding transactions, the total of the chargeable consideration for all relevant seeding transactions, or

(b) where the value of V's investment in the property AIF immediately before the disposal is less than the total of the chargeable consideration for all relevant seeding transactions, the value of V's investment in the property AIF immediately before the disposal, and

"B" means the value of V's investment in the property AIF immediately after the disposal.

(5) The amount chargeable in respect of a relevant seeding transaction ("RST") is—

$$\frac{C}{CCRST} \times SDLT$$

where—

"C" means the difference between A and B;

"CCRST" means the total of the chargeable consideration for all relevant seeding transactions;

"SDLT" means the amount of tax that would have been chargeable in respect of RST but for PAIF seeding relief, ignoring any amount of tax that has been charged under this paragraph in respect of RST in relation to an earlier disposal of units by V.

(6) In this paragraph—

"group company" means (where V is a company) a company which is a member of the same group of companies as V for the purposes mentioned in paragraph 1(2) of Schedule 7 (group relief);

"relevant seeding transaction", in relation to a disposal of units by V in a property AIF, means a seeding transaction—

(a) the effective date of which is, or is before, the date of the disposal,

(b) in which that property AIF is the purchaser, and

(c) in which a vendor is—

(i) V, or

(ii) (where V is a company) a company which is a group company at the time of the disposal;

"seeding transaction" means a transaction in respect of which PAIF seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent);

"the value of V's investment in the property AIF" at a particular time means the market value of all units in the property AIF held at that time by—

(a) V, and

(b) (where V is a company) a company which—

(i) is a group company at that time, and

(ii) before that time, has been a vendor in one or more seeding transactions in which the property AIF was the purchaser.

(7) For the purposes of this paragraph, the "market value" on a particular date of units in the property AIF is an amount equal to the buying price (that is, the lower price) published by the authorised corporate director on that date (or, if no such price is published on that date, on the latest date before).

Withdrawal of relief: dwelling occupied by non-qualifying individual

8 (1) This paragraph applies to a transaction ("the relevant transaction") if—

(a) PAIF seeding relief has been allowed in respect of the transaction,

(b) the main subject-matter of the transaction consists of a chargeable interest in or over land which is or includes a dwelling, and

(c) a non-qualifying individual (see paragraph 9) is permitted to occupy the dwelling at any time on or after the effective date of the transaction.

The dwelling which a non-qualifying individual is permitted to occupy is referred to as "the disqualifying dwelling".

(2) The relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.

This is subject to sub-paragraphs (3) and (4).

(3) Relief is withdrawn only if, at the time a non-qualifying individual is permitted to occupy the disqualifying dwelling, the property AIF holds a chargeable interest in or over that dwelling—

(a) that was acquired by the property AIF under the relevant transaction, or

(b) that is derived from an interest so acquired.

(4) Where a non-qualifying individual is first permitted to occupy the disqualifying dwelling at a time after the end of the control period, relief is withdrawn only if, at that time, the purchaser in the relevant transaction fails to meet the genuine diversity of ownership condition set out in regulation 9A of the AIF (Tax) Regulations.

For the purposes of this sub-paragraph, regulation 9A(2)(a) of those Regulations is to be read as if the words "throughout the accounting period" were omitted.

(5) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for PAIF seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(6) In sub-paragraphs (2) and (5), an "appropriate proportion" means an appropriate proportion having regard to the extent to which the subject-

matter of the relevant transaction was an interest in or over land other than the disqualifying dwelling.

9 (1) In paragraph 8 "non-qualifying individual", in relation to a land transaction and a property AIF, means any of the following—

(a) an individual who is a major participant in the property AIF;

(b) an individual who is connected with a major participant in the property AIF;

(c) an individual who is connected with the property AIF;

(d) a relevant settlor;

(e) the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);

(f) a relative of an individual falling within paragraph (b), (c) or (d), or the spouse or civil partner of a relative of an individual falling within paragraph (b), (c) or (d);

(g) a relative of the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);

(h) the spouse or civil partner of an individual falling within paragraph (g).

(2) An individual who participates in a property AIF is a "major participant" in it if the individual—

(a) is entitled to a share of at least 50% either of all the profits or income arising from the property AIF or of any profits or income arising from it that may be distributed to participants, or

(b) would in the event of the winding up of the property AIF be entitled to 50% or more of the assets of the property AIF that would then be available for distribution among the participants.

(3) The reference in sub-paragraph (2)(a) to profits or income arising from the property AIF is to profits or income arising from the acquisition, holding, management or disposal of the property subject to the property AIF.

(4) In this paragraph—

"relative" means brother, sister, ancestor or lineal descendant;

"relevant settlor", in relation to a land transaction, means an individual who is a settlor in relation to a relevant settlement (as defined in sub-paragraph (5));

"settlement" has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).

(5) Where a person, in the capacity of trustee of a settlement, is connected with a person who is the purchaser under a land transaction, that settlement is a "relevant settlement" in relation to the transaction.

(6) In sub-paragraph (5) "trustee" is to be read in accordance with section 1123(3) of CTA 2010 ("connected" persons: supplementary).

(7) Section 1122 of CTA 2010 (connected persons) has effect for the purposes of this paragraph, but for those purposes, subsections (7) and (8) of that section (application of rules about connected persons to partnerships) are to be disregarded.

PART 2

CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES

COACS seeding relief

10 (1) A land transaction is exempt from charge if conditions A to D are met.

Relief under this paragraph is referred to in this Part of this Act as "COACS seeding relief".

(2) Condition A is that the purchaser is a co-ownership authorised contractual scheme (see section 102A).

(3) Condition B is that the main subject-matter of the transaction consists of a major interest in land.

(4) Condition C is that the only consideration for the transaction is the issue of units in the co-ownership authorised contractual scheme to a person who is the vendor.

(5) Condition D is that the effective date of the transaction is a day within the seeding period (see paragraph 11).

(6) This paragraph is subject to paragraph 12 (restrictions on availability of relief) and paragraphs 13, 14, 16, 17 and 18 (withdrawal of relief).

Meaning of "seeding period"

11 (1) In this Part of this Schedule, subject to sub-paragraph (2), the "seeding period" means—

(a) the period beginning with the first property seeding date and ending with the date of the first external investment into the co-ownership authorised contractual scheme, or

(b) if shorter, the period of 18 months beginning with the first property seeding date.

(2) The co-ownership authorised contractual scheme may elect to bring the seeding period to an end sooner than it would otherwise end under sub-paragraph (1).

Where an election is made, the seeding period is the period beginning with the first property seeding date and ending with the date specified in the election.

(3) An election under sub-paragraph (2) may be made—

(a) by being included in a notice accompanying a claim for COACS seeding relief (see section 65A), or

(b) by separate notice in writing to HMRC.

(4) In sub-paragraphs (1) and (2), "the first property seeding date" means the earliest effective date of a transaction in respect of which conditions A to C in paragraph 10 are met.

(5) In this paragraph—

"external investment" means a non-land transaction in which the vendor is an external investor;

"external investor" means a person other than a person who has been a vendor in a transaction—

(a) the effective date of which is on or before the date of the non-land transaction, and

(b) in respect of which conditions A to C in paragraph 10 are met;

"non-land transaction" means a transaction by which the scheme acquires assets which do not consist of or include a chargeable interest.

Restrictions on availability of relief

12 (1) This paragraph restricts the availability of COACS seeding relief for a transaction in respect of which conditions A to D in paragraph 10 are met.

(2) COACS seeding relief is not available unless, at the effective date of the transaction, the arrangements constituting the co-ownership authorised contractual scheme require a person who is the vendor to notify the operator of the scheme of the following matters—

(a) the identity of the beneficial owner of the units in the scheme received in consideration of the transaction, and

(b) any disposal of units in the scheme on or after the effective date of that transaction by that owner (or, where that person is a company, by a group company) which is or could be a relevant disposal (see paragraph 17).

In paragraph (b) "group company" means a company which is a member of the same group of companies as the person mentioned in paragraph (a) for the purposes mentioned in paragraph 1(2) of Schedule 7 (group relief).

(3) COACS seeding relief is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person who is the vendor makes or could make a disposal of units in the co-ownership authorised contractual scheme which is or could be a relevant disposal (see paragraph 17).

(4) COACS seeding relief is not available if the transaction—

(a) is not effected for bona fide commercial reasons, or

(b) forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

"Tax" here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.

Withdrawal of relief: ceasing to be co-ownership authorised contractual scheme

13 (1) Where COACS seeding relief has been allowed in respect of a transaction ("the relevant transaction"), and the purchaser ceases to be a co-ownership authorised contractual scheme—

(a) at any time after the effective date of that transaction but within the seeding period,

(b) at any time in the control period (see paragraph 21), or

(c) in pursuance of, or in connection with, arrangements made before the end of the control period,

then, subject to sub-paragraph (2), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.

(2) Relief is withdrawn only if, at the time when the purchaser ceases to be a co-ownership authorised contractual scheme, the purchaser holds—

(a) the chargeable interest that was acquired by the purchaser under the relevant transaction, or

(b) a chargeable interest that is derived from that interest.

(3) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(4) In sub-paragraphs (1) and (3) an "appropriate proportion" means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the purchaser at the time it ceases to be a co-ownership authorised contractual scheme.

Withdrawal of relief: genuine diversity of ownership condition not met

14 (1) Where COACS seeding relief has been allowed in respect of a transaction ("the relevant transaction"), and the genuine diversity of ownership condition (see paragraph 15) is not met—

(a) immediately before the end of the seeding period,

(b) at a time in the control period, or

(c) at a time after the end of the control period, where the failure is pursuant to or in connection with arrangements made before the end of that period,

then, subject to sub-paragraph (2), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.

(2) The requirement to meet the genuine diversity of ownership condition at a time mentioned in sub-paragraph (1) applies only to times when the co-ownership authorised contractual scheme holds—

(a) the chargeable interest that was acquired by the scheme under the relevant transaction, or

(b) a chargeable interest that is derived from that interest.

(3) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(4) In sub-paragraphs (1) and (3) an "appropriate proportion" means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the scheme at the time when the genuine diversity of ownership condition is not met.

(5) For the purposes of this paragraph, the operator of a co-ownership authorised contractual scheme may apply to HMRC in writing for clearance that the scheme meets the genuine diversity of ownership condition, and where an application is made, HMRC must notify the scheme of its decision within 28 days of the receipt of all the information that is needed to make the decision.

(6) Any such clearance has effect only for so long as the information on which HMRC relies in granting clearance is materially unchanged and the scheme is operated in accordance with it (including, in particular, continuing to operate in accordance with condition C of the genuine diversity of ownership condition).

Genuine diversity of ownership condition

15 (1) This paragraph has effect for the purposes of paragraphs 14 and 18(4).

(2) A co-ownership authorised contractual scheme meets the genuine diversity of ownership condition at any time when it meets conditions A to C.

(3) Condition A is that the scheme documents, which are available to investors and to HMRC, contain—

(a) a statement specifying the intended categories of investor,

(b) an undertaking that units in the scheme will be widely available, and

(c) an undertaking that units in the scheme will be marketed and made available in accordance with the requirements of sub-paragraph (6)(a).

(4) Condition B is that—

(a) the specification of the intended categories of investor does not have a limiting or deterrent effect, and

(b) any other terms or conditions governing participation in the scheme do not have a limiting or deterrent effect.

(5) In sub-paragraph (4) "limiting or deterrent effect" means an effect which—

(a) limits investors to a limited number of specific persons or specific groups of connected persons, or

(b) deters a reasonable investor falling within one of (what are specified as) the intended categories of investor from investing in the scheme.

(6) Condition C is that—

(a) units in the scheme are marketed and made available—

(i) sufficiently widely to reach the intended categories of investors, and

(ii) in a manner appropriate to attract those categories of investors, and

(b) a person who falls within one of the intended categories of investors can, upon request to the operator of the scheme, obtain information about the scheme and acquire units in it.

(7) A scheme is not regarded as failing to meet condition C at any time by reason of the scheme's having, at that time, no capacity to receive additional investments, unless—

(a) the capacity of the scheme to receive investments in it is fixed by the scheme documents (or otherwise), and

(b) a pre-determined number of specific persons or specific groups of connected persons make investments in the scheme which collectively exhaust all, or substantially all, of that capacity.

(8) A co-ownership authorised contractual scheme also meets the genuine diversity of ownership condition at any time when—

(a) there is a feeder fund in relation to the scheme (see paragraph 20), and

(b) conditions A to C are met in relation to the scheme after taking into account—

(i) the scheme documents relating to the feeder fund, and

(ii) the intended investors in the feeder fund.

(9) Section 1122 of CTA 2010 (connected persons) has effect for the purposes of this paragraph.

Withdrawal of relief: portfolio test not met

16 (1) Where COACS seeding relief has been allowed in respect of a transaction, and the portfolio test is not met immediately before the end of the seeding period, the relief is withdrawn and tax is chargeable in accordance with sub-paragraph (2).

See sub-paragraph (7) for the meaning of "portfolio test".

(2) The amount chargeable is the amount that would have been chargeable in respect of the transaction but for COACS seeding relief.

(3) Where COACS seeding relief has been allowed in respect of a transaction ("the relevant transaction"), and the portfolio test is met immediately before the end of the seeding period, but is not met—

(a) at a time in the control period, or

(b) at a time after the end of the control period, where the failure is pursuant to or in connection with arrangements made before the end of that period,

then, subject to sub-paragraph (4), the relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with sub-paragraph (5).

(4) The requirement to meet the portfolio test at a time mentioned in sub-paragraph (3)(a) or (b) applies only to times when the co-ownership authorised contractual scheme holds—

(a) the chargeable interest that was acquired by the scheme under the relevant transaction, or

(b) a chargeable interest that is derived from that interest.

(5) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(6) In sub-paragraphs (3) and (5) an "appropriate proportion" means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held by the scheme at the time when the portfolio test is not met.

(7) The portfolio test is a requirement that the scheme meets—

(a) the non-residential portfolio test (see sub-paragraph (8)), or

(b) the residential portfolio test (see sub-paragraph (9)).

(8) The "non-residential portfolio test" is met at any time if—

(a) the scheme holds at least 10 seeded interests at that time,

(b) so much of the total chargeable consideration as is attributable to all the seeded interests held by the scheme at that time ("the seeded portfolio") is at least £100 million, and

(c) so much of the total chargeable consideration as is attributable to so many of those seeded interests as are interests in or over residential property (if any) does not exceed 10% of the seeded portfolio.

(9) The "residential portfolio test" is met at any time if—

(a) so much of the total chargeable consideration as is attributable to all the seeded interests held by the scheme at that time is at least £100 million, and

(b) at least 100 of the seeded interests held by the scheme at that time are interests in or over residential property.

(10) In sub-paragraphs (8) and (9)—

"seeded interest" means a chargeable interest acquired by the scheme in a transaction for which COACS seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent) (a "seeding transaction"), and

"total chargeable consideration" means the total of the chargeable consideration for all seeding transactions.

(11) For the purposes of this paragraph, section 116(7) does not apply (modification of what counts as residential property).

Withdrawal of relief: units disposed of

17 (1) This paragraph applies where—

(a) a person ("V") makes a relevant disposal of one or more units in a co-ownership authorised contractual scheme—

(i) at any time in the seeding period,

(ii) at any time in the control period, or

(iii) in pursuance of, or in connection with, arrangements made before the end of the control period, and

(b) there is, in relation to that disposal, a relevant seeding transaction (see sub-paragraph (6)).

(2) In respect of a transaction which is, in relation to the relevant disposal, a relevant seeding transaction—

(a) COACS seeding relief is withdrawn to the extent set out in this paragraph, and

(b) tax is chargeable in accordance with this paragraph.

(3) V's disposal of units in a scheme is a "relevant disposal" for the purposes of this paragraph if, in relation to the disposal, A exceeds B.

(4) In this paragraph—

"A" means—

(a) where the value of V's investment in the scheme immediately before the disposal is equal to or greater than the total of the chargeable consideration for all relevant seeding transactions, the total of the chargeable consideration for all relevant seeding transactions, or

(b) where the value of V's investment in the scheme immediately before the disposal is less than the total of the chargeable consideration for all relevant seeding transactions, the value of V's investment in the scheme immediately before the disposal, and

"B" means the value of V's investment in the scheme immediately after the disposal.

(5) The amount chargeable in respect of a relevant seeding transaction ("RST") is—

$$\frac{C}{CCRST} \times SDLT$$

where—

"C" means the difference between A and B;

"CCRST" means the total of the chargeable consideration for all relevant seeding transactions;

"SDLT" means the amount of tax that would have been chargeable in respect of RST but for COACS seeding relief, ignoring any amount of tax that has been charged under this paragraph in respect of RST in relation to an earlier disposal of units by V.

(6) In this paragraph—

"group company" means (where V is a company) a company which is a member of the same group of companies as V for the purposes mentioned in paragraph 1(2) of Schedule 7 (group relief);

"relevant seeding transaction", in relation to a disposal of units by V in a co-ownership authorised contractual scheme, means a seeding transaction—

(a) the effective date of which is, or is before, the date of the disposal,

(b) in which that scheme is the purchaser, and

(c) in which a vendor is—

(i) V, or

(ii) (where V is a company) a company which is a group company at the time of the disposal;

"seeding transaction" means a transaction in respect of which COACS seeding relief is allowed (whether or not relief is subsequently withdrawn to any extent);

"the value of V's investment in the scheme" at a particular time means the market value of all units in the co-ownership authorised contractual scheme held at that time by—

(a) V, and

(b) (where V is a company) a company which—

(i) is a group company at that time, and

(ii) before that time, has been a vendor in one or more seeding transactions in which the scheme was the purchaser.

(7) For the purposes of this paragraph, the "market value" on a particular date of units in the scheme is an amount equal to the buying price (that is, the lower price) published by the operator on that date (or, if no such price is published on that date, on the latest date before).

Withdrawal of relief: dwelling occupied by non-qualifying individual

18 (1) This paragraph applies to a transaction ("the relevant transaction") if—

(a) COACS seeding relief has been allowed in respect of the transaction,

(b) the main subject-matter of the transaction consists of a chargeable interest in or over land which is or includes a dwelling, and

(c) a non-qualifying individual (see paragraph 19) is permitted to occupy the dwelling at any time on or after the effective date of the transaction.

The dwelling which a non-qualifying individual is permitted to occupy is referred to as "the disqualifying dwelling".

(2) The relief, or an appropriate proportion of it, is withdrawn, and tax is chargeable in accordance with this paragraph.

This is subject to sub-paragraphs (3) and (4).

(3) Relief is withdrawn only if, at the time a non-qualifying individual is permitted to occupy the disqualifying dwelling, the co-ownership authorised contractual scheme holds a chargeable interest in or over that dwelling—

(a) that was acquired by the scheme under the relevant transaction, or

(b) that is derived from an interest so acquired.

(4) Where a non-qualifying individual is first permitted to occupy the disqualifying dwelling at a time after the end of the control period, relief is withdrawn only if, at that time, the scheme fails to meet the genuine diversity of ownership condition (see paragraph 15).

(5) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for COACS seeding relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(6) In sub-paragraphs (2) and (5), an "appropriate proportion" means an appropriate proportion having regard to the extent to which the subject-matter of the relevant transaction was an interest in or over land other than the disqualifying dwelling.

19 (1) In paragraph 18 "non-qualifying individual", in relation to a land transaction and a co-ownership authorised contractual scheme, means any of the following—

(a) an individual who is a major participant in the scheme;

(b) an individual who is connected with a major participant in the scheme;

(c) an individual who is connected with the operator of the scheme (see section 102A) or the depositary of the scheme;

(d) a relevant settlor;

(e) the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);

(f) a relative of an individual falling within paragraph (b), (c) or (d), or the spouse or civil partner of a relative of an individual falling within paragraph (b), (c) or (d);

(g) a relative of the spouse or civil partner of an individual falling within paragraph (b), (c) or (d);

(h) the spouse or civil partner of an individual falling within paragraph (g).

(2) An individual who participates in a scheme is a "major participant" in it if the individual—

(a) is entitled to a share of at least 50% either of all the profits or income arising from the scheme or of any profits or income arising from it that may be distributed to participants, or

(b) would in the event of the winding up of the scheme be entitled to 50% or more of the assets of the scheme that would then be available for distribution among the participants.

(3) The reference in sub-paragraph (2)(a) to profits or income arising from the scheme is to profits or income arising from the acquisition, holding, management or disposal of the property subject to the scheme.

(4) In this paragraph—

"depositary", in relation to a co-ownership authorised contractual scheme, means the person to whom the property subject to the scheme is entrusted for safekeeping;

"relative" means brother, sister, ancestor or lineal descendant;

"relevant settlor", in relation to a land transaction, means an individual who is a settlor in relation to a relevant settlement (as defined in sub-paragraph (5));

"settlement" has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).

(5) Where a person, in the capacity of trustee of a settlement, is connected with a person who is the purchaser under a land transaction, that settlement is a "relevant settlement" in relation to the transaction.

(6) In sub-paragraph (5) "trustee" is to be read in accordance with section 1123(3) of CTA 2010 ("connected" persons: supplementary).

(7) Section 1122 of CTA 2010 (connected persons) has effect for the purposes of this paragraph, but for those purposes, subsections (7) and (8) of that section (application of rules about connected persons to partnerships) are to be disregarded.

PART 3

INTERPRETATION

"Feeder fund" and "units"

20 In this Schedule—

a "feeder fund" of a property AIF means a unit trust scheme—

(a) one of the main objects of which is investment in the property AIF, and

(b) which is managed by the same person as the property AIF;

a "feeder fund" of a co-ownership authorised contractual scheme means an open-ended investment company, an offshore fund or a unit trust scheme—

(a) one of the main objects of which is investment in the co-ownership authorised contractual scheme, and

(b) which is managed by the same person as the scheme;

"units in the property AIF" means—

(a) units in the property AIF (and, where the property AIF is a part of an umbrella company as mentioned in regulation 7(1) and (2) of the AIF (Tax) Regulations, this means units in the separate pool to which that part of the umbrella company relates), and

(b) units in a feeder fund of the property AIF;

"units in the co-ownership authorised contractual scheme" means—

(a) units in the co-ownership authorised contractual scheme (and, where the co-ownership authorised contractual scheme is a sub-scheme of an umbrella COACS (see section 102A(3) and (4)), this means units in the separate pool to which that sub-scheme relates), and

(b) units in a feeder fund of the scheme;

"units" means the rights or interests (however described) of the participants in the property AIF or the co-ownership authorised contractual scheme.

Interpretation of other terms

21 In this Schedule—

the "AIF (Tax) Regulations" means the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964);

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable;

"attributable" means attributable on a just and reasonable basis;

"authorised corporate director", in relation to a property AIF, has the same meaning as in regulation 8 of the AIF (Tax) Regulations;

"COACS seeding relief" means relief under paragraph 10;

"control period" means the period of 3 years beginning with the day following the last day of the seeding period;

"co-ownership authorised contractual scheme" is to be construed in accordance with section 102A (see in particular subsections (2), (5), (7) and (8) of that section);

"CTA 2010" means the Corporation Tax Act 2010;

"FSMA 2000" means the Financial Services and Markets Act 2000;

the "genuine diversity of ownership condition", in relation to a co-ownership authorised contractual scheme, has the meaning given by paragraph 15;

"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005;

"non-qualifying individual" has the meaning given by paragraph 9 (in relation to a property AIF) and paragraph 19 (in relation to a co-ownership authorised contractual scheme);

"offshore fund" has the meaning given by section 355 of the Taxation (International and Other Provisions) Act 2010;

"open-ended investment company" has the meaning given by section 236 of FSMA 2000;

"operator", in relation to a co-ownership authorised contractual scheme, has the same meaning as in section 102A;

"PAIF seeding relief" means relief under paragraph 1;

"participant" is to be read in accordance with section 235 of FSMA 2000;

"portfolio test" has the meaning given by paragraph 6(7) (in relation to a property AIF) and paragraph 16(7) (in relation to a co-ownership authorised contractual scheme);

"property AIF" is to be construed in accordance with paragraph 2 (see in particular sub-paragraphs (2), (3) and (5) of that paragraph);

"relevant disposal" has the meaning given by paragraph 7(3) (in relation to a property AIF) and paragraph 17(3) (in relation to a co-ownership authorised contractual scheme);

"seeding period" has the meaning given by paragraph 3 (in relation to a property AIF) and paragraph 11 (in relation to a co-ownership authorised contractual scheme);

"unit trust scheme" has the meaning given by section 237(1) of FSMA 2000."

PART 3

CONSEQUENTIAL AMENDMENTS

5 FA 2003 is amended in accordance with this Part.

6 In section 75C (anti-avoidance: supplemental), in subsection (4), after "Schedule 6A" insert ", 7A".

7 (1) Section 81 (further return where relief withdrawn) is amended as follows.

(2) In subsection (1)—

(a) omit "or" at the end of paragraph (b), and

(b) after paragraph (b) insert—

"(ba) paragraph 5, 7 or 8 of Schedule 7A (PAIF seeding relief),

(bb) paragraph 13, 17 or 18 of Schedule 7A (COACS seeding relief), or".

(3) In subsection (1A), after "transactions)" insert ", or under paragraph 6 of Schedule 7A (PAIF seeding relief) or paragraph 14 or 16 of Schedule 7A (COACS seeding relief),".

(4) In subsection (1B), after paragraph (e) insert—

"(f) in the case of relief under paragraph 6 of Schedule 7A (PAIF seeding relief: portfolio test)—

(i) where relief is withdrawn under paragraph 6(1), the last day of the seeding period (see paragraph 3 of that Schedule), or

(ii) where relief is withdrawn under paragraph 6(3), the first time mentioned in paragraph 6(3)(a) or (b) at which the portfolio test was not met;

(g) in the case of relief under paragraph 14 of Schedule 7A (COACS seeding relief: genuine diversity of ownership condition), the first time mentioned in paragraph 14(1) at which the genuine diversity of ownership condition was not met;

(h) in the case of relief under paragraph 16 of Schedule 7A (COACS seeding relief: portfolio test)—

(i) where relief is withdrawn under paragraph 16(1), the last day of the seeding period (see paragraph 11 of that Schedule), or

(ii) where relief is withdrawn under paragraph 16(3), the first time mentioned in paragraph 16(3)(a) or (b) at which the portfolio test was not met."

(5) In subsection (4), after paragraph (b) insert—

"(ba) in relation to the withdrawal of PAIF seeding relief—

(i) the purchaser ceasing to be a property AIF as mentioned in paragraph 5 of Schedule 7A,

(ii) a person making a relevant disposal of units as mentioned in paragraph 7 of that Schedule, or

(iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 8 of that Schedule;

(bb) in relation to the withdrawal of COACS seeding relief—

(i) the purchaser ceasing to be a co-ownership authorised contractual scheme as mentioned in paragraph 13 of Schedule 7A,

(ii) a person making a relevant disposal of units as mentioned in paragraph 17 of that Schedule, or

(iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 18 of that Schedule;".

8 In section 86 (payment of tax), in subsection (2)—

(a) omit "or" at the end of paragraph (b), and

(b) after paragraph (b) insert—

"(ba) Part 1 of Schedule 7A (PAIF seeding relief),

(bb) Part 2 of Schedule 7A (COACS seeding relief), or".

9 (1) Section 87 (interest on unpaid tax) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a)—

(i) omit "or" at the end of sub-paragraph (ii), and

(ii) after sub-paragraph (ii) insert—

"(iia) paragraph 5, 7 or 8 of Schedule 7A (PAIF seeding relief),

(iib) paragraph 13, 17 or 18 of Schedule 7A (COACS seeding relief), or";

(b) after paragraph (aza) insert—

"(azb) in the case of an amount payable under paragraph 6(3) of Schedule 7A (PAIF seeding relief: portfolio test), the first time mentioned in paragraph 6(3)(a) or (b) at which the portfolio test was not met;

(azc) in the case of an amount payable under paragraph 14(1) of Schedule 7A (COACS seeding relief: genuine diversity

of ownership condition) because the genuine diversity of ownership condition was not met at a time mentioned in paragraph 14(1)(b) or (c), the first time mentioned in paragraph 14(1)(b) or (c) at which that condition was not met;

(azd) in the case of an amount payable under paragraph 16(3) of Schedule 7A (COACS seeding relief: portfolio test), the first time mentioned in paragraph 16(3)(a) or (b) at which the portfolio test was not met;".

(3) In subsection (4), for "means—" to the end substitute "has the same meaning as in section 81(4)."

10 In section 118 (market value)—

(a) the existing text becomes subsection (1), and

(b) after subsection (1) insert—

"(2) This is subject to paragraphs 7(7) and 17(7) of Schedule 7A (which define "market value" for certain purposes of PAIF seeding relief and COACS seeding relief)."

11 In section 122 (index of defined expressions), at the appropriate place insert—

"COACS seeding relief	Schedule 7A, paragraph 10(1)"
"co-ownership authorised contractual scheme	section 102A"
"operator (in relation to a co-ownership authorised contractual scheme)	section 102A"
"PAIF seeding relief	Schedule 7A, paragraph 1(1)".

12 In Schedule 4A (SDLT: higher rate for certain transactions), in paragraph 2(6)—

(a) omit "and" at the end of paragraph (d),

(b) after paragraph (d) insert—

"(da) Schedule 7A (PAIF seeding relief and COACS seeding relief), and", and

(c) in paragraph (e), for "(d)" substitute "(da)".

13 In Schedule 6B (transfers involving multiple dwellings), in paragraph 2(4)(b), after "Schedule 7" insert ", Schedule 7A".

14 (1) In Schedule 17A (further provisions relating to leases), paragraph 11 (cases where assignment of lease treated as grant of lease) is amended as follows.

(2) In sub-paragraph (3), after paragraph (b) insert—

"(ba) Part 1 or 2 of Schedule 7A (PAIF seeding relief and COACS seeding relief);".

(3) In sub-paragraph (4), after "acquisition relief" insert ", PAIF seeding relief, COACS seeding relief".

(4) In sub-paragraph (5), after paragraph (b) insert—

"(ba) in relation to the withdrawal of PAIF seeding relief—

(i) the purchaser ceasing to be a property AIF as mentioned in paragraph 5 of Schedule 7A,

(ii) a person making a relevant disposal of units as mentioned in paragraph 7 of that Schedule, or

(iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 8 of that Schedule;

(bb) in relation to the withdrawal of COACS seeding relief—

(i) the purchaser ceasing to be a co-ownership authorised contractual scheme as mentioned in paragraph 13 of Schedule 7A,

(ii) a person making a relevant disposal of units as mentioned in paragraph 17 of that Schedule, or

(iii) the grant of permission to a non-qualifying individual to occupy a dwelling as mentioned in paragraph 18 of that Schedule;".

(5) After sub-paragraph (5) insert—

"(6) This paragraph also does not apply where the relief in question is PAIF seeding relief or COACS seeding relief and is withdrawn as a result of a requirement not being met at a time which is before the effective date of the assignment of the lease.

(7) For the purposes of sub-paragraph (6), the reference to a requirement not being met is a reference to—

(a) in relation to the withdrawal of PAIF seeding relief under paragraph 6 of Schedule 7A, the portfolio test not being met (see paragraph 6(7));

(b) in relation to the withdrawal of COACS seeding relief under paragraph 14 of Schedule 7A, the genuine diversity of ownership condition not being met (see paragraph 15);

(c) in relation to the withdrawal of COACS seeding relief under paragraph 16 of Schedule 7A, the portfolio test not being met (see paragraph 16(7)).".

PART 4

COMMENCEMENT

15 (1) The amendments made by Parts 2 and 3 of this Schedule have effect in relation to any land transaction of which the effective date is, or is after, the date on which this Act is passed.

(2) But those amendments do not have effect in relation to a transaction if—

(a) the transaction is effected in pursuance of a contract entered into and substantially performed before the date on which this Act is passed, or

(b) the transaction is effected in pursuance of a contract entered into before that date and is not excluded by sub-paragraph (3).

(3) A transaction effected in pursuance of a contract entered into before the date on which this Act is passed is excluded by this sub-paragraph if—

(a) there is any variation of the contract, or assignment of rights under the contract, on or after that date,

(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, 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.

(4) In this paragraph—

"purchaser" has the same meaning as in Part 4 of FA 2003 (see section 43(4) of that Act);

"substantially performed", in relation to a contract, has the same meaning as in that Part (see section 44(5) of that Act).

SCHEDULE 17

Section 153

AQUA METHANOL ETC

PART 1

AQUA METHANOL

Introductory

1 HODA 1979 is amended as follows.

Definition

2 After section 2AB insert—

"**2AC Aqua methanol**

In this Act "aqua methanol" means a liquid fuel which meets each of the following conditions—

(a) the amount of water it contains is not less than 4.7 per cent and not more than 5.3 per cent by volume,

(b) the amount of methanol it contains is not less than 96 per cent by volume of the remainder of the substance, and

(c) at a temperature of 15°C and under a pressure of 1013.25 millibars, it has a density of not less than 0.81 g/ml and not more than 0.82 g/ml."

3 In section 2A (power to amend definitions), in subsection (1), after paragraph (b) insert—

"(ba) aqua methanol;".

Charging of excise duty

4 After section 6AF insert—

"**6AG Excise duty on aqua methanol**

(1) A duty of excise shall be charged on the setting aside for a chargeable use by any person, or (where it has not already been charged under this section) on the chargeable use by any person, of aqua methanol.

(2) In subsection (1) "chargeable use" means use—

(a) as fuel for any engine, motor or other machinery, or

(b) as an additive or extender in any substance so used.

(3) The rate of duty under this section is—

(a) in the case of a chargeable use within subsection (2)(a), £0.079 a litre;

(b) in the case of a chargeable use within subsection (2)(b), the rate prescribed by order made by the Treasury.

(4) In exercising their power under subsection (3)(b), the Treasury shall so far as practicable secure that aqua methanol set aside for use or used as an additive or extender in any substance is charged with duty at the same rate as the substance in which it is an additive or extender.

(5) The power of the Treasury to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

(6) An order under this section—

(a) may make different provision for different cases, and

(b) may prescribe the rate of duty under subsection (3)(b) by reference to the rate of duty under this Act in respect of any other substance.

6AH Application to aqua methanol of provisions relating to hydrocarbon oil

(1) The Commissioners may by regulations provide for—

(a) references in this Act, or specified references in this Act, to hydrocarbon oil to be construed as including references to aqua methanol;

(b) references in this Act, or specified references in this Act, to duty on hydrocarbon oil to be construed as including references to duty under section 6AG above;

(c) aqua methanol to be treated for the purposes of such of the following provisions of this Act as may be specified as if it fell within a specified description of hydrocarbon oil.

(2) Where the effect of provision made under subsection (1) above is to extend any power to make regulations, provision made in exercise of the power as extended may be contained in the same statutory instrument as the provision extending the power.

(3) In this section "specified" means specified by regulations under this section.

(4) Regulations under this section may make different provision for different cases.

(5) Paragraph (b) of subsection (1) above shall not be taken as prejudicing the generality of paragraph (a) of that subsection."

5 In section 6A (fuel substitutes), in subsection (1)—

(a) omit the "or" after paragraph (d), and

(b) after paragraph (e) insert ", or

(f) aqua methanol."

Mixing of aqua methanol

6 (1) For the italic heading before section 20A substitute "Mixing".

(2) After section 20AAB insert—

"**20AAC Prohibition on mixing of aqua methanol**

(1) Aqua methanol on which duty under section 6AG(3)(a) of this Act has been charged must not be mixed with any relevant substance.

(2) In subsection (1) "relevant substance" means biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil.

(3) A person commits an offence under this subsection if—

(a) the person intentionally uses aqua methanol in contravention of subsection (1) above, or

(b) the person supplies aqua methanol, intending that it will be used in contravention of subsection (1) above.

(4) A person guilty of an offence under subsection (3) above shall be liable—

(a) on summary conviction in England and Wales—

(i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or

(ii) to a fine not exceeding £20,000 or (if greater) 3 times the value of the aqua methanol in question,

or both;

(b) on summary conviction in Scotland—

(i) to imprisonment for a term not exceeding 12 months, or

(ii) to a fine not exceeding the statutory maximum or (if greater) 3 times the value of the aqua methanol in question,

or both;

(c) on summary conviction in Northern Ireland—

(i) to imprisonment for a term not exceeding 6 months, or

(ii) to a fine not exceeding the statutory maximum or (if greater) 3 times the value of the aqua methanol in question,

or both;

(d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

(5) Any aqua methanol, or any mixture containing aqua methanol, in respect of which an offence under subsection (3) above has been committed shall be liable to forfeiture.

20AAD Mixing of aqua methanol in contravention of prohibition: adjustment of duty

(1) A duty of excise shall be charged on a mixture which is produced by mixing aqua methanol on which duty under section 6AG(3)(a) of this Act has been charged with a relevant substance.

(2) In subsection (1) "relevant substance" means biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil.

(3) The rate of duty on a mixture under subsection (1) shall be the rate of duty specified in section 6(1A)(c) (general rate for heavy oil).

(4) The person liable to pay duty charged under this section on production of a mixture is the person producing the mixture.

(5) Where it appears to the Commissioners—

(a) that a person ("P") has produced a mixture on which duty is charged under this section, and

(b) that P is the person liable to pay the duty,

they may assess the amount of duty due from P to the best of their judgment and notify that amount to P or P's representative.

(6) An assessment under subsection (5) above shall be treated as if it were an assessment under section 12(1) of the Finance Act 1994.

(7) Where duty under a provision of this Act has been paid on an ingredient of a mixture, the duty charged under this section shall be reduced by the amount of any duty which the Commissioners are satisfied has been paid on the ingredient (but not to a negative amount).

(8) The Commissioners may exempt a person from liability to pay duty under this section in respect of production of a mixture of a kind described in subsection (1) if satisfied that—

(a) the liability was incurred accidentally, and

(b) in the circumstances the person should be exempted.

Powers to allow reliefs".

Enforcement

7 (1) Section 22 (prohibition on use of petrol substitutes on which duty has not been paid) is amended as follows.

(2) After subsection (1AB) insert—

"(1AC) Where any person—

(a) puts any aqua methanol to a chargeable use (within the meaning of section 6AG above), and

(b) knows or has reasonable cause to believe that there is duty charged under section 6AG above on that aqua methanol which has not been paid and is not lawfully deferred,

his putting the aqua methanol to that use shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which a person contravenes this section shall be liable to forfeiture."

(3) In subsection (1A), for "or (1AB)" substitute ", (1AB) or (1AC)".

(4) For the heading substitute "Prohibition on use of fuel substitutes on which duty has not been paid".

Consequential amendments

8 In section 23C (warehousing), in subsection (4), after paragraph (d) insert—

"(da) aqua methanol,".

9 In section 27(1) (interpretation), before the definition of "aviation gasoline" insert—

""aqua methanol" has the meaning given by section 2AC above;".

10 In section 16 of FA 1994 (appeals to a tribunal), in subsection (6)(c), before "section 23(1)" insert "or (1AC)".

11 In paragraph 3 of Schedule 41 to FA 2008 (penalties for putting product to use that attracts higher duty), in the Table in sub-paragraph (1), at the appropriate place insert—

"HODA 1979 section 20AAD(5)	Mixtures containing aqua methanol."

PART 2

HYDROCARBON OILS: MISCELLANEOUS AMENDMENTS

HODA 1979

12 In section 20AAA of HODA 1979 (mixing of rebated oil), in subsection (4)(a), for "section 6A(1A)(c)" substitute "section 6(1A)(c)".

FA 1994

13 In section 16 of FA 1994 (appeals to a tribunal), in subsection (6)(c), after "section 22(1)" insert "(1AA), (1AB)".

PART 3

COMMENCEMENT

14 The amendments made by this Schedule come into force—

(a) so far as they confer a power to make regulations or an order, on the day on which this Act is passed, and

(b) for all other purposes, on 14 November 2016.

SCHEDULE 18

Section 159

SERIAL TAX AVOIDANCE

PART 1

CONTENTS OF SCHEDULE

1 In this Schedule—

(a) Part 2 provides for HMRC to give warning notices to persons who incur relevant defeats and includes—

(i) provision about the duration of warning periods under warning notices (see paragraph 3), and

(ii) definitions of "relevant defeat" and other key terms;

(b) Part 3 contains provisions about persons to whom a warning notice has been given, and in particular—

(i) imposes a duty to give information notices, and

(ii) allows the Commissioners to publish information about such persons in certain cases involving repeated relevant defeats;

(c) Part 4 contains provision about the restriction of reliefs;

(d) Part 5 imposes liability to penalties on persons who incur relevant defeats in relation to arrangements used in warning periods;

(e) Part 6 contains provisions about corporate groups, associated persons and partnerships;

(f) Part 7 contains definitions and other supplementary provisions.

PART 2

ENTRY INTO THE REGIME AND BASIC CONCEPTS

Duty to give warning notice

2 (1) This paragraph applies where a person incurs a relevant defeat in relation to any arrangements.

(2) HMRC must give the person a written notice (a "warning notice").

(3) The notice must be given within the period of 90 days beginning with the day on which the relevant defeat is incurred.

(4) The notice must—

(a) set out when the warning period begins and ends (see paragraph 3),

(b) specify the relevant defeat to which the notice relates, and

(c) explain the effect of paragraphs 3 and 17 to 46.

(5) A warning notice given by virtue of paragraph 49 must also explain the effect of paragraph 51 (information in certain cases involving partnerships).

(6) In this Schedule "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(7) For the meaning of "relevant defeat" and provision about when a relevant defeat is incurred see paragraph 11.

Warning period

3 (1) If a person is given a warning notice with respect to a relevant defeat (and sub-paragraph (2) does not apply) the period of 5 years beginning with the day after the day on which the notice is given is a "warning period" in relation to that person.

(2) If a person incurs a relevant defeat in relation to arrangements during a period which is a warning period in relation to that person, the warning period is extended to the end of the 5 years beginning with the day after the day on which the relevant defeat occurs.

(3) In relation to a warning period which has been extended under this Schedule, references in this Schedule (including this paragraph) to the warning period are to be read as references to the warning period as extended.

Meaning of "tax"

4 In this Schedule "tax" includes any of the following taxes—

(a) income tax,
(b) corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax,
(c) capital gains tax,
(d) petroleum revenue tax,
(e) diverted profits tax,
(f) apprenticeship levy,
(g) inheritance tax,
(h) stamp duty land tax,
(i) annual tax on enveloped dwellings,
(j) VAT, and
(k) national insurance contributions.

Meaning of "tax advantage" in relation to VAT

5 (1) In this Schedule "tax advantage", in relation to VAT, is to be read in accordance with sub-paragraphs (2) to (4).

(2) A taxable person obtains a tax advantage if—

(a) in any prescribed accounting period, the amount by which the output tax accounted for by the person exceeds the input tax deducted by the person is less than it would otherwise be,
(b) the person obtains a VAT credit when the person would not otherwise do so, or obtains a larger VAT credit or obtains a VAT credit earlier than would otherwise be the case,

(c) in a case where the person recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case, or

(d) in any prescribed accounting period, the amount of the person's non-deductible tax is less than it would otherwise be.

(3) A person who is not a taxable person obtains a tax advantage if the person's non-refundable tax is less than it otherwise would be.

(4) In sub-paragraph (3) "non-refundable tax", in relation to a person who is not a taxable person, means—

(a) VAT on the supply to the person of any goods or services,

(b) VAT on the acquisition by the person from another member State of any goods, and

(c) VAT paid or payable by the person on the importation of any goods from a place outside the member States,

but excluding (in each case) any VAT in respect of which the person is entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.

Meaning of "non-deductible tax"

6 (1) In this Schedule "non-deductible tax", in relation to a taxable person, means—

(a) input tax for which the person is not entitled to credit under section 25 of VATA 1994, and

(b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.

(2) For the purposes of sub-paragraph (1)(b), the VAT "incurred" by a taxable person is—

(a) VAT on the supply to the person of any goods or services,

(b) VAT on the acquisition by the person from another member State of any goods, and

(c) VAT paid or payable by the person on the importation of any goods from a place outside the member States.

"Tax advantage": other taxes

7 In relation to taxes other than VAT, "tax advantage" includes—

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) receipt, or advancement of a receipt, of a tax credit,

(d) avoidance or reduction of a charge to tax, an assessment of tax or a liability to pay tax,

(e) avoidance of a possible assessment to tax or liability to pay tax,

(f) deferral of a payment of tax or advancement of a repayment of tax, and

(g) avoidance of an obligation to deduct or account for tax.

"DOTAS arrangements"

8 (1) For the purposes of this Schedule arrangements are "DOTAS arrangements" at any time if they are notifiable arrangements at the time in question and a person—

(a) has provided information in relation to the arrangements under section 308(3), 309 or 310 of FA 2004, or

(b) has failed to comply with any of those provisions in relation to the arrangements.

(2) But for the purposes of this Schedule "DOTAS arrangements" does not include arrangements in respect of which HMRC has given notice under section 312(6) of FA 2004 (notice that promoters not under duty to notify client of reference number).

(3) For the purposes of sub-paragraph (1) a person who would be required to provide information under subsection (3) of section 308 of FA 2004—

(a) but for the fact that the arrangements implement a proposal in respect of which notice has been given under subsection (1) of that section, or

(b) but for subsection (4A), (4C) or (5) of that section,

is treated as providing the information at the end of the period referred to in subsection (3) of that section.

(4) In this paragraph "notifiable arrangements" has the same meaning as in Part 7 of FA 2004.

"Disclosable VAT arrangements"

9 For the purposes of this Schedule arrangements are "disclosable VAT arrangements" at any time if at that time—

(a) a person has complied with paragraph 6 of Schedule 11A to VATA 1994 in relation to the arrangements (duty to notify Commissioners),

(b) a person under a duty to comply with that paragraph in relation to the arrangements has failed to do so, or

(c) a reference number has been allocated to the scheme under paragraph 9 of that Schedule (voluntary notification of avoidance scheme which is not a designated scheme).

Paragraphs 8 and 9: "failure to comply"

10 (1) A person "fails to comply" with any provision mentioned in paragraph 8(1) or 9(a) if and only if any of the conditions in sub-paragraphs (2) to (4) is met.

(2) The condition in this sub-paragraph is that—

(a) the tribunal has determined that the person has failed to comply with the provision concerned,

(b) the appeal period has ended, and

(c) the determination has not been overturned on appeal.

(3) The condition in this sub-paragraph is that—

(a) the tribunal has determined for the purposes of section 118(2) of TMA 1970 that the person is to be deemed not to have failed to comply with the provision concerned as the person had a reasonable excuse for not doing the thing required to be done,

(b) the appeal period has ended, and

(c) the determination has not been overturned on appeal.

(4) The condition in this sub-paragraph is that the person admitted in writing to HMRC that the person has failed to comply with the provision concerned.

(5) In this paragraph "the appeal period" means—

(a) the period during which an appeal could be brought against the determination of the tribunal, or

(b) where an appeal mentioned in paragraph (a) has been brought, the period during which that appeal has not been finally determined, withdrawn or otherwise disposed of.

(6) In this paragraph "the tribunal" means the First-tier tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

"Relevant defeat"

11 (1) A person ("P") incurs a "relevant defeat" in relation to arrangements if any of Conditions A to E is met in relation to P and the arrangements.

(2) The relevant defeat is incurred when the condition in question is first met.

Condition A

12 (1) Condition A is that—

(a) P has been given a notice under paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision), paragraph 8 or 9 of Schedule 43A to that Act (pooling and binding of arrangements: notice of final decision) or paragraph 8 of Schedule 43B to that Act (generic referrals: notice of final decision) stating that a tax advantage arising from the arrangements is to be counteracted,

(b) that tax advantage has been counteracted under section 209 of FA 2013, and

(c) the counteraction is final.

(2) For the purposes of this paragraph the counteraction of a tax advantage is "final" when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.

Condition B

13 (1) Condition B is that (in a case not falling within Condition A above) a follower notice has been given to P by reference to the arrangements (and not withdrawn) and—

(a) the necessary corrective action for the purposes of section 208 of FA 2014 has been taken in respect of the denied advantage, or

(b) the denied advantage has been counteracted otherwise than as mentioned in paragraph (a) and the counteraction of the denied advantage is final.

(2) In sub-paragraph (1) the reference to giving a follower notice to P includes a reference to giving a partnership follower notice in respect of a partnership return in relation to which P is a relevant partner (as defined in paragraph 2(5) of Schedule 31 to FA 2014).

(3) For the purposes of this paragraph it does not matter whether the denied advantage has been dealt with—

(a) wholly as mentioned in one or other of paragraphs (a) and (b) of sub-paragraph (1), or

(b) partly as mentioned in one and partly as mentioned in the other of those paragraphs.

(4) In this paragraph "the denied advantage" has the same meaning as in Chapter 2 of Part 4 of FA 2014 (see section 208(3) of and paragraph 4(3) of Schedule 31 to that Act).

(5) For the purposes of this paragraph the counteraction of a tax advantage is "final" when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.

(6) In this Schedule "follower notice" means a follower notice under Chapter 2 of Part 4 of FA 2014.

(7) For the purposes of this paragraph a partnership follower notice is given "in respect of" the partnership return mentioned in paragraph (a) or (b) of paragraph 2(2) of Schedule 31 to FA 2014.

Condition C

14 (1) Condition C is that (in a case not falling within Condition A or B)—

(a) the arrangements are DOTAS arrangements,

(b) P has relied on the arrangements (see sub-paragraph (2))—

(c) the arrangements have been counteracted, and

(d) the counteraction is final.

(2) For the purposes of sub-paragraph (1), P "relies on the arrangements" if—

(a) P makes a return, claim or election, or a partnership return is made, on the basis that a relevant tax advantage arises, or

(b) P fails to discharge a relevant obligation ("the disputed obligation") and there is reason to believe that P's failure to discharge that obligation is connected with the arrangements.

(3) For the purposes of sub-paragraph (2) "relevant tax advantage" means a tax advantage which the arrangements might be expected to enable P to obtain.

(4) For the purposes of sub-paragraph (2) an obligation is a "relevant obligation" if the arrangements might be expected to have the result that the obligation does not arise.

(5) For the purposes of this paragraph the arrangements are "counteracted" if—

(a) adjustments, other than taxpayer emendations, are made in respect of P's tax position—

(i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or

(ii) on the basis that the disputed obligation does (or did) arise, or

(b) an assessment to tax other than a self-assessment is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).

(6) For the purposes of this paragraph a counteraction is "final" when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.

(7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are DOTAS arrangements is when the counteraction becomes final.

(8) The following are "taxpayer emendations" for the purposes of sub-paragraph (5)—

(a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P's affairs relating to the tax in question;

(b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to P's tax position as a result of a disclosure made by P which meets the conditions in sub-paragraph (9).

For the purposes of paragraph (a) a payment in respect of a liability to pay national insurance contributions is not an adjustment unless it is a payment in full.

(9) The conditions are that the disclosure—

(a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and

(b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P's affairs relating to the tax in question.

(10) For the purposes of this paragraph a contract settlement which HMRC enters into with P is treated as an assessment to tax (other than a self-assessment); and in relation to contract settlements references in sub-paragraph (5) to the basis an which any assessment or adjustments are made, or any other action is taken, are to be read with any necessary modifications.

Condition D

15 (1) Condition D is that—

(a) P is a taxable person;

(b) the arrangements are disclosable VAT arrangements to which P is a party,

(c) P has relied on the arrangements (see sub-paragraph (2));

(d) the arrangements have been counteracted, and

(e) the counteraction is final.

(2) For the purposes of sub-paragraph (1) P "relies on the arrangements" if—

(a) P makes a return or claim on the basis that a relevant tax advantage arises, or

(b) P fails to discharge a relevant obligation ("the disputed obligation") and there is reason to believe that P's failure to discharge that obligation is connected with those arrangements.

(3) For the purposes of sub-paragraph (2) "relevant tax advantage" means a tax advantage which the arrangements might be expected to enable P to obtain.

(4) For the purposes of sub-paragraph (2) an obligation is a "relevant obligation" if the arrangements might be expected to have the result that the obligation does not arise.

(5) For the purposes of this paragraph the arrangements are "counteracted" if—

(a) adjustments, other than taxpayer emendations, are made in respect of P's tax position—

(i) on the basis that the whole or part of the relevant tax advantage mentioned in sub-paragraph (2)(a) does not arise, or

(ii) on the basis that the disputed obligation does (or did) arise, or

(b) an assessment to tax is made, or any other action is taken by HMRC, on the basis mentioned in paragraph (a)(i) or (ii) (otherwise than by way of an adjustment).

(6) For the purposes of this paragraph a counteraction is "final" when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.

(7) For the purposes of sub-paragraph (1) the time at which it falls to be determined whether or not the arrangements are disclosable VAT arrangements is when the counteraction becomes final.

(8) The following are "taxpayer emendations" for the purposes of sub-paragraph (5)—

(a) an adjustment made by P at a time when P had no reason to believe that HMRC had begun or were about to begin enquiries into P's affairs relating to VAT;

(b) an adjustment made by HMRC with respect to P's tax position (by way of an assessment or otherwise) as a result of a disclosure made by P which meets the conditions in sub-paragraph (9).

(9) The conditions are that the disclosure—

(a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and

(b) was made at a time when P had no reason to believe that HMRC were about to begin enquiries into P's affairs relating to VAT.

Condition E

16 (1) Condition E is that the arrangements are disclosable VAT arrangements to which P is a party and—

(a) the arrangements relate to the position with respect to VAT of a person other than P ("S") who has made supplies of goods or services to P,

(b) the arrangements might be expected to enable P to obtain a tax advantage in connection with those supplies of goods or services,

(c) the arrangements have been counteracted, and

(d) the counteraction is final.

(2) For the purposes of this paragraph the arrangements are "counteracted" if—

(a) HMRC assess S to tax or take any other action on a basis which prevents P from obtaining (or obtaining the whole of) the tax advantage in question, or

(b) adjustments, other than taxpayer emendations, are made in relation to S's VAT affairs on a basis such as is mentioned in paragraph (a).

(3) For the purposes of this paragraph a counteraction is "final" when the assessment, adjustments or action in question, and any amounts arising from the assessment, adjustments or action, can no longer be varied, on appeal or otherwise.

(4) For the purposes of sub-paragraph (1) the time when it falls to be determined whether or not the arrangements are disclosable VAT arrangements is when the counteraction becomes final.

(5) The following are "taxpayer emendations" for the purposes of sub-paragraph (2)—

(a) an adjustment made by S at a time when neither P nor S had reason to believe that HMRC had begun or were about to begin enquiries into the affairs of S or P relating to VAT;

(b) an adjustment (by way of an assessment or otherwise) made by HMRC with respect to S's tax position as a result of a disclosure made by S which meets the conditions in sub-paragraph (6).

(6) The conditions are that the disclosure—

(a) is a full and explicit disclosure of an inaccuracy in a return or other document or of a failure to comply with an obligation, and

(b) was made at a time when neither S nor P had reason to believe that HMRC were about to begin enquiries into the affairs of S or P relating to VAT.

PART 3

ANNUAL INFORMATION NOTICES AND NAMING

Annual information notices

17 (1) A person ("P") who has been given a warning notice under this Schedule must give HMRC a written notice (an "information notice") in respect of each reporting period in the warning period (see sub-paragraph (11)).

(2) An information notice must be given not later than the 30th day after the end of the reporting period to which it relates.

(3) An information notice must state whether or not P—

(a) has in the reporting period delivered a return, or made a claim or election, on the basis that a relevant tax advantage arises, or has since the end of the reporting period delivered on that basis a return which P was required to deliver before the end of that period,

(b) has in the reporting period failed to take action which P would be required to take under or by virtue of an enactment relating to tax but for particular DOTAS arrangements or disclosable VAT arrangements to which P is a party,

(c) has in the reporting period become a party to arrangements which—

(i) relate to the position with respect to VAT of another person ("S") who has made supplies of goods or services to P, and

(ii) might be expected to enable P to obtain a relevant tax advantage ("the expected tax advantage") in connection with those supplies of goods or services,

(d) has failed to deliver a return which P was required to deliver by a date falling in the reporting period.

(4) In this paragraph "relevant tax advantage" means a tax advantage which particular DOTAS arrangements or disclosable VAT arrangements enable, or might be expected to enable, P to obtain.

(5) If P has, in the reporting period concerned, made a return, claim or election on the basis mentioned in sub-paragraph (3)(a) or failed to take action as mentioned in sub-paragraph (3)(b) the information notice must—

(a) explain (on the assumptions made by P in so acting or failing to act) how the DOTAS arrangements or disclosable VAT arrangements enable P to obtain

the tax advantage, or (as the case may be) have the result that P is not required to take the action in question, and

(b) state (on the same assumptions) the amount of the relevant tax advantage mentioned in sub-paragraph (3)(a) or (as the case may be) the amount of any tax advantage which arises in connection with the absence of a requirement to take the action mentioned in sub-paragraph (3)(b).

(6) If P has, in the reporting period, become a party to arrangements such as are mentioned in sub-paragraph (3)(c), the information notice—

(a) must state whether or not it is P's view that the expected tax advantage arises to P, and

(b) if that is P's view, must explain how the arrangements enable P to obtain the tax advantage and state the amount of the tax advantage.

(7) If the time by which P must deliver a return falls within a reporting period and P fails to deliver the return by that time, HMRC may require P to give HMRC a written notice (a "supplementary information notice") setting out any matters which P would have been required to set out in an information notice had P delivered the return in that reporting period.

(8) A requirement under sub-paragraph (7) must be made by a written notice which states the period within which P must comply with the notice.

(9) If P fails to comply with a requirement of (or imposed under) this paragraph HMRC may by written notice extend the warning period to the end of the period of 5 years beginning with—

(a) the day by which the information notice or supplementary information notice should have been given (see sub-paragraphs (2) and (8)) or, as the case requires,

(b) the day on which P gave the defective information notice or supplementary information notice to HMRC,

or, if earlier, the time when the warning period would have expired but for the extension.

(10) HMRC may permit information notices given by members of the same group of companies (as defined in paragraph 46(9)) to be combined.

(11) For the purposes of this paragraph—

(a) the first reporting period in any warning period begins with the first day of the warning period and ends with a day specified by HMRC ("the specified day"),

(b) the remainder of the warning period is divided into further reporting periods each of which begins immediately after the end of the preceding reporting period and is twelve months long or (if that would be shorter) ends at the end of the warning period.

Naming

18 (1) The Commissioners may publish information about a person if the person—

(a) incurs a relevant defeat in relation to arrangements which the person has used in a warning period, and

(b) has been given at least two warning notices in respect of other defeats of arrangements which were used in the same warning period.

(2) Information published for the first time under sub-paragraph (1) must be published within the 12 months beginning with the day on which the most recent of the warning notices falling within that sub-paragraph has been given to the person.

(3) No information may be published (or continue to be published) after the end of the period of 12 months beginning with the day on which it is first published.

(4) The information that may be published is—

(a) the person's name (including any trading name, previous name or pseudonym),

(b) the person's address (or registered office),

(c) the nature of any business carried on by the person,

(d) information about the fiscal effect of the defeated arrangements (had they not been defeated), for instance information about total amounts of tax understated or total amounts by which claims, or statements of losses, have been adjusted,

(e) the amount of any penalty to which the person is liable under paragraph 30 in respect of the relevant defeat of any defeated arrangements,

(f) the periods in which or times when the defeated arrangements were used, and

(g) any other information the Commissioners may consider it appropriate to publish in order to make clear the person's identity.

(5) If the person mentioned in sub-paragraph (1) is a member of a group of companies (as defined in paragraph 46(9)), the information which may be published also includes—

(a) any trading name of the group, and

(b) information about other members of the group of the kind described in sub-paragraph (4)(a), (b) or (c).

(6) If the person mentioned in sub-paragraph (1) is a person carrying on a trade or business in partnership, the information which may be published also includes—

(a) any trading name of the partnership, and

(b) information about other members of the partnership of the kind described in sub-paragraph (4)(a) or (b).

(7) The information may be published in any manner the Commissioners may consider appropriate.

(8) Before publishing any information the Commissioners—

(a) must inform the person that they are considering doing so, and

(b) afford the person reasonable opportunity to make representations about whether or not it should be published.

(9) Arrangements are "defeated arrangements" for the purposes of sub-paragraph (4) if the person used them in the warning period mentioned in sub-paragraph (1) and a warning notice specifying the defeat of those arrangements has been given to the person before the information is published.

(10) If a person has been given a single warning notice in relation to two or more relevant defeats, the person is treated for the purposes of this paragraph as having been given a separate warning notice in relation to each of those relevant defeats.

(11) Nothing in this paragraph prevents the power under sub-paragraph (1) from being exercised on a subsequent occasion in relation to arrangements used by the person in a different warning period.

PART 4

RESTRICTION OF RELIEFS

Duty to give a restriction relief notice

19 (1) HMRC must give a person a written notice (a "restriction of relief notice") if—

(a) the person incurs a relevant defeat in relation to arrangements which the person has used in a warning period,

(b) the person has been given at least two warning notices in respect of other relevant defeats of arrangements which were used in that same warning period, and

(c) the defeats mentioned in paragraphs (a) and (b) meet the conditions in sub-paragraph (2).

(2) The conditions are—

(a) that each of the relevant defeats is by virtue of Condition A, B or C,

(b) that each of the relevant defeats relates to the misuse of a relief (see sub-paragraph (5)), and

(c) in the case of each of the relevant defeats, either—

(i) that the relevant counteraction (see sub-paragraph (7)) was made on the basis that a particular avoidance-related rule applies in relation to a person's affairs, or

(ii) that the misused relief is a loss relief.

(3) In sub-paragraph (2)(c)—

(a) the "misused relief" means the relief mentioned in sub-paragraph (5), and

(b) "loss relief" means any relief under Part 4 of ITA 2007 or Part 4 or 5 of CTA 2010.

(4) A restriction of relief notice must—

(a) explain the effect of paragraphs 20, 21 and 22, and

(b) set out when the restricted period is to begin and end.

(5) For the purposes of this Part of this Schedule, a relevant defeat by virtue of Condition A, B or C "relates to the misuse of a relief" if—

(a) the tax advantage in question, or part of the tax advantage in question, is or results from (or would but for the counteraction be or result from) a relief or increased relief from tax, or

(b) it is reasonable to conclude that the making of a particular claim for relief, or the use of a particular relief, is a significant component of the arrangements in question.

(6) In sub-paragraph (5) "the tax advantage in question" means—

(a) in relation to a defeat by virtue of Condition A, the tax advantage mentioned in paragraph 12(1)(a),

(b) in relation to a defeat by virtue of Condition B, the denied advantage (as defined in paragraph 13(4)), or

(c) in relation to a defeat by virtue of Condition C—

(i) the tax advantage mentioned in paragraph 14(2)(a), or, as the case requires,

(ii) the absence of the relevant obligation (as defined in paragraph 14(4)).

(7) In this paragraph "the relevant counteraction", in relation to a relevant defeat means—

(a) in the case of a defeat by virtue of Condition A, the counteraction referred to in paragraph 12(1)(c);

(b) in the case of a defeat by virtue of Condition B, the action referred to in paragraph 13(1);

(c) in the case of a defeat by virtue of Condition C, the counteraction referred to in paragraph 14(1)(d).

(8) If a person has been given a single warning notice in relation to two or more relevant defeats, the person is treated for the purposes of this paragraph as having been given a separate warning notice in relation to each of those relevant defeats.

Restriction of relief

20 (1) Sub-paragraphs (2) to (15) have effect in relation to a person to whom a relief restriction notice has been given.

(2) The person may not, in the restricted period, make any claim for relief.

(3) Sub-paragraph (2) does not have effect in relation to—

(a) a claim for relief under Schedule 8 to FA 2003 (stamp duty land tax: charities relief);

(b) a claim for relief under Chapter 3 of Part 8 of ITA 2007 (gifts of shares, securities and real property to charities etc);

(c) a claim for relief under Part 10 of ITA 2007 (special rules about charitable trusts etc);

(d) a claim for relief under double taxation arrangements;

(e) an election under section 426 of ITA 2007 (gift aid: election to treat gift as made in previous year).

(4) Claims under the following provisions in Part 4 of FA 2004 (registered pension schemes: tax reliefs etc) do not count as claims for relief for the purposes of this paragraph—

section 192(4) (increase of basic rate limit and higher rate limit);

section 193(4) (net pay arrangements: excess relief);

section 194(1) (relief on making of a claim).

(5) The person may not, in the restricted period, surrender group relief under Part 5 of CTA 2010.

(6) No deduction is to be made under section 83 of ITA 2007 (carry forward against subsequent trade profits) in calculating the person's net income for a relevant tax year.

(7) No deduction is to be made under section 118 of ITA 2007 (carry-forward property loss relief) in calculating the person's net income for a relevant tax year.

(8) The person is not entitled to relief under section 448 (annual payments: relief for individuals) or 449 (annual payments: relief for other persons) of ITA 2007 for any payment made in the restricted period.

(9) No deduction of expenses referable to a relevant accounting period is to be made under section 1219(1) of CTA 2009 (expenses of management of a company's investment business).

(10) No reduction is to be made under section 45(4) of CTA 2010 (carry-forward of trade loss relief) in calculating the profits for a relevant accounting period of a trade carried on by the person.

(11) In calculating the total amount of chargeable gains accruing to a person in a relevant tax year (or part of a relevant tax year), no losses are to be deducted under subsections (2) to (2B) of section 2 of TCGA 1992 (persons and gains chargeable to capital gains tax, and allowable losses).

(12) In calculating the total amount of ATED-related chargeable gains accruing to a person in a relevant tax year, no losses are to be deducted under subsection (3) of section 2B of TCGA 1992 (persons chargeable to capital gains tax on ATED-related gains).

(13) In calculating the total amount of chargeable NRCGT gains accruing to a person in a relevant tax year on relevant high value disposals, no losses are to be deducted under subsection (2) of section 14D of TCGA 1992 (persons chargeable to capital gains tax on NRCGT gains).

(14) If the person is a company, no deduction is to be made under section 62 of CTA 2010 (relief for losses made in UK property business) from the company's total profits of a relevant accounting period.

(15) No deduction is to be made under regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013 (S.I. 2013/2819) (relief for deemed payments by trustees of an exempt unauthorised unit trust) in calculating the person's net income for a relevant tax year.

(16) In this paragraph "relevant tax year" means any tax year the first day of which is in the restricted period.

(17) In this paragraph "relevant accounting period" means an accounting period the first day of which is in the restricted period.

(18) In this paragraph "double taxation arrangements" means arrangements which have effect under section 2(1) of TIOPA 2010 (double taxation relief by agreement with territories outside the UK).

The restricted period

21 (1) In paragraphs 19 and 20 (and this paragraph) "the restricted period" means the period of 3 years beginning with the day on which the relief restriction notice is given.

(2) If during the restricted period (or the restricted period as extended under this sub-paragraph) the person to whom a relief restriction notice has been given incurs a

further relevant defeat meeting the conditions in sub-paragraph (4), HMRC must give the person a written notice (a "restricted period extension notice").

(3) A restricted period extension notice extends the restricted period to the end of the period of 3 years beginning with the day on which the further relevant defeat occurs.

(4) The conditions mentioned in sub-paragraph (2) are that—

(a) the relevant defeat is incurred by virtue of Condition A, B or C in relation to arrangements which the person used in the warning period mentioned in paragraph 19(1)(a), and

(b) the warning notice given to the person in respect of the relevant defeat relates to the misuse of a relief.

(5) If the person to whom a relief restriction notice has been given incurs a relevant defeat which meets the conditions in sub-paragraph (4) after the restricted period has expired but before the end of a concurrent warning period, HMRC must give the person a restriction of relief notice.

(6) In sub-paragraph (5) "concurrent warning period" means a warning period which at some time ran concurrently with the restricted period.

Reasonable excuse

22 (1) If a person who has incurred a relevant defeat satisfies HMRC or, on an appeal under paragraph 24, the First-tier Tribunal or Upper Tribunal that the person had a reasonable excuse for the matters to which that relevant defeat relates, then—

(a) for the purposes of paragraph 19(1)(a) and 21(2) and (5), the person is treated as not having incurred that relevant defeat, and

(b) for the purposes of paragraph 19(1)(b) and (c) any warning notice given to the person which relates to that relevant defeat is treated as not having been given to the person.

(2) For the purposes of this paragraph, in the case of a person ("P")—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure, and

(c) where P had reasonable excuse for the relevant failure but the excuse had ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

(3) In determining for the purposes of this paragraph whether or not a person ("P") had a reasonable excuse for any action, failure or inaccuracy, reliance on advice is to be taken automatically not to constitute a reasonable excuse if the advice is addressed to, or was given to, a person other than P or takes no account of P's individual circumstances.

(4) In this paragraph "relevant failure", in relation to a relevant defeat, is to be interpreted in accordance with sub-paragraphs (2) to (7) of paragraph 43.

Mitigation of restriction of relief

23 (1) The Commissioners may mitigate the effects of paragraph 20 in relation to a person ("P") so far as it appears to them that there are exceptional circumstances such that

the operation of that paragraph would otherwise have an unduly serious impact with respect to the tax affairs of P or another person.

(2) For the purposes of sub-paragraph (1) the Commissioners may modify the effects of paragraph 20 in any way they think appropriate, including by allowing P access to the whole or part of a relief to which P would otherwise not be entitled as a result of paragraph 20.

Appeal

24 (1) A person may appeal against—

(a) a relief restriction notice, or

(b) a restricted period extension notice.

(2) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which the notice is given.

(3) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to income tax (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(4) On an appeal the tribunal may—

(a) cancel HMRC's decision, or

(b) affirm that decision with or without any modifications in accordance with sub-paragraph (5).

(5) On an appeal the tribunal may rely on paragraph 23 (mitigation of restriction of relief) —

(a) to the same extent as HMRC (which may mean applying the same mitigation 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 paragraph 23 was flawed.

(6) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (3)).

Meaning of "avoidance-related rule"

25 (1) In this Part of this Schedule "avoidance-related rule" means a rule in Category 1 or 2.

(2) A rule is in Category 1 if it refers (in whatever terms)—

(a) to the purpose or main purpose or purposes of a transaction, arrangements or any other action or matter, and

(b) to whether or not the purpose in question is or involves the avoidance of tax or the obtaining of any advantage in relation to tax (however described).

(3) A rule is also in Category 1 if it refers (in whatever terms) to—

(a) expectations as to what are, or may be, the expected benefits of a transaction, arrangements or any other action or matter, and

(b) whether or not the avoidance of tax or the obtaining of any advantage in relation to tax (however described) is such a benefit.

For the purposes of paragraph (b) it does not matter whether the reference is (for instance) to the "sole or main benefit" or "one of the main benefits" or any other reference to a benefit.

(4) A rule falls within Category 2 if as a result of the rule a person may be treated differently for tax purposes depending on whether or not purposes referred to in the rule (for instance the purposes of an actual or contemplated action or enterprise) are (or are shown to be) commercial purposes.

(5) For example, a rule in the following form would fall within Category 1 and within Category 2—

Example rule

Section X does not apply to a company in respect of a transaction if the company shows that the transaction meets Condition A or B.

Condition A is that the transaction is effected—

(a) for genuine commercial reasons, or

(b) in the ordinary course of managing investments."

Meaning of "relief"

26 The following are "reliefs" for the purposes of this Part of this Schedule—

(a) any relief from tax (however described) which must be claimed, or which is not available without making an election,

(b) relief under section 1219 of CTA 2009 (expenses of management of a company's investment business),

(c) any relief (not falling within paragraph (a)) under Part 4 of ITA 2007 (loss relief) or Part 4 or 5 of CTA 2010 (loss relief and group relief), and

(d) any relief (not falling within paragraph (a) or (b)) under a provision listed in section 24 of ITA 2007 (reliefs deductible at Step 2 of the calculation of income tax liability).

"Claim" for relief

27 In this Part of this Schedule "claim for relief" includes any election or other similar action which is in substance a claim for relief.

VAT

28 In this Part of this Schedule "tax" does not include VAT.

Power to amend

29 (1) The Treasury may by regulations—

(a) amend paragraph 20;

(b) amend paragraph 26.

(2) Regulations under sub-paragraph (1)(a) may, in particular, alter the application of paragraph 20 in relation to any relief, exclude any relief from its application or extend its application to further reliefs.

(3) Regulations under sub-paragraph (1)(b) may amend the meaning of "relief" in any way (including by extending or limiting the meaning).

(4) Regulations under this paragraph may—

(a) make supplementary, incidental and consequential provision;

(b) make transitional provision.

(5) Regulations under this paragraph are to be made by statutory instrument.

(6) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

PART 5

PENALTY

Penalty

30 (1) A person is liable to pay a penalty if the person incurs a relevant defeat in relation to any arrangements which the person has used in a warning period.

(2) The penalty is 20% of the value of the counteracted advantage if neither sub-paragraph (3) nor sub-paragraph (4) applies.

(3) The penalty is 40% of the value of the counteracted advantage if before the relevant defeat is incurred the person has been given, or become liable to be given, one (but not more than one) relevant prior warning notice.

(4) The penalty is 60% of the value of the counteracted advantage if before the current defeat is incurred the person has been given, or become liable to be given, two or more relevant prior warning notices.

(5) In this paragraph "relevant prior warning notice" means a warning notice in relation to the defeat of arrangements which the person has used in the warning period mentioned in sub-paragraph (1).

(6) For the meaning of "the value of the counteracted advantage" see paragraphs 32 to 37.

Simultaneous defeats etc

31 (1) If a person incurs simultaneously two or more relevant defeats in relation to different arrangements, sub-paragraphs (2) to (4) of paragraph 30 have effect as if the relevant defeat with the lowest value was incurred last, the relevant defeat with the next lowest value immediately before it, and so on.

(2) For this purpose the "value" of a relevant defeat is taken to be equal to the value of the counteracted advantage.

(3) If a person has been given a single warning notice in relation to two or more relevant defeats, the person is treated for the purposes of paragraph 30 as having been given a separate warning notice in relation to each of those relevant defeats.

Value of the counteracted advantage: basic rule for taxes other than VAT

32 (1) In relation to a relevant defeat incurred by virtue of Condition A, B or C, the "value of the counteracted advantage" is—

(a) in the case of a relevant defeat incurred by virtue of Condition A, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 12(1)(c);

(b) in the case of a relevant defeat incurred by virtue of Condition B, the additional amount due or payable in respect of tax as a result of the action mentioned in paragraph 13(1);

(c) in the case of a relevant defeat incurred by virtue of Condition C, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in paragraph 14(1)(d).

(2) The reference in sub-paragraph (1) to the additional amount due and payable includes a reference to—

(a) an amount payable to HMRC having erroneously been paid by way of repayment of tax, and

(b) an amount which would be repayable by HMRC if the counteraction mentioned in paragraph (a) or (c) of sub-paragraph (1) were not made or the action mentioned in paragraph (b) of that sub-paragraph were not taken (as the case may be).

(3) The following are ignored in calculating the value of the counteracted advantage—

(a) group relief, and

(b) any relief under section 458 of CTA 2010 (relief in respect of repayment etc of loan) which is deferred under subsection (5) of that section.

(4) This paragraph is subject to paragraphs 33 and 34.

Value of counteracted advantage: losses for purposes of direct tax

33 (1) This paragraph has effect in relation to relevant defeats incurred by virtue of Condition A, B or C.

(2) To the extent that the counteracted advantage (see paragraph 35) has the result that a loss is wrongly recorded for the purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is determined in accordance with paragraph 32.

(3) To the extent that the counteracted advantage has the result that a loss is wrongly recorded for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the value of the counteracted advantage is—

(a) the value under paragraph 32 of so much of the counteracted advantage as results from the part (if any) of the loss which is used to reduce the amount due or payable in respect of tax, plus

(b) 10% of the part of the loss not so used.

(4) Sub-paragraphs (2) and (3) apply both—

(a) to a case where no loss would have been recorded but for the counteracted advantage, and

(b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (2) and (3) apply only to the difference between the amount recorded and the true amount).

(5) To the extent that a counteracted advantage creates or increases an aggregate loss recorded for a group of companies—

(a) the value of the counteracted advantage is calculated in accordance with this paragraph, and

(b) in applying paragraph 32 in accordance with sub-paragraphs (2) and (3), group relief may be taken into account (despite paragraph 32(3)).

(6) To the extent that the counteracted advantage results in a loss, the value of it is nil where, because of the nature of the loss or the person's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

Value of counteracted advantage: deferred tax

34 (1) To the extent that the counteracted advantage (see paragraph 35) is a deferral of tax (other than VAT), the value of that advantage is—

(a) 25% of the amount of the deferred tax for each year of the deferral, or

(b) a percentage of the amount of the deferred tax, for each separate period of deferral of less than a year, equating to 25% per year,

or, if less, 100% of the amount of the deferred tax.

(2) This paragraph does not apply to a case to the extent that paragraph 33 applies.

Meaning of "the counteracted advantage" in paragraphs 33 and 34

35 (1) In paragraphs 33 and 34 "the counteracted advantage" means—

(a) in relation to a relevant defeat incurred by virtue of Condition A, the tax advantage mentioned in paragraph 12(1)(b);

(b) in relation to a relevant defeat incurred by virtue of Condition B, the denied advantage in relation to which the action mentioned in paragraph 13(1) is taken;

(c) in relation to a relevant defeat incurred by virtue of Condition C, means any tax advantage in respect of which the counteraction mentioned in paragraph 14(1)(c) is made.

(2) In sub-paragraph (1)(c) "counteraction" is to be interpreted in accordance with paragraph 14(5).

Value of the counteracted advantage: Conditions D and E

36 (1) In relation to a relevant defeat incurred by a person by virtue of Condition D or E, the "value of the counteracted advantage" is equal to the sum of any counteracted tax advantages determined under sub-paragraphs (3) to (6).

(2) In this paragraph "the counteraction" means the counteraction mentioned in paragraph 15(1) or 16(1) (as the case may be).

(3) If the amount of VAT due or payable by the person in respect of any prescribed accounting period (X) exceeds the amount (Y) that would have been so payable

but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.

(4) If the person obtains no VAT credit for a particular prescribed accounting period, the amount of any VAT credit which the person would have obtained for that period but for the counteraction is a counteracted tax advantage.

(5) If for a prescribed accounting period the person obtains a VAT credit of an amount (Y) which is less than the amount (X) of the VAT credit which the person would have obtained but for the counteraction, the amount by which X exceeds Y is a counteracted tax advantage.

(6) If the amount (X) of the person's non-deductible tax for any prescribed accounting period is greater than Y, where Y is what would be the amount of the person's non-deductible tax for that period but for the counteraction, then the amount by which X exceeds Y is a counteracted tax advantage, but only to the extent that amount is not represented by a corresponding amount which is the whole or part of a counteracted tax advantage by virtue of sub-paragraphs (3) to(5).

(7) In this paragraph "non-deductible tax", in relation to the person who incurred the relevant defeat, means—

(a) input tax for which the person is not entitled to credit under section 25 of VATA 1994, and

(b) any VAT incurred by the person which is not input tax and in respect of which the person is not entitled to a refund from the Commissioners by virtue of any provision of VATA 1994.

(8) For the purposes of sub-paragraph (7)(b) the VAT "incurred" by a taxable person is—

(a) VAT on the supply to the person of any goods or services,

(b) VAT on the acquisition by the person from another member State of any goods;

(c) VAT on the importation of any goods from a place outside the member States.

(9) References in sub-paragraph (3) to amounts due and payable by the person in respect of a prescribed accounting period include references to—

(a) amounts payable to HMRC having erroneously been paid by way of repayment of tax, and

(b) amounts which would be repayable by HMRC if the counteraction mentioned in sub-paragraph (3) were not made.

Value of counteracted advantage: delayed VAT

37 (1) Sub-paragraph (3) of paragraph 36 has effect as follows so far as the tax advantage which is counteracted as mentioned in that sub-paragraph is in the nature of a delay in relation to the person's obligations with respect to VAT.

(2) That sub-paragraph has effect as if for "the amount by which X exceeds Y is a counteracted tax advantage" there were substituted, "there is a counteracted tax advantage of—

"(d) 25% of the amount of the delayed VAT for each year of the delay, or

(e) a percentage of the amount of the delayed VAT, for each separate period of delay of less than a year, equating to 25% per year,

or, if less, 100% of the amount of the delayed VAT".

Assessment of penalty

38 (1) Where a person is liable for a penalty under paragraph 30, HMRC must assess the penalty.

(2) Where HMRC assess the penalty, HMRC must—

(a) notify the person who is liable for the penalty, and

(b) state in the notice a tax period in respect of which the penalty is assessed.

(3) A penalty under this paragraph must be paid before the end of the period of 30 days beginning with the day on which the person is notified of the penalty under sub-paragraph (2).

(4) An assessment—

(a) is to be treated for procedural purposes as if it were an assessment to tax,

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with the date of the defeat mentioned in paragraph 30(1).

Alteration of assessment of penalty

39 (1) After notification of an assessment has been given to a person under paragraph 38(2), the assessment may not be altered except in accordance with this paragraph or on appeal.

(2) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the value of the counteracted advantage.

(3) An assessment may be revised as necessary if operated by reference to an overestimate of the value of the counteracted advantage.

Aggregate penalties

40 (1) The amount of a penalty for which a person is liable under paragraph 30 is to be reduced by the amount of any other penalty incurred by the person, or any surcharge for late payment of tax imposed on the person, if the amount of the penalty or surcharge is determined by reference to the same tax liability.

(2) In sub-paragraph (1) "any other penalty" does not include a penalty under section 212A of FA 2013 (GAAR penalty) or Part 4 of FA 2014 (penalty where corrective action not taken after follower notice etc).

(3) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under paragraph 30.

Appeal against penalty

41 (1) A person may appeal against a decision of HMRC that a penalty is payable under paragraph 30.

(2) A person may appeal against a decision of HMRC as to the amount of a penalty payable by P under paragraph 30.

(3) An appeal under this paragraph must be made within the period of 30 days beginning with the day on which notification of the penalty is given under paragraph 38.

(4) An appeal under this paragraph is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(5) Sub-paragraph (4) does not apply—

(a) so as to require a person to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Part of this Schedule.

(6) On an appeal under sub-paragraph (1) or (2) the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC has power to make.

(7) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of sub-paragraph (4)).

Penalties: reasonable excuse

42 (1) A person is not liable to a penalty under paragraph 30 in respect of a relevant defeat if the person satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that the person had a reasonable excuse for the relevant failure to which that relevant defeat relates (see paragraph 43).

(2) Sub-paragraph (3) applies if—

(a) a person has incurred a relevant defeat in respect of which the person is liable to a penalty under paragraph 30, and

(b) before incurring that defeat the person had been given, or become liable to be given, an excepted warning notice.

(3) The person is treated for the purposes of sub-paragraphs (2) to (4) of paragraph 30 (rate of penalty) as not having been given, and not having become liable to be given, the excepted notice (so far as it relates to the relevant defeat in respect of which the person had a reasonable excuse).

(4) A warning notice is "excepted" for the purposes of this paragraph if the person was not liable to a penalty in respect of the defeat specified in it because the person had a reasonable excuse for the relevant failure in question.

(5) For the purposes of this paragraph, in the case of a person ("P")—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on another person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant failure, and

(c) where P had a reasonable excuse for the relevant failure but the excuse had ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

(6) In determining for the purposes of this paragraph whether or not a person ("P") had a reasonable excuse for any action, failure or inaccuracy, reliance on advice is to be taken automatically not to constitute a reasonable excuse if the advice is addressed to, or was given to, a person other than P or takes no account of P's individual circumstances.

Paragraph 42: meaning of "the relevant failure"

43 (1) In paragraph 42 "the relevant failure", in relation to a relevant defeat, is to be interpreted in accordance with sub-paragraphs (2) to (7).

(2) In relation to a relevant defeat incurred by virtue of Condition A, "the relevant failure" means the failures or inaccuracies as a result of which the counteraction under section 209 of FA 2013 was necessary

(3) In relation to a relevant defeat incurred by virtue of Condition B, "the relevant failure" means the failures or inaccuracies in respect of which the action mentioned in paragraph 13(1) was taken.

(4) In relation to a relevant defeat incurred by virtue of Condition C, "the relevant failure" means the failures of inaccuracies as a result of which the adjustments, assessments, or other action mentioned in paragraph 14(5) are required.

(5) In relation to a relevant defeat incurred by virtue of Condition D, "the relevant failure" means the failures or inaccuracies as a result of which the adjustments, assessments or other action mentioned in paragraph 15(5) are required.

(6) In relation to a relevant defeat incurred by virtue of Condition E, "the relevant failure" means P's actions (and failures to act), so far as they are connected with matters in respect of which the counteraction mentioned in paragraph 16(1) is required.

(7) In sub-paragraph (6) "counteraction" is to be interpreted in accordance with paragraph 16(2).

Mitigation of penalties

44 (1) The Commissioners may in their discretion mitigate a penalty under paragraph 30, or stay or compound any proceedings for such a penalty.

(2) They may also, after judgment, further mitigate or entirely remit the penalty.

PART 6

CORPORATE GROUPS, ASSOCIATED PERSONS AND PARTNERSHIPS

Representative member of a VAT group

45 (1) Where a body corporate ("R") is the representative member of a group (and accordingly is treated for the purposes of this Schedule as mentioned in section 43(1) of VATA 1994), anything which has been done by or in relation to another body

corporate ("B") in B's capacity as representative member of that group is treated for the purposes of this Schedule as having been done by or in relation to R in R's capacity as representative member of the group.

Accordingly paragraph 3 (warning period) operates as if the successive representative members of a group were a single person.

(2) This Schedule has effect as if the representative member of a group, so far as acting in its capacity as such, were a different person from that body corporate so far as acting in any other capacity.

(3) In this paragraph the reference to a "group" is to be interpreted in accordance with sections 43A to 43D of VATA 1994.

Corporate groups

46 (1) Sub-paragraphs (2) and (3) apply if HMRC has a duty under paragraph 2 to give a warning notice to a company ("C") which is a member of a group.

(2) That duty has effect as a duty to give a warning notice to each current group member (see sub-paragraph (8)).

(3) Any warning notice which has been given (or is treated as having been given) previously to any current group member is treated as having been given to each current group member (and any provision in this Schedule which refers to a "warning period" in relation to a person is to be interpreted accordingly).

(4) In relation to a company which incurs a relevant defeat, paragraph 19(1) (duty to give relief restriction notice) does not have effect unless the warning period mentioned in that sub-paragraph would be a warning period in relation to the company regardless of sub-paragraph (3).

(5) A company which incurs a relevant defeat is not liable to pay a penalty under paragraph 30 unless the warning period mentioned in sub-paragraph (1) of that paragraph would be a warning period in relation to the company regardless of sub-paragraph (3).

(6) HMRC may discharge any duty to give a warning notice to a current group member in accordance with sub-paragraph (2) by delivering the notice to C (and if it does so may combine one or more warning notices in a single notice).

(7) If a company ceases to be a member of a group, and—

(a) immediately before it ceases to be a member of the group, a warning period has effect in relation to the company, but

(b) no warning period would have effect in relation to the company at that time but for sub-paragraph (2) or (3),

that warning period ceases to have effect in relation to the company when it ceases to be a member of that group.

(8) In this paragraph "current group member" means a company which is a member of the group concerned at the time when the warning notice mentioned in sub-paragraph (1) is given.

(9) For the purposes of this paragraph two companies are members of the same group of companies if—

(a) one is a 75% subsidiary of the other, or

(b) both are 75% subsidiaries of a third company.

(10) In this paragraph "75% subsidiary" has the meaning given by section 1154 of CTA 2010.

(11) In this paragraph "company" has the same meaning as in the Corporation Tax Acts (see section 1121 of CTA 2010).

Associated persons treated as incurring relevant defeats

47 (1) Sub-paragraph (2) applies if a person ("P") incurs a relevant defeat in relation to any arrangements (otherwise than by virtue of this paragraph).

(2) Any person ("S") who is associated with P at the relevant time is also treated for the purposes of paragraphs 2 (duty to give warning notice) and 3(2) (warning period) as having incurred that relevant defeat in relation to those arrangements (but see sub-paragraph (3)).

For the meaning of "associated" see paragraph 48.

(3) Sub-paragraph (2) does not apply if P and S are members of the same group of companies (as defined in paragraph 46(9)).

(4) In relation to a warning notice given to S by virtue of sub-paragraph (2), paragraph 2(4)(c) (certain information to be included in warning notice) is to be read as referring only to paragraphs 3, 17 and 18.

(5) A warning notice which is given to a person by virtue of sub-paragraph (2) is treated for the purposes of paragraphs 19(1) (duty to give relief restriction notice) and 30 (penalty) as not having been given to that person.

(6) In sub-paragraph (2) "the relevant time" means the time when P is given a warning notice in respect of the relevant defeat.

Meaning of "associated"

48 (1) For the purposes of paragraph 47 two persons are associated with one another if—

(a) one of them is a body corporate which is controlled by the other, or

(b) they are bodies corporate under common control.

(2) Two bodies corporate are under common control if both are controlled—

(a) by one person,

(b) by two or more, but fewer than six, individuals, or

(c) by any number of individuals carrying on business in partnership.

(3) For the purposes of this section a body corporate ("H") is taken to control another body corporate ("B") if—

(a) H is empowered by statute to control B's activities, or

(b) H is B's holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006.

(4) For the purposes of this section an individual or individuals are taken to control a body corporate ("B") if the individual or individuals, were they a body corporate, would be B's holding company within the meaning of those provisions.

Partners treated as incurring relevant defeats

49 (1) Where paragraph 50 applies in relation to a partnership return, each relevant partner is treated for the purposes of this Schedule as having incurred the relevant defeat mentioned in paragraph 50(1)(b), (2) or (3)(b) (as the case may be).

(2) In this paragraph "relevant partner" means any person who was a partner in the partnership at any time during the relevant reporting period (but see sub-paragraph (3)).

(3) The "relevant partners" do not include—

(a) the person mentioned in sub-paragraph (1)(b), (2) or (3)(b) (as the case may be) of paragraph 50, or

(b) any other person who would, apart from this paragraph, incur a relevant defeat in connection with the subject matter of the partnership return mentioned in sub-paragraph (1).

(4) In this paragraph the "relevant reporting period" means the period in respect of which the partnership return mentioned in sub-paragraph (1), (2) or (3) of paragraph 50 was required.

Partnership returns to which this paragraph applies

50 (1) This paragraph applies in relation to a partnership return if—

(a) that return has been made on the basis that a tax advantage arises to a partner from any arrangements, and

(b) that person has incurred, in relation to that tax advantage and those arrangements, a relevant defeat by virtue of Condition A (final counteraction of tax advantage under general anti-abuse rule).

(2) Where a person has incurred a relevant defeat by virtue of sub-paragraph (2) of paragraph 13 (Condition B: case involving partnership follower notice) this paragraph applies in relation to the partnership return mentioned in that sub-paragraph.

(3) This paragraph applies in relation to a partnership return if—

(a) that return has been made on the basis that a tax advantage arises to a partner from any arrangements, and

(b) that person has incurred, in relation to that tax advantage and those arrangements, a relevant defeat by virtue of Condition C (return, claim or election made in reliance on DOTAS arrangements).

(4) The references in this paragraph to a relevant defeat do not include a relevant defeat incurred by virtue of paragraph 47(2).

Partnerships: information

51 (1) If paragraph 50 applies in relation to a partnership return, the appropriate partner must give HMRC a written notice (a "partnership information notice") in respect of each sub-period in the information period.

(2) The "information period" is the period of 5 years beginning with the day after the day of the relevant defeat mentioned in paragraph 50.

(3) If, in the case of a partnership, a new information period (relating to another partnership return) begins during an existing information period, those periods are treated for the purposes of this paragraph as a single period (which includes all times that would otherwise fall within either period).

(4) An information period under this paragraph ends if the partnership ceases.

(5) A partnership information notice must be given not later than the 30th day after the end of the sub-period to which it relates.

(6) A partnership information notice must state—

(a) whether or not any relevant partnership return which was, or was required to be, delivered in the sub-period has been made on the basis that a relevant tax advantage arises, and

(b) whether or not there has been a failure to deliver a relevant partnership return in the sub-period.

(7) In this paragraph—

(a) "relevant partnership return" means a partnership return in respect of the partnership's trade, profession or business;

(b) "relevant tax advantage" means a tax advantage which particular DOTAS arrangements enable, or might be expected to enable, a person who is or has been a partner in the partnership to obtain.

(8) If a partnership information notice states that a relevant partnership return has been made on the basis mentioned in sub-paragraph (6)(a) the notice must—

(a) explain (on the assumptions made for the purposes of the return) how the DOTAS arrangements enable the tax advantage concerned to be obtained, and

(b) describe any variation in the amounts required to be stated in the return under section 12AB(1) of TMA 1970 which results from those arrangements.

(9) HMRC may require the appropriate partner to give HMRC a notice (a "supplementary information notice") setting out further information in relation to a partnership information notice.

In relation to a partnership information notice "further information" means information which would have been required to be set out in the notice by virtue of sub-paragraph (6)(a) or (8) had there not been a failure to deliver a relevant partnership return.

(10) A requirement under sub-paragraph (9) must be made by a written notice and the notice must state the period within which the notice must be complied with.

(11) If a person fails to comply with a requirement of (or imposed under) this paragraph, HMRC may by written notice extend the information period concerned to the end of the period of 5 years beginning with—

(a) the day by which the partnership information notice or supplementary information notice was required to be given to HMRC or, as the case requires,

(b) the day on which the person gave the defective notice to HMRC,

or, if earlier, the time when the information period would have expired but for the extension.

(12) For the purposes of this paragraph—

(a) the first sub-period in an information period begins with the first day of the information period and ends with a day specified by HMRC,

(b) the remainder of the information period is divided into further sub-periods each of which begins immediately after the end of the preceding sub-period and is twelve months long or (if that would be shorter) ends at the end of the information period.

(13) In this paragraph "the appropriate partner" means the partner in the partnership who is for the time being nominated by HMRC for the purposes of this paragraph.

Partnerships: special provision about taxpayer emendations

52 (1) Sub-paragraph (2) applies if a partnership return is amended at any time under section 12ABA of TMA 1970 (amendment of partnership return by representative partner etc) on a basis that—

(a) results in an increase or decrease in, or

(b) otherwise affects the calculation of,

any amount stated under subsection (1)(b) of section 12AB of that Act (partnership statement) as a partner's share of any income, loss, consideration, tax or credit for any period.

(2) For the purposes of paragraph 14 (Condition C: counteraction of DOTAS arrangements), the partner is treated as having at that time amended—

(a) the partner's return under section 8 or 8A of TMA 1970, or

(b) the partner's company tax return,

so as to give effect to the amendments of the partnership return.

(3) Sub-paragraph (4) applies if a partnership return is amended at any time by HMRC as a result of a disclosure made by the representative partner or that person's successor on a basis that—

(a) results in an increase or decrease in, or

(b) otherwise affects the calculation of,

any amount stated under subsection (1)(b) of section 12AB of TMA 1970 (partnership statement) as the share of a particular partner (P) of any income, loss, consideration, tax or credit for any period.

(4) If the conditions in sub-paragraph (5) are met, P is treated for the purposes of paragraph 14 as having at that time amended—

(a) P's return under section 8 or 8A of TMA 1970, or

(b) P's company tax return,

so as to give effect to the amendments of the partnership return.

(5) The conditions are that the disclosure—

(a) is a full and explicit disclosure of an inaccuracy in the partnership return, and

(b) was made at a time when neither the person making the disclosure nor P had reason to believe that HMRC was about to begin enquiries into the partnership return.

Supplementary provision relating to partnerships

53 (1) In paragraphs 49 to 52 and this paragraph—

"partnership" is to be interpreted in accordance with section 12AA of TMA 1970 (and includes a limited liability partnership);

"the representative partner", in relation to a partnership return, means the person who was required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver the return;

"successor", in relation to a person who is the representative partner in the case of a partnership return, has the same meaning as in TMA 1970 (see section 118(1) of that Act).

(2) For the purposes of this Part of this Schedule a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

PART 7

SUPPLEMENTAL

Meaning of "adjustments"

54 (1) In this Schedule "adjustments" means any adjustments, whether by way of an assessment, the modification of an assessment or return, amendment or disallowance of a claim, a payment, the entering into of a contract settlement, or otherwise (and references to "making" adjustments accordingly include securing that adjustments are made by entering into a contract settlement).

(2) "Adjustments" also includes a payment in respect of a liability to pay national insurance contributions.

Time of "use" of defeated arrangements

55 (1) With reference to a particular relevant defeat incurred by a person in relation to arrangements, the person is treated as having "used" the arrangements on the dates set out in this paragraph.

(2) If the person incurs the relevant defeat by virtue of Condition A, the person is treated as having "used" the arrangements on the following dates—

(a) the filing date of any return made by the person on the basis that the tax advantage mentioned in paragraph 12(1)(a) arises from the arrangements;

(b) the date on which the person makes any claim or election on that basis;

(c) the date of any relevant failure by the person to comply with an obligation.

(3) For the purposes of sub-paragraph (2) a failure to comply with an obligation is a "relevant failure" if the whole or part of the tax advantage mentioned in paragraph 12(1)(b) arose as a result of, or in connection with, that failure.

(4) If the person incurs the relevant defeat by virtue of Condition B, the person is treated as having "used" the arrangements on the following dates—

(a) the filing date of any return made by the person on the basis that the asserted advantage (see section 204(3) of FA 2014) results from the arrangements,

(b) the date on which any claim is made by the person on that basis,

(c) the date of any failure by the person to comply with a relevant obligation.

In this sub-paragraph "relevant obligation" means an obligation which would not have fallen on the person (or might have been expected not to do so), had the denied advantage arisen (see section 208(3) of FA 2014).

(5) If the person incurs the relevant defeat by virtue of Condition C, the person is treated as having "used" the arrangements on the following dates—

(a) the filing date of any return made by the person on the basis mentioned in paragraph 14(2)(a);

(b) the date on which the person makes any claim or election on that basis;

(c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 14(4)).

(6) If the person incurs the relevant defeat by virtue of Condition D, the person is treated as having "used" the arrangements on the following dates—

(a) the filing date of any return made by the person on the basis mentioned in paragraph 15(2)(a);

(b) the date on which the person makes any claim on that basis;

(c) the date of any failure by the person to comply with a relevant obligation (as defined in paragraph 15(4)).

(7) If the person incurs the relevant defeat by virtue of Condition E, the person is treated as having "used" the arrangements on the following dates—

(a) the filing date of any return made by S to which the counteraction mentioned in paragraph 16(1)(c) relates;

(b) the date on which S made any claim to which that counteraction relates;

(c) the date of any relevant failure by S to which that counteraction relates.

(8) In sub-paragraph (7) "relevant failure" means a failure to comply with an obligation relating to VAT.

(9) In this paragraph "filing date", in relation to a return, means the earlier of—

(a) the day on which the return is delivered, or

(b) the last day of the period within which the return must be delivered.

(10) References in this paragraph to the date on which a person fails to comply with an obligation are to the date on which the person is first in breach of the obligation.

Inheritance tax

56 (1) In the case of inheritance tax, each of the following is treated as a return for the purposes of this Schedule—

(a) an account delivered by a person under section 216 or 217 of IHTA 1984 (including an account delivered in accordance with regulations under section 256 of that Act);

(b) a statement or declaration which amends or is otherwise connected with such an account produced by the person who delivered the account;

(c) information or a document provided by a person in accordance with regulations under section 256 of that Act;

and such a return is treated as made by the person in question.

(2) In this Schedule (except where the context requires otherwise) "assessment", in relation to inheritance tax, includes a determination.

National insurance contributions

57 (1) In this Schedule references to an assessment to tax include a NICs decision relating to a person's liability for relevant contributions.

(2) In this Schedule a reference to a provision of Part 7 of FA 2004 (disclosure of tax avoidance schemes) (a "DOTAS provision") includes a reference to—

(a) that DOTAS provision as applied by regulations under section 132A of the Social Security Administration Act 1992 (disclosure of contributions avoidance arrangements);

(b) any provision of regulations under that section that corresponds to that DOTAS provision,

whenever the regulations are made.

(3) Regulations under section 132A of that Act may disapply, or modify the effect of, sub-paragraph (2).

(4) In this paragraph "NICs decision" means a decision under section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671).

General interpretation

58 (1) In this Schedule—

"arrangements" has the meaning given by paragraph 2(6);

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"contract settlement" means an agreement in connection with a person's liability to make a payment to the Commissioners under or by virtue of an enactment;

"disclosable VAT arrangements" is to be interpreted in accordance with paragraph 9;

"DOTAS arrangements" is to be interpreted in accordance with paragraph 8 (and see also paragraph 57(2));

"follower notice" has the meaning given by paragraph 13(6);

"HMRC" means Her Majesty's Revenue and Customs;

"national insurance contributions" means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"net income" has the meaning given by section 23 of ITA 2007 (see Step 2 of that section);

"partnership follower notice" has the meaning given by paragraph 2(2) of Schedule 31 to FA 2014;

"partnership return" means a return under section 12AA of TMA 1970;

"relevant contributions" means the following contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992—

(a) Class 1 contributions;
(b) Class 1A contributions;
(c) Class 1B contributions;
(d) Class 2 contributions which must be paid but in relation to which section 11A of the Act in question (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2) of that Act) does not apply;

"relevant defeat" is to be interpreted in accordance with paragraph 11;

"tax" has the meaning given by paragraph 4;

"tax advantage" has the meaning given by paragraph 7;

"warning notice" has the meaning given by paragraph 2.

(2) In this Schedule an expression used in relation to VAT has the same meaning as in VATA 1994.

(3) In this Schedule (except where the context requires otherwise) references, however expressed, to a person's affairs in relation to tax include the person's position as regards deductions or repayments of, or of sums representing, tax that the person is required to make by or under an enactment.

(4) For the purposes of this Schedule a partnership return is regarded as made on the basis that a particular tax advantage arises to a person from particular arrangements if—
(a) it is made on the basis that an increase or reduction in one or more of the amounts mentioned in section 12AB(1) of TMA 1970 (amounts in the partnership statement in a partnership return) results from those arrangements, and
(b) that increase or reduction results in that tax advantage for the person.

Consequential amendments

59 In section 103ZA of TMA 1970 (disapplication of sections 100 to 103 in the case of certain penalties)—
(a) omit "or" at the end of paragraph (ga), and
(b) after paragraph (h) insert "or
(i) Part 5 of Schedule 18 to the Finance Act 2016 (serial tax avoidance)."

60 In section 212 of FA 2014 (follower notices: aggregate penalties), in subsection (4)—
(a) omit "or" at the end of paragraph (b), and
(b) after paragraph (c) insert ", or
(d) Part 5 of Schedule 18 to FA 2016 (serial tax avoidance)."

61 (1) The Social Security Contributions and Benefits Act 1992 is amended as follows.

(2) In section 11A (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2)), in subsection (1), at the end of paragraph (e) insert—
"(ea) the provisions of Schedule 18 to the Finance Act 2016 (serial tax avoidance);".

(3) In section 16 (application of Income Tax Acts and destination of Class 4 contributions), in subsection (1), at the end of paragraph (d) insert "and

(e) the provisions of Schedule 18 to the Finance Act 2016 (serial tax avoidance),".

62 In the Social Security Contributions and Benefits (Northern Ireland) Act 1992, in section 11A (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2)), in subsection (1), at the end of paragraph (e) insert—

"(ea) the provisions of Schedule 18 to the Finance Act 2016 (serial tax avoidance);".

Commencement

63 Subject to paragraphs 64 and 65, paragraphs 1 to 62 of this Schedule have effect in relation to relevant defeats incurred after the day on which this Act is passed.

64 (1) A relevant defeat is to be disregarded for the purposes of this Schedule if it is incurred before 6 April 2017 in relation to arrangements which the person has entered into before the day on which this Act is passed.

(2) A relevant defeat incurred on or after 6 April 2017 is to be disregarded for the purposes of this Schedule if—

(a) the person entered into the arrangements concerned before the day on which this Act is passed, and

(b) before 6 April 2017—

(i) the person incurring the defeat fully discloses to HMRC the matters to which the relevant counteraction relates, or

(ii) that person gives HMRC notice of a firm intention to make a full disclosure of those matters and makes such a full disclosure within any time limit set by HMRC.

(3) In sub-paragraph (2) "the relevant counteraction" means—

(a) in a case within Condition A, the counteraction mentioned in paragraph 12(1)(c);

(b) in a case within Condition B, the action mentioned in paragraph 13(1);

(c) in a case within Condition C, the counteraction mentioned in paragraph 14(1)(c);

(d) in a case within Condition D, the counteraction mentioned in paragraph 15(1)(d);

(e) in a case within Condition E, the counteraction mentioned in paragraph 16(1)(c).

(4) In sub-paragraph (3)—

(a) in paragraph (c) "counteraction" is to be interpreted in accordance with paragraph 14(5);

(b) in paragraph (d) "counteraction" is to be interpreted in accordance with paragraph 15(5);

(c) in paragraph (e) "counteraction" is to be interpreted in accordance with paragraph 16(2).

(5) See paragraph 11(2) for provision about when a relevant defeat is incurred.

65 (1) A warning notice given to a person is to be disregarded for the purposes of—

(a) paragraph 18 (naming), and

(b) Part 4 of this Schedule (restriction of reliefs),

if the relevant defeat specified in the notice relates to arrangements which the person has entered into before the day on which this Act is passed.

(2) Where a person has entered into any arrangements before the day on which this Act is passed—

(a) a relevant defeat incurred by a person in relation to the arrangements, and

(b) any warning notice specifying such a relevant defeat,

is to be disregarded for the purposes of paragraph 30 (penalty).

SCHEDULE 19

Section 161

LARGE BUSINESSES: TAX STRATEGIES AND SANCTIONS

PART 1

INTERPRETATION

Purpose of Part 1

1 This Part defines terms for the purposes of this Schedule.

"Relevant body"

2 (1) "Relevant body" means a UK company or any other body corporate (wherever incorporated), but does not include a limited liability partnership.

(2) A relevant body is a "foreign" relevant body (or member of a group or sub-group) if it is incorporated outside the United Kingdom.

"UK company"

3 (1) "UK company" means a company which is (or is treated as if it is) formed and registered under the Companies Act 2006, unless it falls within sub-paragraph (2).

(2) The term "UK company" does not include a company which is—

(a) an open-ended investment company within the meaning of section 613 of CTA 2010, or

(b) an investment trust within the meaning of section 1158 of CTA 2010.

"UK permanent establishment"

4 (1) "UK permanent establishment" means a permanent establishment in the United Kingdom of a foreign relevant body.

(2) In sub-paragraph (1) "permanent establishment" has the same meaning as it has for the purposes of the Corporation Tax Acts (see section 1141 to 1144 of CTA 2010).

"Qualifying company"

5 (1) A UK company is a "qualifying company" in any financial year (subject to any regulations under sub-paragraph (5)) if sub-paragraph (2) or (3) applies to it.

(2) This sub-paragraph applies to the company if, at the end of the previous financial year—

(a) it satisfied the qualification test for a UK company, and

(b) was not a member of a UK group or a UK sub-group.

(3) This sub-paragraph applies to the company if, at the end of the previous financial year—

(a) it was a member of a foreign group,

(b) the group met the qualification test for a group, and

(c) it was not a member of a UK sub-group of that foreign group.

(4) The qualification test for a UK company is that the company satisfied either or both of the following conditions (by reference to the previous financial year)—

1. The company's turnover	More than £200 million
2. The company's balance sheet total	More than £2 billion.

(5) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule (or any such purpose specified in the regulations).

(6) For the purposes of this paragraph a UK permanent establishment of a foreign relevant body is to be treated as if it were—

(a) a UK company, and

(b) if the foreign relevant body is a member of a UK group or a UK sub-group, a member of that group or sub-group.

"Group" and related expressions

6 (1) "Group" means two or more relevant bodies which together constitute—

(a) an MNE Group (see paragraph 7), or

(b) a group other than an MNE group (see paragraph 8).

(2) "UK group" means a group whose head is a relevant body incorporated in the United Kingdom.

(3) "Foreign group" means a group whose head is a foreign relevant body.

(4) For the purposes of sub-paragraphs (2) and (3) it is immaterial where other members of the group are incorporated.

7 (1) "MNE Group" has the same meaning (subject to sub-paragraph (2) below) as in the OECD Model Legislation in the OECD Country-by-Country Reporting Implementation Package as contained in the OECD's Guidance on Transfer Pricing Documentation and Country-by-Country Reporting published in 2014.

(2) Paragraph (ii) (excluded MNE Group) of the Implementation Package is not part of the definition applied by sub-paragraph (1) above for the purposes of this Schedule.

(3) In sub-paragraph (1) "OECD" means the Organisation for Economic Co-operation and Development.

8 (1) A "group other than an MNE group" means a group consisting of two or more relevant bodies—

(a) each of which is a member of the group by virtue of sub-paragraph (3) or (4),

(b) at least two of which are UK companies,

which is not an MNE Group.

(2) For the purposes of the condition in sub-paragraph (1)(b) a UK permanent establishment of a foreign member of a group is to be treated as if it were a UK company and a member of the group.

(3) A relevant body is a member of a group if—

(a) another relevant body is its 51% subsidiary, or

(b) it is a 51% subsidiary of another relevant body.

(4) Two relevant bodies are members of the same group if—

(a) one is a 51% subsidiary of the other, or

(b) both are 51% subsidiaries of another relevant body.

(5) Chapter 3 of Part 24 of CTA 2010 (meaning of 51% subsidiary) applies for the purposes of this Schedule as it applies for the purposes of the Corporation Tax Acts (but with the modification in sub-paragraph (6)).

(6) It applies as if references to a body corporate were references to a relevant body.

9 A group is headed by whichever relevant body within the group is not a 51% subsidiary of another relevant body within the group (and "head", in relation to the group, means that body).

"Qualifying group"

10 (1) A group is a "qualifying group" in any financial year if, at the end of the previous financial year—

(a) in the case of a group other than an MNE Group, the group satisfied the qualification test for such a group (subject to any regulations under sub-paragraph (6)), or

(b) in the case of an MNE Group—

(i) there was a mandatory reporting requirement in respect of the group under regulations made under section 122 of FA 2015 (country-by-country reporting), or

(ii) there would have been such a requirement if the head of the group were resident in the United Kingdom for tax purposes.

(2) The qualification test for a group other than an MNE Group is that the group satisfied either or both of the following conditions (by reference to the previous financial year) —

1. Group turnover	More than £200 million
2. Group balance sheet total	More than £2 billion.

(3) In sub-paragraph (2)—

(a) "group turnover" means the aggregate turnover of the UK companies that are members of the group at the end of the previous financial year, and

(b) "group balance sheet total", means the aggregate balance sheet totals for all those UK companies.

(4) Where the financial year of a UK company within in the group does not end on the same day as the previous financial year of the head of the group, the figures from the company that are to be included in the aggregate figures are those for the company's financial year ending last before the end of the previous financial year of the head of the group.

(5) For the purposes of assessing the turnover or balance sheet total of the group, sub-paragraphs (3) and (4) apply as if a UK permanent establishment of a foreign member of the group were a UK company and a member of the group.

(6) The Treasury may by regulations provide—

(a) that a group other than an MNE Group which is of a specified description is not a qualifying group for the purposes, or any specified purpose, of this Schedule, or

(b) that a relevant body, or a UK permanent establishment, of a specified description is to be disregarded in determining whether the qualification test is satisfied by a group other than an MNE Group;

and in this sub-paragraph "specified" means specified in the regulations.

(7) In this paragraph "financial year", in relation to a group, means a financial year of the head of the group.

"UK sub-group" and "head" (in relation to a UK sub-group)

11 (1) A "UK sub-group" consists of two or more relevant bodies that would be a UK group, but for the fact that they are members of a larger group headed by a relevant body incorporated outside the United Kingdom.

(2) A UK sub-group is headed by the company or other relevant body incorporated in the United Kingdom that is not a 51% subsidiary of another member of the UK sub-group (and "head", in relation to the sub-group, means that company or body).

"UK partnership", "qualifying partnership" and "representative partner"

12 (1) "UK partnership" means a body of any of the following descriptions which is carrying on a trade, business or profession with a view to profit—

(a) a partnership within the meaning of the Partnership Act 1890,

(b) a limited partnership registered under the Limited Partnerships Act 1907, or

(c) a limited liability partnership incorporated in the United Kingdom.

(2) A UK partnership is a "qualifying partnership" in a financial year, if it satisfied the qualification test for a UK partnership at the end of the previous financial year (subject to any regulations under sub-paragraph (4)).

(3) The qualification test for a UK partnership is that the partnership satisfied either or both of the following conditions (by reference to the previous financial year)—

1. The partnership's turnover	More than £200 million

2. The partnership's balance sheet total	More than £2 billion.

(4) The Treasury may by regulations provide that a UK partnership of a description specified in the regulations is not a qualifying partnership for the purposes of this Schedule (or any such purpose specified in the regulations).

(5) "Representative partner", in relation to a UK partnership, means the partner who is required by a notice served under or by virtue of section 12AA(2) or (3) of TMA 1970 to make and deliver returns to an officer of HMRC.

"Financial year"

13 "Financial year"—

(a) in relation to a UK company, has the meaning given by the Companies Act 2006 (see section 390 of that Act),

(b) in relation to any other relevant body, means any period in respect of which a profit and loss account for the body's undertaking is required to be made up (whether by its constitution or by the law under which it is established), whether that period is a year or not,

(c) in relation to a UK partnership, means any period of account for which its representative partner has provided or is required to provide a partnership statement under a return issued under section 12AB TMA 1970.

"Turnover" and "balance sheet total"

14 (1) "Turnover"—

(a) in relation to a UK company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act), and

(b) in relation to a UK partnership or a UK permanent establishment, has a corresponding meaning.

(2) "Balance sheet total", in relation to a UK company, UK partnership or UK permanent establishment and a financial year, means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year.

"UK taxation"

15 (1) "UK taxation" means —

(a) income tax,

(b) corporation tax, including any amount assessable or chargeable as if it were corporation tax or treated as if it were corporation tax,

(c) value added tax,

(d) amounts for which the company is accountable under PAYE regulations,

(e) diverted profits tax,

(f) insurance premium tax,

(g) annual tax on enveloped dwellings,

(h) stamp duty land tax,

(i) stamp duty reserve tax,

(j) petroleum revenue tax;

(k) customs duties,

(l) excise duties,
(m) national insurance contributions.

(2) In relation to a tax strategy required to be published by Part 2, "UK taxation" refers to the taxes or duties mentioned above so far as relating to or affecting the bodies or body to which the required tax strategy relates.

PART 2

PUBLICATION OF TAX STRATEGIES

Qualifying UK groups: duty to publish a group tax strategy

16 (1) This paragraph applies in relation to a UK group which is a qualifying group in any financial year ("the current financial year").

(2) The head of the group must ensure that a group tax strategy for the group, containing the information required by paragraph 17, is prepared and published on behalf of the group in accordance with this paragraph.

(3) The group tax strategy—
(a) must be published before the end of the current financial year, and
(b) if the group was a qualifying group in the previous financial year, must not be published more than 15 months after the day on which its previous group tax strategy was published.

(4) The group tax strategy—
(a) must be published on the internet by any of the UK companies that are members of the group so as to be accessible to the public free of charge (whether or not it is also published in any other way), and
(b) may be published as a separate document or as a self-contained part of a wider document.

(5) The head of the group must ensure that the group tax strategy published on the internet remains accessible to the public free of charge—
(a) if a group tax strategy for the group's next financial year is required by this paragraph to be published, until that tax strategy is published, or
(b) if paragraph (a) does not apply, for at least one year.

(6) For the purposes of this paragraph—
(a) a group tax strategy is published when it is first published on the internet as mentioned in paragraph (4)(a),
(b) the identity of the group is not to be regarded as altered by any change in its membership during the current financial year resulting from a relevant body—
(i) becoming a 51% subsidiary of a member of the group, or
(ii) ceasing to be a 51% subsidiary of another member of the group; and
(c) if the group becomes a UK sub-group of a foreign group during the current financial year, it is to be treated for the rest of that year as if it were still a UK group.

(7) In this paragraph and paragraph 17 "financial year", in relation to a UK group, means a financial year of the head of the group.

Content of group tax strategy

17 (1) A group tax strategy required to be published on behalf of a UK group by paragraph 16 must set out—

(a) the approach of the group to risk management and governance arrangements in relation to UK taxation,

(b) the attitude of the group towards tax planning (so far as affecting UK taxation),

(c) the level of risk in relation to UK taxation that the group is prepared to accept, and

(d) the approach of the group towards its dealings with HMRC.

(2) The group tax strategy may—

(a) include other information relating to taxation (whether UK taxation or otherwise), and

(b) deal with a matter mentioned in sub-paragraph (1) by reference to the group as a whole or to individual members of the group (or to both).

(3) The information required by sub-paragraph (1) to be included in the group tax strategy does not include any information about activities of any member of the group that consists of the provision of tax advice or related professional services to persons who are not members of the group.

(4) The publication of information as the group tax strategy does not constitute publication of the strategy for the purposes of paragraph 16 unless the UK company publishing it makes clear (in a way that will be readily apparent to anyone accessing the information online) that the company regards its publication as complying with the duty under paragraph 16(2) in the current financial year.

(5) For the purposes of this paragraph a UK permanent establishment of a foreign member of the group is to be treated as if it were a member of the group.

(6) The Treasury may by regulations require the group tax strategy to include a country-by-country report.

(7) In this paragraph "country-by-country report" has the meaning given by the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016.

Penalty for non-compliance with paragraph 16

18 (1) This paragraph applies where paragraph 16 requires a group tax strategy to be published for a UK group in any financial year of the head of the UK group.

(2) The head of the group is liable to a penalty of £7,500 if—

(a) there is a failure to publish a group tax strategy for the group that complies with paragraph 16(2), or

(b) where a group tax strategy has been published, there is a failure to comply with paragraph 16(5).

(3) Subject to sub-paragraph (5) the head of the group is only liable to one penalty by virtue of sub-paragraph (2) in respect of a group tax strategy required for the financial year in question.

(4) Sub-paragraph (5) applies where—

(a) the head of the group is liable to a penalty under this paragraph in respect of a failure mentioned in sub-paragraph (2)(a), and

(b) no group tax strategy for the group that complies with paragraph 16(2) (disregarding paragraph 16(3)) is published within the period of 6 months after the last day on which the duty under paragraph 16(2) could have been complied with.

(5) At the end of that period, the head of the group—

(a) is liable to a further penalty of £7,500, and

(b) where the failure mentioned in sub-paragraph (4)(b) continues, is liable to a further penalty of £7,500 at the end of each subsequent month in which no such group tax strategy is published.

UK sub-groups: duty to publish a sub-group tax strategy

19 (1) This paragraph applies to a UK sub-group of a foreign group if in any financial year ("the current financial year") the foreign group is a qualifying group.

(2) The head of the sub-group must ensure that a sub-group tax strategy for the sub-group, giving the information required by paragraph 20, is prepared and published in accordance with this paragraph.

(3) The sub-group tax strategy—

(a) must be published before the end of the current financial year, and

(b) if the group of which the sub-group is part was a qualifying group in the previous financial year, must not be published more than 15 months after the day on which its sub-group tax strategy for that year was published;

(4) The sub-group tax strategy—

(a) must be published on the internet by any of the UK companies that are members of the foreign group so as to be accessible to the public free of charge (whether or not it is also published in any other way), and

(b) may be published as a separate document or as a self-contained part of a wider document.

(5) The head of the sub-group must ensure that the sub-group tax strategy published on the internet remains accessible to the public free of charge—

(a) if a sub-group tax strategy for the sub-group's next financial year is required by this paragraph to be published, until that tax strategy is published, or

(b) if paragraph (a) does not apply, for at least one year.

(6) For the purposes of this paragraph—

(a) a sub-group tax strategy is published when it is first published on the internet as mentioned in sub-paragraph (4)(a),

(b) the identity of the sub-group is not affected by any change in its membership in the current financial year resulting from a relevant body becoming or ceasing to be a 51% subsidiary of a member of the sub-group, and

(c) if the sub-group becomes a UK sub-group of another foreign group during the current financial year, for the rest of that year it is to be treated as if it were still a UK sub-group of the original foreign group (but only a UK company within the sub-group may publish a sub-group tax strategy for the sub-group after that change).

(7) In this paragraph "financial year", in relation to a UK sub-group, means a financial year of the head of the group of which it is a sub-group.

Content of a sub-group tax strategy

20 (1) Paragraph 17 applies in relation to a sub-group tax strategy required to be published on behalf of a UK sub-group by paragraph 19 as it applies to a group tax strategy required to be published by a qualifying UK group.

(2) In the application of paragraph 17 to a sub-group tax strategy, references to the group or members of the group are to be read as references to the UK sub-group or members of the UK sub-group.

(3) In the application of paragraph 17 as modified by this paragraph to a sub-group tax strategy, a UK permanent establishment of a foreign member of the UK sub-group is to be treated as if it were a member of the sub-group.

Penalty for non-compliance with requirements of paragraph 19

21 (1) This paragraph applies where paragraph 19 requires a sub-group tax strategy to be published for a UK sub-group in any financial year of the head of the sub-group.

(2) The head of the sub-group is liable to a penalty of £7,500 if—

(a) there is a failure to publish a sub-group tax strategy for the sub-group that complies with paragraph 19(2), or

(b) where a sub-group tax strategy has been published, there is a failure to comply with paragraph 19(5).

(3) Subject to sub-paragraph (5), the head of the sub-group is only liable to one penalty by virtue of sub-paragraph (2) in respect of a sub-group tax strategy required for the financial year in question.

(4) Sub-paragraph (5) applies where—

(a) the head of the sub-group is liable to a penalty under this paragraph in respect of a failure mentioned in sub-paragraph (2)(a), and

(b) no sub-group tax strategy for the sub-group that complies with paragraph 19(2) (disregarding paragraph 19(3)) is published within the period of 6 months after the last day on which the duty under paragraph 19(2) could have been complied with.

(5) At the end of that period, the head of the sub-group is liable—

(a) to a further penalty of £7,500, and

(b) where the failure mentioned in sub-paragraph (4)(b) continues, to a further penalty of £7,500 at the end of each subsequent month in which no such sub-group tax strategy is published.

Qualifying companies: duty to publish a company tax strategy

22 (1) This paragraph applies in relation to a UK company which in any financial year ("the current financial year") is a qualifying company.

(2) The company must prepare and publish a company tax strategy, containing the information required by paragraph 23, in accordance with this paragraph.

(3) The duty under sub-paragraph (2) applies even if the company becomes a member of a UK group or a UK sub-group during the current financial year.

(4) The company tax strategy—

(a) must be published by the company before the end of the current financial year, and

(b) if the company was a qualifying company in the previous financial year, must not be published more than 15 months after the day on which its company tax strategy was published in the previous financial year.

(5) The company tax strategy—

(a) must be published on the internet so as to be accessible to the public free of charge (whether or not published in any other way), and

(b) may be published as a separate document or a self- contained part of a wider document.

(6) The company must ensure that the company tax strategy published on the internet remains accessible to the public free of charge—

(a) if a company tax strategy for the next financial year is required by this paragraph to be published, until that tax strategy is published, or

(b) if paragraph (a) does not apply, for at least one year.

(7) For the purposes of this paragraph a company tax strategy is published when it is first published as mentioned in sub-paragraph (5)(a).

(8) A UK permanent establishment which in any financial year is by virtue of paragraph 5(6) to be treated as a qualifying company is to be treated for the purposes of this paragraph and paragraphs 23 and 24 as if it were a UK company which in that financial year is a qualifying company.

Content of a company tax strategy

23 (1) The company tax strategy must set out—

(a) the company's approach to risk management and governance arrangements in relation to UK taxation,

(b) the company's attitude towards tax planning (so far as affecting UK taxation),

(c) the level of risk in relation to UK taxation that the company is prepared to accept,

(d) the company's approach towards its dealings with HMRC.

(2) The company tax strategy may include other information relating to taxation (whether UK taxation or otherwise).

(3) The information required by sub-paragraph (1) to be included in a company tax strategy does not include any information about activities of the company that consist of the provision of tax advice or related professional services to other persons.

(4) The publication of information as a company tax strategy does not constitute publication of the strategy for the purposes of paragraph 22 unless the company makes clear (in a way that will be readily apparent to anyone accessing the information online) that the company regards its publication as complying with the duty under paragraph 22(2) in the current financial year.

Penalty for non-compliance with paragraph 22

24 (1) This paragraph applies where paragraph 22 requires a company tax strategy to be published for a UK company in any financial year.

(2) The company is liable to a penalty of £7,500 if—

(a) there is a failure to publish a company tax strategy for the company that complies with paragraph 22(2), or

(b) where a company tax strategy has been published, there is a failure to comply with paragraph 22(6).

(3) Subject to sub-paragraph (5), the company is only liable to one penalty by virtue of sub-paragraph (2) in respect of a company tax strategy required for the financial year in question.

(4) Sub-paragraph (5) applies where—

(a) a penalty is imposed under this paragraph in respect of a failure mentioned in sub-paragraph (2)(a), and

(b) no company tax strategy that complies with paragraph 22(2) (disregarding paragraph 22(4)) is published within the period of 6 months after the last day on which the duty under paragraph 22(2) could have been complied with.

(5) At the end of that period, the company is liable—

(a) to a further penalty of £7,500, and

(b) where the failure mentioned in sub-paragraph (4)(b) continues, to a further penalty of £7,500 at the end of each subsequent month in which no such company tax strategy is published.

Qualifying partnerships: duty to publish a partnership tax strategy

25 (1) Paragraphs 22 to 24 apply in relation to a UK partnership which is (in any financial year of the partnership) a qualifying partnership as they apply to a UK company which is (in any financial year of the company) a qualifying company.

(2) Those paragraphs have effect in their application to a qualifying partnership—

(a) with the omission of paragraph 22(3) and (8),

(b) as if for "company tax strategy" (in each place) there were substituted "partnership tax strategy", and

(c) as if for "company" and "company's" (in each place) there were substituted respectively "partnership" and "partnership's".

Penalties under this Part: general provisions

26 (1) Paragraphs 27 to 33 apply in relation to the liability of any person to a penalty under this Part and, accordingly, in those paragraphs—

"failure", in relation to a liability for a penalty, means a failure which could give rise to that liability,

"liability to a penalty" means a liability under paragraph 18, 21 or 24 (including paragraph 24 as applied to a qualifying UK partnership), and

"penalty" means a penalty under any of those paragraphs.

(2) In those paragraphs "tribunal" means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.

Failure to comply with a time limit

27 A failure to do anything required by this Part to be done within a limited period of time goes not give rise to liability to a penalty if it is done within such further time (if any) as an officer of Revenue and Customs may have allowed.

Reasonable excuse

28 (1) Liability to a penalty for a failure does not arise if the person who would otherwise be liable to that penalty satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that the person had a reasonable excuse for that 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) where the person relies on another person to do anything, that cannot be a reasonable excuse—

(i) unless the first person took reasonable care to avoid the failure, or

(ii) if the first person is a UK group or UK sub-group, where the person relied on is another member of the group or sub-group,

(c) where the person had a reasonable excuse 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.

Assessment of penalties

29 (1) Where a person becomes liable to a penalty—

(a) HMRC may assess the penalty, and

(b) if they do so, HMRC must notify the person of the assessment.

(2) An assessment of a penalty may not be made—

(a) more than 6 months after the failure first comes to the attention of an officer of Revenue and Customs, or

(b) more than 6 years after the end of the financial year in which the tax strategy to which the failure relates was (or was originally) required to be published.

Appeal

30 (1) A person may appeal against a decision of HMRC that a penalty is payable by that person.

(2) Notice of an appeal must be given—

(a) in writing,

(b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 29(1)(b) was issued,

(3) Notice of an appeal must state the grounds of appeal.

(4) On an appeal that is notified to the tribunal, the tribunal may confirm or cancel the decision.

(5) Subject to this paragraph and paragraph 31, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax.

Enforcement

31 (1) A penalty must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 29(1)(b) was issued, or

(b) if a notice of appeal is given, before the end of 30 days beginning with the day on which the appeal is determined or withdrawn.

(2) A penalty may be enforced as if it were corporation tax charged in an assessment and due and payable.

Power to change amount of penalties

32 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for any sums for the time being specified in paragraph 18, 21 or 24 such other sum as appear to them to be justified by the change.

(2) In sub-paragraph (1) "relevant date" means—

(a) the date on which this Act is passed, and

(b) each date on which the power conferred by that sub-paragraph has been exercised.

(3) Regulations under this paragraph do not apply to a failure that occurs in respect of a financial year (of the body or partnership responsible for the failure) that begins before the date on which they come into force.

Application of provisions of TMA 1970

33 Subject to the provisions of this Part, the following provisions of TMA 1970 apply for the purposes of this Part 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).

Meaning of "tax strategy"

34 In this Part "tax strategy" means—

(a) a group tax strategy (see paragraphs 16 to 18),

(b) a sub-group tax strategy (see paragraphs 19 to 21),

(c) a company tax strategy (see paragraphs 22 to 24), or

(d) a partnership tax strategy (see paragraph 25).

PART 3

SANCTIONS FOR PERSISTENTLY UNCO-OPERATIVE LARGE BUSINESSES

Large groups falling within Part 3

35 A UK group falls within this Part of this Schedule ("this Part") if—

(a) the group has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),

(b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the group or members of the group which are unresolved (see paragraph 39), and

(c) there is a reasonable likelihood of further instances of the group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the group or members of the group.

36 (1) A UK group has "engaged in unco-operative behaviour" if—

(a) a member of the group has satisfied either or both of the conditions listed in sub-paragraph (2), or

(b) two or more of the members of the group, taken together, have satisfied either or both of those conditions.

(2) Those conditions are—

(a) the behaviour condition (see paragraph 37);

(b) the arrangements condition (see paragraph 38).

(3) A UK group has engaged in unco-operative behaviour "persistently" if—

(a) a member of the group has done so persistently, or

(b) two or more members of the group, taken together, have done so persistently.

(4) References in this Part to doing something "persistently" include doing it on a sufficient number of occasions for it to be clear that it represents a pattern of behaviour.

37 (1) A member of a UK group has, or two or more members of a UK group (taken together) have, "satisfied the behaviour condition" if it has, or they have, behaved in a manner which has delayed or otherwise hindered HMRC in the exercise of their functions in connection with determining the liability to UK taxation of the group or a member of the group.

(2) Factors which may indicate that a member of a UK group has behaved as described in sub-paragraph (1) include—

(a) the extent to which HMRC have used statutory powers to obtain information relating to the UK group or members of the group;

(b) the reasons why those powers have been used;

(c) the number and seriousness of inaccuracies in, and omissions from, documents given to HMRC by or on behalf of the UK group or members of the group;

(d) the extent to which, in dealings with HMRC, members of the group (or people acting on their behalf) have relied on interpretations of legislation relating to UK taxation which, at the time, are speculative.

(3) An interpretation of legislation relating to UK taxation is "speculative" if it is likely that a court or tribunal would disagree with it.

38 (1) A member of a UK group has "satisfied the arrangements condition" if it is a party to a tax avoidance scheme.

(2) "Tax avoidance scheme" means—

(a) arrangements in respect of which a notice of final decision has been given under—

(i) paragraph 12 of Schedule 43 to FA 2013,

(ii) paragraph 5 or 6 of Schedule 43A to FA 2013, or

(iii) paragraph 9 of Schedule 43B to FA 2013,

stating that a tax advantage arising from the arrangements is to be counteracted;

(b) arrangements which are notifiable arrangements for the purposes of Part 7 of FA 2004 (disclosure of tax avoidance schemes), other than arrangements in relation to which HMRC have given notice under section 312(6) of FA 2004 (notice that promoters not under duty to provide clients with prescribed information);

(c) a scheme which is a notifiable scheme for the purposes of Schedule 11A to VATA 1994 (disclosure of avoidance schemes).

39 (1) There is a significant tax issue in respect of a UK group or a member of a UK group where—

(a) there is a disagreement between HMRC and a member of the group about an issue affecting the amount of the liability of the group or a member of the group to UK taxation,

(b) the issue has been, or could be, referred to a court or tribunal to determine, and

(c) as regards the amount of the liability, the difference between HMRC's view and the view of the member is, or is likely to be, not less than £2 million.

(2) The reference in sub-paragraph (1)(a) to circumstances in which there is a disagreement include circumstances in which there is a reasonable likelihood of a disagreement.

(3) The Treasury may by regulations substitute a higher amount for the amount for the time being specified in sub-paragraph (1)(c).

40 The references in paragraphs 36 to 39 to things done by a member of a UK group ("the group in question")—

(a) include acts and omissions of a relevant body that is not a member of the group in question if they took place at a time when the relevant body was a member of a group headed by the body that is the head of the group in question;

(b) do not include acts or omissions of a relevant body that is a member of the group in question if they took place at a time when the relevant body was not a member of a group headed by the body that is the head of the group in question.

Warning notices

41 (1) A designated HMRC officer may give the head of a UK group a notice under this paragraph (a "warning notice") if the officer considers that the group is a qualifying group that falls within this Part.

(2) The notice must set out the reasons why the officer considers that the group falls within this Part.

(3) The notice—

(a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the group, and

(b) expires (if not previously withdrawn) at the end of the period of 15 months beginning with the day on which it was given.

(4) Once a warning notice has been given —

(a) it is immaterial for the purposes of this Part whether the group remains a qualifying group,

(b) the identity of the group is not to be regarded as altered by any change in its membership resulting from a relevant body—

(i) becoming a 51% subsidiary of a member of the group, or

(ii) ceasing to be a 51% subsidiary of another member of the group; and

(c) if the group becomes a UK sub-group of a foreign group it is to be treated as if it were still a UK group.

(5) Sub-paragraph (4) applies while the group is subject to—

(a) the warning notice, or

(b) any other notice under this Part issued as a result of the group having been given the warning notice.

Special measures notices

42 (1) This paragraph applies to a UK group if—

(a) the head of the group has been given a warning notice in relation to the group that has not been withdrawn,

(b) the period of 12 months beginning with the day on which the warning notice was given has elapsed, and

(c) the period of 15 months beginning with that day has not elapsed.

(2) If a designated HMRC officer considers that the group falls within this Part, the officer may give the head of the group a notice under this paragraph (a "special measures notice").

(3) When considering whether the group falls within this Part, the officer may take into account any relevant behaviour, whether or not it is mentioned in the warning notice.

(4) When deciding whether to give a special measures notice, the designated HMRC officer must consider any representations made by a member of the group before the end of the period of 12 months beginning with the day on which the warning notice was given.

(5) The special measures notice must set out the reasons why the officer considers that the group falls within this Part.

(6) Paragraph 45 deals with other circumstances in which a UK group may be given a special measures notice.

43 (1) A special measures notice—

(a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the UK group, and

(b) expires, if not previously withdrawn, at the end of the period of 27 months beginning with the relevant day.

(2) "The relevant day" means the later of—

(a) the day on which the special measures notice was given, and

(b) the day on which it was last confirmed under paragraph 44.

44 (1) This paragraph applies to a UK group if—

(a) the head of the group has been given a special measures notice in relation to the group which has not been withdrawn,

(b) the period of 24 months beginning with the relevant day has elapsed, and

(c) the period of 27 months beginning with that day has not elapsed.

(2) If a designated HMRC officer considers that the group falls within this Part, the officer may give the head of the group a notice under this paragraph (a "confirmation notice") confirming the special measures notice given in relation to the group.

(3) When considering whether the group falls within this Part, the officer may take into account any relevant behaviour, whether or not it is mentioned in the special measures notice which is to be confirmed, in any previous confirmation notice or in the warning notice.

(4) "The relevant day" has the same meaning as in paragraph 43(2).

(5) The confirmation notice must set out the reasons why the officer considers that the group falls within this Part.

(6) When deciding whether to give a confirmation notice, a designated HMRC officer must consider any representations made by a member of the group before the end of the period of 24 months beginning with the relevant day.

(7) A confirmation notice—

(a) may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the group, and

(b) expires, if not previously withdrawn, at the end of the period of 27 months beginning with the day on which it is given.

45 (1) This paragraph applies in relation to a UK group where—

(a) the head of the group has been given a warning notice or a special measures notice in relation to the group, and

(b) that notice has expired.

(2) A designated HMRC officer may give the head of a UK group a special measures notice if—

(a) it appears to the officer that—

(i) during the period of 6 months beginning with the day on which the notice mentioned in sub-paragraph (1)(a) expired ("the expiry day"),

the group has engaged in unco-operative behaviour (see paragraphs 36 to 38), and

(ii) there is a reasonable likelihood that, if it had engaged in the behaviour before the notice expired, a designated HMRC officer would have considered that the group fell within this Part (so that a special measures notice or confirmation notice could have been given to the head of the group),

(b) during the period of 7 months beginning with the expiry day, a designated HMRC officer has notified the head of the group that the power under this paragraph may be exercised in relation to the group, and

(c) the period of 9 months beginning with that day has not elapsed.

(3) When deciding whether to give a special measures notice under this paragraph, the officer must consider any representations made by a member of the group before the end of the period of 8 months beginning with the expiry day.

Circumstances in which warning and special measures notices are treated as having been given

46 (1) Sub-paragraphs (2) and (3) apply where—

(a) a relevant body ("B1") is given a warning notice, and

(b) before the notice ceases to have effect, B1 becomes a member of a group headed by another relevant body ("H1").

(2) H1 is to be treated as having been given a warning notice on the day on which the warning notice was given to B1.

(3) A warning notice treated as given under sub-paragraph (2) is valid whether or not, on the day mentioned in that sub-paragraph, H1 was the head of a qualifying UK group that fell within this Part.

(4) Sub-paragraphs (5) to (7) apply where—

(a) a relevant body ("B2") is given a special measures notice, and

(b) before the notice ceases to have effect, B2 becomes a member of a group headed by another relevant body ("H2").

(5) H2 is to be treated as having been given a special measures notice on the day on which the special measures notice was given to B2.

(6) A special measures notice treated as given under sub-paragraph (5) is valid whether or not, on the day mentioned in that sub-paragraph, H2 was the head of a qualifying UK group that fell within this Part.

(7) Paragraph 47(1) does not by virtue of sub-paragraphs (5) and (6) of this paragraph apply to an inaccuracy in a document given to HMRC by or on behalf of a person—

(a) at a time when the person was a member of a group headed by H2, but

(b) before the day B2 becomes a member of H2.

(8) Sub-paragraphs (9) and (10) apply where—

(a) a relevant body ("B3") is given a confirmation notice, and

(b) before the notice ceases to have effect, B3 becomes a member of a group headed by another relevant body ("H3").

(9) H3 is to be treated as having been given a confirmation notice on the day on which the confirmation notice was given to B3.

(10) A confirmation notice treated as given under sub-paragraph (9) is valid whether or not, on the day mentioned in that sub-paragraph, H3 was the head of a qualifying UK group that fell within this Part.

(11) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to relevant bodies in other circumstances described in the regulations.

(12) Regulations under this paragraph may, in particular—

(a) make provision about the validity of notices treated as given by virtue of the regulations;

(b) make provision about the effect of paragraph 47(1) in cases involving such notices.

Sanctions: liability for penalties for errors in documents given to HMRC

47 (1) For the purposes of Schedule 24 to FA 2007 (penalties for errors), an inaccuracy in a document given to HMRC by or on behalf of a person is to be treated as being due to failure by the person to take reasonable care if—

(a) the document was given to HMRC at a time when the person was a member of a group subject to a special measures notice, and

(b) the inaccuracy—

(i) relates to a tax avoidance scheme (as defined in paragraph 38) entered into by the person at a time when the person was a member of a group subject to a special measures notice, or

(ii) is, entirely or partly, attributable to an interpretation of legislation relating to UK taxation which, at the time the document was given to HMRC, was speculative.

(2) A group is "subject to a special measures notice" if a special measures notice—

(a) has been given to the head of the group in relation to the group, and

(b) is in force.

(3) An interpretation of legislation relating to UK taxation is "speculative" if it is likely that a court or tribunal would disagree with it.

(4) Sub-paragraph (1) does not apply to an inaccuracy if—

(a) it is deliberate on the part of the person or someone acting on the person's behalf,

(b) it is in fact due to a failure by the person or someone acting on the person's behalf to take reasonable care, or

(c) it is treated as due to such a failure by virtue of another enactment.

48 In Schedule 24 to FA 2007 (penalties for errors), at the end of paragraph 3 (meaning of "careless" etc) insert—

"(3) Paragraph 47 of Schedule 19 to FA 2016 (special measures for persistently unco-operative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care."

Sanctions: Commissioners publishing information

49 (1) If a group is subject to a confirmed special measures notice, the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") may publish the following information—

(a) the name of the group, including any previous name;

(b) the address or registered office of the head of the group;

(c) any other information that the Commissioners consider it appropriate to publish in order to identify the group;

(d) the fact that the group is subject to a confirmed special measures notice.

(2) A group is "subject to a confirmed special measures notice" if sub-paragraph (3) or (4) is satisfied.

(3) This sub-paragraph is satisfied if—

(a) a special measures notice has been given to the head of the group and confirmed under paragraph 44, and

(b) the special measures notice is in force.

(4) This sub-paragraph is satisfied if—

(a) a special measures notice has been given to the head of the group and confirmed under paragraph 44,

(b) that notice has ceased to have effect,

(c) a further special measures notice has been given to the head of the group under paragraph 45 in the period of 9 months beginning with the day on which the special measures notice mentioned in paragraph (a) ceased to have effect, and

(d) that notice is in force.

(5) Before publishing the information, the Commissioners must—

(a) inform the head of the group that they are considering doing so, and

(b) allow the head of the group a reasonable opportunity to make representations about whether the information should be published.

(6) If, after information about a group is published under this paragraph, the group ceases to be subject to a confirmed special measures notice, the Commissioners must publish a notice stating that the group is no longer subject to a confirmed special measures notice.

(7) A notice under sub-paragraph (6) must be published before the end of the period of 30 days beginning with the day on which the special measures notice is withdrawn or has expired.

(8) The Commissioners may publish information and notices under this paragraph in any manner they consider appropriate.

Application of Part 3 to large UK sub-groups

50 (1) A UK sub-group of a foreign group falls within this Part if—

(a) the sub-group has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),

(b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the

sub-group or members of the sub-group which are unresolved (see paragraph 39), and

(c) there is a reasonable likelihood of further instances of the sub-group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the sub-group or members of the sub-group.

(2) Paragraphs 36 to 40 apply in relation to a UK sub-group as they apply in relation to a UK group.

(3) Paragraphs 41 to 45 apply in relation to the head of a UK sub-group of a foreign group that is a qualifying group at the material time as they apply in relation to the head of a UK group.

(4) In the application of paragraph 41 in the case of a UK sub-group, sub-paragraph (4) has effect in relation to a UK sub-group as if for paragraphs (b) and (c) there were substituted—

"(b) the identity of the sub-group is not to be regarded as altered by any change in its membership resulting from a relevant body—

(i) becoming a 51% subsidiary of a member of the sub-group, or

(ii) ceasing to be a 51% subsidiary of another member of the sub- group; and

(c) if the sub-group becomes a UK sub-group of another foreign group, it is to be treated as if it were still a UK sub-group of the original foreign group."

(5) As applied by this paragraph, paragraphs 36 to 45 have effect as if references to a UK group (including in references to the head of a UK group or members of a UK group) were references to a UK sub-group.

(6) In paragraphs 40, 41, 46, 47 and 49, references to a group (including in references to the head of a group or members of a group) include a UK sub-group.

(7) In paragraph 46, references to the head of a UK group include the head of a UK sub-group.

Application of Part 3 to large companies

51 (1) A UK company falls within this Part if—

(a) the company has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),

(b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the company which are unresolved (see paragraph 39), and

(c) there is a reasonable likelihood of further instances of the company engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the company.

(2) Paragraphs 36 to 39 apply in relation to a company as they apply in relation to a UK group.

(3) Paragraphs 41 to 45 apply in relation to a company as they apply in relation to the head of a UK group.

(4) As applied by this paragraph, paragraphs 36 to 39 and 41 to 45 have effect as if references to a UK group, the head of a UK group or a member of a UK group were references to a company.

(5) Paragraph 47 applies in relation to a company as it applies in relation to a member of a group.

(6) Paragraph 49 applies in relation to a company as it applies in relation to a group.

(7) As applied by this paragraph, paragraphs 47 and 49 have effect as if references to a group, the head of a group or a member of a group were references to a company.

Application of Part 3 to large partnerships

52 (1) A UK partnership falls within this Part if—

(a) the partnership has persistently engaged in unco-operative behaviour (see paragraphs 36 to 38),

(b) some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the partnership which are unresolved (see paragraph 39), and

(c) there is a reasonable likelihood of further instances of the partnership engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the partnership.

(2) Paragraphs 36 to 39 of this Schedule apply in relation to a UK partnership as they apply in relation to a UK group.

(3) Paragraphs 41 to 45 of this Schedule apply in relation to the representative partner of a UK partnership as they apply in relation to the head of a UK group.

(4) As applied by this paragraph, paragraphs 36 to 39 and 41 to 45 have effect as if—

(a) references to a UK group were references to a UK partnership;

(b) references to the head of a UK group were references to the representative partner of a UK partnership;

(c) references to a member of a UK group were references to a partner of a UK partnership, acting in the person's capacity as such.

(5) The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to the representative partner of a UK partnership in circumstances described in the regulations.

(6) Paragraph 46(12) applies to regulations under this paragraph.

(7) Paragraph 47 applies in relation to an inaccuracy in a document given to HMRC by a partner of a UK partnership, acting in the person's capacity as such, as if—

(a) references to a group were references to a partnership;

(b) references to the head of a group were references to the representative partner of a partnership;

(c) references to a member of a group were references to a partner of a partnership.

(8) Paragraph 47 applies in relation to an inaccuracy in any other document given to HMRC on behalf of a UK partnership as if—

(a) references to a person included a UK partnership;

(b) references to a group, or a member of a group, were references to a UK partnership;

(c) references to the head of a group were references to the representative partner of a UK partnership.

(9) Paragraph 49 applies in relation to a UK partnership as it applies in relation to a group.

(10) As applied by this paragraph, paragraph 49 has effect as if—

(a) references to a group were references to a UK partnership;

(b) references to the head of a group were references to the representative partner of a UK partnership.

Meaning of "designated HMRC officer"

53 In this Part "designated HMRC officer" means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty's Revenue and Customs for the purposes of this Part.

PART 4

SUPPLEMENTARY

Amendment of power under section 122 of FA 2015

54 The power to make regulations under section 122(6)(c) of FA 2015 (country- by-country reporting: incidental etc provision that may be included in regulations) includes power to amend paragraph 7 above.

Regulations

55 (1) Regulations under this Schedule are to be made by statutory instrument.

(2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

TERMS DEFINED FOR PURPOSES OF MORE THAN ONE PARAGRAPH OF THIS SCHEDULE

Term	*Paragraph*
balance sheet total	paragraph 14(2)
confirmation notice (in Part 3)	paragraph 44
designated HMRC officer (in Part 3)	paragraph 53
engaged in unco-operative behaviour (in Part 3)	paragraph 36
failure (in paragraphs 27 to 33)	paragraph 26(1)

Term	*Paragraph*
financial year (in relation to a UK group) (in paragraphs 16 and 17)	paragraph 16(7)
foreign (in relation to a relevant body)	paragraph 2(2)
foreign (in relation to a group)	paragraph 6(3)
group	paragraph 6(1)
group other than an MNE Group	paragraph 8
head (in relation to a group)	paragraph 9
head (in relation to a UK sub-group)	paragraph 11(2)
"liability to a penalty" (in paragraphs 27 to 33)	paragraph 26(1)
MNE Group	paragraph 7(1)
member (in relation to a group)	paragraph 8(2) and (3)
penalty (in paragraphs 27 to 33)	paragraph 26(1)
qualifying company	paragraph 5
qualifying group	paragraph 10
qualifying UK partnership	paragraph 12(2)
relevant body	paragraph 2(1)
representative partner	paragraph 12(5)
satisfied the arrangements condition (in Part 3)	paragraph 38
satisfied the behaviour condition (in Part 3)	paragraph 37
special measures notice	paragraphs 42 and 45
tax strategy (in Part 2)	paragraph 34
tribunal (in paragraphs 27 to 33)	paragraph 26(2)
turnover	paragraph 14(1)
UK company	paragraph 3
UK group	paragraph 6(2)
UK partnership	paragraph 12(1)
UK permanent establishment	paragraph 4(1)
UK sub-group	paragraph 11(1)
UK taxation	paragraph 15
warning notice	paragraph 41.

SCHEDULE 20

Section 162

PENALTIES FOR ENABLERS OF OFFSHORE TAX EVASION OR NON-COMPLIANCE

PART 1

LIABILITY FOR PENALTY

Liability for penalty

1 (1) A penalty is payable by a person (P) who has enabled another person (Q) to carry out offshore tax evasion or non-compliance, where conditions A and B are met.

(2) For the purposes of this Schedule—

(a) Q carries out "offshore tax evasion or non-compliance" by—

(i) committing a relevant offence, or

(ii) engaging in conduct that makes Q liable (if the applicable conditions are met) to a relevant civil penalty,

where the tax at stake is income tax, capital gains tax or inheritance tax, and

(b) P "has enabled" Q to carry out offshore tax evasion or non-compliance if P has encouraged, assisted or otherwise facilitated conduct by Q that constitutes offshore tax evasion or non-compliance.

(3) The relevant offences are-

(a) an offence of cheating the public revenue involving offshore activity, or

(b) an offence under section 106A of TMA 1970 (fraudulent evasion of income tax) involving offshore activity,

(c) an offence under section 106B, 106C or 106D of TMA 1970 (offences relating to certain failures to comply with section 7 or 8 by a taxpayer chargeable to income tax or capital gains tax on or by reference to offshore income, assets or liabilities).

(4) The relevant civil penalties are—

(a) a penalty under paragraph 1 of Schedule 24 to FA 2007 (errors in taxpayer's document) involving an offshore matter or an offshore transfer (within the meaning of that Schedule),

(b) a penalty under paragraph 1 of Schedule 41 to FA 2008 (failure to notify etc) in relation to a failure to comply with section 7(1) of TMA 1970 involving offshore activity,

(c) a penalty under paragraph 6 of Schedule 55 to FA 2009 (failure to make return for 12 months) involving offshore activity,

(d) a penalty under paragraph 1 of Schedule 21 to FA 2015 (penalties in connection with relevant offshore asset moves).

(5) Condition A is that P knew when P's actions were carried out that they enabled, or were likely to enable, Q to carry out offshore tax evasion or non-compliance.

(6) Condition B is that—

(a) in the case of offshore tax evasion or non-compliance consisting of the commission of a relevant offence, Q has been convicted of the offence and the conviction is final, or

(b) in the case of offshore tax evasion or non-compliance consisting of conduct that makes Q liable to a relevant penalty—

(i) Q has been found to be liable to such a penalty, assessed and notified, and the penalty is final, or

(ii) a contract has been made between the Commissioners for Her Majesty's Revenue and Customs and Q under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.

(7) For the purposes of sub-paragraph (6)(a)—

(a) "convicted of the offence" means convicted of the full offence (and not for example of an attempt), and

(b) a conviction becomes final when the time allowed for bringing an appeal against it expires or, if later, when any appeal against conviction has been determined.

(8) For the purposes of sub-paragraph (6)(b)(i) a penalty becomes final when the time allowed for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is determined.

(9) It is immaterial for the purposes of condition B that—

(a) any offence of which Q was convicted, or

(b) any penalty for which Q was found to be liable,

relates also to other tax evasion or non-compliance by Q.

(10) In this Schedule "other tax evasion or non-compliance by Q" means conduct by Q that—

(a) constitutes an offence of cheating the public revenue or an offence of fraudulent evasion of tax, or

(b) makes Q liable to a penalty under any provision of the Taxes Acts,

but does not constitute offshore tax evasion or non-compliance.

(11) Nothing in condition B affects the law of evidence as to the relevance if any of a conviction, assessment of a penalty or contract mentioned in sub-paragraph (6) for the purpose of proving that condition A is met in relation to P.

(12) In this Schedule "conduct" includes a failure to act.

Meaning of "involving offshore activity" and related expressions

2 (1) This paragraph has effect for the purposes of this Schedule.

(2) Conduct involves offshore activity if it involves—

(a) an offshore matter,

(b) an offshore transfer, or

(c) a relevant offshore asset move.

(3) Conduct involves an offshore matter if it results in a potential loss of revenue that is charged on or by reference to—

(a) income arising from a source in a territory outside the United Kingdom,

(b) assets situated or held in a territory outside the United Kingdom,

(c) activities carried on wholly or mainly in a territory outside the United Kingdom, or

(d) anything having effect as if it were income, assets or activities of the kind described above.

(4) Where the tax at stake is inheritance tax, assets are treated for the purposes of sub-paragraph (3) as situated or held in a territory outside the United Kingdom if they are so held or situated immediately after the transfer of value by reason of which inheritance tax becomes chargeable.

(5) Conduct involves an offshore transfer if—

(a) it does not involve an offshore matter,

(b) it is deliberate (whether or not concealed) and results in a potential loss of revenue,

(c) the condition set out in paragraph 4AA of Schedule 24 to FA 2007 is satisfied.

(6) Conduct involves a relevant offshore asset move if at a time when Q is the beneficial owner of an asset ("the qualifying time")—

(a) the asset ceases to be situated or held in a specified territory and becomes situated or held in a non-specified territory,

(b) the person who holds the asset ceases to be resident in a specified territory and becomes resident in a non-specified territory, or

(c) there is a change in the arrangements for the ownership of the asset,

and Q remains the beneficial owner of the asset, or any part of it, immediately after the qualifying time.

(7) Paragraphs 4(2) to (4) of Schedule 21 to FA 2015 apply for the purposes of sub-paragraph (6) above as they apply for purposes of paragraph 4 of that Schedule.

(8) In sub-paragraph (6) above, "specified territory" has the same meaning as in paragraph 4(5) of Schedule 21 to FA 2015.

Amount of penalty

3 (1) The penalty payable under paragraph 1 is (except in a case mentioned in sub-paragraph (2)) the higher of—

(a) 100% of the potential lost revenue, or

(b) £3,000.

(2) In a case where P has enabled Q to engage in conduct which makes Q liable to a penalty under paragraph 1 of Schedule 21 to FA 2015, the penalty payable under paragraph 1 is the higher of—

(a) 50% of the potential lost revenue in respect of the original tax non-compliance, and

(b) £3,000.

(3) In sub-paragraph (2)(a) "the original tax non-compliance" means the conduct that incurred the original penalty and "the potential lost revenue" (in respect of that non-compliance) is—

(a) the potential lost revenue under Schedule 24 to FA 2007,

(b) the potential lost revenue under Schedule 41 to FA 2008, or

(c) the liability to tax which would have been shown on the return (within the meaning of Schedule 55 to FA 2009),

according to whether the original penalty was incurred under paragraph 1 of Schedule 24, paragraph 1 of Schedule 41 or paragraph 6 of Schedule 55.

Potential lost revenue: enabling Q to commit relevant offence

4 (1) The potential lost revenue in a case where P is liable to a penalty under paragraph 1 for enabling Q to commit a relevant offence is the same amount as the potential lost revenue applicable for the purposes of the corresponding relevant civil penalty (determined in accordance with the relevant sub-paragraph of paragraph 5).

(2) Where Q's offending conduct is—

(a) an offence of cheating the public revenue involving offshore activity, or

(b) an offence under section 106A of TMA 1970 involving offshore activity,

the corresponding relevant civil penalty is the penalty which Q is liable for as a result of that offending conduct.

(3) Where Q's offending conduct is an offence under section 106B, 106C or 106D of TMA 1970, the corresponding relevant civil penalty is—

(a) for an offence under section 106B of TMA 1970, a penalty under paragraph 1 of Schedule 41 to FA 2008,

(b) for an offence under section 106C of TMA 1970, a penalty under paragraph 6 of Schedule 55 to FA 2009, and

(c) for an offence under section 106D of TMA 1970, a penalty under paragraph 1 of Schedule 24 to FA 2007.

(4) In determining any amount of potential lost revenue for the purposes of this paragraph, the fact Q has been prosecuted for the offending conduct is to be disregarded.

Potential lost revenue: enabling Q to engage in conduct incurring relevant civil penalty

5 (1) The potential lost revenue in a case where P is liable to a penalty under paragraph 1 for enabling Q to engage in conduct that makes Q liable (if the applicable conditions are met) to a relevant civil penalty is to be determined as follows.

(2) In the case of a penalty under paragraph 1 of Schedule 24 to FA 2007 involving an offshore matter or an offshore transfer, the potential lost revenue is the amount that under that Schedule is the potential lost revenue in respect of Q's conduct.

(3) In the case of a penalty under paragraph 1 of Schedule 41 to FA 2008 in relation to a failure to comply with section 7(1) of TMA 1970 involving offshore activity, the potential lost revenue is the amount that under that Schedule is the potential lost revenue in respect of Q's conduct.

(4) In the case of a penalty under paragraph 6 of Schedule 55 to FA 2009 involving offshore activity, the potential lost revenue is the liability to tax which would have been shown in the return in question (within the meaning of that Schedule).

Treatment of potential lost revenue attributable to both offshore tax evasion or non-compliance and other tax evasion or non-compliance

6 (1) This paragraph applies where any amount of potential lost revenue in a case falling within paragraph 4 or 5 is attributable not only to Q's offshore tax evasion or non-compliance but also to any other tax evasion or non-compliance by Q.

(2) In that case the potential lost revenue in respect of Q's offshore tax evasion or non-compliance is to be taken for the purposes of assessing the penalty to which P is liable as being or (as the case may be) including such share as is just and reasonable of the amount mentioned in sub-paragraph (1).

Reduction of penalty for disclosure etc by P

7 (1) If P (who would otherwise be liable to a penalty under paragraph 1)—

(a) makes a disclosure to HMRC of—

(i) a matter relating to an inaccuracy in a document, a supply of false information or a failure to disclose an under-assessment,

(ii) P's enabling of actions by Q that constituted (or might constitute) a relevant offence or that made (or might make) Q liable to a relevant penalty, or

(iii) any other matter HMRC regard as assisting them in relation to the assessment of P's liability to a penalty under paragraph 1, or

(b) assists HMRC in any investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty,

HMRC must reduce the penalty to one that reflects the quality of the disclosure or assistance.

(2) But the penalty may not be reduced—

(a) in the case of unprompted disclosure or assistance, below whichever is the higher of—

(i) 10% of the potential lost revenue, or

(ii) £1,000, or

(b) in the case of prompted disclosure or assistance, below whichever is the higher of—

(i) 30% of the potential lost revenue, or

(ii) £3,000.

8 (1) This paragraph applies for the purposes of paragraph 7.

(2) P discloses a matter by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in relation to the matter (for example by quantifying an inaccuracy in a document, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment), and

(c) allowing HMRC access to records for any reasonable purpose connected with resolving the matter (for example for the purpose of ensuring that an inaccuracy in a document, an inaccuracy attributable to the supply of false information or withholding of information or an under-assessment is fully corrected).

(3) P assists HMRC in relation to an investigation leading to Q being charged with a relevant offence or found liable to a relevant penalty by—

(a) assisting or encouraging Q to disclose all relevant facts to HMRC,

(b) allowing HMRC access to records, or

(c) any other conduct which HMRC considers assisted them in investigating or assessing Q's liability to such a penalty.

(4) Disclosure or assistance by P—

(a) is "unprompted" if made at a time when P has no reason to believe that HMRC have discovered or are about to discover Q's offshore tax evasion or non-compliance (including any inaccuracy in a document, supply of false information or withholding of information, or under-assessment), and

(b) otherwise is "prompted".

(5) In relation to disclosure or assistance, "quality" includes timing, nature and extent.

9 (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1.

(2) In sub-paragraph 1 "special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential overpayment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, or

(b) agreeing a compromise in relation to proceedings for a penalty.

Procedure for assessing penalty, etc

10 (1) Where a person is found liable for a penalty under paragraph 1 HMRC must—

(a) assess the penalty,

(b) notify the person, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty—

(a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule), and

(b) may be enforced as if it were an assessment to tax.

(4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax that would have been shown in a return.

(5) Sub-paragraph (6) applies if—

(a) an assessment in respect of a penalty is based on a liability to tax that would have been shown on a return, and

(b) that liability is found by HMRC to have been excessive.

(6) HMRC may amend the assessment so that it is based upon the correct amount.

(7) But an amendment under sub-paragraph (6)—

(a) does not affect when the penalty must be paid, and

(b) may be made after the last day on which the assessment in question could have been made under paragraph 11.

11 An assessment of a person as liable to a penalty under paragraph 1 may not take place more than 2 years after the fulfilment of the conditions mentioned in paragraph 1(1) (in relation to that person) first came to the attention of an officer of Revenue and Customs.

Appeals

12 A person may appeal against—

(a) a decision of HMRC that a penalty under paragraph 1 is payable by that person, or

(b) a decision of HMRC as to the amount of a penalty under paragraph 1 payable by the person.

13 (1) An appeal under paragraph 12 is to be treated in the same way as an appeal against an assessment to the tax at stake (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require the person bringing the appeal to pay a penalty before an appeal against the assessment of the penalty is determined,

(b) in respect of any other matter expressly provided for by this Schedule.

14 (1) On an appeal under paragraph 12(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 12(b) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for that decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its own decision for HMRC's, the tribunal may rely on paragraph 7 or 9 (or both)—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point),

(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.

(4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 13(1).

Double jeopardy

15 A person is not liable to a penalty under paragraph 1 in respect of conduct for which the person—

(a) has been convicted of an offence, or
(b) has been assessed to a penalty under any provision other than paragraph 1.

Application of provisions of TMA 1970

16 Subject to the provisions of this Part of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Part 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).

Interpretation of Part 1

17 (1) This paragraph applies for the purposes of this Schedule.

(2) References to an assessment to tax, in relation to inheritance tax, are to a determination.

PART 2

APPLICATION OF SCHEDULE 36 TO FA 2008: INFORMATION POWERS

General application of information and inspection powers to suspected enablers

18 (1) Schedule 36 to FA 2008 (information and inspection powers) applies for the purpose of checking a relevant person's position as regards liability for a penalty under paragraph 1 as it applies for checking a person's tax position, subject to the modifications in paragraphs 19 to 21.

(2) In this Part of this Schedule "relevant person" means a person an officer of Revenue and Customs has reason to suspect has or may have enabled offshore tax evasion or non-compliance by another person so as to be liable to a penalty under paragraph 1.

General modifications

19 In its application for the purpose mentioned in paragraph 18(1) Schedule 36 to FA 2008 has effect as if—
(a) any provisions which can have no application for that purpose, or are specifically excluded by paragraph 20, were omitted,
(b) references to "the taxpayer" were references to the relevant person whose position as regards liability for a penalty under paragraph 1 is to be checked, and references to "a taxpayer" were references to a relevant person,
(c) references to a person's "tax position" are to the relevant person's position as regards liability for a penalty under paragraph 1,
(d) references to prejudice to the assessment or collection of tax included a reference to prejudice to the investigation of the relevant person's position as regards liability for a penalty under paragraph 1,
(e) references to information relating to the conduct of a pending appeal relating to tax were references to information relating to the conduct of a

pending appeal relating to an assessment of liability for a penalty under paragraph 1.

Specific modifications

20 The following provisions are excluded from the application of Schedule 36 to FA 2008 for the purpose mentioned in paragraph 18(1)—

(a) paragraph 24 (exception for auditors),

(b) paragraph 25 (exception for tax advisers),

(c) paragraphs 26 and 27 (provisions supplementary to paragraphs 24 and 25),

(d) paragraphs 50 and 51 (tax-related penalty).

21 In the application of Schedule 36 to FA 2008 for the purpose mentioned in paragraph 18(1), paragraph 10A (power to inspect business premises of involved third parties) has effect as if the reference in sub-paragraph (1) to the position of any person or class of persons as regards a relevant tax were a reference to the position of a relevant person as regards liability for a penalty under paragraph 1.

PART 3

PUBLISHING DETAILS OF PERSONS FOUND LIABLE TO PENALTIES

Naming etc of persons assessed to penalty or penalties under paragraph 1

22 (1) The Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") may publish information about a person if—

(a) in consequence of an investigation the person has been found to have incurred one or more penalties under paragraph 1 (and has been assessed or is the subject of a contract settlement), and

(b) the potential lost revenue in relation to the penalty (or the aggregate of the potential lost revenue in relation to each of the penalties) exceeds £25,000.

(2) The Commissioners may also publish information about a person if the person has been found to have incurred 5 or more penalties under paragraph 1 in any 5 year period.

(3) The information that may be published is—

(a) the person's name (including any trading name, previous name or pseudonym),

(b) the person's address (or registered office),

(c) the nature of any business carried on by the person,

(d) the amount of the penalty or penalties in question,

(e) the periods or times to which the actions giving rise to the penalty or penalties relate,

(f) any other information that the Commissioners consider it appropriate to publish in order to make clear the person's identity.

(4) The information may be published in any manner that the Commissioners consider appropriate.

(5) Before publishing any information the Commissioners must—

(a) inform the person that they are considering doing so, and

(b) afford the person the opportunity to make representations about whether it should be published.

(6) No information may be published before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.

(7) No information may be published for the first time after the end of the period of one year beginning with that day.

(8) No information may be published if the amount of the penalty—

(a) is reduced under paragraph 7 to—

(i) 10% of the potential lost revenue (in a case of unprompted disclosure or assistance), or

(ii) 30% of potential lost revenue (in a case of prompted disclosure or assistance),

(b) would have been reduced to 10% or 30% of potential lost revenue but for the imposition of the minimum penalty,

(c) is reduced under paragraph 9 to nil or stayed.

(9) For the purposes of this paragraph a penalty becomes final—

(a) if it has been assessed, when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined, and

(b) if a contract settlement has been made, at the time when the contract is made.

(10) In this paragraph "contract settlement", in relation to a penalty, means a contract between the Commissioners and the person under which the Commissioners undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.

23 (1) The Treasury may by regulations amend paragraph 22(1) to vary the amount for the time being specified in paragraph (b).

(2) Regulations under this paragraph are to be made by statutory instrument.

(3) A statutory instrument under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 21

Section 163

PENALTIES RELATING TO OFFSHORE MATTERS AND OFFSHORE TRANSFERS

Amendments to Schedule 24 to the Finance Act 2007 (c. 11)

1 Schedule 24 to FA 2007 (penalties for errors) is amended as follows.

2 (1) Paragraph 9 (reductions for disclosure) is amended as follows.

(2) For sub-paragraph (A1) substitute—

"(A1) Paragraph 10 provides for reductions in penalties—

(a) under paragraph 1 where a person discloses an inaccuracy that involves a domestic matter,

(b) under paragraph 1A where a person discloses a supply of false information or withholding of information, and

(c) under paragraph 2 where a person discloses a failure to disclose an under-assessment.

(A2) Paragraph 10A provides for reductions in penalties under paragraph 1 where a person discloses an inaccuracy that involves an offshore matter or an offshore transfer.

(A3) Sub-paragraph (1) applies where a person discloses—

(a) an inaccuracy that involves a domestic matter,

(b) a careless inaccuracy that involves an offshore matter,

(c) a supply of false information or withholding of information, or

(d) a failure to disclose an under-assessment."

(3) In sub-paragraph (1), in the words before paragraph (a), for the words from "an inaccuracy" to "under-assessment" substitute "the matter".

(4) After sub-paragraph (1) insert—

"(1A) Sub-paragraph (1B) applies where a person discloses—

(a) a deliberate inaccuracy (whether concealed or not) that involves an offshore matter, or

(b) an inaccuracy that involves an offshore transfer.

(1B) A person discloses the inaccuracy by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the inaccuracy,

(c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy is fully corrected, and

(d) providing HMRC with additional information.

(1C) The Treasury must make regulations setting out what is meant by "additional information" for the purposes of sub-paragraph (1B)(d).

(1D) Regulations under sub-paragraph (1C) are to be made by statutory instrument.

(1E) An instrument containing regulations under sub-paragraph (1C) is subject to annulment in pursuance of a resolution of the House of Commons."

(5) At the end insert—

"(4) Paragraph 4A(4) to (5) applies to determine whether an inaccuracy involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph."

3 In paragraph 10 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute—

"Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
30%	15%	0%
70%	35%	20%
100%	50%	30%"

4 After paragraph 10 insert—

"10A (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

(a) in the case of a prompted disclosure, in column 2 of the Table, and

(b) in the case of an unprompted disclosure, in column 3 of the Table.

Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
30%	15%	0%
37.5%	18.75%	0%
45%	22.5%	0%
60%	30%	0%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%"

Amendments to Schedule 41 to the Finance Act 2008 (c. 9)

5 Schedule 41 to FA 2008 (penalties: failure to notify etc) is amended as follows.

6 (1) Paragraph 12 (reductions for disclosure) is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) Paragraph 13 provides for reductions in penalties—

(a) under paragraph 1 where P discloses a relevant failure that involves a domestic matter, and

(b) under paragraphs 2 to 4 where P discloses a relevant act or failure.

(1A) Paragraph 13A provides for reductions in penalties under paragraph 1 where P discloses a relevant failure that involves an offshore matter or an offshore transfer.

(1B) Sub-paragraph (2) applies where P discloses—

(a) a relevant failure that involves a domestic matter,

(b) a non-deliberate relevant failure that involves an offshore matter, or

(c) a relevant act or failure giving rise to a penalty under any of paragraphs 2 to 4."

(3) In sub-paragraph (2), for "a" substitute "the".

(4) After sub-paragraph (2) insert—

"(2A) Sub-paragraph (2B) applies where P discloses—

(a) a deliberate relevant failure (whether concealed or not) that involves an offshore matter, or

(b) a relevant failure that involves an offshore transfer.

(2B) P discloses the failure by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it,

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and

(d) providing HMRC with additional information.

(2C) The Treasury must make regulations setting out what is meant by "additional information" for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons."

(5) At the end insert—

"(5) Paragraph 6A(4) to (5) applies to determine whether a failure involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph.

(6) In this paragraph "relevant failure" means a failure to comply with a relevant obligation."

7 In paragraph 13 (amount of reduction for disclosure), for the Table in sub-paragraph (3) substitute—

"Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
30%	case A: 10%	case A: 0%
	case B: 20%	case B: 10%
70%	35%	20%
100%	50%	30%"

8 After paragraph 13 insert—

"13A (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

(a) for a prompted disclosure, in column 2 of the Table, and

(b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum for case A and case B—

(a) the case A minimum applies if HMRC becomes aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure;

(b) otherwise, the case B minimum applies.

Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
30%	case A: 10%	case A: 0%
	case B: 20%	case B: 10%
37.5%	case A: 12.5%	case A: 0%
	case B: 25%	case B: 12.5%
45%	case A: 15%	case A: 0%
	case B: 30%	case B:15%
60%	case A: 20%	case A: 0%
	case B: 40%	case B: 20%
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%

Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
200%	110%	70%”

Amendments to Schedule 55 to the Finance Act 2009 (c.10)

9 Schedule 55 to FA 2009 (penalty for failure to make returns etc) is amended as follows

10 (1) Paragraph 14 (reductions for disclosure) is amended as follows.

(2) At the beginning insert—

“(A1) In this paragraph, “relevant information” means information which has been withheld by a failure to make a return.”

(3) In sub-paragraph (1)—

(a) after “6(3) or (4)” insert “where P discloses relevant information that involves a domestic matter”;

(b) for the words from “information which” to the end substitute “relevant information”.

(4) After sub-paragraph (1) insert—

“(1A) Paragraph 15A provides for reductions in the penalty under paragraph 6(3) or (4) where P discloses relevant information that involves an offshore matter or an offshore transfer.

(1B) Sub-paragraph (2) applies where—

(a) P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves a domestic matter, or

(b) P is liable to a penalty under any of the other provisions mentioned in sub-paragraph (1) and P discloses relevant information.”

(5) After sub-paragraph (2) insert—

“(2A) Sub-paragraph (2B) applies where P is liable to a penalty under paragraph 6(3) or (4) and P discloses relevant information that involves an offshore matter or an offshore transfer.

(2B) P discloses relevant information by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld,

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid, and

(d) providing HMRC with additional information.

(2C) The Treasury must make regulations setting out what is meant by “additional information” for the purposes of sub-paragraph (2B)(d).

(2D) Regulations under sub-paragraph (2C) are to be made by statutory instrument.

(2E) An instrument containing regulations under sub-paragraph (2C) is subject to annulment in pursuance of a resolution of the House of Commons."

(6) At the end insert—

"(5) Paragraph 6A(4) to (5) applies to determine whether relevant information involves an offshore matter, an offshore transfer or a domestic matter for the purposes of this paragraph."

11 In paragraph 15 (amount of reduction for disclosure), for the Table in sub-paragraph (2) substitute—

"Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
70%	35%	20%
100%	50%	30%"

12 After paragraph 15 insert—

"15A (1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a "standard percentage") has made a disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it—

(a) in the case of a prompted disclosure, in column 2 of the Table, and

(b) in the case of an unprompted disclosure, in column 3 of the Table.

Standard %	*Minimum % for prompted disclosure*	*Minimum % for unprompted disclosure*
70%	45%	30%
87.5%	53.75%	35%
100%	60%	40%
105%	62.5%	40%
125%	72.5%	50%
140%	80%	50%
150%	85%	55%
200%	110%	70%

(3) But HMRC must not under this paragraph reduce a penalty below £300."

SCHEDULE 22

Section 165

ASSET-BASED PENALTY FOR OFFSHORE INACCURACIES AND FAILURES

PART 1

LIABILITY FOR PENALTY

Circumstances in which asset-based penalty is payable

1 (1) An asset-based penalty is payable by a person (P) where—

(a) one or more standard offshore tax penalties have been imposed on P in relation to a tax year (see paragraphs 2 and 3), and

(b) the potential lost revenue threshold is met in relation to that tax year (see paragraph 4).

(2) But this is subject to paragraph 6 (restriction on imposition of multiple asset-based penalties in relation to the same asset).

Meaning of standard offshore tax penalty

2 (1) A standard offshore tax penalty is a penalty that falls within sub-paragraph (2), (3) or (4).

(2) A penalty falls within this sub-paragraph if—

(a) it is imposed under paragraph 1 of Schedule 24 to FA 2007 (inaccuracy in taxpayer's document),

(b) the inaccuracy for which the penalty is imposed involves an offshore matter or an offshore transfer,

(c) it is imposed for deliberate action (whether concealed or not), and

(d) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.

(3) A penalty falls within this sub-paragraph if—

(a) it is imposed under paragraph 1 of Schedule 41 to FA 2008 (penalty for failure to notify),

(b) the failure for which the penalty is imposed involves an offshore matter or an offshore transfer,

(c) it is imposed for a deliberate failure (whether concealed or not), and

(d) the tax at stake is (or includes) capital gains tax or asset-based income tax.

(4) A penalty falls within this sub-paragraph if—

(a) it is imposed under paragraph 6 of Schedule 55 to FA 2009 (penalty for failure to make return more than 12 months after filing date),

(b) it is imposed for the withholding of information involving an offshore matter or an offshore transfer,

(c) it is imposed for a deliberate withholding of information (whether concealed or not), and

(d) the tax at stake is (or includes) capital gains tax, inheritance tax or asset-based income tax.

(5) In a case where the inaccuracy, failure or withholding of information for which a penalty is imposed involves both an offshore matter or an offshore transfer and a domestic matter, the standard offshore tax penalty is only that part of the penalty that involves the offshore matter or offshore transfer.

(6) In a case where the tax at stake in relation to a penalty includes a tax other than capital gains tax, inheritance tax or asset-based income tax, the standard offshore tax penalty is only that part of the penalty which relates to capital gains tax, inheritance tax or asset-based income tax.

(7) "Asset-based income tax" means income tax that is charged under any of the provisions mentioned in column 1 of the table in paragraph 13(2).

Tax year to which standard offshore tax penalty relates

3 (1) Where a standard offshore tax penalty is imposed under paragraph 1 of Schedule 24 to FA 2007, the tax year to which that penalty relates is—

(a) if the tax at stake as a result of the inaccuracy is income tax or capital gains tax, the tax year to which the document containing the inaccuracy relates;

(b) if the tax at stake as a result of the inaccuracy is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.

(2) Where a standard offshore tax penalty is imposed under paragraph 1 of Schedule 41 to FA 2008 for a failure to comply with an obligation specified in the table in that paragraph, the tax year to which that penalty relates is the tax year to which the obligation relates.

(3) Where a standard offshore tax penalty is imposed under paragraph 6 of Schedule 55 to FA 2009 for a failure to make a return or deliver a document specified in the table of paragraph 1 of that Schedule, the tax year to which that penalty relates is—

(a) if the tax at stake is income tax or capital gains tax, the tax year to which the return or document relates;

(b) if the tax at stake is inheritance tax, the year, beginning on 6 April and ending on the following 5 April, in which the liability to tax first arose.

Potential lost revenue threshold

4 (1) The potential lost revenue threshold is reached where the offshore PLR in relation to a tax year exceeds £25,000.

(2) The Treasury may by regulations change the figure for the time being specified in sub-paragraph (1).

(3) Regulations under sub-paragraph (2) are to be made by statutory instrument.

(4) A statutory instrument containing regulations under sub-paragraph (2) is subject to annulment in pursuance of a resolution of the House of Commons.

(5) Regulations under sub-paragraph (2)—

(a) may make different provision for different purposes;

(b) may contain supplemental, incidental, consequential, transitional and transitory provision.

Offshore PLR

5 (1) The offshore PLR, in relation to a tax year, is the total of—

(a) the potential lost revenue (in the case of a standard offshore tax penalty imposed under Schedule 24 to FA 2007 or Schedule 41 to FA 2008), and

(b) the liability to tax (in the case of a standard offshore tax penalty imposed under Schedule 55 to FA 2009),

by reference to which all of the standard offshore tax penalties imposed on P in relation to the tax year are assessed.

(2) Sub-paragraphs (3) to (5) apply where—

(a) a penalty is imposed on P under paragraph 1 of Schedule 24 to FA 2007, paragraph 1 of Schedule 41 to FA 2008 or paragraph 6 of Schedule 55 to FA 2009, and

(b) the potential lost revenue or liability to tax by reference to which the penalty is assessed relates to a standard offshore tax penalty and one or more other penalties.

In this paragraph, such a penalty is referred to as a "combined penalty".

(3) Only the potential lost revenue or liability to tax relating to the standard offshore tax penalty is to be taken into account in calculating the offshore PLR.

(4) Where the calculation of the potential lost revenue or liability to tax by reference to which a combined penalty is assessed depends on the order in which income or gains are treated as having been taxed, for the purposes of calculating the offshore PLR—

(a) income and gains relating to domestic matters are to be taken to have been taxed before income and gains relating to offshore matters and offshore transfers;

(b) income and gains relating to taxes that are not capital gains tax, inheritance tax or asset-based income tax are to be taken to have been taxed before income and gains relating to capital gains tax, inheritance tax and asset-based income tax.

(5) In a case where it cannot be determined—

(a) whether income or gains relate to an offshore matter or offshore transfer or to a domestic matter, or

(b) whether income or gains relate to capital gains tax, asset-based income tax or inheritance tax or not,

for the purposes of calculating the offshore PLR, the potential lost revenue or liability to tax relating to the standard offshore tax penalty is to be taken to be such share of the total potential lost revenue or liability to tax by reference to which the combined penalty was calculated as is just and reasonable.

(6) Sub-paragraph (7) applies where—

(a) a standard offshore tax penalty or a combined penalty is imposed on P, and

(b) there are two or more taxes at stake, including capital gains tax and asset-based income tax.

(7) Where the calculation of the potential lost revenue or liability to tax by reference to which the penalty is assessed depends on the order in which income or gains are treated as having been taxed, for the purposes of calculating the offshore PLR,

income and gains relating to asset-based income tax are to be taken to have been taxed before income and gains relating to capital gains tax.

Restriction on imposition of multiple asset-based penalties in relation to the same asset

6 (1) Sub-paragraphs (2) and (3) apply where—

(a) a standard offshore tax penalty has been imposed on P, and

(b) the potential lost revenue threshold is met,

in relation to more than one tax year falling within the same investigation period.

(2) Only one asset-based penalty is payable by P in the investigation period in relation to any given asset.

(3) The asset-based penalty is to be charged by reference to the tax year in the investigation period with the highest offshore PLR.

(4) An "investigation period" is—

(a) the period starting with the day on which this Schedule comes into force and ending with the last day of the last tax year before P was notified of an asset-based penalty in respect of an asset, and

(b) subsequent periods beginning with the day after the previous period ended and ending with the last day of the last tax year before P is notified of a subsequent asset-based penalty in respect of the asset,

and different investigation periods may apply in relation to different assets.

PART 2

AMOUNT OF PENALTY

Standard amount of asset-based penalty

7 (1) The standard amount of the asset-based penalty is the lower of—

(a) 10% of the value of the asset, and

(b) offshore PLR x 10.

(2) See also—

(a) paragraphs 8 and 9, which provide for reductions in the standard amount, and

(b) Part 3, which makes provision about the identification and valuation of the asset.

Reductions for disclosure and co-operation

8 (1) HMRC must reduce the standard amount of the asset-based penalty where P does all of the following things—

(a) makes a disclosure of the inaccuracy or failure relating to the standard offshore tax penalty;

(b) provides HMRC with a reasonable valuation of the asset;

(c) provides HMRC with information or access to records that HMRC requires from P for the purposes of valuing the asset.

(2) A reduction under sub-paragraph (1) must reflect the quality of the disclosure, valuation and information provided (and for these purposes "quality" includes timing, nature and extent).

(3) The Treasury must make regulations setting out the maximum amount of the penalty reduction under sub-paragraph (1).

(4) The maximum amount may differ according to whether the case involves only unprompted disclosures or involves prompted disclosures.

(5) A case involves only unprompted disclosures where—

(a) in a case where the asset-based penalty relates to only one standard offshore tax penalty, that standard offshore tax penalty was reduced on the basis of an unprompted disclosure, or

(b) in a case where the asset-based penalty relates to more than one standard offshore tax penalty, all of those standard offshore tax penalties were reduced on the basis of unprompted disclosures.

(6) A case involves prompted disclosures where any of the standard offshore tax penalties to which the asset-based penalty relates was reduced on the basis of a prompted disclosure.

(7) Regulations under sub-paragraph (3) are to be made by statutory instrument.

(8) A statutory instrument containing regulations under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the House of Commons.

(9) Regulations under sub-paragraph (3)—

(a) may make different provision for different purposes;

(b) may contain supplemental, incidental, consequential, transitional and transitory provision.

Special reduction

9 (1) If HMRC think it right because of special circumstances, they may reduce the standard amount of the asset-based penalty.

(2) In sub-paragraph (1) "special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

PART 3

IDENTIFICATION AND VALUATION OF ASSETS

Introduction

10 (1) This Part makes provision about the identification and valuation of the asset for the purposes of calculating the amount of the asset-based penalty.

(2) An asset-based penalty may relate to more than one asset.

(3) The identification and valuation of the asset is to be determined—

(a) under paragraph 11 where the principal tax at stake is capital gains tax,

(b) under paragraph 12 where the principal tax at stake is inheritance tax, and

(c) under paragraph 13 where the principal tax at stake is asset-based income tax.

See also paragraph 14 (jointly held assets).

(4) The principal tax at stake—

(a) in a case where the standard offshore tax penalty (or penalties) relates to only one type of tax, is the tax to which that standard offshore tax penalty (or penalties) relates;

(b) in a case where the standard offshore tax penalty (or penalties) relate to more than one type of tax, is the tax which gives rise to the highest offshore PLR value.

(5) The offshore PLR value, in relation to a type of tax, is the potential lost revenue or liability to tax by reference to which the part of the penalty relating to that type of tax was assessed.

(6) The rules in paragraph 5(2) to (7) apply for the purposes of calculating the offshore PLR value, in relation to a type of tax, as they apply for the purposes of calculating the offshore PLR.

Capital gains tax

11 (1) This paragraph applies where the principal tax at stake is capital gains tax.

(2) The asset is the asset that is the subject of the disposal (or deemed disposal) on or by reference to which the capital gains tax to which the standard offshore penalty relates is charged.

(3) For the purposes of calculating the amount of the asset-based penalty, the value of the asset is to be taken to be the consideration for the disposal of the asset that would be used in the computation of the gain under TCGA 1992 (other than in a case where sub-paragraph (4) applies).

(4) In a case where the disposal on or by reference to which the capital gains tax is charged is a part disposal of an asset, the asset-based penalty is to be calculated by reference to the full market value of the asset immediately before the part disposal took place.

(5) Terms used in this paragraph have the same meaning as in TCGA 1992.

Inheritance tax

12 (1) This paragraph applies where the principal tax at stake is inheritance tax.

(2) The asset is the property the disposition of which gave rise to the transfer of value by reason of which the inheritance tax to which the standard offshore penalty relates became chargeable.

(3) For the purposes of calculating the amount of the asset-based penalty, the value of the property is to be the value of the property used by HMRC in assessing the liability to inheritance tax.

(4) Terms used in this paragraph have the same meaning as in IHTA 1984.

Asset-based income tax

13 (1) This paragraph applies where the principal tax at stake is asset-based income tax.

(2) Where the standard offshore tax penalty relates to income tax charged under a provision shown in column 1 of the Table, the asset is the asset mentioned in column 2 of the Table.

Provision under which income tax is charged	*Asset*
Chapters 3, 7 and 10 of Part 3 of ITTOIA 2005 (property businesses)	The estate, interest or right in or over the land that generates the income for the business (see sections 264 to 266 of ITTOIA 2005)
Chapter 8 of Part 3 of ITTOIA 2005 (rent receivable in connection with a s.12(4) concern)	The estate, interest or right in or over the land that generates the rent receivable in connection with a UK section 12(4) concern (see sections 335 and 336 of ITTOIA 2005)
Chapters 2 and 2A of Part 4 of ITTOIA 2005 (interest and disguised interest)	The asset that generates the interest
Chapters 3 to 5 of Part 4 of ITTOIA 2005 (dividends etc)	The shares or other securities in relation to which the dividend or distribution is paid
Chapter 7 of Part 4 of ITTOIA 2005 (purchased life annuity payments)	The annuity that gives rise to the payments
Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities)	The deeply discounted securities that are disposed of (see sections 427 to 430 of ITTOIA 2005)
Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc)	The policy or contract from which the gain is treated as arising
Chapter 11 of Part 4 of ITTOIA 2005 (transactions in deposits)	The deposit right which is disposed of (see sections 551 and 552 of ITTOIA 2005)
Chapter 2 of Part 5 of ITTOIA 2005 (receipts from intellectual property)	The intellectual property, know-how or patent rights which generate the income (see sections 579, 583 and 587 of ITTOIA 2005)

Provision under which income tax is charged	*Asset*
Chapter 4 of Part 5 of ITTOIA 2005 (certain telecommunication rights: non-trading income)	The relevant telecommunication right from which the income derives (see section 614 of ITTOIA 2005)
Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor)	The settlement which gives rise to the income or capital sums treated as income of a settlor

(3) For the purposes of calculating the amount of the asset-based penalty, the asset is to be valued as follows.

(4) In a case where the charge to income tax was triggered by a disposal of the asset, the value of the asset is to be taken as its market value on the date of disposal (and in the case of a part disposal, the value of the asset is to be taken as its full market value immediately before the part disposal took place).

(5) In any other case—

(a) where P still owns the asset on the last day of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as its market value on that day;

(b) where P disposed of the asset during the course of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as its market value on the date of disposal;

(c) where P disposed of part of the asset during the course of the tax year to which the standard offshore tax penalty relates, the value of the asset is to be taken as the market value of the part disposed on the date (or dates) of disposal plus the market value of the part still owned by the person on the last day of that tax year.

(6) But if the value of the asset, as determined in accordance with sub-paragraphs (4) and (5), does not appear to HMRC to be a fair and reasonable value, then HMRC may value the asset for the purposes of this Schedule in any other way which appears to them to be fair and reasonable.

(7) For the purposes of sub-paragraph (5)—

(a) P owns an asset if P is liable to asset-based income tax in relation to that asset;

(b) references to a disposal (and related expressions) have the same meaning as in TCGA 1992.

(8) In this paragraph "market value" has the same meaning as in TCGA 1992 (see section 272 of that Act).

(9) Other terms used in this paragraph have the same meaning as in ITTOIA 2005.

Jointly held assets

14 (1) This paragraph applies where an asset-based penalty is chargeable in relation to an asset that is jointly held by P and another person (A).

(2) The value of the asset is to be taken to be the value of P's share of the asset.

(3) In a case where P and A—

(a) are married to, or are civil partners of, each other, and

(b) live together,

the asset is to be taken to be jointly owned by P and A in equal shares, unless it appears to HMRC that this is not the case.

PART 4

PROCEDURE

Assessment

15 (1) Where a person (P) becomes liable for an asset-based penalty under paragraph 1, HMRC must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice—

(i) the tax year to which the penalty relates, and

(ii) the investigation period within which that tax year falls (see paragraph 6).

(2) A penalty under paragraph 1 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment—

(a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(4) An assessment of an asset-based penalty under paragraph 1 must be made within the period allowed for making an assessment of the standard offshore tax penalty to which the asset-based penalty relates (and where an asset-based penalty relates to more than one standard offshore tax penalty, the assessment must be made within the latest of those periods).

(5) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax, are to a determination.

Appeal

16 (1) P may appeal against a decision of HMRC that a penalty is payable by P.

(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

17 (1) An appeal is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or the Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Schedule.

18 (1) On an appeal under paragraph 16(1), the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 16(2), the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9—

(a) to the same extent as HMRC (which may mean applying the same percentage 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 paragraph 9 was flawed.

(4) In sub-paragraph (3), "flawed" means flawed when considered in the light of the principles applied in proceedings for judicial review.

(5) In this paragraph "tribunal" means the First-tier Tribunal or the Upper Tribunal (as appropriate by virtue of paragraph 17(1)).

PART 5

GENERAL

Interpretation

19 (1) In this Schedule—

"asset" has the same meaning as in TCGA 1992 (but also includes currency in sterling);

"asset-based income tax" has the meaning given in paragraph 2(7);

"HMRC" means Her Majesty's Revenue and Customs;

"investigation period" has the meaning given in paragraph 6(4);

"offshore PLR" has the meaning given in paragraph 5;

"standard amount of the asset-based penalty" has the meaning given in paragraph 7;

"standard offshore tax penalty" has the meaning given in paragraph 2.

(2) Terms used in relation to a penalty imposed under Schedule 24 to FA 2007, Schedule 41 to FA 2008 or Schedule 55 to FA 2009 have the same meaning as in the Schedule under which the penalty was imposed.

(3) References in this Schedule to capital gains tax do not include capital gains tax payable by companies in respect of chargeable gains accruing to them to the extent that those gains are NRCGT gains in respect of which the companies are chargeable to capital gains tax under section 14D or 188D of TCGA 1992 (see section 1(2A)(b) of that Act).

Consequential amendments etc

20 (1) In section 103ZA to TMA 1970 (disapplication of sections 100 to 103 in case of certain penalties), omit the "or" at the end of paragraph (h), and at the end insert ", or

(j) Schedule 22 to the Finance Act 2016 (asset-based penalty)".

(2) In section 107A of that Act (relevant trustees)—

(a) in subsection (2)(a), after "Schedule 55 to the Finance Act 2009" insert "or Schedule 22 to the Finance Act 2016";

(b) after subsection (3)(a) insert—

"(aa) in relation to a penalty under Schedule 22 to the Finance Act 2016, or to interest under section 101 of the Finance Act 2009 on such a penalty, the time when the relevant act or omission occurred;";

(c) in the words after paragraph (c), after "paragraph" insert "(aa) and".

(3) In Schedule 24 to FA 2007 (penalties for errors), in paragraph 12 (interaction with other penalties etc), in sub-paragraph (2A) at the end insert "or Schedule 22 to FA 2016 (asset-based penalty)".

(4) In Schedule 41 to FA 2008 (penalties for failure to notify), in paragraph 15 (interaction with other penalties etc), in sub-paragraph (1A) at the end insert "or Schedule 22 to FA 2016 (asset-based penalty)."

(5) In Schedule 55 to FA 2009 (penalty for failure to make return etc), in paragraph 17 (interaction with other penalties etc), in sub-paragraph (2), at the end insert ", or

(d) a penalty under Schedule 22 to FA 2016 (asset-based penalty)."

21 Section 97A of TMA 1970 (two or more tax-geared penalties in respect of same tax) does not apply in relation to an asset-based penalty imposed under this Schedule.

SCHEDULE 23

Section 167

SIMPLE ASSESSMENTS

1 TMA 1970 is amended in accordance with paragraphs 2 to 8 of this Schedule.

2 In section 7 (notice of liability to income tax and capital gains tax), after subsection (2) insert—

"(2A) A person who—

(a) falls within subsection (1A) or (1B), and

(b) is notified of a simple assessment for the year of assessment,

is not required to give notice under subsection (1) for that year unless the person is chargeable to income tax or capital gains tax for the year of assessment on any income or gain that is not included in the assessment."

3 After section 28G (determination of amount notionally chargeable where no NRCGT return delivered) insert—

"**28H Simple assessments by HMRC: personal assessments**

(1) HMRC may make a simple assessment for a year of assessment in respect of a person (other than a person to whom section 28I applies) if, when the assessment is made, the person is not excluded by subsection (2) in relation to that year.

(2) Subsection (1) does not apply to a person at any time in relation to that year of assessment if—

(a) the person has delivered a return under section 8 for that year, or

(b) the person is at that time subject to a requirement to make and deliver such a return by virtue of a notice under section 8.

but nothing in this subsection prevents HMRC from giving the person notice of a simple assessment at the same time as a notice withdrawing a notice under section 8.

(3) A simple assessment is—

(a) an assessment of the amounts in which the person is chargeable to income tax and capital gains tax for the year of assessment to which it relates, and

(b) an assessment of the amount payable by the person by way of income tax for that year, that is to say, the difference between the amount in which the person is assessed to income tax under paragraph (a) and the aggregate amount of any income tax deducted at source;

but nothing in this subsection enables an assessment to show as repayable any income tax which any provision of the Income Tax Acts provides is not repayable.

(4) The amounts in which a person is chargeable to income tax and capital gains are net amounts, taking into account any relief or allowance that is applicable.

(5) A simple assessment must be based on information relating to the person that is held by HMRC (whether or not supplied by the person to whom the assessment relates).

(6) The notice of a simple assessment required to be sent to the person by section 30A(3) must (among other things)—

(a) include particulars of the income and gains, and any relief or allowance, taken into account in the assessment, and

(b) state any amount payable by the person by virtue of section 59BA (with particulars of how it may be paid and the date by which it is payable).

(7) The tax to be assessed on a person by a simple assessment does not include any tax which—

(a) is chargeable on the scheme administrator of a registered pension scheme under Part 4 of Finance Act 2004,

(b) is chargeable on the sub-scheme administrator of a sub-scheme under Part 4 of the Finance Act 2004 as modified by the Registered Pension Schemes (Splitting of Schemes) Regulations 2006, or

(c) is chargeable on the person who is (or persons who are) the responsible person in relation to an employer-financed retirement benefits scheme under section 394(2) of ITEPA 2003.

(8) Nothing in this section prevents HMRC issuing more than one simple assessment to the same person in respect of the same year of assessment (whether or not any earlier simple assessment for that year is withdrawn).

(9) In this section references to a simple assessment are to an assessment under this section.

28I Simple assessments by HMRC: trustees

(1) HMRC may make a simple assessment for a year of assessment in respect of a settlement if, when the assessment is made, the relevant trustees of the settlement are not excluded by subsection (2) in relation to that year.

(2) Subsection (1) does not apply at any time in relation to that year of assessment if—

(a) a return under section 8A has been delivered for that year by the relevant trustees or any of them, or

(b) there is at that time a subsisting requirement to make and deliver such a return by virtue of a notice under section 8A;

but nothing in this subsection prevents HMRC from giving notice of a simple assessment at the same time as a notice withdrawing a notice under section 8A.

(3) A simple assessment is—

(a) an assessment of the amounts in which the relevant trustees are chargeable to income tax and capital gains tax for the year of assessment to which it relates, and

(b) an assessment of the amount payable by them by way of income tax for that year, that is to say, the difference between the amount in which they are assessed to income tax under paragraph (a) and the aggregate amount of any income tax deducted at source;

but nothing in this subsection enables an assessment to show as repayable any income tax which any provision of the Income Tax Acts provides is not repayable.

(4) The amounts in which the relevant trustees are chargeable to income tax and capital gains are net amounts, taking into account any relief or allowance that is applicable.

(5) A simple assessment must be based only on information relating to the settlement that is held by HMRC (whether or not supplied by the relevant trustees).

(6) The notice of a simple assessment required by section 30A(3) may be given to any one or more of the relevant trustees.

(7) That notice must (among other things)—

(a) include particulars of the income and gains, and any relief or allowance, taken into account in the assessment, and

(b) state any amount payable by the relevant trustees by virtue of section 59BA (with particulars of how it may be paid and the date by which it is payable).

(8) The tax to be assessed by a simple assessment does not include any tax which—

(a) is chargeable on the scheme administrator of a registered pension scheme under Part 4 of Finance Act 2004,

(b) is chargeable on the sub-scheme administrator of a sub-scheme under Part 4 of the Finance Act 2004 as modified by the Registered Pension Schemes (Splitting of Schemes) Regulations 2006, or

(c) is chargeable on the person who is (or persons who are) the responsible person in relation to an employer-financed retirement benefits scheme under section 394(2) of ITEPA 2003.

(9) Nothing in this section prevents HMRC issuing more than one simple assessment in respect of the same settlement and the same year of assessment (whether or not any earlier simple assessment for that year is withdrawn).

(10) In this section references to a "simple assessment" are to an assessment under this section.

(11) In this Act references to the person to whom a simple assessment relates are, in relation to one made under this section, to the relevant trustees of the settlement to which it relates.

28J Power to withdraw a simple assessment

(1) HMRC may withdraw a simple assessment by notice to the person to which it relates.

(2) An assessment that has been withdrawn ceases to have effect (and is to be taken as never having had any effect)."

4 In section 31 (appeals: right to appeal), before subsection (4) insert—

"(3A) In the case of a simple assessment, the right to appeal under subsection (1)(d) does not apply unless and until the person concerned has—

(a) raised a query about the assessment under section 31AA, and

(b) been given a final response to that query."

5 (1) Section 31A (appeals: notice of appeal) is amended as follows.

(2) In subsection (4), after "this Act" insert "(other than an appeal against a simple assessment)".

(3) After subsection (4) insert—

"(4A) In relation to an appeal under section 31(1)(d) against a simple assessment—

(a) the specified date is the date on which the person concerned is given notice under section 31AA of the final response to the query the person is required by section 31(3A) to make, and

(b) the relevant officer of the Board is the officer by whom the notice of assessment was given."

6 After section 31A (notice of appeal) insert—

"**31AA Taxpayer's right to query simple assessment**

(1) This section applies where a person has been given notice of a simple assessment.

(2) The person may query the simple assessment by notifying HMRC of—

(a) a belief that the assessment is or may be incorrect, and

(b) the reasons for that belief.

(3) The person may exercise the power to query the simple assessment at any time within—

(a) the period of 60 days after the date on which the notice of assessment was issued, or

(b) such longer period as HMRC may allow.

(4) If the simple assessment is queried, HMRC must—

(a) consider the query and the matters raised by it, and

(b) give a final response to the query.

(5) The person may at any time withdraw a query (which terminates HMRC's duties under subsection (4)).

(6) If it appears to HMRC that—

(a) they need time to consider the matters raised by the query, or

(b) further information (whether from the person or anyone else) is required,

HMRC may postpone the simple assessment in whole or part (according to how much of it is being queried by the person).

(7) If the simple assessment is postponed in whole or part, HMRC must notify the person in writing—

(a) whether the assessment is postponed in whole or part, and

(b) if it is postponed in part, of the amount that remains payable under the assessment.

(8) While the simple assessment is postponed the person is under no obligation to pay—

(a) the payable amount specified in the notice of assessment (if the whole assessment is postponed), or

(b) the postponed part of the payable amount so specified (if the assessment is postponed in part).

(9) After considering the query the final response must be to—

(a) confirm the simple assessment,

(b) give the person an amended simple assessment (which supersedes the original assessment), or

(c) withdraw the simple assessment (without replacing it).

(10) HMRC must notify the person in writing of their final response.

(11) This section does not apply to an amended simple assessment given as a final response to the query.

(12) Nothing in this section affects—

(a) a person's right to request an explanation from HMRC of a simple assessment or the information on which it is based, or

(b) HMRC's power to give a person such explanation or information as they consider appropriate,

whether as part of the querying process under this section or otherwise.

(13) In subsection (12) "person" means a person who has been given notice of a simple assessment".

7 (1) Section 59B (payment of income tax and capital gains tax) is amended as follows.

(2) In the heading, at end insert "**: assessments other than simple assessments**".

(3) In subsection (6), after "9" insert ", 28H or 28I".

8 After section 59B insert—

"**59BA Payment of income tax and capital gains tax: simple assessments**

(1) This section applies where a person has been given a simple assessment in relation to a year of assessment.

(2) Subject to subsection (3), the difference between—

(a) the amount of income tax and capital gains tax for that year contained in the simple assessment, and

(b) the aggregate of any payments on account made by the person in respect of that year (whether under section 59A or 59AA or otherwise) and any income tax which in respect of that year has been deducted at source,

is payable by that person as mentioned in subsection (4) or (5).

(3) Nothing in subsection (2) is to be read as requiring the repayment of any income tax which any provision of the Income Tax Acts provides is not repayable.

(4) In a case where the person is given notice of the simple assessment after the 31st October next after the year of assessment, the difference is payable at the end of the period of 3 months after the day on which that notice was given.

(5) In any other case the difference is payable on or before the 31st January next after the end of the year of assessment.

(6) Section 59B(7) (which explains references to income tax deducted at source) applies for the purposes of this section.

(7) PAYE regulations may provide that, for the purpose of determining the amount of the difference mentioned in subsection (2), any necessary adjustments in respect of matters prescribed in the regulations shall be made to the amount of tax deducted at source under PAYE regulations."

9 (1) Schedule 56 to FA 2009 (penalty for failure to make payments on time) is amended as follows.

(2) In the Table in paragraph 1, after item 1 insert—

"1A	Income tax or capital gains tax	Amount payable under section 59BA(4) or (5) of TMA 1970	The date falling 30 days after the date specified in section 59BA(4) or (5) of TMA 1970 as the date by which the amount must be paid."

(3) In paragraph 3(1)(a), after "items 1," insert "1A,".

SCHEDULE 24

Section 180(2) and (5)

TAX ADVANTAGES CONSTITUTING THE GRANT OF STATE AID

PART 1

TAX ADVANTAGES TO WHICH SECTION 180(2)APPLIES

Enhanced capital allowances

Tax advantage	*Provision under which tax advantage is given*
Business premises renovation allowances	Part 3A of CAA 2001
Zero-emission goods vehicle allowances	Section 45DA, 45DB and 212T of CAA 2001
Expenditure on plant and machinery for use in designated assisted areas (enhanced capital allowances for enterprise zones)	Sections 45K to 45N and 212U of CAA 2001

Creative tax reliefs

Tax advantage	*Provision under which tax advantage is given*
Film tax relief	Part 15 of CTA 2009
Television tax reliefs	Part 15A of CTA 2009
Theatre relief	Part 15C of CTA 2009
Orchestra tax relief	Part 15D of CTA 2009

Research and development reliefs

Tax advantage	*Provision under which tax advantage is given*
Relief for SMEs: cost of research and development incurred by SME	Chapter 2 of Part 13 of CTA 2009

Tax advantage	*Provision under which tax advantage is given*
Vaccine research relief	Chapter 7 of Part 13 of CTA 2009

PART 2

TAX ADVANTAGES TO WHICH SECTION 180(5) APPLIES

Tax advantage	*Provision under which tax advantage is given to beneficiary*	*Person liable to receive request under section 180(5)*
Reduced rate of climate change levy payable in respect of a reduced rate supply (for supplies covered by climate change agreement)	Paragraphs 42 and 44 of Schedule 6 to FA 2000	The person to whom the reduced rate taxable supply is supplied
Relief granted to investors in a company under the enterprise investment scheme	Part 5 of ITA 2007	The company whose shares are acquired by investors
Relief granted to investors in a venture capital trust under the venture capital trust scheme	Part 6 of ITA 2007	The venture capital trust

SCHEDULE 25

Section 184

OFFICE OF TAX SIMPLIFICATION

Membership

1 (1) The OTS is to consist of not more than eight members.

(2) The members of the OTS must include—

(a) a chair,

(b) a tax director (see sub-paragraph (5)),

(c) a representative of Her Majesty's Revenue and Customs, and

(d) a representative of the Treasury.

(3) The additional members, if any, are to be nominated by the chair.

(4) The members of the OTS are to be appointed by the Chancellor of the Exchequer.

(5) A person may be appointed as a tax director of the OTS only if the Chancellor of the Exchequer is satisfied that the person has the necessary qualifications and experience to direct the manner in which the OTS discharges its functions.

(6) The Chancellor of the Exchequer must consult the chair of the OTS before appointing a person as a tax director (subject to paragraph 3(3)).

Term of office

2 (1) A person holds and vacates office as a member of the OTS in accordance with the terms of the appointment, subject to the following provisions.

(2) A period of appointment may not exceed 5 years.

(3) A person who ceases to be a member of the OTS is eligible for re-appointment.

Appointment of initial members

3 (1) Sub-paragraphs (2) and (3) apply where a person ("P") appointed under paragraph 1(2)(a) or (b) was, immediately before the appointment, the chair or tax director (as the case may be) of the non-statutory Office of Tax Simplification.

(2) P's period of appointment is to be taken to have begun with the appointment of P as the chair or tax director (as the case may be) of the non-statutory Office of Tax Simplification.

(3) The requirement in paragraph 1(6) does not apply where P was, immediately before P's appointment under paragraph 1(2)(b), the tax director of the non-statutory Office of Tax Simplification.

Termination of appointments

4 A member of the OTS may at any time resign by giving written notice to the Chancellor of the Exchequer.

5 (1) The Chancellor of the Exchequer may terminate the appointment of a member of the OTS by giving the member written notice.

(2) In the case of a member appointed for the purposes of paragraph 1(2)(a) or (b) or (3), the Chancellor of the Exchequer may only terminate the appointment if—

(a) the member has been absent from meetings of the OTS without the OTS's permission for a period of more than 3 months,

(b) the member becomes bankrupt (see sub-paragraph (3)),

(c) the member has failed to comply with the terms of the appointment, or

(d) the member is, in the opinion of the Chancellor of the Exchequer, unable, unfit or unwilling to carry out the member's functions.

(3) A member becomes bankrupt if—

(a) in England and Wales or Northern Ireland, a bankruptcy order is made in relation to the member;

(b) in Scotland, the member's estate is sequestrated.

Remuneration

6 The Treasury may pay a member of the OTS such remuneration and allowances as the Treasury may determine.

Provision of staff and facilities etc.

7 The Treasury may provide the OTS with such staff, accommodation, services and other facilities as appear to the Treasury to be necessary or expedient for the proper performance by the OTS of its functions.

Validity of proceedings

8 The OTS may regulate its own procedure.

9 The validity of anything done by the OTS is not affected by—

(a) any vacancy in the membership of the OTS, or

(b) any defect in the appointment of a member of the OTS.

Supplementary powers

10 The OTS may do anything that appears to it to be necessary or appropriate for the purpose of, or in connection with, the performance of its functions.

Finance

11 (1) The Treasury may make to the OTS such payments out of money provided by Parliament as the Treasury considers appropriate for the purpose of enabling the Office to meet its expenses.

(2) Payments are to be made at such times, and subject to such conditions, as the Treasury may determine.

Disqualification

12 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—

"The Office of Tax Simplification."

13 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—

"The Office of Tax Simplification."

Freedom of information

14 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities to which the Act applies) insert at the appropriate place—

"The Office of Tax Simplification."

Public sector equality duty

15 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty) under the heading "Industry, business, finance etc." insert at the appropriate place—

"The Office of Tax Simplification."