These notes refer to the Finance Act 2013 (c.29) which received Royal Assent on 17 July 2013

FINANCE ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to Finance Act 2013 that received Royal Assent on 17 July 2013. They have been prepared jointly by HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes are designed to be read alongside with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

3. Terms used in the Act are explained in these notes where they first appear. Hansard references are provided at the end of the notes.

Section 1: Charge for 2013-14

Summary

1. Section 1 provides for income tax for the tax year 2013-14.

Details of the Section

2. Section 1 provides for income tax for 2013-14.

Background

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

4. Section 1 imposes a charge to income tax for the tax year 2013-14. Section 1(2) Finance Act 2012 provides the main rates of income tax for 2013-14: the 20 per cent basic rate, the 40 per cent higher rate and the 45 per cent additional rate.

Section 2: Personal Allowance for 2013-14 for Those Born after 5 April 1948

Summary

1. Section 2 sets the amount of the personal allowance for those born after 5 April 1948.

Details of the Section

2. Subsection (1) sets the amount of the personal allowance for those born after 5 April 1948 in section 35(1) of the Income Tax Act 2007 (£8,105) with £9,440 for 2013-14.

3. Subsection (2) disapplies the indexation provisions for the personal allowance, at section 57 of the Income Tax Act 2007, for those born after 5 April 1948 for 2013-14.

Background

4. An individual is entitled to a personal allowance for income tax. The amount depends upon the individual's date of birth and income from 2013-14.

5. Up to 2012-13, an individual's personal allowance depends on their age. Finance Act 2012 made changes to the main income tax personal allowances. From 2013-14, there are still three main personal allowances, but availability will be by reference to date of birth. Section 4, Finance Act 2012 substitutes ‘born after 5 April 1948’ for ‘aged under 65’ in section 35 with effect from tax year 2013-14.

6. Income tax personal allowances are subject to indexation (an annual increase based upon the percentage increase to the retail prices index). Parliament can over-ride the indexed amounts by a provision in the Finance Act.

7. Autumn Statement 2012 announced that the basic personal allowance will be increased to £9,440 in 2013-14. This supersedes the corresponding amount announced at Budget 2012.

8. The table below sets out the amount of the personal allowance for those aged under 65 for 2012-13, the indexed amount for 2013-14 and the amount specified for this section for 2013-14 for those born after 5 April 1948:

2012-13	*2013-14 indexed*	*2013-14 by this section*
£8,105	£8,325	£9,440

9. The effect of this section is to override the indexed amount for the personal allowance for those born after 5 April 1948. This section is part of a package of measures together, with a further section that sets the basic rate limit in an amount below indexation.

Section 3: Basic Rate Limit for 2013-14

Summary

1. Section 3 sets the amount of the basic rate limit for income tax at £32,010 for 2013-14.

Details of the Section

2. Subsection (1) replaces the existing amount of the basic rate limit in section 10(5) of the Income Tax Act 2007 (£34,370) with £32,010 for 2013-14.

3. Subsection (2) disapplies the indexation provisions for the basic rate limit at section 21 Income Tax Act 2007 as far as it applies to section 10(5), for 2013-14.

Background

4. An individual’s taxable income is charged to tax at the basic rate of tax up to the basic rate limit.

5. The basic rate limit is subject to indexation (an annual increase based upon the percentage increase to the retail prices index). Parliament can over-ride the indexed amounts by a provision in the Finance Act.

6. Autumn statement 2012 announced that the basic rate limit will be set at £32,010 for 2013-14. This supersedes the corresponding amount announced at Budget 2012.

7. The table below sets out the amount of the basic rate limit for 012-13, the indexed amount for 2013-14, and the amount specified by this section for 2013-14.

2012-13	*2013-14 indexed*	*2013-14 by this section*
£34,370	£35,300	£32,010

8. The effect of this section is to override the indexed amount for the basic rate limit. This section is part of a package of measures, together with a further section that sets the

personal allowance for 2013-14 for those born after 5 April 1948 by an amount above indexation.

Section 4: Corporation Tax: Charge and Main Rate for Financial Year 2014

Summary

1. Section 4 charges corporation tax (CT) for the financial year beginning 1 April 2014 and sets the main rate of CT at 30 per cent on oil and gas ring fence profits and 21 per cent on non-ring fence profits.

Details of the Section

2. Subsections (1) and (2) set the charge and the main rate of CT for the financial year beginning 1 April 2014.

Background

3. The main rate of CT is paid by companies with profits of more than £1,500,000 (the upper profits limit).

4. Where two or more companies are associated with one another, the profits limit is reduced. This is done by dividing the limit by the number of associated companies.

5. Profits from oil extraction and oil rights in the UK and the UK Continental Shelf ("ring fence profits") will continue to be subject to a separate main rate of CT applicable to those ring fenced profits. Profits from activities which are not ring fenced will continue to be charged at the main rate of CT applicable to all other profits.

Section 5: Corporation Tax: Small Profits Rate and Fractions for Financial Year 2013

Summary

1. Section 5 sets the small profits rate of corporation tax (CT) for the financial year beginning 1 April 2013 at 20 per cent for all profits apart from "ring fence profits" of North Sea oil companies, where the rate is set at 19 per cent. Additionally, it sets the fraction used in calculating marginal relief from the main rate at 3/400 for all profits apart from "ring fence profits", where the fraction is set at 11/400.

Details of the Section

2. Subsection (1) sets the small profits rate of CT for the financial year beginning 1 April 2013.

3. Subsection (2) sets the marginal relief standard and ring fence fractions.

Background

4. Companies with profits up to £300,000 pay CT at the small profits rate.

5. Companies with profits between £300,000 and £1,500,000 (the lower and upper limits) benefit from marginal relief from the main rate.

6. Marginal relief has the effect of gradually increasing the rate of tax for a company as its profits move from the lower to the upper profits limit.

7. The example below illustrates the effect of marginal relief for a company with taxable non-ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 23 per cent	£115,000
minus 3/400 of £1,000,000[1]	£7,500
Tax payable:	£107,500
* £1,000,000 is the difference between the upper limit and the profit.	

8. The example below illustrates the effect of marginal relief for a company with taxable ring fence profits of £500,000. Its tax liability is calculated as follows:

£500,000 @ 30 per cent	£150,000
minus 11/400 of £1,000,000[1]	£27,500
Tax payable:	£122,500
* £1,000,000 is the difference between the upper limit and the profit.	

9. Where two or more companies are associated with one another, the profits limits are divided by the number of associated companies.

Section 6: Corporation Tax: Main Rate for Financial Year 2015

Summary

1. Section 6 sets the corporation tax (CT) main rate for profits other than ring fence profits at 20 per cent for the financial year beginning 1 April 2015.

Details of the Section

2. Subsections (1) and (2) set the main rate of CT for the financial year beginning 1 April 2015.

Background

3. The Government announced at Budget 2013 that they intend to legislate in Finance Bill 2014 so that the CT main rate will be unified with the small profits rate from the financial year 2015.

4. Profits from oil extraction and oil rights in the UK and the UK Continental Shelf ("ring fence profits") will continue to be subject to a separate main rate of CT applicable to those ring fenced profits. Profits from activities which are not ring fenced will continue to be charged at the main rate of CT applicable to all other profits.

Section 7, Schedule 1: Temporary Increase in Annual Investment Allowance

Summary

1. Section 7 and Schedule 1 introduce provisions to increase the maximum amount of the annual investment allowance (AIA) from £25,000 to £250,000 for a temporary period of two years. The increase is effective for expenditure incurred on or after 1 January 2013 and before 1 January 2015. Schedule 1 contains provisions about chargeable periods which straddle 1 January 2013 or 1 January 2015. Schedule 1 may be seen as falling into

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three main parts: the first gives the rules for chargeable periods that straddle 1 January 2013; the second gives the rules for chargeable periods that straddle 1 January 2015; and the third explains how the rules relating to a shared AIA are modified.

Details of the Section

2. Subsection (1) amends section 51A(5) of the Capital Allowances Act 2001 (CAA) so that the maximum AIA that can be claimed for a 12 month chargeable period is increased from £25,000 to £250,000, but only in relation to expenditure incurred during the two-year period beginning on 1 January 2013. For expenditure incurred on or after 1 January 2015, the maximum AIA returns to its previous limit of £25,000.

3. Subsection (2) introduces Schedule 1, which contains provisions about chargeable periods that straddle 1 January 2013 or 1 January 2015.

Details of the Schedule

4. Paragraph 1(1) explains that the paragraph applies to a chargeable period that begins before 1 January 2013 and ends on or after that date. Such a period is referred to as "the first straddling period".

5. Paragraph 1(2) provides that the maximum allowance for such a period will be the sum of each maximum allowance that would be found if the actual chargeable period were split into separate chargeable periods by reference to the 'relevant date' and the date of the temporary increase. The 'relevant date' is given by paragraph 1(4) and is the date of the last change in the maximum amount of the AIA (when the maximum amount was reduced from £100,000 to £25,000). For the purposes of corporation tax (CT) this date was 1 April 2012 and, for the purposes of income tax, this date was 6 April 2012.

   The first period

   Because some business may have a chargeable period that began before “the relevant date” of 1 (or 6) April 2012, and so may be affected by the changes enacted by section 11 of Finance Act 2011, the first period is so much of the actual chargeable period as falls before 1 (or 6) April 2012. The legislation does not require that there has to be such a period, but where the chargeable period starts before 1 (or 6) April 2012 that period must be separately considered.

   The second period

   The second period is so much of the actual chargeable period as falls on or after 1 (or 6) Aril 2012, but before 1 January 2013.

   The third or last period

   The third period is so much of the actual chargeable period as falls on or after 1 January 2013.

6. So, where a business has a chargeable period of a year that straddles 1 January 2013, the maximum allowance for that period is the sum of:

   a. (if appropriate) the maximum AIA entitlement based on the £100,000 annual cap that applied before 1 (or 6) April 2012, for the portion of a year falling before that date; and

   b. the maximum AIA entitlement based on the £25,000 cap that applied for the portion of a year falling on or after 1 (or 6) April 2012, but before 1 January 2013; and

   c. the maximum AIA entitlement based on the new temporary £250,000 cap for the portion of a year falling on or after 1 January 2013.

7. Paragraph 1(3) provides that this calculation of the maximum allowance for “the first straddling period” is subject to paragraphs 2 and 3, which contain some additional rules

about the maximum allowance for expenditure actually incurred in each of the three potential periods identified in paragraph 1(2). Paragraph 2 gives the additional rules for straddling periods beginning before 1 (or 6) April, and paragraph 3 gives the additional rules for straddling periods beginning on or after that date.

8. Paragraph 2(1) explains that the paragraph applies where the first straddling period begins before the relevant date of 1 (or 6) April.

For example, a company with a chargeable period from 1 March 2012 to 28 February 2013 would calculate its maximum AIA entitlement based on:

a. the proportion of a year from 1 March 2012 to 31 March 2012, that is 1/12 x £100,000 = £8,333;

b. the proportion of a year from 1 April 2012 to 31 December 2012, that is, 9/12 x £25,000 = £18,750; and

c. the proportion of a year from 1 January 2013 to 28 February 2013, that is, 2/12 x £250,000 = £41,667.

So, the company's maximum AIA for this first straddling period would be the total of (a) + (b) + (c) = £8,333 + £18,750 + £41,667 = £68,750.

9. Paragraph 2(2) effectively provides that in the part of the chargeable period falling before 1 (or 6) April 2012, the maximum allowance for expenditure actually incurred in this period, is the amount that would have been the maximum allowance for the first straddling period, if the temporary increase in the AIA to £250,000 had not been made. So, for expenditure incurred in period (a) of the example in paragraph 8 above, the maximum allowance would be:

$1/12^{th}$ x £100,000 =	£8,333, and
11/12ths x £25,000 =	£22,917
Total	£31,250

10. Paragraph 2(3) provides that for expenditure actually incurred in the part of the chargeable period falling on or after 1(or 6) April 2012, but before 1 January 2013, the maximum allowance is the difference between two amounts, called 'A' and 'B.' 'A' and 'B' are defined in the next subparagraph 2(4).

11. Paragraph 2(4)(a) defines 'A', and paragraph 2(4)(b) defines ‘B'.

‘A’ means the amount that would have been the maximum allowance for the period beginning on the relevant date and ending at the end of the first straddling period, assuming that the temporary increase in the AIA to £250,000 had not been made. In other words, applying this to our example at paragraph 8 above, the maximum allowance for expenditure incurred for the period beginning on 1 (or 6) April 2012 and ending on 28 February 2013 would have been (11/12 x £25,000) = £22,917. So, based on our example, the value of ‘A’ would be £22,917.

‘B’ means the amount (if any) by which:

(i) the AIA expenditure incurred in the period in paragraph 1(2)(a) of the Schedule (that is, in the period before the relevant date) in respect of which an AIA claim is made, exceeds

(ii) the maximum allowance for that period, if it were to be treated as a separate chargeable period.

So, returning to our example in paragraph 8 above, the two elements of ‘B’ may be seen as:

(i) an amount in the range between £31,250 and nil for the first element. For example:

- if the business had actually incurred the maximum AIA expenditure it could in that part period, and was making a claim in respect of that expenditure, the maximum it could claim would be £31,250 (as already calculated at paragraph 9 above); or
- if the business had decided to work out its AIA entitlement on a strict time-apportioned basis, and to spend no more than that amount prior to 'the relevant date', the first element of 'B' would be £8,333 (in our above example at paragraph 9 above); or
- the business might, of course, decide to spend a lesser amount than either of the two possibilities just mentioned, or it might, indeed, have incurred no relevant expenditure at all, in which case the first element of 'B' would be nil.

From this first element of 'B' the following, second element falls to be deducted:

(ii) The second element of 'B' is, based on our example, £8,333, that is, the maximum allowance the business could have claimed for that part period before the relevant date (i.e. 1/12 x £100,000 = £8,333) as if that period were treated as a separate chargeable period.

12. The rule, then, for expenditure actually incurred on or after 1 (or 6) April 2012, but before 1 January 2013, is that the maximum allowance for this expenditure cannot exceed ('A' – 'B'). Applying this formula to our example would mean that the maximum allowance could not exceed 'A' or £22,917, less the extent to which the first element of 'B' exceeded the second element. So, for example:

- If the business had spent the maximum it could before 1 (or 6) April 2012, that is, £31,250, 'B' would equal (£31,250 – £8,333) = £22,917, and ('A'- 'B') would equal (£22,917 - £22,917) = nil. In other words, the business would already have used up its maximum allowance for this part period, and would not be entitled to any further AIA in relation to further expenditure incurred on or after the relevant date, but before 1 January 2013.
- If, however, the business had spent and would be claiming on £8,333 before 1 (or 6) April 2012, 'B' would equal (£8,333 - £8,333) = nil, and ('A' – 'B') would equal (£22,917 – nil) = £22,917. In other words, the business's maximum allowance, in relation to expenditure incurred on or after 1(or 6) April and before 1 January 2013, would be £22,917, although if it claimed on those two amounts (£8,333 + £22,917 = £31,250) in respect of expenditure incurred before 1 January 2013, it would only have £37,500 of its maximum entitlement (£68,750 - £31,250 = £37,500) left to cover its expenditure incurred on or after 1 January 2013. (See the calculation of the overall maximum entitlement at paragraph 8).
- Alternatively, if the business had incurred no qualifying expenditure in the part period before 1 (or 6) April 2012, 'B' would equal (£nil - £8,333) = nil (because no part of the expenditure actually incurred exceeded the second element of 'B') and ('A' – 'B') would equal (£22,917- nil) = £22,917. This means, in effect, that the entitlement for the part period to the relevant date would have been lost, to the extent that it had not been utilised by that date, observing the transitional provision already legislated in section 11(7) of Finance Act 2011 (when the maximum AIA was reduced from £100,000 to £25,000 from 1 (or 6) April 2012).

13. Paragraph 2(5) provides that, in relation to expenditure actually incurred in the part of the chargeable period falling on or after 1 January 2013, the maximum allowance is

the sum of each maximum allowance that would be found if the periods mentioned in paragraph 1(2)(b) and 1(2)(c) of the schedule were each treated as separate chargeable periods. In other words, returning to the example at paragraph 8 above, in relation to expenditure incurred on or after 1 January 2013, a maximum total of (b) + (c) = £18,750 + £41,667 = £60,417 could be covered. But if, for example, no qualifying expenditure had been incurred before 1 (or 6) April 2012 (period (a) at paragraph 8 above), that part of the business's potential maximum entitlement could not be effectively "regained" in relation to expenditure incurred on or after 1 January 2013. (Once again, this observes the rule legislated in section 11(7) of Finance Act 2011, in relation to the reduction in the AIA, effective from 1 (or 6) April 2012.)

14. Paragraph 3 gives the additional rule about the maximum allowance for expenditure incurred in straddling periods beginning on or after the relevant date of 1 (or 6) April 2012. For example, a company with such a straddling period might have a chargeable period that ran from 1 April 2012 to 31 March 2013. It would calculate its maximum AIA entitlement based on:

   a. the portion of a year from 1 April 2012 to 31 December 2012, that is, 9/12 x £25,000 = £18,750; and

   b. the portion of a year from 1 January 2013 to 31 March 2013, that is, 3/12 x £250,000 = £62,600.

   The company's maximum AIA for its first straddling period would therefore be the total of (a) + (b) = £81,250.

15. Paragraph 3(2) provides that so far as expenditure is incurred in the part of the chargeable period falling before 1 January 2013, the maximum allowance is to be calculated as if the increase in the maximum AIA to £250,000 had not been made. In other words, for expenditure incurred before 1 January 2013, only expenditure up to the maximum amount of the £25,000 cap can be covered. Or, to look at this from another perspective, the company in our example would need to incur qualifying expenditure of between £56,250 [i.e. £81,250 - £25,000 = £56,250, if it had already spent the maximum of £25,000 in 2012] and £81,250 on or after 1 January 2013, if it wanted to benefit from the maximum AIA available to it for this first straddling period.

16. Paragraph (4) provides the transitional rules for chargeable periods that straddle 1 January 2015, when the maximum amount of the AIA is to return to its previous maximum of £25,000. This rule is identical in its operation to section 11(6) and (7) of Finance Act 2011, when the AIA was reduced from £100,000 to £25,000.

17. Paragraph 4(1) explains that the paragraph applies to a chargeable period that begins before 1 January 2015 and ends on or after that date. Such a period is referred to as "the second straddling period".

18. Paragraph 4(2) provides that the maximum allowance for the second straddling period is the sum of each maximum allowance that would be found if:

   a. the period beginning with the first day of the chargeable period and ending with the day before 1 January 2015, and,

   b. the period beginning with 1 January 2015 and ending with the last day of the chargeable period,

   were treated as separate chargeable periods.

   So a company with a financial year chargeable period, from 1 April 2014 to 31 March 2015, would calculate its maximum AIA entitlement for its 'second straddling period' based on:

   (a) the proportion of a year from 1 April 2014 to 31 December 2014, that is, 9/12 x £250,000 = £187,500, and

(b) the portion of a year from 1 January 2015 to 31 March 2015, that is, 3/12 x £25,000 = £6,250.

The company's maximum AIA for this straddling period would, therefore, be the sum of (a) + (b) = £193,750.

19. Paragraph 4(3) provides that, for expenditure incurred in the part of the chargeable period falling on or after 1 January 2015, the maximum allowance is the maximum calculated in accordance with (b) above, that is, £6,250 in our example. This rule does not affect the business's maximum AIA entitlement for the chargeable period as a whole (which is £193,750), simply the amount of expenditure incurred on or after 1 January 2015 that may be covered.

20. For example, if the company in our example at paragraph 18 above, incurred no qualifying expenditure in the period 1 April 2014 to 31 December 2014 and then spent, say, £30,000 in the period 1 January 2015 to 31 March 2015, the maximum AIA available to that company for expenditure in that particular part period would be limited to £6,250.

21. Paragraph 5 provides the rules explaining the operation of the AIA where businesses have to share a single AIA (where restrictions apply).

22. Paragraph 5(1) provides that paragraphs 1 to 4 also apply for the purposes of determining the maximum allowance in relation to businesses that are required by CAA to share a single AIA, in a case where one or more of those businesses has a chargeable period that straddles either the start or end date of the temporary increase. This provision is stated to be subject to sub-paragraphs (2) and (3).

23. Paragraphs 5(2) provides that, for the purposes of determining the maximum allowance in cases where businesses must share a single AIA, and one or more of the affected businesses has a straddling chargeable period, only chargeable periods of one year or less may be taken into account, and, if there is more than one such period, only that period which gives rise to the maximum allowance.

24. For example, four companies in a company group with different chargeable periods ending in the financial year 2012-2013 would be required to share a single AIA. In the following example, their individual maximum amounts are as shown in the third column of the table. However, their overall maximum, single AIA (to be shared amongst the group) would be the greatest maximum allowance, in this example, £93,750. So if, say, £93,750 were allocated to Company A, nothing further could be allocated to other companies in the group in this particular year. Alternatively, if, say, £43,750 were allocated to Company C, and the balance of the greatest maximum was to be allocated to Company D, no more than (£93,750 - £43,750)= £50,000 could be allocated to D in this particular year.

EXAMPLE: A RELATED GROUP OF COMPANIES WITH CHARGEABLE PERIODS ENDING IN THE TRANSITIONAL YEAR: 1.04.12 TO 31.03.13

Company	***Chargeable period (CP) ending on***	***Maximum time-apportioned AIA***
		£
A	**30 April 2012**	93,750
B	**30 September 2012**	62,500
C	**31 December 2012**	43,750
D	**31 March 2013**	81,250

25. Paragraph 5(3) contains a special rule which relates only to businesses carrying on a trade, profession or vocation within the charge to income tax, as these businesses can have a chargeable period of up to (but no more than) 18 months. Limiting a business's chargeable period to a year ending at the same time as it actually ends, stops an increased AIA being shared with related businesses.

26. Paragraph 5(6) preserves the right of the business with the long chargeable period to see if it is entitled to look back to an earlier chargeable period to see if there is potentially an unused AIA entitlement in that earlier chargeable period.

27. Paragraphs 5(4) & (5) repeal section 11(11) of Finance Act 2011, but only in relation to cases where one or more of the chargeable periods, in which relevant AIA qualifying expenditure is incurred, is a chargeable period which straddles 1 January 2013.

28. Paragraph 5(6) provides that where an AIA has to be shared the special rules in relation to unincorporated businesses with chargeable periods longer than 12 months are not affected by the transitional provisions in paragraph 5.

Background

29. Since 1 April 2008 (CT) and 6 April 2008 (income tax) most businesses, regardless of size, have been able to claim the AIA on their expenditure on plant or machinery, up to a specified annual amount each year (subject to certain conditions mentioned below). With effect from 1 April 2012 (CT) or 6 April 2012 (income tax) the maximum amount of the AIA was reduced from £100,000 to £25,000 for qualifying expenditure incurred on or after those dates.

30. At the Autumn Statement, on 5 December 2012, the Chancellor announced that legislation would be introduced in Finance Act 2013 to increase the maximum amount of the AIA from £25,000 to £250,000 from 1 January 2013, for a temporary period of two years.

31. The temporary increase is designed to stimulate growth in the economy by providing an additional, time-limited incentive for businesses (particularly small and medium-sized businesses) to increase, or bring forward, their capital expenditure on plant or machinery.

32. Businesses are able to claim the AIA in respect of their expenditure on both general and "special rate" plant and machinery. The AIA is effectively a 100 per cent allowance that applies to most qualifying expenditure (with expenditure on cars being the most important exception) up to an annual limit or cap. Where businesses spend more than the annual limit, any additional qualifying expenditure is dealt with in the normal capital allowances regime, entering either the main rate or the special rate pool, where it will attract writing-down allowances (WDAs) at the 18 per cent or 8 per cent rates respectively.

33. Because the AIA is a generous relief there are certain restrictions

    It is available to:

    - any individual carrying on a qualifying activity (this includes trades, professions, vocations, ordinary property businesses and individuals having an employment or office);
    - any partnership consisting only of individuals; and,
    - any company (subject to certain restriction).

34. In the case of companies in a group there is one AIA available to all the companies in the group.

35. In the case of singleton companies, each receives its own AIA unless, for example, it and another company are under common control. In cases where companies are under common control (for example, two companies owned by the same individual) each company will still be entitled to a separate AIA, unless they are engaged in "similar activities" or share the same premises in a financial year.

36. The rules provide that a company is related to another company in a financial year and, separately, that an unincorporated qualifying activity is related to another qualifying activity in a tax year, if either or both of:

- the shared premises condition; and/or,
- the similar activities condition,

are met in relation to the companies or the qualifying activities with chargeable periods ending in that financial year, or that tax year, as the case may be.

37. The rules provide businesses with almost complete freedom to allocate the AIA between different types of expenditure. For example, they may allocate it first against any expenditure on "integral features", qualifying for the lower 8 per cent "special rate" of WDA.

Section 8: London Anniversary Games

Summary

1. Section 8 provides for an exemption from income tax for non-UK resident competitors in the London Anniversary Games.

Details of the Section

2. Subsection (1) provides that accredited competitors in the London Anniversary Games who meet the non-residence condition will be exempt from UK tax on any income arising from Anniversary Games activities.

3. Subsection (2) defines Anniversary Games activities for the purposes of subsection (1) as both competing at the Anniversary Games and performing any activity during the games period where the main purpose is to support or promote the Anniversary Games.

4. Subsection (3) defines the non-residence condition for the purpose of subsection (1). To meet the non-residence condition, an accredited competitor must be non-UK resident for the tax year in which the Anniversary Games activity is performed, or, where that year is a split year as regards the competitor, the Anniversary Games activity must be performed in the overseas part of that split year.

5. Subsection (4) provides that withholding obligations provided by section 966 of the Income Tax Act (ITA) 2007 do not apply to any payment or transfer that gives rise to income which benefits from the exemption provided by subsection (1).

6. Subsection (5) defines the terms "accredited competitor", "the Anniversary Games", "the games period" and "income" for the purpose of this section.

7. Subsection (6) provides that this section is treated as having come into force on 6 April 2013.

Background

8. As announced on 15 February 2013, any income arising to non-resident competitors from the London Anniversary Games will be exempt from UK tax. This event will be held at the Olympic Stadium, London from 26 to 28 July 2013. A similar exemption will be legislated for competitors at the Glasgow 2014 Commonwealth Games.

9. Both employment and self-employment income arising to non-UK resident accredited competitors from competing in or carrying out activities primarily to promote or support the Glasgow Commonwealth Games where they are performed during the games period will be exempt from UK income tax. This exemption only applies where the competitor holds a London Anniversary Games accreditation card in the athletes' category which has been issued by UK Athletics Ltd.

10. This exemption will not apply to any non-resident officials, sponsors, or coaching staff who will continue to be liable to UK tax on any income which is related to participation in the event. It will not apply to any UK tax residents, including athletes, except those for whom the year is a split year and where the event falls in the overseas part of the year.

Section 9: Glasgow Commonwealth Games

Summary

1. Section 9 provides for an exemption from income tax for non-UK resident competitors in the Glasgow 2014 Commonwealth Games.

Details of the Section

2. Subsection (1) provides that accredited competitors in the Glasgow 2014 Commonwealth Games who meet the non-residence condition will be exempt from UK tax on any income arising from Commonwealth Games activities.

3. Subsection (2) defines Commonwealth Games activities for the purposes of subsection (1) as both competing at the Glasgow 2014 Commonwealth Games and performing any activity during the games period where the main purpose is to support or promote the Glasgow 2014 Commonwealth Games or any future Commonwealth Games.

4. Subsection (3) defines the non-residence condition for the purpose of subsection (1). To meet the non-residence condition, an accredited competitor must be non-UK resident for the tax year in which the Commonwealth Games activity is performed, or, where that year is a split year as regards the competitor, the Commonwealth Games activity must be performed in the overseas part of the year.

5. Subsection (4) provides that withholding obligations under section 966 of the Income Tax Act 2007 do not apply to any payment or transfer that gives rise to income which benefits from the exemption provided by subsection (1).

6. Subsection (5) defines the terms “accredited competitor”, “the games period”, “the Glasgow Commonwealth Games” and “income” for the purpose of this section.

Background

7. As announced by the Chief Secretary to the Treasury on 26 January 2012, any income arising to non-resident competitors from the 2014 Commonwealth Games will be exempt from UK tax. A similar exemption will be provided for non-resident competitors in the 2013 London Anniversary Games.

8. Both employment and self-employment income arising to non-UK resident accredited competitors from competing in or carrying out activities primarily to promote or support the Glasgow 2014 Commonwealth Games where they are performed during the games period will be exempt from UK income tax. This exemption only applies where the competitor holds a Glasgow 2014 accreditation card in the athletes' category which has been issued by Glasgow 2014 Ltd.

9. The exemption will not apply to any non-resident officials, sponsors, or coaching staff who will continue to be liable to UK tax on any income which is related to their participation in the event. It will not apply to any UK tax residents, including athletes,

except those for whom the year is a split year and where the event falls into the overseas part of the year.

Section 10: Expenses of Elected Representatives

Summary

1. Section 10 introduces a new income tax exemption for certain travel expenses paid or reimbursed to Members of the Scottish Parliament, Members of the National Assembly for Wales, and Members of the Legislative Assembly in Northern Ireland. This will broadly have the effect of maintaining the tax treatment that applies to similar expenses paid under a long-standing concessionary arrangement.

Details of the Section

2. Subsection (1) inserts new section 293B into the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

3. New section 293B(1) provides for payments to which new section 293B applies to be exempt from income tax if they are expressed to be made in respect of relevant UK travel expenses.

4. New section 293B(2) defines the payments to which new section 293B applies.

5. New section 293B(3) defines ’relevant UK travel expenses’ as expenses necessarily incurred on the kinds of journeys made by the member listed in new section 293B(4) and journeys made by the member’s spouse or partner with whom they share caring responsibilities.

6. New section 293B(4) lists the qualifying journeys for the purposes of new section 293B(3)(a), including journeys within the member’s constituency or region which are not excluded journeys.

7. New section 293B(5) sets out the circumstances in which journeys within the member’s constituency or region are excluded journeys .

8. New section 293B(6) defines the terms ‘constituency or region’, ‘local office’, ‘the member’s local home’, ‘the member’s parliamentary home’, and ‘principal local office’, for the purposes of new section 293B.

9. New section 293B(7) defines the term ‘caring responsibilities’ for the purpose of new section 293B(3)(b).

10. New section 293B(8) provides an order-making power to amend the definition of ‘caring responsibilities’.

11. Subsection (2) provides that the amendments made to ITEPA by this section have effect in relation to payments made on or after 6 April 2013.

Background

12. Members of the three devolved administrations (DAs) are reimbursed in accordance with the respective allowances schemes administered by the DAs. The current tax treatment of travel expenses paid to members of the DAs is subject to certain long standing concessions which need to be formalised or ended.

13. To recognise the requirement of elected members having to carry out their duties in both their constituencies and their respective Parliament or Assembly headquarters, the general rules which allow tax relief for expenses incurred on work-related travel have, under long standing concessions, been extended in the case of members of the DAs.

14. Following the creation of the Independent Parliamentary Standards Authority (IPSA) and the introduction of the new MPs' Expenses Scheme, legislation was enacted in Finance (No.2) Act 2010 to formalise aspects of these concessions as they previously applied to MPs. Similar legislation was not introduced at the same time in relation to members of the DAs because, at that time, new allowances schemes were not in place for all of the DAs.

15. The concessionary treatment applying to travel expenses paid to members of the DAs will end from 6 April 2013 and instead these amendments to ITEPA will provide a statutory exemption for certain relevant UK travel expenses paid to members by the respective authority, as expenses necessarily incurred in the performance of their Parliamentary or Assembly functions. This will bring the tax treatment of these members' expenses broadly into line with their Westminster counterparts.

16. From 6 April 2013, expenses incurred by members of the DAs on travel between their home and their sole or most frequently occupied office in their constituency or region will become taxable.

17. The new exemption will apply to relevant expenses paid or reimbursed on or after 6 April 2013.

Section 11: Exemption from Income Tax of Contributions to Pension Schemes

Summary

1. Section 11 restricts an employee's exemption from income tax on pension contributions made by their employer to a registered pension scheme. The restriction ensures that the exemption will only apply to such contributions made by an employer to their employee's arrangements under a registered pension scheme.

Details of the Section

2. Subsection 1 of the section inserts the words "in respect of the employee" at the end of Section 308 of Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"). This means that an employee's exemption from income tax on an employer's contribution to a registered pension scheme will not apply where the contribution is made in respect of someone other than the employee.

3. Subsection 2 provides that the restriction has effect for the tax year 2013/14 and for subsequent tax years.

Background

4. Employees are exempt from income tax on contributions paid into registered pension schemes by their employers. This income tax exemption is provided by Section 308 ITEPA 2003.

5. Where employer pension contributions are exempt from income tax in this way, they are also excluded from earnings for the purposes of earnings-related National Insurance contributions (NICs).

6. The amount of pension contributions that benefit from tax relief is limited to an annual allowance. This allowance was reduced from £255,000 to £50,000 from the tax year 2011-12 and to £40,000 for the tax year 2014-15 onwards.

7. In response to the introduction of the lower limit in 2011-12, certain arrangements (referred to as Family Pension Plans) have been developed to side step the new rules for employees who would otherwise face an income tax charge on contributions in excess of the £50,000 limit.

8. Under these arrangements, an employer pays pension contributions into a registered pension scheme of an employee's family member as part of the employee's flexible remuneration package. The effect is that the employee is still exempt from income tax and NICs on the employer contributions into the family member's pension scheme. Furthermore, these contributions do not count towards the £50,000 limit for the employee, avoiding the income tax that would otherwise be due on the employee for contributions in excess of the limit.

9. This section ensures that employees will not enjoy exemption from income tax and NICs on such contributions into the family member's pension scheme, to protect against attempts to sidestep the Annual Allowance limit.

Section 12: Childcare Exemptions: Meaning of Disabled Child

Summary

1. Section 12 adds a further reference to the definitions of "disabled child" provided for in section 318B(3) of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA). The effect is to allow tax relief for employer-supported childcare to continue where a child is in receipt of a Personal Independence Payment (PIP) rather than a Disability Living Allowance (DLA).

Details of the Section

2. Subsection (1) of the section amends section 318B(3)(a) ITEPA by adding a reference to a personal independence payment.

3. Subsection (2) of the section provides that the amendment is to come into effect on or after Royal Assent to the Finance Act.

Background

4. The Government announced, as part of the June 2010 Budget, its intention to reform DLA with effect from 2013-14. Proposals for replacing DLA with a new PIP formed part of the consultation on welfare reform, and PIP was introduced in Part 4 of the Welfare Reform Act 2012.

5. The purpose of the benefit is to contribute to the extra costs faced by long-term disabled people to leading full and active lives.

6. Tax relief for employer-supported childcare is available as long as certain conditions are met. Normally the age criterion for a child is until the first week of the September following their 15^{th} birthday. However, for disabled children that is extended to the first week of the September following their 16^{th} birthday.

7. Definitions for qualifying disabled children include being in receipt of DLA which now needs to be extended to children in receipt of PIP to ensure consistency of treatment in line with welfare reforms.

8. PIP will initially be phased in for new applicants; therefore for disabled children the reference to both DLA and PIP is required until such time as DLA is replaced completely.

Section 13: Income Tax Exemption for Universal Credit

Summary

1. Section 13 adds Universal Credit to the table of social security benefits that are wholly exempt from income tax.

Details of the Section

2. Subsection 1 adds Universal Credit and its equivalent in Northern Ireland to Table B in section 677 of the Income Tax (Earnings and Pensions) Act 2003. Table B sets out the social security benefits that are wholly exempt from income tax.

Background

3. Universal Credit will bring together different forms of income-related benefits and tax credits and provide a simple, integrated benefit for people in or out of work. The benefit will consist of a basic standard allowance with additional elements for disability, children disabled children, child care, carers and housing costs.

Section 14, Schedule 2: Tax Advantaged Employee Share Schemes

Summary

1. Section 14 introduces Schedule 2 which amends the legislation relating to the four tax advantaged employee share schemes - Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE), Company Share Option Plans (CSOP) and Enterprise Management Incentives (EMI). These changes give effect to recommendations of the Office of Tax Simplification (OTS). They aim to simplify the employee share scheme rules where these may create undue complexities or unnecessary administrative burdens for scheme users. Most of the changes will take effect on the date Finance Act 2013 receives Royal Assent. Changes under Part 6 of the Schedule relating to the reinvestment of cash dividends paid on SIP shares come into effect on 6 April 2013.

Details of the Schedule

2. Schedule 2 implements a series of changes across the four tax advantaged schemes.

3. The legislation is set out in Income Tax (Earnings and Pensions) Act 2003 (ITEPA). The provisions on SIP are in sections 488 - 515 and Schedule 2 to ITEPA; on SAYE in sections 516 - 519 and Schedule 3; on CSOP in sections 521 - 526 and Schedule 4; and on EMI in sections 527 - 541 and Schedule 5. All statutory references in this Note are to provisions in ITEPA.

Part 1, Retirement of Participants

4. Paragraph 1 introduces amendments to the rules in Part 7 of ITEPA governing when employees are entitled to favourable tax treatment when they leave employment on retirement or after reaching a specified age. The changes will harmonise retirement rules across SIP, SAYE and CSOP, to allow businesses offering these schemes to align the definition of 'retirement' with their broader policy in this area.

5. Paragraphs 2 - 6 remove the requirement for a SIP scheme to include a 'specified retirement age' in the scheme rules, and make consequential changes.

6. Paragraphs 7 - 13 remove the requirement for an SAYE scheme to include a 'specified age' for retirement in the scheme rules, and repeal the provision allowing exercise of options by those who reach the 'specified age' without retiring.

7. Paragraphs 14 - 15 remove the requirement for a CSOP scheme to specify a retirement age in the scheme rules, where these provide for exercise of the CSOP options on retirement.

8. Paragraph 16 provides that the change under paragraph 11 (the repeal of the current provision in paragraph 33 of Schedule 3 allowing exercise of SAYE options by those who reach the 'specified age' without retiring) does not apply to options granted before Royal Assent. These options can therefore still be exercised with favourable tax treatment where the participant reaches the specified age without retiring.

9. Paragraph 17 provides that other changes in Part 1 have effect from the date the legislation receives Royal Assent, and SIP, SAYE and CSOP schemes approved before these changes take effect are to be treated as if relevant provisions included the modifications made by these paragraphs.

10. Sub-paragraphs (2) and (3) of paragraph 17 introduce a modification in the case of free and matching SIP shares awarded before the date these changes take effect. Any provision within a SIP allowing for forfeiture will not apply to these free and matching shares where the employee retires.

Part 2, 'Good Leavers' (other than Retirees)

11. Paragraph 18 introduces amendments to the rules in Part 7 of ITEPA that govern when those leaving employment (other than on retirement) can qualify for favourable tax treatment as 'good leavers'.

12. Paragraphs 19 - 29 address two issues across the three schemes. First, they lay down simpler and more consistent rules for SAYE and CSOP to govern when employees who leave employment other than on retirement are entitled to favourable tax treatment under the schemes. Second, they set out new rules for SIP, SAYE and CSOP for certain cases where there is a cash takeover of the company whose shares are scheme shares.

13. Paragraph 19 amends section 498 by inserting new subsections (3) - (13), to provide that there will be no income tax liability where shares are withdrawn from a SIP during the holding period, on certain cash takeovers of companies. Various conditions have to be satisfied as to the circumstances in which the shares are withdrawn, the assets available to the participant in exchange for their shares and the nature of the offer that constitutes the cash takeover. By virtue of subsection (6) of section 498, favourable tax treatment is not available where it is reasonable to suppose that the shares would not have been awarded had the cash takeover not been in place or under consideration.

14. Paragraph 20 makes consequential changes to paragraph 37 of Schedule 2 (concerning the power of participants in SIP schemes to direct trustees to accept certain takeover offers). Sub-paragraph (7) clarifies when a qualifying 'general offer' takes place for the purposes of this paragraph. SIP schemes approved before these changes come into force are to be treated as if relevant provisions included the modifications made by this paragraph.

15. Paragraph 21 amends section 519 and inserts new subsections (3A) - (3J), which provide that there will be no income tax liability where an SAYE option is exercised before the third anniversary of grant on certain cash takeovers of companies. Various conditions have to be met as to the circumstances in which the option is exercised, the assets available to the participant in exchange for the shares under option and the nature of the offer that constitutes the cash takeover. By virtue of new subsections (3A)(d) and (3A)(e) of section 519, favourable tax treatment is not available where the cash takeover was in place or under consideration at the time it was decided to grant the option. New subsection (3A)(g) makes availability of this favourable tax treatment subject to an anti-avoidance condition.

16. Paragraph 23 inserts new sub-paragraphs (2)(c) and (d) into paragraph 34 of Schedule 3, to provide that the scheme rules must allow for exercise of SAYE options when employment ceases in relation to a transfer within the meaning of Transfer of Undertakings (Protection of Employment) Regulations, and certain cases of companies ceasing to be associated with the company organising the scheme on a change of control.

17. Paragraphs 24 and 25 amend paragraphs 37 and 38 Schedule 3 to extend the circumstances in which exercise of SAYE options is permitted on the occurrence of certain company events within the Companies Act 2006. Sub-paragraphs (2) of paragraph 24 and (3) of paragraph 25 clarify when a qualifying 'general offer' can take place for the purposes of paragraphs 37 and 38. SAYE schemes approved before

these changes come into force are to be treated as if relevant provisions included the modifications made by this paragraph.

18. Paragraph 26 amends section 524 concerning CSOP.

19. Sub-paragraphs (2) - (4) make amendments to subsection (2B) of section 524, to extend the circumstances in which favourable tax treatment is available where CSOP options are exercised before the third anniversary of the date on which they were granted. New subsections (2B)(a)(ii) and (a)(iii) apply to those exercising CSOP options when employment ceases in relation to a transfer within the meaning of Transfer of Undertakings (Protection of Employment) Regulations; and in the case of group schemes where the company employing an individual ceases to be controlled by the company organising the scheme. Several consequential changes are also made.

20. Sub-paragraph (5) of paragraph 26 inserts new subsections (2E) - (2N) in section 524, which provide that there will be no income tax liability where a CSOP option is exercised before the third anniversary of grant on certain cash takeovers of companies. Various conditions have to be met as to the circumstances in which the option is exercised, the assets available to the participant in exchange for the shares under option and the nature of the offer that constitutes the cash takeover. By virtue of new subsections (2E)(d) and (2E)(e) of section 524, favourable tax treatment is not available where the cash takeover was in place or under consideration at the time it was decided to grant the option. New subsection (2E)(g) makes availability of this favourable tax treatment subject to an anti-avoidance condition.

21. Paragraphs 27 and 28 make consequential changes to Part 5 of Schedule 4.

22. Paragraph 29 extends the circumstances in which exercise of CSOP options is permitted, to cover certain company events within the Companies Act 2006 and certain offers to acquire the share capital of the company.

23. Paragraph 30 amends paragraph 26 Schedule 4 to extend the circumstances in which exchange of CSOP options is permitted on company reorganisation, to include certain company events within the Companies Act 2006. It also clarifies when a 'general offer' will be a company reorganisation for the purposes of this paragraph. CSOP schemes approved before this change comes into force are to be treated as if relevant provisions included the modifications made by this paragraph.

24. Paragraph 31 is concerned with the circumstances in which EMI options can be exercised on the occurrence of certain company reorganisations. It clarifies when a 'general offer' will be a company reorganisation for the purposes of paragraph 39 of Schedule 5. Paragraph 31 takes effect from a date to be specified by Treasury Order.

Part 3, Material Interest Rules

25. Paragraph 32 introduces amendments to the rules on 'material interest' in Part 7 of ITEPA for SIP, SAYE and CSOP, under which employees are not allowed to participate in these schemes if, broadly, they own more than 25 per cent of the ordinary share capital of a company (or in some cases the assets of the business).

26. Paragraphs 33 - 38 remove the material interest requirement for determining whether an individual is eligible to participate in a SIP scheme and make consequential changes. The changes have effect from the date the legislation receives Royal Assent, and SIP schemes approved before these changes take effect are to be treated as if relevant provisions included the modifications made by these paragraphs.

27. Paragraphs 39 - 43 remove the material interest requirement for determining whether an individual is eligible to participate in an SAYE option scheme, and make consequential changes. These changes have effect from the date the legislation receives Royal Assent, and SAYE schemes approved before these changes take effect are to be treated as if relevant provisions included the modifications made by these paragraphs.

28. Paragraph 44 amends the CSOP legislation by adjusting from 25 to 30 per cent the figure for determining whether an individual has a material interest in the share capital or assets of the company. The change has effect from the date the legislation receives Royal Assent, and CSOP schemes approved before these changes take effect are to be treated as if relevant provisions included the modifications made by this paragraph.

Part 4, Restricted Shares

29. Paragraph 45 introduces changes to Part 7 of ITEPA as it relates to the use of restricted shares in SIP, SAYE and CSOP.

30. Paragraphs 47 - 51 amend Schedule 2 to omit the requirement that shares awarded under a SIP may be subject to only certain kinds of restrictions, and make consequential changes. Paragraph 50 introduces new sub-paragraph (2A) of paragraph 43 of Schedule 2, which provides that partnership shares may not be subject to forfeiture.

31. Paragraph 52 sets out a requirement at new sub-paragraphs (2)(aa) and (3)(aa) of paragraph 75 of Schedule 2 for employees to be provided with details of any restrictions applying to SIP shares.

32. Paragraph 53 makes consequential changes to paragraph 84 of Schedule 2 concerning disqualifying events.

33. Paragraph 55 amends paragraph 92 of Schedule 2 to provide that, for the purposes of Schedule 2, SIP shares subject to restrictions are to be valued as if they were not restricted.

34. Paragraphs 56 and 57 set out a definition of a 'restriction' in relation to shares for the purposes of the SIP code and make consequential amendments.

35. Paragraph 58 provides that the changes take effect from the date the legislation receives Royal Assent and apply only to shares awarded after that date. SIP schemes approved before these changes take effect, whose scheme rules contain provisions of the type modified by paragraphs 46 - 57, are treated as if any such modification had been made.

36. Paragraphs 59 - 61 amend Schedule 3 to remove the requirement that shares to which an SAYE scheme can apply may be subject to only certain kinds of restrictions, and make consequential changes.

37. Paragraph 62 sets out requirements at new sub-paragraphs (5) and (6) of paragraph 28 of Schedule 3 for employees to be notified of the detail of restrictions applying to SAYE shares at the time options are granted; and for restricted shares to be valued as if they were not restricted in determining the price at which shares may be acquired.

38. Paragraph 63 introduces a rule at new sub-paragraph (7) of paragraph 39 of Schedule 3 in relation to exchanges of SAYE share options, requiring restricted shares to be valued as if they were not restricted.

39. Paragraphs 65 - 66 amend paragraph 48 of Schedule 3 to provide a definition of a 'restriction' in relation to shares for the purposes of the SAYE code, and make consequential amendments.

40. Paragraph 67 provides that the amendments take effect from the date the legislation receives Royal Assent in relation to options granted after that date. SAYE schemes approved before the present changes take effect, whose scheme rules contain provisions of the type modified by paragraphs 59 - 66, are treated as if any such modification had been made.

41. Paragraph 68 amends paragraph 6 of Schedule 4, to provide at new sub-paragraph (4) that when calculating the limit on the value of shares subject to a CSOP, shares subject to restrictions are valued as if they were not restricted.

42. Paragraphs 69 - 71 amend Part 4 of Schedule 4 to remove the requirement that shares to which a CSOP can apply may be subject to only certain kinds of restriction, and make consequential changes.

43. Paragraph 72 sets out requirements at new sub-paragraphs (5) and (6) of paragraph 22 of Schedule 4 for employees to be notified of the detail of restrictions applying to CSOP shares at the time options are granted; and for restricted shares to be valued as if they were not restricted in determining the price at which shares may be acquired.

44. Paragraph 73 introduces a rule at new sub-paragraph (7) of paragraph 27 of Schedule 4 in relation to exchanges of share options, requiring restricted shares to be valued as if they were not restricted.

45. Paragraphs 75 - 76 amend paragraph 36 of Schedule 4 to provide a definition of a 'restriction' in relation to shares for the purposes of the CSOP code, and make consequential amendments.

46. Paragraph 77 provides that the requirement for valuing restricted CSOP shares as if they were not restricted (paragraph 68 of this Schedule) does not apply in relation to options granted before Royal Assent. All other changes to the CSOP code take effect from the date the legislation receives Royal Assent. CSOP schemes approved before these changes take effect, whose scheme rules contain provisions of the type modified by paragraphs 68 - 76, are treated as if any such modification had been made.

Part 5, Share Incentive Plans: Partnership Shares

47. Paragraph 78 introduces amendments to paragraph 52 of Schedule 2 of ITEPA in relation to the allocation of SIP shares where a company allows employees to purchase these shares by deduction from salary over a period of time not exceeding 12 months, referred to in the legislation as an 'accumulation period'.

48. Paragraph 79 inserts new sub-paragraphs (2A), (3A) and (3B) of paragraph 52 of Schedule 2, to introduce a revised method for determining the number of shares awarded to an employee when applying money deducted in an accumulation period. Companies are allowed to make a choice between three possible methods of valuing the shares in these cases; and whichever method is chosen must be specified in the company's partnership share agreement.

49. Paragraph 80 amends sub-paragraph 3(c) of paragraph 75 of Schedule 2 to introduce a requirement for the SIP trustees to inform scheme participants of the basis on which the number of shares allocated was determined.

50. Paragraph 81 provides that these changes take effect from the date the legislation receives Royal Assent, and SIP trust instruments in force on that date have effect as if they included the modifications made by paragraph 79.

Part 6, Share Incentive Plans: Dividend Shares

51. Paragraph 82 introduces amendments to Part 8 of Schedule 2 of ITEPA in relation to SIP 'dividend shares'.

52. Paragraphs 83 - 86 provide that a company may decide what amount of the cash dividends in respect of plan shares is to be reinvested in dividend shares. Companies may apply their own limits for this purpose. This change takes effect from the date the legislation receives Royal Assent, and SIP schemes approved before the change takes effect are to be treated as if relevant provisions included the modifications made by these paragraphs.

53. Paragraphs 87 - 89 remove the £1,500 annual limit on reinvestment of cash dividends in respect of plan shares and make consequential changes. Paragraph 90 removes the three year time limit for reinvestment and makes consequential changes. The changes

introduced by paragraphs 87 - 90 apply for the tax year 2013-14 onwards. SIP schemes approved before 6 April 2013 which provide for the reinvestment of dividend shares are treated as if they include the modifications made by these paragraphs.

Part 7, Share Incentive Plans: Employee Share Ownership Trusts

54. Paragraph 91 introduces amendments to Part 9 of Schedule 2 of ITEPA.

55. Paragraphs 92 and 93 remove the requirement in paragraph 78 of Schedule 2 for the SIP trust instrument to include a provision in relation to the acquisition by the SIP trustees of shares from qualifying employee share ownership trusts, and make consequential changes. The change takes effect from the date the legislation receives Royal Assent. Any SIP trust instrument in force on that date the legislation takes effect has effect with the omission of the provision deleted by paragraph 93.

Part 8, Enterprise Management Incentives: Consequences of Disqualifying Events

56. Paragraph 94 amends section 532 ITEPA to extend from 40 to 90 days the time available for those holding qualifying EMI options to exercise them with favourable tax treatment after a 'disqualifying event' occurs. The change takes effect from the date the legislation receives Royal Assent.

Background

57. SIP is an 'all employee' scheme under which employees may purchase 'partnership' shares out of their pre-tax (gross) salary; be awarded 'matching' or 'free' shares by their employer; or reinvest dividends earned on SIP shares into 'dividend' shares.

58. SAYE is an 'all employee' share option scheme under which employees save out of taxed earnings and can use their savings to purchase shares in their company at a discounted price.

59. CSOP is a scheme under which selected employees may be awarded options to purchase shares in their company.

60. EMI is a scheme targeted on small and medium sized businesses carrying out certain trades, under which selected employees may be awarded share options in their company.

61. The Government asked the OTS in 2011 to evaluate the four tax advantaged employee share schemes, identify areas where they created undue complexities or disproportionate administrative burdens for scheme users, and make recommendations on how the schemes could be simplified.

62. The OTS report was published on the HM Treasury website on 6 March 2012. It contained a series of recommended changes to the underlying legislation and related provisions.

63. Draft legislation, addressing the OTS recommendations the Government had decided to implement, was published for consultation on 11 December 2012.

Section 15: Abolition of Tax Relief for Patent Royalties

Summary

1. Section 15 abolishes income tax relief for certain payments of patent royalties.

Details of the Section

2. Subsection 1 provides that subsections (2) and (3) amend Chapter 4 of Part 8 of Income Tax Act 2007 (ITA) which provides income tax relief for payments of patent royalties.

3. Subsection 2 amends section 448(1)(b) ITA by removing the reference to section 903(5) ITA and the words ‘and patent royalties’. Section 903(5) ITA contains the requirement for individuals to deduct an amount representing basic rate income tax from payments of patent royalties. By removing these references the subsection has the effect of abolishing the relief for payments of patent royalties made by individuals.

4. Subsection 3 similarly amends section 449(1)(b) ITA by removing the reference to section 903(6) and the words ‘and patent royalties’. Section 903(6) contains the requirement for persons other than individuals to deduct an amount representing basic rate income tax from payments of patent royalties. By removing these references the subsection has the effect of abolishing the relief for payments of patent royalties made by other persons such as trustees, personal representatives and non-resident companies within the charge to income tax.

5. Subsection 4 makes consequential amendments to ITA to remove redundant references to patent royalties.

6. Subsection 5 commences the provision from 5 December 2012. Relief will therefore not be available for payments of patent royalties made on or after that date.

Background

7. The relief which is abolished relates only to payments of patent royalties which are not deductible in calculating income from any source, such as trading. Where patent royalties are deductible in calculating income from any source they will continue to be relieved in that way.

8. The relief is being abolished to counter known avoidance and to simplify the income tax code.

Section 16, Schedule 3: Limit on Income Tax Reliefs

Summary

1. Section 16 introduces Schedule 3 which provides for a limit on the amount of income tax relief that an individual may deduct at step 2 of their income tax calculation for a tax year in relation to certain prescribed reliefs. The limit is the greater of £50,000 or 25% of the individual’s adjusted total income for the tax year. The limit has effect for the tax year 2013-14 and subsequent tax years.

Details of the Schedule

The limit

2. Paragraph 1 inserts new section 24A after section 24 of Chapter 3 of Part 2 of Income Tax Act 2007 (ITA). New section 24(A)(1) provides for a limit on the amount of relief that may be deducted at step 2 of the income tax calculation for those reliefs listed in new section 24A(6). The reliefs are:

   - Trade Loss Relief against general income– available for losses made by an individual carrying on a trade, profession or vocation. This will exclude relief for losses attributable to overlap relief and Business Premises Renovation Allowances (BPRA);

   - Early Trade Losses Relief – available to an individual in the first four years of the trade, profession or vocation. This will exclude relief for losses attributable to overlap relief and BPRA;

   - Post-cessation Trade Relief – available for qualifying payments or qualifying events within seven years of the permanent cessation of the trade;

- Property Loss Relief against general income – available for property business losses arising from capital allowances or agricultural expenses. This will exclude relief for losses attributable to BPRA;
- Post-cessation Property Relief – available for qualifying payments or qualifying events within seven years of the permanent cessation of the UK property business;
- Employment Loss Relief against general income– available in certain circumstances where losses or liabilities arise from employment;
- Former Employees Deduction for Liabilities – available for payments made by former employees for which they are entitled to claim a deduction from their general income in the year in which the payment is made;
- Share Loss Relief on non-EIS/SEIS shares – available for capital losses on the disposal (or deemed disposal) of certain qualifying shares;
- Losses on Deeply Discounted Securities – available only for losses on gilt strips and on listed securities held since at least 26 March 2003; and
- Qualifying Loan Interest – available for interest paid on certain loans. These include loans to buy an interest in certain types of company, or to invest in a partnership.

3. New sections 24A(3) to (5) set out the method of computing the limit.

4. New section 24A(7) lists deductions for amounts of relief that are specifically excluded from the limit.

5. New section 24A(8) explains how to calculate "adjusted total income" for the purposes of the limit.

Consequential Amendments

6. Paragraph 2 provides consequential amendments to step 2 of the income tax calculation in section 23 ITA and in specific relief provisions.

7. Paragraph 4 enables qualifying shares to which SEIS relief has been attributed to be identified for the purpose of the deduction in new section 24A (7)(d)(ii).

Commencement and transitional provision

8. Paragraph 3 provides for the limit to take effect for tax year 2013-14 and subsequent tax years.

9. Paragraph 4 provides that the limit will also apply where loss relief is claimed for a tax year before 2013-14 in relation to losses made in 2013-14 or a later year.

10. Paragraph 5 ensures that the limit will not apply to property loss relief arising from a loss made in 2012-13 where the loss is claimed for relief against general income in tax year 2013-14.

Background

11. In his Budget Statement of 21 March 2012, the Chancellor announced a limit on previously uncapped income tax reliefs with effect from 6 April 2013. The limit is to ensure that those on higher incomes cannot use reliefs excessively. The limit is set at £50,000 or 25 per cent of an individual's adjusted total income, whichever is the greater.

12. This section is about fairness: the Government is committed to supporting investment and entrepreneurship – but considers that its support should not be without limit.

13. This section is not being introduced to address tax avoidance; it will however reduce the scope for exploiting these reliefs for tax avoidance purposes.

14. Following engagement with the charity sector the Government decided to specifically exclude charitable reliefs from the cap. The Government consulted on the delivery of the cap between 13 July and 5 October 2012.

Section 17, Schedule 4: Cash Basis for Small Businesses

Summary

1. Section 17 introduces Schedule 4 which provides that eligible individuals carrying on a trade or profession as self employed sole traders or in partnership with other individuals can choose to use a cash basis to calculate taxable income.

Details of the Schedule.

2. Paragraph 3 amends section 25(3) Income Tax (Trading and other Income) Act 2005 (ITTOIA). Section 25(1) provides that profits of a trade are calculated in accordance with Generally Accepted Accounting Practice. Section 25(3) is amended so that section 25 is subject to new section 25A which provides for calculation of profits on a cash basis for small businesses. The new cash basis legislation replaces the alternative basis for barristers in the early years of practice allowed by section 160.

3. Paragraph 4 inserts a new section 25A of ITTOIA which provides that a person carrying on a trade profession or vocation can elect to use the cash basis. New subsection 25A also provides that sections 27, 28 and 30 of ITTOIA do not apply to those using the cash basis. These sections deal with receipts and expenses under Generally Accepted Accounting Practice and animals kept for trade purposes.

4. Paragraph 5 introduces a new Chapter 3A to Part 2 of ITTOIA dealing with when a person is eligible to make an election to use the cash basis under section 25A and the effect of an election.

5. New Section 31A details conditions A to C which a person must meet to be eligible to elect to use the cash basis.

6. New section 31B details the conditions regarding the ‘relevant maximum’. There is a relevant maximum if any of the three conditions is met.

7. New subsection 31B(5) provides that the ‘relevant maximum’ that applies if any of conditions A-C is met is the VAT threshold and double the VAT threshold where the person is a Universal Credit claimant.

8. New subsection 31B(6) provides that the threshold is proportionally adjusted for short basis periods.

9. New subsection 31B(7) provides that for the purpose of section 31B a universal credit claimant must have a universal credit assessment period within a cash basis period.

10. New subsections 31B(8) and (9) provide that section 31B may be amended by order.

11. New Section 31C sets out the categories of person that are excluded from electing to use the cash basis, for example, a partnership where any of the partners is a company.

12. New section 31D provides that an election under section 25A has effect for the tax year in which it is made and for all the trades professions or vocations carried on by the person in the tax year. New section 31D additionally provides that a person will remain in the cash basis until their circumstances change, at which point they can choose to use the accruals basis. New section 31D also signposts the amendment to the Capital Allowances Act 2001 which precludes a person using the cash basis from claiming capital allowances other than on a car.

13. New section 31E provides for how profits are determined on the cash basis. There are two steps, firstly calculate the total trade receipts received in the basis period for the

tax year and secondly, from that figure deduct the total amount of expenses of the trade paid during the basis period of the tax year (subject to any adjustments required or authorised by law).

14. Paragraphs 6 to 11 amend Chapter 4 Part 2 ITTOIA, dealing with trade profits: rules restricting deductions.

15. New section 32A gives a summary of how this Chapter applies when calculating profits on a cash basis.

16. New section 33A details the types of capital expenditure allowed as a deduction for those using the cash basis to calculate the profits of a trade. Capital expenditure allowed includes expenditure on items on which capital allowances can be given under Part 2 of the capital Allowances Act 2001 unless it is capital expenditure on a car. Under the normal rules, section 33 ITTOIA disallows any capital expenditure as a deduction in calculating the profits of a trade.

17. Paragraph 9 amends section 38 which provides that where an employee benefit contribution is made, a deduction is available to the trader only if certain qualifications are met. This section is amended with the effect that for calculating taxable income on the cash basis the employee benefit contributions have to be paid in the taxable period.

18. Paragraph 10 inserts new section 51A which provides that in calculating profits of a trade on a cash basis no deduction is allowed for interest paid. This section is subject to new section 57B.

19. Paragraph 11 amends section 55A. Section 55A provides that no deduction is available for integral features of a building or structure as detailed in section 33A(3) Capital Allowances Act 2001. As amended, section 55A signposts that s.33A(3) does not apply in the cash basis.

20. Paragraphs 12 to 17 amendChapter 5 Part 2 ITTOIA dealing with ‘trade profits: rules allowing deductions’.

21. New section 56A provides a summary of the rules in Chapter 5 for calculating profits on the cash basis.

22. Paragraph 14 inserts a new section 57B. This allows that, in calculating profits of a trade under the cash basis, where a deduction would otherwise be disallowed under new section 51A, or where in the absence of section 51A a deduction would not be allowable only because it was not an expense wholly and exclusively for the trade, a deduction is allowed for interest paid of up to £500.

23. Paragraph 15 amends section 58 which allows incidental costs of finance so that on the cash basis, the maximum deduction which may be made for those costs when taken together with interest allowable under new section 57B is £500.

24. Paragraph 16 amends section 72 which deals with payroll expenses so that contributions to agents’ expenses are only allowed as a deduction when the expenses have been incurred.

25. Paragraph 17 amends section 94A which allows expenses of setting up a SAYE or CSOP option scheme. The amendment ensures that only expenses paid in respect of such schemes are allowable deductions for computing income under the cash basis.

26. Paragraph 19 inserts new section 95A. This provides that rules about receipts which apply only for the purposes of calculating profits under the cash basis can be found at new sections 96A, 97A, 106A and 106B.

27. Paragraph 20 inserts new section 96A which provides how capital receipts are to be treated under the cash basis.

28. New subsection (6) provides the mechanism by which changes in the proportion of non business use before disposal are dealt with.

29. New subsection (7) defines market value for the purpose of section 96A. That is an amount that would be regarded as normal and reasonable in the prevailing market conditions at arm's length in the open market.

30. Paragraph 21 introduces new sections 97A and 97B which provide that where a cash basis business ceases the value of stock on hand or work in progress at cessation is brought into account as a receipt of the business.

31. Paragraph 22 amends section 105 ITTOIA which deals with particular grants received and treats them as trading income. One of the exceptions to this is where the grant is towards the cost of capital expenditure. The new subsection (2A) disapplies this exception when calculating profits under the cash basis.

32. Paragraph 23 inserts new chapter 6A which applies only in relation to the cash basis and which deals with bringing into account amounts which do not reflect commercial transactions.

33. New section 106C of chapter 6A provides that where there is a difference between the amount brought into account in respect of a transaction and the amount that would be brought into account if the transaction was at arm's length then the amount which must be brought into account is a just and reasonable amount.

34. New section 106D disapplies new 106C where the transaction involves a capital receipt (new section 96A covers this situation).

35. New section 106E disapplies new 106C where the transaction involves a gift to charity.

36. Paragraph 24-34 disapply particular Chapters of ITTOIA for the purpose of calculating profits of a trade under the cash basis.

37. Paragraph 36 amends Chapter 17 which deals with adjustment income where a person changes the basis on which he calculates the profits of the trade. The insertion of new section 227A provides that Chapter 17 applies to businesses moving to and from the cash basis.

38. Paragraph 37 inserts new section 239A into ITTOIA to provide that the taxation of any adjustment income arising as a result of leaving the cash basis may be spread over 6 tax years. New section 239B provides that the spreading of adjustment income may be accelerated by an election and provides a means of calculating the spreading in subsequent years.

39. Paragraph 38 inserts new Chapter 17A 'Cash basis: adjustments for capital allowances' into ITTOIA, which applies where a person enters the cash basis for a tax year (that is, he was not in the cash basis in the previous tax year).

40. New section 240C provides that where a person enters the cash basis for a tax year, any expenditure that is unrelieved qualifying expenditure for capital allowances purposes and would qualify as a deduction within the cash basis is allowable as a deduction in calculating the profits of the trade under the cash basis unless the asset is not fully paid for.

41. New section 240D provides for the case where a person enters the cash basis for a tax year and has claimed capital allowances on plant and machinery that is not fully paid for. Then where the amount paid exceeds the capital allowances given the difference is deductible for the purposes of calculating profit under the cash basis. Where the amount paid is less than the capital allowances given the difference is a receipt. This section does not apply to expenditure on cars.

42. New section 240E deals with the circumstances where a predecessor business passes plant and machinery to a successor business and makes an election under section 266 of the Capital Allowances Act 2001. New section 240E provides that the successor is treated as though he had done everything the predecessor business had done in respect of the plant and machinery.

43. Paragraph 39 ensures that post cessation receipts and expenses for a business that was in the cash basis are treated as though the business was still in the cash basis.

44. Paragraphs 40-43 make changes to allow the cash basis to work with rent a room relief (amending section 786 ITTOIA) and qualifying care relief (amending sections 805 and 820 ITTOIA).

45. Part 2 of the Schedule deals with consequential amendments.

46. Paragraph 44 amends section 42 of the Taxes Management Act 1970 so that in the case of a business carried on by a partnership, the general rule is that an election to use the cash basis must be made on the partnership return by the person required to make that return.

47. Paragraph 45 inserts new sections 47A and 47B into the Taxation of Chargeable Gains Act 1992 which deal with capital gains on disposal of assets when a business is in, or has been in, the cash basis. Section 47A provides that while in the cash basis disposals of assets will not give rise to a chargeable gain or loss (because the proceeds are liable to income tax). Section 47B provides that where a business is no longer in the cash basis then if the disposal is of an asset which has been used in the cash basis the disposal is treated as though capital allowances had been claimed on the asset.

48. Paragraph 46 makes an amendment to CAA 2001 inserting a new subsection (4) to section (1) CAA 2001. The new subsection provides that persons using the cash basis are not entitled to any allowance or liable to any charge under that Act other than in respect of a car.

49. Paragraph 47 inserts new subsections (4) and (7) into section 59 CAA 2001. These provide that there is no unrelieved qualifying expenditure brought forward when joining the cash basis except if incurred on the provision of a car.

50. Paragraph 48 inserts new section 66A into CAA 2001 which sets out how the capital allowances regime applies on leaving the cash basis.

51. New section 66A to CAA 2001 provides for the case where a person leaving the cash basis has incurred expenditure that would have been qualifying expenditure if the election to use the cash basis had not had effect. Such expenditure that has not been relieved under the cash basis will qualify for capital allowances.

52. Paragraph 51 omits section 160 of ITTOIA which provides that barristers in the early years of business can use a cash basis of calculating profits.

53. Paragraph 52 amends section 229 to provide that adjustment income arising on leaving the cash basis can be spread.

54. Paragraph 54 amends the Income Tax Act 2007 (ITA 2007) by inserting a new section 74E which prevents a person using the cash basis from using a loss arising from the business either as sideways relief or capital gains relief.

55. Paragraph 55 amends the provisions of ITA 2007 dealing with relief for interest payments. New section 384B inserted in ITA 2007 restricts relief for interest on loans where the cash basis is used for loans to buy plant and machinery for partnership use or to buy an interest in a partnership.

56. Paragraph 57 provides for transitional rules in the case of barristers or advocates in the early years of practice who have calculated their profits on an alternative basis under

section 160 ITTOIA in the tax year 2012-13. They are able to continue to calculate profits on that basis as if section 160, had not been repealed and to spread adjustment income on leaving the alternative basis under sections 238 and 239 ITTOIA as before.

Background

57. Existing income tax legislation requires the taxable profits of a business to be calculated in accordance with Generally Accepted Accounting Practice.

58. This means that profits are computed on the accruals basis so that income is the income earned in a tax year and not the amounts received in a year; expenses are those incurred in a tax year not the expenses paid out in a tax year.

59. The cash basis introduced by this schedule allows eligible small businesses to choose to use a simpler cash basis to work out their taxable income with effect from the tax year 2013-14.

Section 18, Schedule 5: Trade Profits: Deductions Allowable at a Fixed Rate

Summary

1. Section 18 introduces Schedule 5 which provides that individuals carrying on a trade or profession as self employed sole traders or in partnership with other individuals can choose to use certain simplified expenses when calculating their profits for income tax purposes.

Details of the Schedule.

2. Paragraph 2 inserts new Chapter 5A ‘Trade Profits: Flat Rate Expenses’ into the Income Tax (Trading and other Income) Act 2005 (ITTOIA). The new chapter comprises new sections 94C-I.

3. New section 94C excludes a partnership where one of the partners is not an individual (for example a company) from using the fixed rates provided for in new chapter 5A.

4. New section 94D sets out the circumstances in which a fixed rate deduction is allowable for expenditure on vehicles.

5. New section 94D(1) provides that new section 94D applies where a deduction would be allowed under the normal trading income rules for expenditure on a relevant vehicle.

6. New section 94D(4) provides that where a deduction is made under new section 94D then no other deduction can be made and that only a deduction under section 94D is allowed in respect of the relevant vehicle in any later period.

7. New section 94D(6) provides a definition of qualifying expenditure as being amounts incurred on acquisition and ownership of a vehicle.

8. New section 94E(1) provides that a vehicle is an excluded vehicle if either of two conditions are met.

9. New section 94E(2) provides the first condition which is that if the person carrying on the trade has at any time claimed any capital allowances under Part 2 CAA 2001 on the provision of the vehicle then the vehicle is an excluded vehicle.

10. New section 94E(3) provides the second condition which is that if the vehicle is a van or a motorcycle and expenditure incurred on acquiring the van or motorcycle has been deducted in calculating profits of the trade on a cash basis the vehicle is an excluded vehicle.

11. New section 94F provides the means of calculating the ‘appropriate mileage amount’, the amount allowable as an expense of the business. The rate for a vehicle is computed

by multiplying the number of miles of business journeys made by a person (other than as a passenger) by the rate appropriate to that vehicle.

12. New section 94H deals with a fixed rate deduction for the business use of a home. Where the section applies (as set out in subsection (1), a person may make a fixed deduction instead of making a deduction under the normal trading income rules.

13. New section 94I provides for a fixed rate adjustment where premises are used both as a home and for business purposes. Where the section applies (as set out in subsection (1)), a person may make a fixed deduction instead of making a deduction under the normal trading income rules.

14. New section 94I(6) provides that for the purposes of the fixed rate deduction, the relevant persons occupying the premises are those who occupy the premises as a home or who stay at the premises otherwise than as part of the trade.

15. Paragraph 4 inserts in section 254 new subsection 2B which provides that where a business has used section 94D fixed rate mileage expenses in respect of a vehicle then post cessation expenses in respect of that vehicle will also be under section 94D.

16. Paragraph 5 amends the Capital Allowances Act 2001 (CAA 2001).

17. New section 38ZA CAA 2001 provides that if expenditure has been deducted under new section 94D ITTOIA 2005 then for capital allowances purposes there is no qualifying expenditure in respect of the vehicle.

18. Paragraph 5 also inserts into section 59 CAA 2001 new subsections (8)-(10) which provide that where a person uses simplified expenses for a vehicle in a tax year then none of the unrelieved qualifying expenditure in respect of that vehicle can be carried forward.

Background

19. Existing tax legislation requires that where expenses are incurred that are partly for business purposes and partly for private purposes an apportionment of these expenses is made.

20. New Chapter 5A inserted by this schedule provides that for certain expenses an apportionment will not be required. A business can choose to make fixed rate deductions for vehicle expenditure, expenses arising from business use of home and in relation to premises used both as a home and as business premises

Section 19, Schedule 6: Employment Income: Duties Performed in the UK and Overseas

Summary

1. Section 19 introduces Schedule 6 which introduces the Special Mixed Fund Rules which broadly replicate the treatment that international employees who meet certain qualifying conditions currently receive under Statement of Practice 1/09 (SP1/09). The schedule also provides for such employees to apportion on a just and reasonable basis their earnings from an employment which covers UK and non-UK duties when they are entitled to overseas workdays relief. This again replicates the treatment currently available under SP1/09.

Details of the Schedule

2. Part 1 inserts new section 41ZA into the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) which allows for the apportionment of general earnings between UK and non-UK duties on a just and reasonable basis. It also makes a consequential amendment to section 15 ITEPA.

3. Part 2 inserts new sections 809RA to 809RD into the Income Tax Act 2007 (ITA).

4. New section 809RA determines how the special mixed fund rules operate. New subsection 809RA(1) provides the conditions that must be met in order for these rules to apply. These are that:

   - the individual must have general earnings from an employment for a tax year where some of those earnings are subject to a charge under section 15(1) and some are subject to a charge under section 26(1) ITEPA; and
   - some of the earnings that are subject to section 15(1) and some that are subject to section 26(1) must be paid into a qualifying account in the tax year.

5. New subsection 809RA(2) provides the rules which apply where the conditions in new subsection 809RA(1) are met and determine the composition of transfers from a qualifying account. These treat all Condition A transfers as if they were a single transfer made from the account at the end of the tax year and treat all other transfers as a single offshore transfer which takes place immediately after the single Condition A transfer. They can then apply sections 809Q(3) and 809R(4) ITA to determine the amount of income and gains contained within those transfers.

6. New subsection 809RA(3) provides that the steps in new subsection 809RA(2) do not affect the time that those transfers from a qualifying account are considered to occur.

7. New subsections 809RA(4) and 809RA(5) provide for the application of the special mixed fund rules where they can only be used for part of a tax year, such as where the qualifying account is opened part way through a year, or where the account ceases to be a qualifying account part way through the year, unless it ceases due to a breach of the deposit rule.

8. New subsection 809RA(6) defines a ‘Condition A transfer’ for the purposes of new subsection 809RA(2) as one which is a remittance to the UK as defined in section 809L ITA.

9. New subsection 809RA(7) defines an ‘other transfer’ for the purposes of new subsection 809RA(2) as one which is not a Condition A transfer.

10. New subsections 809RA(8) and (9) provide further rules relating to other transfers.

11. New subsection 809RA(10) provides that a qualifying account is defined in sections 809RB.

12. New subsection 809RA(11) defines further terms for the purposes of new sections 809RB to 809RD. These include cross references to various sections of Chapter 1 of Part 2 ITEPA in relation to ‘employment’ and general earnings ‘for’ a tax year, and a definition of anything ‘paid into’ an account.

13. New section 809RB sets out the conditions under which an account can be a qualifying account.

14. New subsections 809RB(1) and 809RB(2) provide that an individual can nominate an account as a qualifying account provided they specify the ‘qualifying date’

15. New subsection 809RB(3) defines ‘qualifying date’ for the purpose of new subsection 809RB(2) as the first date on which sums falling within subsection (4) of more (in total) than £10 are paid into the account. This ensures that depositing a small amount in order to open a qualifying account does not automatically trigger the qualifying date.

16. New subsection 809RB(4) provides that a sum will fall within new subsection 809RB(3) if it is, or derives, from general earnings of the individual from an employment for a tax year which is a relevant tax year in relation to that employment.

17. New subsection 809RB(5) defines a 'relevant tax year' as being one in which the individual has general earnings from an employment some of which fall within each of sections 15(1) and 26(1) ITEPA.

18. New subsection 809RB(6) provides for an individual to withdraw their nomination of a qualifying account, as long as the date of withdrawal is specified.

19. New subsection 809RB(7) provides that a notice to nominate or withdraw a nomination from a qualifying account must contain such information as the Commissioners for HM Revenue and Customs may reasonably require.

20. New subsection 809RB(8) specifies the relevant time limits for nominating an account to be a qualifying account or withdrawing such a nomination.

21. New subsection 809RB(9) provides the period when an account nominated by an individual will be a qualifying account. The qualifying account will cease if –

    a. it is closed or ceases to meet the criteria to be a qualifying account;

    b. the individual withdraws their nomination;

    c. the individual nominates a different account to be their qualifying account;

    d. there is a breach of the deposit rule which either is not or cannot be remedied;

    e. the individual does not receive earnings from an employment which fall within section 26(1) ITEPA in the tax year.

22. New subsections 809RB(10) and 809RB(11) provide restrictions on what can be nominated as a qualifying account (providing that the account must be an ordinary bank account and have a balance not exceeding £10 immediately before the qualifying date) and where an account cannot be treated as a qualifying account for the year. The latter occurs as the result of a breach of the deposit rule which is not or cannot be remedied, or where none of the individual's earnings from an employment for the year falls within section 26(1) ITEPA.

23. New subsection 809RB(12) provides that new subsections (9)(b)(iv) and (11)(b) (which both relate to a breach of the deposit rules that is not or cannot be remedied), are to be ignored if the breach occurs after the date the qualifying account has been closed, has been denominated, or has been replaced with another qualifying account.

24. New subsections 809RB(13) and 809(14) provide that an individual can only nominate a single qualifying account at any one time, and that an account cannot be nominated as a qualifying account by more than one individual at any one time.

25. New subsection 809RB(15) defines an 'ordinary bank account' for the purposes of section 809RB.

26. New section 809RC provides for 'a breach of the deposit rule' which is defined in new subsection 809RC(1) and sets out the effects of such a breach.

27. New subsection 809RC(1) defines a breach of the deposit rule as a payment of a prohibited amount into an account.

28. New subsections 809RC(2) and 809RC(3) set out the circumstances in which a breach of the deposit rules is considered to be 'remedied' and the 'required amount' need to make the remedy. A breach of the deposit rule occurs when a 'prohibited sum' is paid into the individual's qualifying account and it is remedied where the required amount is transferred out of the account within 30 days of the date on which the individual became aware or ought reasonably to have become aware that a prohibited sum had been paid into the account.

29. New subsection 809RC(4) provides for treatment of the qualifying account if a third breach of the deposit rule takes place within 12 months of the first. Where this is the case, the breach cannot be remedied and the account will be disqualified from the beginning of the tax year in which the third breach takes place.

30. New subsection 809RC(5) provides that where multiple deposits of further prohibited sums take place after the date of the first deposit of a prohibited sum, but before the required amount is paid out of the account within 30 days (and the required amount equals the amount of all the prohibited sums paid into the account before that date), they represent a single breach of the deposit rule.

31. New subsection 809RC(6) defines ‘a prohibited sum’ as any amount containing anything other than certain earnings from the individual’s employment, consideration for the disposal of certain employment-related securities or employment-related securities options, and interest on the account. Paragraph (b) provides that general earnings from an employment consisting of money and which are paid in a tax year which is a relevant tax year in relation to the employment are paid into the qualifying account will not be treated as a prohibited sum. This could include, for example, a bonus for a previous year which is paid in the current year which may be subject to neither sections 15(1) or 26(1) ITEPA, or expenses which relate entirely to employment duties falling within section 15(1) ITEPA.

32. New subsections 809RC(7) and 809RC(8) describe the circumstances in which a consideration for the disposal of employment-related securities or employment-related securities options are not a prohibited sum by reference to ‘a relevant event’, and define a relevant event for these purposes.

33. New subsection 809RC(9) defines a ‘relevant tax year’ for the purposes of section 809RC.

34. New subsection 809RC(10) defines ‘employment-related securities’ and ‘employment-related securities options’ for the purposes of section 809RC by cross-reference to provisions in ITEPA.

35. New section 809RD sets out the consequences of remedying a breach of the deposit rule within the 30-day deadline.

36. New subsections 809RD(2) provides that, where the required amount is transferred out of an account, sections 809Q and 809R will apply as if the intervening transactions had not taken place. Instead they will be treated as if they had been paid directly into whichever account the required amount was transferred into on leaving the qualifying account.

37. That transfer is treated as occurring on the date that the breach of the deposit rule took place.

38. New subsection 809RD(3) defines an intervening transaction for the purposes of new subsection 809RC(2) as a payment of a prohibited sum into an account and the single one-off transfer out of that account.

39. New subsection 809RD(4) sets out the treatment of any calculation made in respect of the single remittance to the UK and single offshore transfer at the end of a tax year (or the cessation of a qualifying account) if the breach of the deposit rule occurs before that date and the removal of the prohibited sum is made within the 30-day deadline.

40. New subsection 809RD(5) defines ‘the intervening period’ as the day on which the breach of the deposit rule occurs and the date the breach is remedied.

41. New subsection 809RD(6) provides that if more than one transfer of a sum equal to the required amount needed to remedy the breach of the deposit rule is made within the 30-day grace period, the first of these is taken to be the one-off transfer remedying the breach.

42. New subsection 809RD(7) defines 'the 30-day grace period'.

Background

43. Currently individuals who are Resident but Not Ordinarily Resident (RNOR) in the UK for income tax purposes may opt to be taxed on the remittance basis rather than the normal arising basis. Broadly, the remittance basis provides that any income or gains that arise overseas are only taxable in the UK to the extent that they are remitted to (brought into, used in, or enjoyed in) the UK.

44. As individual types of income and gains are taxed differently, statutory rules are needed to determine how remittances to the UK should be taxed. These rules, known as the 'mixed fund rules', are provided by section 809Q ITA. They work by determining, for every offshore transfer or remittance to the UK, what kinds of income and gains make up that transfer or remittance. The mixed fund rules therefore operate on a transaction by transaction basis.

45. RNOR individuals who have a single employment with duties performed both within and outside the UK are, through Statement of Practice 1/09 (SP1/09) and its predecessor Statement of Practice 5/84 (SP5/84), able to apportion their annual earnings from that employment between UK and non-UK earnings on a just and reasonable basis (e.g. workdays).

46. To remove the requirement that such individuals should operate the mixed fund rules on their main overseas account into which the salary from their employment is paid on a transaction by transaction basis, SP1/09 provides a simpler administrative treatment for these individuals, as long as they meet certain conditions. This simpler treatment allows individuals to calculate the composition of any remittance or transfers from that account by reference to the total value of deposits in and transfers out of the account across the year.

47. In June 2011 the Government published a consultation on a number of issues related to the remittance basis of taxation, including the legislation of SP1/09. As a result of that consultation the Government agreed that as part of putting SP1/09 on a statutory footing, it would also provide some further easements to the current practice, including allowing the use of existing accounts and allowing earnings from multiple employments to be deposited into the same account. In addition, the new legislation requires individuals to give notice to HMRC nominating the account that they wish the special mixed fund rules to apply to, and they may only have one such account at any given time.

48. The new rules will apply from 6 April 2013.

Section 20, Schedule 7: Remittance Basis: Exempt Property

Summary

1. Section 20 introduces Schedule 7 which makes changes to the rules in sections 809X to 809Z6 of the Income Tax Act (ITA 2007) applying to certain property acquired with overseas using foreign income and gains which determine when the bringing of certain property to the UK will not constitute a taxable remittance under Chapter A1 of Part 14 of ITA. The Schedule amends the exempt property rules to ensure that property which is lost, stolen or destroyed will not trigger a taxable remittance to the UK and that any compensation payment relating to the loss, theft or destruction of such property will not be treated as a remittance provided such payments are taken offshore or used to make a qualifying investment within 45 days of being received. The Schedule also makes changes to the public access rule so that it is no longer restricted to works of art, collector's items and antiques, and attract a relevant VAT relief, but is instead available to any property which is brought to the UK and put on public display at an approved establishment such as a gallery or museum or in transit to or from such display, for no more than two years or such longer period specified by HMRC.

Details of the Schedule

2. Paragraph 2 of the Schedule makes a change to section 809X ITA 2007 to reflect the removal of the reference to a relevant VAT relief in the public access rule in section 809Z.

3. Paragraph 3 of the Schedule amends section 809Y ITA 2007 to provide that, where exempt property is lost, stolen or destroyed, the rules which treat such property as remitted when it ceases to be exempt property do not apply after the loss, theft or destruction and, in cases where the property has been lost or stolen, until the property is subsequently recovered. It also provides that property which has been lost, stolen or destroyed will be treated as remitted where a compensation payment is released with respect to that property.

4. Paragraph 4 of the Schedule inserts new section 809YF ITA 2007. New subsections 809YF(1) to (3) provide that, where a payment is made in compensation for exempt property which has been lost, stolen or destroyed, that property will not be treated as remitted to the UK provided the payment is taken offshore or used to make a qualifying investment as defined in section 809VC ITA within 45 days of receipt.

5. Paragraph 5 of the Schedule amends the public access rule in section 809Z ITA 2007 by removing the conditions which require that the property must be a work of art, collector's item or antique in order to be treated as exempt property under that rule and must attract a relevant VAT relief.

6. Paragraph 6 of the Schedule removes section 809Z1 which defines relevant VAT relief for the purposes of the public access rule.

7. Paragraph 7 of the Schedule amends the temporary importation rule in section 809Z4 which applies to property which has been brought to the UK for 275 countable days or fewer. It provides that this total is subject to any increase provided by new subsection (3B). It also provides that any day, or part of a day, on which property meets the public access rule or meets new subsection (3A) are not treated as a countable day.

8. New subsection (3A) applies to property which is not available to be used or enjoyed in the UK, has not been recovered (in the case of lost or stolen property) and where no compensation payment has been released with respect to its loss, theft or destruction.

9. New subsection (3B) applies to property which has been lost or stolen and subsequently recovered. It provides that there will be 45 days in which such property needs to be taken offshore after it is recovered to prevent a taxable remittance.

10. Paragraphs 9 to 11 provides the commencement rules for the changes made by the Schedule.

Background

11. Section 47 and Schedule 12 of Finance Act 2012 introduced a number of changes to the remittance basis of taxation provided by Chapter A1 of Part 14 of ITA 2007. These changes followed Government consultation in 2011.

12. In their formal response to that consultation in December 2011, the Government said further consideration would be given to a number of further issues with a view to possible legislation in Finance Act 2013. These included new rules for inadvertent remittances which can arise in certain circumstances which are set out in section 21 and changes to the rules on exempt property which are set out in this Schedule.

13. Property which is acquired using, or otherwise derives from, foreign income and gains and which is brought to the UK by or for the benefit of a relevant person (as defined in section 809M ITA 2007) will normally be treated as a remittance to the UK. However, certain property will not be treated as remitted to the UK where they meet the rules in sections 809X to 809Z6 of ITA 2007 and will instead be treated as exempt property.

Section 21: Payments on account

Summary

1. Section 21 ensures that certain payments are not treated as a taxable remittance to the UK under Chapter A1 of Part 14 of the Income Tax Act (ITA 2007). It prevents any repayment made in the circumstances described from being treated as a taxable remittance, provided a sum equal to the amount repaid is taken offshore by the 15 March following the end of the tax year in which that amount is repaid.

Details of the Section

2. Subsection (2) makes a consequential amendment to section 809K of ITA 2007.

3. Subsection (3) introduces new section 809UA of ITA 2007 which applies to certain individuals who are taxed on the remittance basis and who make payments on account under section 59A of the Taxes Management Act (TMA) 1970.

4. New subsection 809UA(1) sets out the qualifying conditions for new subsection 809UA(2). These are that payments on account are made in relation to a tax year using foreign income and gains in a year when an individual is not taxed on the remittance basis (‘year 1’) which follows a year in which they were liable to pay the annual remittance basis charge (‘year 2’).

5. New subsection 809UA(2) provides that the foreign income and gains are not treated as remitted to the UK, provided the individual takes offshore an amount equal to the relevant amount by 15 March of the tax year following tax year 2 or by a later date allowed by the Commissioners for HMRC following a claim made by a individual.

6. New subsection 809UA(5) defines the term ‘relevant amount’ for the purposes of new subsection 809UA(2) as the lower of the amount of foreign income and gains used to make payments on account and the annual remittance basis charge which the individual was liable to pay in tax year 1.

7. Subsection (4) makes consequential amendments to section 809Z9(11) ITA 2007.

8. Subsection (5) provides the commencement rule for the changes made by this section.

Background

9. Section 47 and Schedule 12 of Finance Act 2012 introduced a number of changes to the remittance basis of taxation provided by Chapter A1 of Part 14 of ITA 2007. These changes followed Government consultation in 2011.

10. In their formal response to that consultation in December 2011, the Government said further consideration would be given to a number of further issues with a view to possible legislation in Finance Act 2013. These included new rules for inadvertent remittances which can arise in certain circumstances which are set out in this section and changes to the rules on exempt property which are set out in Schedule 7.

11. The annual remittance basis charge is payable by long-term UK non-domiciled residents who elect to be taxed on the remittance basis. The annual charge is provided for by section 809H of ITA 2007and is either £30,000 or £50,000, depending whether the individual meets the 7-year residence test or the 12-year residence test (as set out in section 809C of ITA). Payments of the charge using foreign income and gains do not constitute a taxable remittance by virtue of section 809V ITA 2007, but that exemption does not extend to repayments of that charge by HMRC.

12. In cases where an individual is liable to pay the remittance basis charge in a previous tax year, any payments on account which are made in the following year will relate to that charge. Where an individual decides not to be taxed on the remittance basis in that later year, and so will not be liable to pay the annual charge, they may be due a repayment

from HMRC. The application of section 809V(2) will mean that such repayments will constitute a taxable remittance.

Section 22: Arrangements Made by Intermediaries

Summary

1. Section 22 amends Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 – the intermediaries legislation (commonly known as IR35) to extend the application of this chapter to office holders. As an office holder is not considered to be an employee, prior to this amendment, an office holder engaged via an intermediary would not come within this legislation.

Details of the Section

2. Subsection (1) replaces subsection 49 (1)(c) of Part 2 of ITEPA 2003. It extends Chapter 8 of Part 2 of ITEPA 2003 so that it applies to office holders when they are engaged through a third party intermediary. The extension applies both where the worker is named as an office holder of the client but paid through an intermediary and where the intermediary (third party) is named as the office holder of the client. It applies in each case where the worker would be considered as an office holder of the client if the services were provided directly under a contract between the worker and the client. In the situations described above, providing there is also a requirement for the personal service of the worker, this section brings into charge for income tax, as the worker's deemed earnings from employment, any payment made to the worker via an intermediary (third party).

Background

3. The intermediaries legislation in Chapter 8 of Part 2 of ITEPA 2003 considers the underlying nature of the relationship between the worker and the engager; if this relationship would be considered to be employment, if it were not for the interposition of the intermediary, then the legislation applies. Where the intermediaries legislation applies, the income received by the intermediary (third party) is deemed to be employment earnings of the worker and the worker is liable for income tax on it, calculated in accordance with Chapter 8.

4. This change equalises the tax treatment of office holders engaged through third parties with the treatment under the relevant National Insurance legislation, under which they are already in the same position as individuals who would be in an employment relationship if engaged directly.

5. Section 5(3) of ITEPA provides a non-exhaustive definition of the term "office", which applies to this section. It states that "office" includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders. It is based on guidelines derived from case law: see in particular Great Western Railway Company v Bater (1922) 8 TC 231 and Edwards v Clinch (1981) 56 TC 367. However, since these are only guidelines, any explanation can only be non-exhaustive. An office is a separate and independent position to which duties are attached; an office does not owe its existence to the incumbent or the discretion of an organisation. For example, the post of manager of a factory or a head of division in an organisation is not an office because such a post will normally only exist as long as the organisation wishes. It will not have the independent existence or endurance required to establish it as an office.

Section 23: Taxable Benefit of Cars: the Appropriate Percentage

Summary

1. Section 23 relates to taxable benefits on company cars. With effect from 6 April 2015, it modifies the appropriate percentage bands and carbon dioxide (CO) emissions thresholds by revising the appropriate percentage of the relevant threshold. It also introduces two new bandings in respect of low emission vehicles.

Details of the Section

2. Subsection (1) introduces changes to section 139 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) as amended by section 17 of the Finance Act 2012 with effect from 6 April 2014.

3. Subsections (2), (5) and (6) amend sections 139(2), 139(3) and 139(4)(a) respectively to remove otiose phrasing.

4. Subsection (3) provides for the two new rates of appropriate percentage for low emissions vehicles. Section 139(2)(a), which dealt with the special regime for ultra low emissions cars for tax years up to and including 2014-15 is replaced by an appropriate percentage of 5 per cent for cars with CO emissions 0 to 50 grams per kilometre. New section 139(2)(aa) provides an appropriate percentage of 9 per cent for cars with CO emissions of 51 to 75 grams per kilometre.

5. Subsections (4), (5), and (6) provide for the increase to the level of the appropriate percentage by 2 per cent in sections 139(2) (cars with engine emissions below that of the relevant threshold, but greater than 75 grams CO per kilometre); an increase in the level of the appropriate percentage for the relevant threshold in section 139(3); and for an increase in the maximum level of the appropriate percentage 139(4)(b).

6. Subsections (7), (8) and (9) removes the reference to and definition of the special percentage in section 140 ITEPA for cars without a CO emissions figure and also provides for an appropriate percentage of 5 per cent for cars which are not, under any circumstances, capable of emitting CO emissions when being driven.

7. Subsection (10) provides that this amendment has effect for 2015-16 and subsequent tax years.

Background

8. Section 139 of ITEPA sets out the basis for calculating the appropriate percentage for cars with CO emissions. The appropriate percentage multiplied by the list price of the car (adjusted for any taxable accessories) provides the level of chargeable benefit for company car tax for employees and of Class 1A NICs for employers.

9. From 6 April 2015, the graduated table of company car tax bands will provide for a 5 per cent band for cars with emissions of 0-50g CO per km, a 9 per cent band for cars with emissions of 51-75g CO per km, a 13 per cent band for other low emissions cars (76g-94g CO per km) with a 2 per cent increase for each rise in emissions of 5g CO per km from 95g CO to a new maximum of 37 per cent.

10. Section 140 ITEPA sets out the basis for calculating the appropriate percentage for cars without CO emissions. From 6 April 2015, the appropriate percentage for cars which are incapable of producing CO emissions under any circumstances when being driven will be set at 5 per cent, and will rise to 37 per cent for other cars.

11. On average, the level of CO emissions produced by company cars fell by more than 6g (-4.2%) in the last year. These changes support the Government's commitment to reducing the UK's carbon footprint.

Section 24, Schedule 8: Gains from Contracts for Life Insurance

Summary

1. Section 24 introduces Schedule 8 which amends the rules for time apportioned reductions from gains made on life insurance policies for periods when the policyholder is resident outside the UK. Current rules only provide for time apportioned reductions where a life insurance policy has been issued by a foreign insurer. Time apportioned reductions will be extended to life insurance policies issued by UK insurers. Time apportioned reductions will be calculated by reference to the residence history of the person liable to income tax on the gains and not by reference to the residence history of the legal owner of the policy.

Details of the Schedule

2. Paragraph 1 of Schedule 8 amends Chapter 9 of Part 4 of Income Tax (Trading and Other Income) Act 2005 (ITTOIA) (gains from contracts for life insurance etc).

3. Paragraph 2 of Schedule 8 amends section 476 ITTOIA by removing references to section 528 and section 536(6) ITTOIA.

4. Paragraph 3 of Schedule 8 replaces section 528 ITTOIA with new sections 528 and 528A.

New section 528 Reduction in amount charged on basis of non-UK residence where individual liable for tax

5. New section 528(1) provides that new subsection (2) applies to individuals who are liable to chargeable event gains and who have not been resident in the UK during the material interest period (defined in new section 528(5)). From 6 April 2013, when the statutory residence test applies, a day will only fall in new subsection (1)(b) if the individual is not resident in the UK for the whole of the relevant tax year. For information on how new section 528 applies to a year that, for the individual, is split between a UK part and an overseas part, see the Explanatory Notes on the Statutory Residence Test.

6. New section 528(2) provides that an individual's liability to tax on a gain on a life insurance policy is to be reduced by the appropriate fraction.

7. New section 528(3) provides details of that fraction.

8. New section 528(4) provides that the reference to 'gain' in new subsection (2) is the gain reduced in accordance with section 463A(4), 463D(4) or 463E(3) ITTOIA.

9. New section 528(5) defines 'material interest period' for the purposes of this section.

10. New section 528(6) provides that new subsections (7) and (8) apply if there has been an assignment between spouses or civil partners before the chargeable event.

11. New section 528(7) explains that the material interest period includes so much of the policy period before the assignment during which the assignor meets condition A, B or C in section 465.

12. New section 528(8) explains that when a period falls under new subsection (7) any reference to an individual under new subsection (1)(b) is to be deemed to also include a reference to the assignor.

13. New section 528(9) provides that references to rights in section 465(2) to (4) ITTOIA include references to a share of those rights.

14. New section 528(10) defines the term 'policy period' for the purposes of new section 528.

15. New section 528(11) provides that where a new policy is issued for another policy (policy 'A') the 'policy period' in new subsection (10) includes the period for which (A) was in existence. If A itself is a new policy issued for another policy (policy 'B') the 'policy period' in new subsection (10) includes the period for which both A and B are in existence.

16. New section 528(12) explains that 'new policy' in new subsection (11) takes its meaning from paragraph 17 of Schedule 15 to ICTA 1988.

New 528A Reduction in amount charged on basis of non-UK residence of deceased person

17. New section 528A(1) applies to reduce the amount of a personal representative's tax liability under section 466 ITTOIA on a chargeable event gain where the deceased has not been resident in the UK during the material interest period.

18. New section 528A(2) applies to reduce trustees' liability to tax on a chargeable event gain under section 467 ITTOIA in respect of a deceased settlor where the deceased was not resident in the UK during the material interest period.

19. New section 528A(3) explains that the liability to tax of personal representatives or trustees on a gain on a life insurance policy is to be reduced by the appropriate fraction.

20. New section 528A(4) provides details of the fraction for new section 528A.

21. New section 528A(5) provides that references to 'gain' in new subsection (3) is to the gain after it has been reduced in accordance with section 463C(8) ITTOIA.

22. New section 528A(6) defines 'material interest period' for the purposes of new section 528A.

23. New section 528A(7) applies subsections (8) and (9) if there was an assignment between spouses or civil partners prior to the deceased's death and the deceased was the assignee.

24. New section 528A(8) explains that the material interest period includes so much of the period prior to the assignment that the assignor met conditions A, B or C in section 465.

25. New section 528A(9) explains that when a period falls under subsection (8) any reference to an individual under new subsection (1)(b) or (2)(b) is to be deemed to also include a reference to the assignor.

26. New section 528A(10) provides that references to rights in section 465(2) to (4) ITTOIA include references to a share of those rights for the purposes of new section 528A subsections (6) and (8).

27. New section 528A(11) defines the term 'policy period' for the purposes of new section 528A.

28. New section 528A(12) provides that where a new policy is issued for another policy (policy 'A') the 'policy period' in new sub-section (11) includes the period for which (A) was in existence. If A itself were a new policy issued for another policy (policy 'B') the 'policy period' in new sub-section (11) will include the period for which both A and B are in existence.

29. New section 528A(13) explains that 'new policy' in subsection (12) takes its meaning from paragraph 17 of Schedule 15 to ICTA 1988.

30. Paragraph 4 of Schedule 8 repeals section 529 ITTOIA.

31. Paragraph 5(1) of Schedule 8 amends section 536 ITTOIA (top slicing relief).

32. Paragraph 5(2) of Schedule 8 amends section 536(6) to provide that the top slicing relief calculation in section 536(2) does not apply where the gain on a life insurance policy is reduced under new section 528.

33. Paragraph 5(3) of Schedule 8 amends section 536(7).

34. New section 536(7) provides that in computing top slicing relief the number of complete years for which the policy has run before the chargeable event gain arises will be reduced by the number of complete years in the material interest period during which the individual was non-UK resident.

35. Paragraph 6 of Schedule 8 inserts a new sub-paragraph (14) into section 552 of ICTA (information: duty of insurers).

36. Paragraph 7(1) and (2) of Schedule 8 sets out the effective dates for the changes made by Schedule 8.

37. Paragraph 7(3) of Schedule 8 defines 'variation' and 'increase in the benefits secured' for the purposes of paragraph 7 (2)(a).

38. Paragraph 7(4) of Schedule 8 explains the date on which the insurance or contract is made when a policy falls under section 473A ITTOIA for the purposes of paragraph 7(1) and (2).

Background

32. Special rules apply income tax to investment profits (gains) realised by individuals from life insurance policies and capital redemption policies. The rules are known as the chargeable event gain regime.

33. Provision is made within the regime to ensure that chargeable event gains arising on policies issued by foreign insurers are reduced in proportion to the policyholder's period of residence outside the UK at any time during the life of the policy. Very broadly, this means that gains accruing during an individual's period of residence outside the UK are excluded from the charge to UK tax.

34. Time apportioned reductions are currently not available to policies issued by UK insurers even though individuals with such policies may also have periods of residence outside the UK.

35. In addition, the amount of the reduction provided by the current rules may be inappropriate in some circumstances. For example, relief is given by reference to the residence history of the legal owner of the policy rather than the person liable to income tax on the gains (generally the beneficial owner).

36. A consultation document was issued 13 August 2012 to invite views on reforming the rules to allow time apportioned reductions to be made available to individuals with policies issued in the UK, who have a period of residence outside the UK and to develop a more appropriate method to calculate time apportioned reductions that also interacts effectively with the new statutory residence rules.

Section 25, Schedule 9: Qualifying Insurance Policies

Summary

1. Section 25 and Schedule 9 provide for the implementation of a new annual premium limit on qualifying life insurance policies (QPs). The amount of premiums payable into QPs for an individual will be limited to no more than £3,600 in any 12 month period for QPs issued on or after 6 April 2013. Transitional rules will apply for policies issued from 21 March 2012 to 5 April 2013 inclusive. Policies issued in this period will be restricted so that full relief is available in relation to premiums payable or treated as payable in the transitional period, but the £3,600 annual limit will apply to premiums payable thereafter.

Details of the Schedule

2. Paragraph 1 of Schedule 9 announces amendments to Schedule 15 to the Income and Corporation Taxes Act 1988 (ICTA) (qualifying insurance policies).

3. Paragraph 2 of Schedule 9 introduces a new Part A1 entitled "Premium limit on qualifying policies" into Schedule 15 to ICTA which will precede the existing Part1.

Details of the new Part A1 of Schedule 15 to ICTA

4. Sub-paragraphs (1) to (3) of new paragraph A1(1) set out the events and conditions which will make a policy a non-qualifying policy after the issue, variation or assignment of a policy on or after 6 April 2013.

5. Sub-paragraph (4) of new paragraph A1 sets out exceptions to events that would normally make a policy non-qualifying.

6. Sub-paragraph (5) of new paragraph A1 defines the 'relevant period' in sub-paragraph (3)(b)(ii) of new paragraph A1.

7. Sub-paragraph (6) of new paragraph A1 sets out the circumstances where a variation to a policy can be ignored.

8. Sub-paragraph (7) of new paragraph A1 provides that where a policy first fulfils the requirements of paragraph 24(3) of Schedule 15 to ICTA on or after 6 April 2013 that policy is not excluded from the events listed in sub-paragraph (3) of new paragraph A1 that make a policy non-qualifying on breach of the annual premium limit.

9. Sub-paragraph (8) of new paragraph A1 provides that the assignment of a restricted relief qualifying policy and any subsequent event (including the issue of a new policy) relating to the assigned policy is not excluded from the events listed in sub-paragraph (3) of new paragraph A1 that make a policy non-qualifying on breach of the annual premium limit.

10. Sub-paragraph (9) of new paragraph A1 provides that a variation to a 'pure protection' policy is only excluded where the policy is a pure protection policy before and after the variation.

11. Sub-paragraph (10) of new paragraph A1 provides that paragraph A1 only applies after all of the other provisions of Schedule 15 to ICTA relating to whether a policy is a qualifying policy.

12. Sub-paragraphs (1) to (3) of new paragraph A2 set out the events and conditions which will make a policy a restricted relief qualifying policy.

13. Sub-paragraph (4) of new paragraph A2 sets out exceptions to events that would otherwise make a policy a restricted relief qualifying policy.

14. Sub-paragraph (5) of the new paragraph A2 defines the 'relevant period' for the purposes of sub-paragraph (3)(f)(ii) of new paragraph A2.

15. Sub-paragraph (6) of new paragraph A2 sets out the circumstances where a variation or premium limit event can be ignored.

16. Sub-paragraph (7) of new paragraph A2 sets out the relevant date for the purposes of sub-paragraph (6) of new paragraph A2.

17. Sub-paragraph (8) of new paragraph A2 provides that a variation to a 'pure protection' policy is only excluded where the policy is a pure protection policy before and after the premium limit event or variation.

18. Sub-paragraphs (9) and (10) of new paragraph A2 define a premium limit event if a protected policy is varied or an option under such a policy is exercised.

19. Sub-paragraph (11) of new paragraph A2 defines a ‘relevant period’ for the purposes of sub-paragraphs (9)(b)(ii) and (10)(b)(ii) of new paragraph A2.

20. Sub-paragraph (12) of new paragraph A2 sets out the circumstances where a variation of, or an exercise of an option under, a protected policy is excluded from being a premium limit event.

21. Sub-paragraph (13) of new paragraph A2 provides that references to paragraph 24 of Schedule 15 to ICTA in sub-paragraph (3)(g) of new paragraph A2 are references to the application of paragraph 24 before 6 April 2013.

22. Sub-paragraph (14) of new paragraph A2 provides that a qualifying policy which is a new policy, in relation to a restricted relief qualifying policy will itself be a restricted relief qualifying policy.

23. Sub-paragraph (15) of new paragraph A2 provides that once a policy is designated a restricted relief qualifying policy it will remain a restricted relief qualifying policy provided it continues to meet the other qualifying policy requirements in Schedule 15 to ICTA for a qualifying policy.

24. Sub-paragraph (16) of new paragraph A2 provides that new paragraph A1 will not apply to restricted relief qualifying policies for the purposes of new sub-paragraphs (14) or (15) except where a restricted relief qualifying policy is assigned.

25. Sub-paragraph (17) of new paragraph A2 advises that further provisions concerning restricted relief qualifying policies are contained in section 463A to 463D of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

26. Sub-paragraph (1) of new paragraph A3 defines the circumstances in which an individual is in breach of the premium limit for relevant policies.

27. Sub-paragraph (2) of new paragraph A3 sets out exceptions to the calculation of premiums payable and defines ‘relevant period’ in relation to sub-paragraph (1) of new paragraph A3.

28. Sub-paragraph (3) of new paragraph A3 sets out the maximum amount that may be left out of account where payment of the first premium is met out of sums due to the beneficiary under previous policies in accordance with paragraphs 3(4)(c) and 15 of Schedule 15 to ICTA.

29. Sub-paragraph (4) of new paragraph A3 defines a ‘relevant policy’.

30. Sub-paragraph (5) of new paragraph A3 explains that a protected policy and a pure protection policy are not relevant policies.

31. Sub-paragraphs (6) and (7) of new paragraph A3 set out how to determine to which policies new paragraph A3 is to apply where two or more of the events listed in sub-paragraph (3) of new paragraph A1 and new sub-paragraph (3) of new paragraph A2 occur at the same time.

32. Sub-paragraph (8) of new paragraph A3 deals with the situation where two or more of the events referred to in sub-paragraph (6) of new paragraph A3 occur at the same time and the policies in question are issued by the same issuer with unique identifiers. It provides that, in such a case, the policies to which new paragraph A3 apply are determined by sub-paragraph (9) of new paragraph A3.

33. Sub-paragraphs (1) to (2) of new paragraph A4 define ‘protected policies’ for the purposes of new Part A1.

34. Sub-paragraphs (3) to (4) of new paragraph A4 set out when a policy is no longer to be regarded as a ‘protected policy’.

35. Sub-paragraphs (1) to (3) of new paragraph A5 define ‘beneficiary under a policy’ for the purposes of new Part A1.

36. Sub-paragraph (4) of new paragraph A5 provides that the definition of non-charitable trust for the purposes of this paragraph follows that set out in section 545(1) of ITTOIA. It also clarifies that trusts created by an individual include those trusts set out in section 465(6) of that Act.

37. Sub-paragraph (5) of new paragraph A5 provides that an individual is a beneficiary under a policy where the rights, or any share in the rights, of a policy are held by someone else as security for a debt of that individual and the rights, or share in the rights, are not beneficially owned by any individual.

38. Sub-paragraph (1) of new paragraph A6 provides the definitions of a ‘new policy’, a variation to a policy, a ‘pure protection policy’ and a ‘relevant option’ in relation to a policy.

39. Sub-paragraph (2) of new paragraph A6 defines a ‘deceased beneficiary event’.

40. Sub-paragraph (3) of new paragraph A6 defines a ‘mortgage endowment assignment’.

41. Paragraph 3 of Schedule 9 inserts a new section at the beginning of Part 1 of Schedule 15 to ICTA entitled “Rules for qualifying policies”.

Details of new rules for qualifying policies

42. Sub-paragraphs (1) and (2) of new paragraph B1 provide that for policies issued on or after 6 April 2013 only individuals may have beneficial ownership of all the rights.

43. Sub-paragraph (3) of new paragraph B1 disapplies the paragraph to policies protected for the purposes of new Paragraph A1.

44. Sub-paragraph (4) of new paragraph B1 defines ‘protected’ for the purposes of a new policy.

45. Sub-paragraphs (1) & (2) of new paragraph B2 provide that if any rights under a policy are assigned on or after 6 April 2013 the policy will become a non-qualifying policy after assignment.

46. Sub-paragraph (3) of new paragraph B2 sets out exceptions to sub-paragraph (2) of new paragraph B2.

47. Sub-paragraph (4) of new paragraph B2 provides that section 465(6) of ITTOIA applies for the purposes of sub-paragraph (3)(f) of new paragraph B2.

48. Sub-paragraph (5) of new paragraph B2 sets out that regulations may provide that sub-paragraph (2) of new paragraph B2 does not apply if conditions prescribed by the regulations are met.

49. Sub-paragraph (6) of new paragraph B2 describes what regulations under sub-paragraph (5) may contain.

50. Sub-paragraph (7) of new paragraph B2 provides that assignments falling within sub-paragraphs (3) or (5) of new paragraph B2 may fall within new paragraphs A1 or A2 and so may become non-qualifying or restricted relief qualifying policies following that assignment.

51. Sub-paragraph (1) of new paragraph B3 sets out which events occurring on or after 6 April 2013 will require production of a required statement to enable qualifying policy status either to come into existence or continue.

52. Sub-paragraph (2) of new paragraph B3 explains that the required statement must be provided by each individual who is a beneficiary and must be provided to the issuer of

the policy before the end of the relevant period if the policy is to become or continue to be a qualifying policy.

53. Sub-paragraph (3) of new paragraph B3 explains that if no statement is provided under sub-paragraph (2) of new paragraph B3, the policy will be a non-qualifying policy.

54. Sub-paragraph (4) of new paragraph B3 defines ‘relevant period’ for the purposes of the variation of a policy falling within sub-paragraph (1)(b)(ii) of new paragraph B3.

55. Sub-paragraph (5) of new paragraph B3 provides that the required statement is not required on the issue of a policy that is a pure protection policy (as defined in sub-paragraph (1)(c) of new paragraph A6) on issue. A required statement is also not required when a pure protection policy is assigned and the assignment is one listed in sub-paragraph (3)(c) to (g) of new paragraph B2. A required statement will not be required for all other events listed in sub-paragraph (1) of new paragraph B3 where the policy is a pure protection policy both before and after the event.

56. Sub-paragraph (6) of new paragraph B3 provides that the required statement is not required where an assignment is a mortgage endowment assignment and is made to an individual in pursuance of a legally enforceable obligation relating to a divorce or the dissolution of a civil partnership.

57. Sub-paragraph (7) of new paragraph B3 provides a power for Her Majesty’s Revenue and Customs to exclude in regulations individuals from the requirement to make a statement under sub-paragraph (2) of new paragraph B3 where conditions set out in those regulations are met.

58. Sub-paragraph (8) of new paragraph B3 provides that if a statement is not required under sub-paragraph (7) of new paragraph B3, then sub-paragraph (3) of new paragraph B3 does not make the policy a non-qualifying policy.

59. Sub-paragraph (9) of new paragraph B3 provides that the reference to an individual who is a beneficiary under the policy is to be read in accordance with new paragraph A5. It defines the statement period for the purposes of sub-paragraph (2) of new paragraph B3 above. It provides the Commissioners for Her Majesty’s Revenue and Customs with the power to make regulations for the purposes of sub-paragraph (2) of new paragraph B3.

60. Sub-paragraph (10) of new paragraph B3 explains the circumstances under which an extension to the statement period may be granted by an officer of Revenue and Customs.

61. Sub-paragraph (11) of new paragraph B3 provides that sub-paragraph (12) of new paragraph B3 applies where the obligations of the issuer under a policy have been transferred to another person.

62. Sub-paragraph (12) of new paragraph B3 provides that where sub-paragraph (11) of new paragraph B3 applies a statement provided under sub-paragraph (2) of new paragraph B3 must be provided to the transferee.

63. Sub-paragraph (13) of new paragraph B3 sets out the provisions that the regulations may cover.

64. Paragraph 4 of Schedule 9 amends Paragraph 17 of Schedule 15 to ICTA applying to substitutions.

65. Paragraph 4(2) inserts a new subsection (za) in paragraph 17(2) before subsection (a).

66. New paragraph 17(2)(za) provides that a new policy issued for another policy on or after 6 April 2013 cannot be a qualifying policy if the old policy was not a qualifying policy by virtue of new paragraphs A1(2), B1(2), B2(2), or B3(3) or because it was itself a new policy refused qualifying policy status by virtue of this provision.

67. Paragraph 4(3) makes a consequential amendment to paragraph 17(2)(a) as a result of new paragraph 17(2)(za).

68. Paragraph 4(4) amends the reference to sub-paragraph (2) to a reference to sub-paragraph (2)(a) to (c)

69. Paragraph 4(5) inserts new sub-paragraph (5) in paragraph 17.

70. New paragraph 17(5) provides that whilst new paragraph A1 is not to be applied in determining whether a new policy issued for another policy is a qualifying policy for the purposes of paragraph 17, new paragraph A1 may instead be applied after paragraph 17 has been applied.

71. Paragraph 5 of Schedule 9 inserts new sub-paragraph (2A) in paragraph 25 of Schedule 15 to ICTA.

72. New paragraph 25(2A) provides that in determining for the purposes of paragraph 25 whether a policy would be a qualifying policy new paragraphs A1 and B1 to B3 are to be ignored.

73. Paragraph 6 of Schedule 9 makes amendments to section 55 Finance Act 1995 so as to have effect on the appointed date.

74. Paragraph 7 of Schedule 9 announces amendments to Chapter 9 of Part 4 of ITTOIA (gains from contracts for life insurance etc.).

75. Paragraph 8 of Schedule 9 inserts new sections 463A (restricted relief qualifying policies: disapplication of section 485 etc.); 463B (restricted relief qualifying policies: allowable premiums); 463C (restricted relief qualifying policies: personal representatives and trustees with deceased settlors); 463D (restricted relief qualifying policies: assignments and events following assignments) and 463E (transitional protection for policies issued in respect of insurances made on or after 21 March 2012 but before 6 April 2013) into ITTOIA after section 463.

76. New section 463A(1) provides that this section applies to determine if an individual is liable to tax under Chapter 9 of Part 4 of ITTOIA.

77. New section 463A(2) provides that where an event occurs on or after 6 April 2013 section 485 does not apply in relation to a restricted relief qualifying policy.

78. New section 463A(3) provides the formula for reducing the gain chargeable to tax in respect of a restricted relief qualifying policy.

79. New section 463A(4) explains that if section 528 also applies to the gain, then the reduction to the gain is calculated under new section 463A(3) prior to the application of section 528.

80. New section 463A(5) introduces subsections that apply for the purposes of this section and new section 463B.

81. New section 463A(6) defines the policy period for the restricted relief qualifying policy in question.

82. New section 463A(7) introduces new sections 463A (8) and (9) if the restricted relief qualifying policy in question is a new policy in relation to another policy.

83. New section 463A(8) sets out the period from which the restricted relief qualifying policy is to have run for the purposes of new section 463A (6).

84. New section 463A (9) sets out what the premiums payable under the restricted relief qualifying policy in question include.

85. New section 463A(10)(a) and (b) sets out which premiums are to be excluded in determining the premiums payable under a policy.

86. New section 463A(11) sets out the maximum amount that may be left out of account under new section 463A (10) (b).

87. New section 463A(12) explains that any provision for premiums to be waived due to a person's disability are ignored when determining the premiums payable under a policy.

88. New section 463A(13) defines new policy as having the meaning given in paragraph 17 of Schedule 15 to ICTA.

89. New section 463B(1) sets out how to determine the extent to which premiums payable under the restricted relief qualifying policy in question during the period of that policy are allowable premiums for the purposes of new section 463A(3).

90. New section 463B(2) states that a premium payable under the restricted relief qualifying policy in question is allowable if it is payable before the restricted relief date.

91. New section 463B(3) defines 'restricted relief date'.

92. New section 463B(4) provides that premiums payable under the restricted relief qualifying policy in question in a relevant premium period are allowable so far as they do not exceed in total the premium limit for the period.

93. New section 463B(5) defines 'relevant premium period.'

94. New section 463B(6) defines 'relevant date' for the purposes of new section 463B (5).

95. New section 463B(7) to (10) sets out how to determine the 'premium limit' for a relevant premium period for the purposes of new section 463B(4).

96. New section 463B(11) confirms that new section 463B(4) does not apply if at the time the restricted relief qualifying policy became a restricted relief qualifying policy, it was not the individual's first restricted relief qualifying policy.

97. New section 463B(12) and (13) sets out the conditions for a policy to be a related policy for the purposes of new section 463B.

98. New section 463B(14) explains when a new policy is a related policy.

99. New section 463B(15) confirms that a policy ceases to be a related policy if it no longer meets the conditions of new section 463B(12) and (13) .

100. New section 463B(16) states that if the restricted relief qualifying policy in question is a restricted relief qualifying policy by virtue of new paragraph A2(14) of Schedule 15 to ICTA then references in this section to the restricted relief qualifying policy in question becoming a restricted relief qualifying policy are to be read as references to the policy determined under new section 463B(17) becoming a restricted relief qualifying policy.

101. New section 463B(17) defines "the qualifying policy in question becoming a restricted relief qualifying policy" for the purposes of new section 463B(16). The qualifying policy in question will be the original policy in respect of which the new policy has been issued. Where a series of new policies have been issued under paragraph 17 of Schedule 15 to ICTA, the qualifying policy in question is the first original policy in that series.

102. New section 463B(18) to (21) provides a rule where a premium payable in the period from 21 March 2012 to 5 April 2013 inclusive (P1) and the next premium payable after that (P2) is payable more than one month after the date on which P1 is payable and on or after 6 April 2013. In this situation P1 is treated as if it were a series of monthly premiums instead of one single premium. The series will run from the day P1 is payable (day A) to the date P2 is payable (day B). The number of premiums due will equate to the number of complete months in the period beginning on day A and ending on day B. The amount of each monthly premium will be the amount of P1 divided by the number of complete months in the series.

103. New section 463C(1) provides that this section applies to determine if personal representatives are liable to tax under section 466.

104. New section 463C(2) provides that this section also applies to determine if trustees are liable for tax under section 467 where the rights under the policy are held in trusts and the person who created the trusts has died.

105. New section 463C(3) provides that where an event occurs on or after 6 April 2013 section 485 does not apply in relation to a restricted relief qualifying policy.

106. New section 463C(4) provides that where personal representatives or trustees are liable for tax on a gain in respect of a restricted relief qualifying policy, new section 463A(3) applies to the personal representatives or trustees as if they were the 'individual' referred to in that section.

107. New section 463C(5) provides that references to the 'individual' in new section 463B(12)(a) are to be read as references to the deceased. It also provides that policies which were related policies before the deceased's death and which continue to run after the deceased's death shall continue to be related policies until such time it ceases to run and, apart from the deceased's death, meet the conditions in new section 463B(12).

108. New section 463C(6) explains when a new policy is a related policy.

109. New section 463C(7) confirms that a policy ceases to be a related policy if apart from the deceased's death it no longer meets the conditions of new section 463B(12)(a) and (b)

110. New section 463C(8) provides that if section 528A also applies to the gain, then the reduction to the gain is calculated under new section 463A(3) prior to the application of section 528A.

111. New section 463D(1) applies where a policy is assigned or any subsequent event (including the issue of a new policy) relating to the assigned policy and that policy becomes a non-qualifying policy after the assignment or subsequent event.

112. New section 463D(2) applies the formula in new section 463A(3) to the assigned policy.

113. New section 463D(3) amends the relevant premium period defined at new section 463B(5) to include the period before the assignment.

114. New section 463D(4) provides that if section 528 also applies to the gain, then the reduction to the gain is calculated under new section 463A(3) prior to the application of section 528.

115. New section 463E(1) applies to certain policies issued on or after 21 March 2012 but before 6 April 2013. These are policies that are not restricted relief qualifying policies at issue but are varied on or after 6 April 2013 such that, as a result of the variation, they become non-qualifying.

116. New section 463E(2) provides the formula for reducing the gain chargeable to tax when this section applies.

117. New section 463E(3) explains that if section 528 also applies to the gain, then the reduced gain chargeable to tax is calculated under new section 463E(2) prior to the application of section 528.

118. New section 463E(4) applies new section 463A(10) to (12) to the reduced gain chargeable to tax under new section 463E(2).

119. Paragraph 9 of Schedule 9 amends section 485 to ensure that this section is subject to new section 463A and 463C.

120. Paragraph 10 of Schedule 9 inserts a new section 552ZB (regulations in relation to qualifying policies) in ICTA after section 552ZA.

121. New section 552ZB(1) provides the power to make regulations in relation to the provision of information to the Commissioners for Her Majesty's Revenue and Customs by insurers about issued QPs and for the provision of information by insurers to those applying for QPs or who are required to make statements under new paragraph B3. The section also provides that the regulations may also make such provision as is necessary for enabling an officer of Her Majesty's Revenue and Customs to check that the regulations and required under sub-paragraph B3(2) are not being contravened.

122. New section 552ZB(2) provides that records should be maintained to allow an officer of Revenue and Customs to check the regulations are not being contravened.

123. New section 552ZB(3) explains what the regulations may contain.

124. New section 552ZB(4) defines 'prescribed', 'qualifying policy' and 'relevant person' for the purposes of this section.

125. New section 552ZB(5) defines 'relevant transferee' for the purposes of that section.

126. Paragraph 11 of Schedule 9 makes amendments to section 552B of ICTA.

127. Paragraph 12 of Schedule 9 inserts the requirements under new section 552ZB into section 98 of the Taxes Management Act 1970 (TMA 1970).

Background

128. The qualifying policy (QP) regime was introduced in 1968 to preserve pre-existing tax treatment for traditional moderate value, long term, regular premium savings policies that contain a significant element of life insurance.

129. No upper limit was set for the investment premiums that could be paid into a QP which allowed individuals to obtain unlimited relief from higher rates of income tax.

130. The Government announced in Budget 2012 a restriction to the tax relief available for QPs. This restriction will limit the amount of premiums payable into QPs for an individual to no more than £3,600 in any 12 month period with effect from 6 April 2013.

131. This Schedule introduces changes to legislation, following consultation, which implements the new annual premium limit of £3,600.

132. Policies issued before 21 March 2012 will only be affected by the new rules where there is substitution, variation or the exercise of an existing option within the policy on or after 21 March 2012 which results in the following:

(a) Where the substitution etc. occurs before 6 April 2013:

  i) the premium paying term is extended and the premiums payable exceed the £3,600 limit on their own or when taking into account other policies after that date or

  ii) the premiums payable are increased, and although satisfying all other QP criteria as set out in Schedule 15 to the Income and Corporation Taxes Act 1988, the premiums payable exceed the £3,600 limit on their own or when taking into account other policies after that date.

(b) Where the substitution etc occurs on or after 6 April 2013:

  i) The same conditions apply as for substitution etc, before 6 April 2013 but additionally where the premium paying term is reduced or the premiums payable are reduced, and although satisfying all other QP criteria as set out in Schedule 15 to the Income and Corporation Taxes Act 1988, the premiums payable exceed the £3,600 limit on their own or when taking into account other policies after that date.

(c) Where any of the above three events occurs, the relief will still be granted for premiums payable or treated as payable up to the modification of the policy but will be restricted to the £3,600 annual limit for premiums payable thereafter.

Section 26, Schedule 10: Transfer of Assets Abroad

Summary

1. Section 26 introduces Schedule 10 which makes changes to the "transfer of assets" anti-avoidance legislation in Chapter 2 of Part 13 of the Income Tax Act (ITA) 2007. This legislation applies to UK resident individuals who have transferred assets so that income has become payable to an overseas person, while the UK resident individual continues to be able to enjoy the income of the person abroad, or receive a capital sum directly or indirectly from the income. The legislation also applies to UK resident individuals who have not made the transfer which results in the income arising to the person abroad, but who can benefit directly or indirectly from the income arising. The changes do two things. They provide a new exemption from charge for "genuine transactions" where European Union treaty freedoms are engaged, and they make a series of other changes to the transfer of assets provisions aimed at clarifying the way certain aspects operate.

Details of the Schedule

Part 1

2. Paragraph 1 is introductory and provides for Chapter 2 of Part 13 of ITA 2007 (the transfer of assets abroad provisions) to be amended.

Part 2

3. Paragraph 2 sub-paragraph (2) amends the definition of a "person abroad" in section 718 ITA 2007 so that a person abroad for the purposes of the transfer of assets legislation is:

   a. either a person who is resident outside the United Kingdom, or

   b. an individual who is domiciled outside the United Kingdom.

   c. Therefore a company's domicile is not relevant in determining whether the company is a 'person abroad'. A company will be a 'person abroad' if it is resident outside the United Kingdom.

4. Paragraph 2 sub-paragraph (3) provides that sub-section 718 (2)(a) is omitted with the result that UK resident companies that are incorporated outside the UK will no longer automatically be treated as a 'person abroad' for the purposes of this legislation.

5. Paragraphs 3, 4 and 5 make amendments to section 720 ITA 2007 consequent upon the introduction of new section 742A.

6. Paragraph 6 makes further amendments, in this case to section 736 ITA 2007, consequent upon the introduction of new section 742A. It also provides for new section 742A to exempt relevant transactions effected on or after 6th April 2012.

7. Paragraph 7 inserts new section 742A (a new exemption for genuine transactions) into Chapter 2 Part 13 of ITA 2007.

8. Subsections (1) and (2) of new section 742A provide that income is to be left out of account (that is, it will be exempt from charge) if an officer of HMRC is satisfied that it is attributable to a transaction that takes place on or after 6 April 2012 and which meets Conditions A and B.

9. Subsection (3) of new section 742A sets out Condition A. Condition A is met where, if the transaction in question were to be considered to be a genuine one (when viewed

objectively, having regard to the circumstances under which it was effected and any other relevant circumstances), and gave rise to a transfer of assets charge, that liability would constitute an unjustified and disproportionate restriction on a relevant EU treaty freedom.

10. Subsection (4) of new section 742A sets out that provisions of the Treaty on the Functioning of the European Union and the EEA Agreement (or any subsequent treaty replacing either of those provisions) are to be considered as relevant for the purposes of subsection (3). They contain the four freedoms mentioned in subsection (3): freedom of movement of persons, capital, services and goods.

11. Subsection (5) of new section 742A sets out Condition B. Condition B is met where an officer of HMRC is satisfied that the transaction in question should be considered genuine when viewed objectively, having regard to the circumstances under which it was effected and any other relevant circumstances.

12. Subsection (6) of new section 742A makes further provision, about what constitutes a "genuine" transaction for the purposes of meeting Conditions A and B. A transaction will not be considered genuine where it is made other than on arm's length terms. A transaction is not on arm's length terms if either :

- it is on terms other than those that would have been made between persons not connected with each other dealing at arm's length, or
- it would not have been entered into at all between persons not connected with each other dealing at arm's length.

When considering whether a transaction is on arm's length terms regard must be had to all arrangements and relevant circumstances in connection with which the transaction is carried out.

13. Subsection (7), (8) and (13) of new section 742A make further provision about what constitutes a "genuine" transaction. These provisions concern the use of the assets transferred; any assets directly or indirectly representing those assets; any income arising from the assets transferred and any assets representing the accumulation of income arising in relation to the transaction being considered. That transaction may be a relevant transfer (as defined in section 716), or an associated operation (as defined in section 719).

14. Where such assets are used for the purposes of, or received in the course of, activities carried out in a territory outside the UK, by a person who has a business establishment in that territory, in order for the transaction to be considered to be a genuine transaction, those activities must consist of the provision, by the person who has the business establishment in the overseas territory, of goods or services to others on a commercial basis. The activities must involve the use of sufficient staff with the appropriate level of competence and authority to carry out them out. The activities must involve the use of premises and equipment commensurate with their size and nature. And the activities must involve the person who has the business establishment adding a commensurate level of economic value to the customers to whom the goods or services are provided.

15. Subsection (9) of new section 742A defines "staff" as employees, agents or contractors engaged by the person who has the overseas business establishment.

16. Subsection (10) of new section 742A explains how to determine whether a person has a "business establishment" in a territory, by analogy with the provisions at sections 1141, 1142(1) and 1143 of the Corporation Tax Act 2010 which define a permanent establishment of a company.

17. Subsection (11) of new Section 742A sets out circumstances where the arm's length test in subsection (6) does not apply to a transaction. This will be the case where:

- the relevant transfer is made by an individual wholly for personal (not commercial) reasons, for the personal benefit (not commercial) benefit of other individuals,
- no consideration is given (whether directly or indirectly) for the relevant transfer or otherwise for any benefit received by the other individuals, and
- all the assets and income described in subsection (12) in relation to the transaction being considered, are used only in this respect.

This may be the case where, for example, an individual settles assets into a non-resident trust for the benefit of his family.

18. Subsection (12) of new section 742A defines assets and income for the purposes of subsections (7) and (11) as:

    a. any of the assets transferred by the relevant transfer ,
    b. any assets representing any of the assets transferred,
    c. any income arising from the assets within (a) or (b),
    d. any assets representing the accumulations of income arising from any assets within paragraph (a) or (b).

19. Subsections (14) and (15) of new section 742A apply where a transaction is not shown to be genuine because it does not fully meet the requirements of subsection (6). They provide for income shown to be attributable to that part of a relevant transaction which is genuine to be exempt from the charge whilst the part which is not shown to be genuine will be subject to the charge.

20. Paragraph 8 inserts a provision into section 751 of ITA 2007 to extend the jurisdiction of the tribunal on any appeal to cover the new section 742A.

21. Paragraph 9 sets out the dates from which the changes in Part 2 of the Schedule take effect. Sub-paragraph (1) provides for resident companies which are incorporated abroad to be treated as resident with effect from 6th April 2012. Sub-paragraph 2 provides for all other amendments set out in part 2 to take effect for the 2012-13 and subsequent tax years.

Part 3

22. Paragraph 10 sub-paragraph (1) provides that amendments will be made to section 721 (individuals with power to enjoy income as a result of a relevant transaction).

23. Paragraph 10 sub-paragraph (2) clarifies that the income that would be chargeable to income tax if it were the individual’s in Condition B in section 721(3) is the income of the person abroad.

24. Paragraph 10 sub-paragraph (3) inserts new subsection (3A) and new subsection (3B) into section 721.

25. New subsection 721(3A) clarifies that the income that is treated as arising to the individual in subsection 721(1) is not the income that the individual abroad receives, but an amount that is equal to it. This is subject to the provisions in section 724 (where benefit is provided out of the income of a person abroad) and 725 (where the income that the individual can enjoy form part of the profits of a controlled foreign company).

26. New subsection 721(3B) provides that where the individual has been charged to tax on the deemed income in subsection 721(1) under provisions other than those in Chapter 2 of Part 13 ITA 2007, **and** that income tax liability on the deemed income has actually been paid, then there is no further charge under section 721.

27. Paragraph 10 sub-paragraph (4) clarifies that the income referred to in subsection 721(4) is the income of the person abroad and achieves consistency of drafting in the section as a whole.

28. Paragraph 10 sub-paragraph (5) removes the provision which allows section 721 to apply even where income might be chargeable under other provisions. It is an amendment consistent with new subsection 721(3B).

29. Paragraph 11 sub-paragraphs (1) to (3) make amendments to section 724 in order to make it clear that where this section applies the tax charge under section 720 is on an amount which is equal to the amount or value of the benefit that the individual can enjoy rather than on the benefit itself.

30. Paragraph 12 amends section 725 which provides for a reduction in the amount charged under section 721 where there is a controlled foreign company involved.

31. Sub-paragraph (2) of paragraph 12 amends subsection 725(1), which is amended by paragraph 22 of Schedule 20 to FA 2012. Subsection 725(1) provides that section 725 applies where an amount of income is treated as arising to an individual under section 721 and the income arising to a person abroad includes an amount forming part of a CFC's chargeable profit.

32. Sub-paragraph (3) of paragraph 12 inserts new subsections (2A) and (2B) into section 725. These provide a formula to determine the reduction in the amount of income to be treated as arising to an individual where (i) there is a CFC involved and the amount of income treated as arising to the individual is reduced under section 725 as a result and (ii) the special rules in section 724 apply to determine the amount on which an individual is chargeable rather than section 721.

33. Sub-paragraph (4) of paragraph 12 provides that where the amendments made to section 725(1) by paragraph 22 of Schedule 20 to FA 2012 are to be ignored then sub-paragraph (2) does not apply. Instead subsection 725(2) is amended by sub-paragraph (5).

34. Sub-paragraph (5) of paragraph 12 amends subsection 725(1) where paragraph 22 of Schedule 20 to FA 2012 is to be ignored. The amendments to subsection 725(1) are to provide clarification.

35. Paragraph 13 amends section 726 to reflect that the income treated as arising to an individual under section 721 is an amount equal to the income of the person abroad.

36. Paragraph 14 sub-paragraphs (1) to (5) makes amendments to section 728.

37. Sub-paragraph (2) inserts new subsection 728(1A) which provides that the amount of income treated as arising to an individual under this section is equal to the amount of the income of the person abroad (subject to subsection 728(2)).

38. Sub-paragraph (3) makes consequential amendments to subsection 728(2) as a result of the amendments to section 725 which applies in determining the amount of income treated as arising to an individual under section 728.

39. Sub-paragraph (4) inserts new subsection 728(2A) which provides that where an individual has been charged to tax on income that is treated as arising to them (under subsection 728(1)) under provisions other than those in Chapter 2 of Part 13 ITA 2007, **and** that income tax liability on the deemed income has actually been paid, then there is no further charge under section 728.

40. Sub-paragraph (5) deletes subsection 728(3)(a).

41. Paragraph 15 amends subsection 730(2) to reflect that the income treated as arising to an individual under section 728 is an amount equal to the income of the person abroad.

42. Paragraph 16 amends section 743.

43. Sub-paragraph (2) inserts new subsection 743(2A) and (2B) which provide that where an amount of income is taken into account in charging an individual to income tax under section 720 or 727 and that income is subsequently received by the individual then it will not be charged to tax again. Subsection 743(4) is consequently deleted.

44. Paragraph 17 makes consequential amendments to section 744 to reflect the various amendments in Part 3 of this Schedule.

45. Paragraph 18 makes consequential amendments to section 745 to reflect that sections 721 and 728 have been amended to provide that the income treated as arising under these sections is an amount equal to the amount of the income of the person abroad.

46. Paragraph 19 makes consequential amendments to subsection 746(2) to reflect that sections 721 and 728 have been amended to provide that the income treated as arising under these sections is an amount equal to the amount of the income of the person abroad.

47. Paragraph 20 provides for the amendments made by paragraphs 10 to 19 to take effect for 2013-14 and subsequent tax years and to apply to all relevant transfers whether they occurred before, on or after 6th April 2013.

48. Paragraph 21 provides that the new sections 721(3B) and 728(2A) only take effect only where the income abroad arises to the person abroad after 6th April 2013.

Background

49. This legislation updates this anti-avoidance provision to maintain its compatibility with EU law, and makes certain other amendments to improve the clarity of the rules.

50. Broadly, the “transfer of assets” rules impose a charge to income tax on an individual who is ordinarily resident in the UK (or, from 6 April 2013, an individual who is resident in the UK) where there has been a transfer of assets and, as a result of the transfer (and/or any associated operations), income becomes payable to a person abroad, but an individual can still enjoy income, or receive or have entitlement to receive a capital sum or other benefits from the arrangements.

51. An infraction notice (Reasoned Opinion) was issued by the European Commission on 16 February 2011. The Commission argued that the transfer of assets legislation breaches the treaty freedoms of establishment and movement of capital.

52. On 30 July 2012 the Government published a consultation document proposing a way of reforming the legislation to ensure EU compatibility, and also certain other changes to improve the clarity of the provisions. The Government's response to the consultation was published on 11 December 2012, together with draft legislation.

53. The legislation adds a new exemption which operates where the EU treaty freedoms are engaged and which focuses on whether the nature of transactions is genuine and whether they serve the purpose of the freedoms. (There is an existing exemption where there is no tax avoidance purpose, or where the transactions are genuine commercial transactions, and any tax avoidance purpose was incidental.) Business transactions will not be regarded as genuine unless they are on arm's length terms and, in the case of transactions for the purposes of a business establishment, give rise to income attributable to economically significant activity that takes place overseas.

54. These changes will provide exemption for genuine commercial business activities overseas and also for transactions that do not involve commercial activities but that are nevertheless genuine transactions that are protected by the single market.

55. There is also a provision which allows for the bifurcation of a relevant transaction into a part which is genuine and a part which is artificial, so that the transfer of assets tax charge only falls on income from the artificial part of the transaction.

56. The statutory definition of a 'person abroad' for transfer of assets purposes is amended by this legislation so that a company's domicile status is not taken into account to determine whether it is a 'person abroad'. A company will be a 'person abroad' if it is resident outside the United Kingdom. Companies incorporated outside the United Kingdom but nevertheless resident in the United Kingdom for tax purposes will no longer automatically be treated as a 'person abroad' for these purposes.

57. This legislation also makes a series of other changes to the transfer of assets provisions aimed at clarifying the way certain aspects operate.

58. There is an amendment to provide greater clarity around the prevention of double charging, in circumstances where the same income could be the subject of both a transfer of assets charge and also a charge under another part of the Taxes Acts.

59. Finally there is a change that clarifies how the transfer of assets rules operate in relation to reliefs under double taxation agreements. This will make it clear that neither a treaty provision nor the transfer of assets legislation can allow a relief that would not otherwise be due.

Section 27, Schedule 11: Payments of Interest

Summary

1. Section 27 introduces Schedule 11 which makes changes to tax rules on deduction of income tax from interest relating to compensation payments, specialty debt and interest in kind.

Details of the Schedule

Interest payable on compensation

2. Paragraph 1 of the schedule provides for Chapter 3 of Part 15 of the Income Tax Act 2007 (ITA 2007) to be amended. Chapter 3 sets out the tax rules on deducting income tax from payments of 'yearly interest'. The meaning of 'yearly interest' is derived from case law and refers, broadly, to interest on a debt where the debtor and creditor intend that the debt should exist for more than a year, or where it is mutually accepted that the interest may be paid from year to year.

3. Paragraph 2 amends section 874 of ITA 2007 by inserting new subsections (5A) and (5B). The new subsections provide that interest that is payable to an individual in respect of compensation is to be treated as a payment of yearly interest. As a consequence, the person paying the interest will be required to deduct income tax at source from it. This is subject to a regulation-making power to allow for this requirement not to apply in certain circumstances.

4. Paragraphs 3 and 4 amend sections 875 and 878 of ITA 2007, to disapply the exception from the duty to deduct income tax from yearly interest that currently applies to building societies and banks Building societies and banks will therefore have to deduct income tax from interest payable in respect of compensation, where previously they would have been able to reply on the relevant exception.

Specialty debt

5. Paragraph 5 amends section 874 of ITA 2007 by inserting a new subsection (6A) to clarify the position on the obligation to deduct income tax from yearly interest arising on 'specialty debt' (that is, debt paid under a deed).

Interest in kind

6. Paragraph 6 inserts a new section 370A into the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005). The new section provides a rule to determine how interest paid in kind in the form of goods, services or vouchers is to be valued

7. Paragraphs 7, 8 and 11 amend section 380 of ITTOIA 2005, section 939 ITA 2007 and section 413 of the Corporation Tax Act 2009 (CTA 2009) respectively to exclude interest in kind from the definition of a funding bond for income tax and corporation tax. The amendments make it clear that the legislative provisions applying to funding bonds and interest in kind are mutually exclusive.

8. Paragraph 9 amends section 975 of ITA 2007 to ensure that the duty to issue a statement under that section only applies if new section 975A of ITA 2007 does not apply.

9. Paragraph 10 inserts a new section 975A into ITA 2007. The new section requires a person who pays interest in kind, or in the form of funding bonds where the issuer is under an duty to retain bonds under section 939 ITA 2007, to provide the recipient with a statement in writing. The statement must show the amount of the interest paid in kind or as a funding bond, the amount of tax deducted (if any), the net amount paid, and the date of payment.

10. Unlike the similar requirement in section 975 ITA where interest is paid in cash, a statement under new section 975A will be required in any case when any interest is paid in kind or by funding bonds where bonds must be retained, not just if the recipient requests it.

11. New section 975A will not apply to a payment of interest by funding bonds where there is no requirement on the issuer to deduct a sum representing income tax from the payment.

12. Paragraph 12 sets out the commencement provisions which, for building societies and other institutions such as banks paying interest on compensation payments, relate to the quarterly returns made by such institutions in respect of tax deducted from interest. Other changes made by the Schedule have effect from the date of Royal Assent.

Background

13. This legislation follows consultation in 2012 on a number of possible changes to income tax rules on interest and on deduction of income tax from interest.

14. The application of the current rules on deducting income tax from interest can be unclear and inconsistent in certain situations. For example, tax is required to be deducted from interest on compensation payments if it is ‘yearly interest’, but not if it is ‘short interest’; and, even if it is yearly interest, no tax is required to be deducted if the institution paying it is a building society or a bank paying it in the ordinary course of its business. A common example of interest paid on such compensation is that paid by financial institutions in cases of financial mis-selling.

15. Similarly, the amount of tax to be deducted when any interest is paid in kind can be difficult to ascertain in the absence of a clear rule providing how the interest is to be valued.

16. The changes clarify the application of the legislation and ensure that the rules on deduction of income tax operate in a consistent manner.

Section 28, Schedule 12: Disguised Interest

Summary

1. Section 28 introduces Schedule 12 which makes provision for amounts from arrangements that produce returns that are economically equivalent to interest (disguised interest) to be taxed as income.

Details of the Schedule

2. Paragraph 2 amends section 365 of ITTOIA by adding disguised interest to the list of savings and investment income that is charged to income tax under the rules in Part 4 of ITTOIA.

3. Paragraph 3 inserts new Chapter 2A, which contains the charge to income tax on disguised interest, into Part 4 of ITTOIA.

4. New section 381A defines the charge to tax on disguised interest. New subsection (1) establishes the scope of the income tax charge on disguised interest. It applies to an 'arrangement' that produces for the person who is party to it a return in relation to which an amount is 'economically equivalent to interest'. The legislation applies to any return that is economically equivalent to interest, which is produced by the arrangement in any way. This includes anything done in relation to the arrangement from which a return will be produced, such as disposing of an instrument before maturity, or a person otherwise ceasing to be party to the arrangement.

5. New subsection (2) provides that the charge under new section 381A applies only where the return is not taxed under any other income tax provision. Hence, where a return is taxable both as disguised interest and (for example) as a profit from a deeply discounted security, the latter rules take priority. Subsection (3) ensures that this also applies where the return chargeable under that other provision is exempt from income tax.

6. New subsection (4) determines when, for the purposes of the legislation, a return is 'economically equivalent to interest'. 'The time value of that amount of money' takes its meaning from case law on the meaning of interest. In *BennettvOgston* (15TC374) Rowlatt J described interest as 'payment by time for the use of money'. 'Practical likelihood' takes its meaning from cases involving the *Ramsay* principle, and is to be interpreted in the light of the House of Lords' judgment in *ScottishProvidentInstitution* (76TC538) as precluding attempts to manufacture a 'falsifying' arrangement.

7. New subsection (5) defines 'relevant time'. The effect of these provisions is that it must be clear at the outset that the return will be produced.

8. New subsection (6) defines the term 'arrangement'. It will include combinations of contracts or transactions that produce amounts that are economically equivalent to interest, such as box option schemes that are currently subject to rules under Chapter 12 of Part 4 of ITTOIA on guaranteed returns from disposals of futures and options. It will also include the manufactured payments and price differences that arise on stock lending and sale and repurchase arrangements (repos).

9. New section 381B charges the full amount of the return arising in the tax year. The charge on disguised interest is thus the same as that on interest taxable under Chapter 2 of Part 4 ITTOIA. 'Full amount' means the gross amount without deductions, and the term 'arising' takes its meaning from case law. In *DunmorevMcGowan* (52TC307) it was held that interest was taxable when it 'enured to the benefit' of the taxpayer. The charge on the amount arising in the tax year includes any part of the return that arises in that tax year. For example, where the arrangement is not undertaken or completed as originally envisaged, and only part of the return from the arrangement materialises, the amount taxable as having arisen is the disguised interest at that point – that is, that part of the return actually produced.

10. New section 381C establishes the person liable for income tax on disguised interest. As with section 381B, this replicates the position that applies to a person who receives or is entitled to interest under Chapter 2 of Part 4 of ITTOIA.

11. New section 381D prevents double taxation where the same income is taxable as disguised interest and under other tax provisions. It provides for HM Revenue & Customs to make 'just and reasonable' consequential adjustments to any other tax liabilities, where a person makes a claim.

12. New section 381E provides for an exemption from the disguised interest rules for arrangements that involve certain types of listed share. The exemption applies to shares that were issued before 6 April 2013, and to shares issued after that date that do not provide an interest-like return on issue. This is subject to an anti-avoidance provision where arrangements subsequently do secure such a return.

13. Paragraphs 4 to 17 make consequential amendments to legislation in the Taxation of Chargeable Gains Act 1992 (TCGA), ITTOIA, Income Tax Act 2007 (ITA), the Finance Act 2007, the Corporation Tax Act 2010 and the Finance Act 2010. These include the repeal of Chapter 12 of Part 4 of ITTOIA (guaranteed returns from disposals of futures and options) and the related legislation in TCGA, and Chapters 4 to 6 of Part 11 of ITA (amounts arising under stock lending and sale and repurchase arrangements (repos)).

14. Paragraph 18 contains the commencement provisions. The changes apply to returns from arrangements to which a person becomes party on or after 6 April 2013. Where a person is party to arrangements before 6 April 2013 that would have been within the rules on guaranteed returns from disposals of futures and options, or on manufactured payments and repos, returns arising from those arrangements on or after that date are taxable as disguised interest.

Background

15. Current income tax rules contain a number of provisions under which interest-like returns are charged to income tax in the same way as interest.

16. The new legislation provides a comprehensive income tax charge on disguised interest. It enables the repeal of existing anti-avoidance legislation on guaranteed returns from futures and options (which are a form of disguised interest arrangement), and allows for the simplification of income tax rules that treat certain amounts arising on stock lending and repos as payments of interest.

17. The legislation follows consultation in 2012 on a number of possible changes to income tax rules on interest. It is based on the disguised interest rule for corporates in Chapter 2A of Part 6 of the Corporation Tax Act 2009 and follows a similar principle-based approach to the drafting of legislation on financial products.

18. In due course it is anticipated that the legislation will facilitate the simplification of other income tax rules that tax returns from interest-like arrangements, such as legislation on deeply discounted securities and accrued income.

Section 29: Restriction on Surrender of Losses: Controlled Foreign Company Cases

Summary

1. Section 29 amends section 105 of Corporation Tax Act 2010 (CTA 2010) so that chargeable profits of a controlled foreign company (CFC) which are apportioned to a surrendering company are included in the threshold which amounts listed under section 99(1)(d)-(g) CTA 2010 must exceed before group relief is available.

Details of the Section

2. Sections 2 & 3 replaces the term “gross profits” with “the profit-related threshold”.

3. New subsection 3A, inserted by section 4, defines “the profit-related threshold”. This is the sum of the surrendering company’s gross profits and the amount of the chargeable profits of a CFC apportioned to the surrendering company (on condition that it is a chargeable company for the purpose of the controlled foreign company rules). This new subsection applies in respect of chargeable profits of CFCs apportioned under

section 371BC of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010).

4. New subsection 3B, inserted by section 4, includes in the "profit-related threshold" any chargeable profits of a CFC apportioned to the surrendering company under sections 747(3) and 752 of the Income and Corporation Taxes Act 1988 (ICTA 1988).

5. Section 5 inserts new subsection (5A) to section 105 which defines the terms "CFC" and "chargeable profits" by reference to the appropriate rules in either ICTA 1988 or TIOPA 2010. The definitions for these in the two Acts are slightly different and this section provides clarity on which rules need to be followed.

6. Sections 6-7 state that the amendments have effect where the surrender period of the surrendering company ends on or after 20 March 2013. However, the chargeable profits of a CFC for accounting periods ending before 20 March 2013 are not included.

7. Section 8 -9 says that where the accounting period of the CFC falls partly before and after 20 March 2013, the chargeable profits that relate to the period are apportioned, with the section not applying to the chargeable profits apportioned to part ending before 20 March 2013.

Background

8. This section is one of three that close existing loopholes in the loss rules.

9. This section shuts down a loophole whereby a company can divert profits to a controlled foreign company (CFC) so as to reduce its 'gross profits' for a period – allowing it to access losses that would not otherwise be surrenderable under section 105 CTA 2010.

10. Where one company is the 75% subsidiary of another company or where both are the 75% subsidiary of a third company one company may surrender losses and other amounts to another company, by way of group relief.

11. There are seven different categories of losses, expenses and deficits that can be surrendered under the group relief rules (section 99 (1) CTA 2010). Four of these (referred to at section 99(1)(d)-(g)) can only be surrendered if together they exceed the surrendering company's 'gross profits' for a period. The legislation at section 105 describes how this restriction works.

12. CFC apportioned profits are self assessed, with the resulting tax charged on the UK company as an amount equivalent to corporation tax.

13. This section will ensure that apportionments in respect of CFC's profits will be taken in to account as well as gross profits in computing whether any of the second type of losses can be surrendered.

14. The threshold covers apportionments under both the old and new rules for CFCs (contained in Chapter 4 of Part 17 of the Income and Corporation Taxes Act `1988 and Part 9A of the Taxation (International and Other Provisions) Act 2010, respectively). The old rules apply to an accounting period of a CFC that straddles 1 January 2013; the new rules apply to an accounting period beginning on or after 1 January 2013.

Section 30: Loss Relief Surrenderable by Non-UK Resident Established in Eea State

Summary

1. Section 30 amends the restrictions on when companies resident in the European Economic Area (EEA) can surrender losses attributable to their UK permanent establishments as group relief from Corporation Tax in the UK. Currently, companies resident in the EEA are subject to the same rules as non-EEA resident companies. From 1 April 2013, a new restriction will apply for EEA resident companies based on whether

their losses are relieved in another country in any period, rather than on whether they could potentially be relieved in another country.

Details of the Section

2. Subsection (1) is introductory and confirms that section 107 Corporation Tax Act (CTA) 2010, which restricts the losses and other amounts that may be surrendered as group relief by a non-UK resident company, is amended as follows.

3. Subsection (2) provides that where the surrendering company is established in the European Economic Area (EEA) then (as before) it may surrender losses and other amounts that meet Conditions A and B, but they no longer need to meet Condition C. Instead these losses are subject to a new restriction, set out at subsection (4) of this section.

4. The effect of subsection (3) is that for a non-UK resident company that is not established in the EEA, section 107 CTA remains unchanged.

5. Subsection (4) inserts a new restriction for a company established in the EEA. It may not surrender losses and other amounts that meet conditions A and B if and to the extent that they are deducted from or allowed against non-UK profits of any person.

6. Subsections (6) to (8) provide that this amendment applies to losses arising on or after 1 April 2013. Where an apportionment is needed to work out the losses that arise from this date, companies should use a time apportionment unless that produces an unjust or unreasonable result.

Background

7. This section derives from a recent decision of the Court of Justice of the European Union (CJEU) in the case of *Philips Electronics UK Ltd* (C-18/11).

Section 31: Arrangement for Transfers of Companies

Summary

1. Section 31 makes a specific change to the types of arrangements that are exempt from the anti-avoidance rules affecting the group relief rules contained in Part 5 of the Corporation Tax Act 2010 (CTA 2010). The section also corrects cross-reference errors in sections 154(3) and 155(3) of CTA 2010.

Details of the Section

2. The section amends section 156 of CTA 2010 which provides the definition of ‘arrangements’ for the purposes of the anti-avoidance rules in sections 154 and 155. These sections ensure, for example, that if there are arrangements providing a specific date on which a company can leave a group and come under the control of another that no group relief can flow.

3. Subsection (1)(b) inserts new sub-paragraph (ii) to section 156(2)(b). The paragraph extends the exclusion of what is not treated as arrangements to include conditions and requirements imposed by, or agreed with, Ministers or statutory bodies.

4. Subsection (1)(c) inserts new subsection (2A) which provides a definition of statutory body for the purposes of section 156(2).

5. Subsection (2) corrects the reference to section 154A in sections 154(3) and 155(3) to section 155A.

6. Subsection (3) provides that the changes made by the section are for accounting periods ending on or after 1 April 2013.

Background

7. Currently some statutory public bodies set down conditions or requirements for companies (who are members of wider groups) operating in specific sectors, which mean they are inadvertently caught by the anti-avoidance rules in sections 154 to 156 of CTA 2010 preventing the flow of group relief.

8. For accounting periods ending on or after 1 April 2013, any such conditions imposed by, or agreed with, a statutory public body will not be arrangements that prevent the flow of group relief.

Section 32: CHANGE IN OWNERSHIP: COMPANY RECONSTRUCTIONS

Summary

1. Section 32 substitutes section 676 in Chapter 2 of Part 14 CTA 2010. The substitute restricts relief available for carried forward of trading losses of a company whether a transfer of a trade (to which Chapter 1 of Part 22 of CTA 2010 applies) occurs before or after a change in ownership of the company.

Details of the Section

2. Subsection 1(1) applies subsection 1(2) where a transfer of a trade (to which Chapter 1 of Part 22 applies) carried on by a company occurs prior to a change in ownership of that company.

3. Subsection 1(2) applies Chapter 2 to restrict relief available by virtue of section 944(3) in Part 22 (for carried forward losses) as if references to the trade and losses sustained by the predecessor company in the transfer of the trade are references to the trade carried on and the loss sustained by the successor company.

4. Subsection 1(3) applies subsection 1 (4) where a transfer of a trade (to which Chapter 1 of Part 22 applies) carried on by a company occurs after a change in ownership of that company.

5. Subsection 1(4) applies Chapter 2 to restrict relief available under section 45 CTA 2010 or by virtue of section 944(3) in Part 22 (for carried forward losses) as if references to the trade carried on by the company include the trade carried on by the successor company, or any successor, to a transfer of the trade..

6. Subsections 1(5)-(7) define predecessor and successor companies.

Background

7. This section is one of three that seek to close existing loopholes in the loss rules.

8. The purpose of Chapter 2 of Part 14 CTA 2010 is to counter loss buying by restricting relief for carried forward corporation tax losses across a change in ownership of a company carrying on a trade. A change in ownership as defined at section 719 of CTA 2010; where, broadly, 51% of the company's shares change ownership.

9. Relief is restricted if the trade carried on by a company undergoes a major change within 3 years of the change in ownership; or the change in ownership occurs after the company's activities have become small or negligible.

10. If there has been a major change in the nature or conduct of the trade following a change of ownership, a company cannot use losses arising before the date of the change in ownership to set off against profits arising after the date of the change in ownership.

11. Chapter 1 of Part 22 CTA 2010 allows any trading losses of a trade to be transferred when the trade is transferred from one company to another when those companies are under at least 75% common ownership.

12. Before this amendment, the effect of section 676 was to restrict the carry forward of losses by a successor company where the loss had been sustained by a predecessor if the transfer of the trade occurred before the change in ownership (of the successor).

13. The effect of the new legislation is to extend the restriction of carried forward losses by a company even if the transfer of the trade occurs after the change in ownership (i.e. where the successor company has not itself undergone a change in ownership).

Section 33, Schedule 13: Change in Company Ownership: Shell Companies

Summary

1. Section 33 introduces Schedule 13 which extends the scope of the loss buying rules in Part 14 Corporation Tax Act 2010 (CTA 2010) by restricting the availability of non-trading debits, non-trading loan relationship deficits and non-trading losses on intangible fixed assets after a change of ownership of a shell company.

Details of the Schedule

2. Paragraph 1 extends the current Part 14 CTA 2010 rules by introducing new Chapter 5A to encompass the change of ownership of shell companies.

3. New section 705A introduces the Chapter, states where it applies and defines the terms “a change of ownership” and a “shell company” used in the Chapter.

4. New section 705B states that the accounting period in which the change of ownership occurs should be split into two notional accounting periods. The first notional accounting period ending with the date of change and the second covering the balance of the period. The section directs the reader to the table at section 703F which apportions amounts to these notional accounting periods

5. New section 705C restricts how non-trading loan relationship debits are accounted for after the change in ownership. The debits, after the change in ownership, are to be reduced by the amount of total taxable profits in the period before the change in ownership.

6. New section 705D ensures that non-trading loan relationship deficits carried forward from a previous year are apportioned to the first notional accounting period and prevents any amount being carried forward to any subsequent period after the change of ownership.

7. New section 705E deals with non-trading losses on intangible fixed assets. Firstly, it ensures that only the in year non trading losses on intangible fixed assets are appropriately apportioned to the notional accounting periods and relieved against the appropriate amount of the total profits apportioned to the notional accounting periods. Secondly, it ensures that non trading non trading losses on intangible fixed assets carried forward from a previous year are apportioned to the first notional accounting period and prevents any amount being carried forward to any subsequent period after the change of ownership.

8. New section 703F consists of a table providing details of how to apportion amounts to the notional accounting periods. The table mirrors the existing table in Chapter 3 of Part 14 for changes of ownership of investment companies (but omits references to management expenses or capital allowance excesses as they are not relevant to Chapter 5A). The apportionments can be made on a just and reasonable basis if the apportionment in the table would work unjustly or unreasonably in any case.

9. New section 703G provides further definitions of the amounts of non-trading profit and deficits, referred to in the table, provides for consequential amendments and gives the commencement date.

10. Paragraph 2 makes consequential amendments to Part 14.

11. Paragraph 3 sets out the date from which amendments made by the Schedule have effect.

Background

12. This section is one of three that seek to close existing loopholes in the loss rules.

13. This is the first of two that specifically deal with Part 14.

14. The purpose of Part 14 is to counter loss buying by restricting relief for carried forward CT losses across a change in ownership of a company. A change in ownership as defined at section 719; where, broadly, 51% of the company's shares change hands.

15. Relief is restricted if the trade (Chapter 2), investment business (Chapter 3), property business (Chapter 5) carried on by a company undergoes a major change within 3 years of the change in ownership; or the change in ownership occurs after the company's activities had revived after becoming small & negligible .

16. If there has been a major change following a change of ownership a company carrying on a trade or property business cannot use losses arising before the date of the change in ownership to set off against profits arising after the date of the change in ownership.

17. Slightly different rules apply to company's carrying on investment businesses on a change in ownership. If any of the conditions are met the losses of the company are divided into those occurring before and after the date of the change in ownership. Any losses occurring before that date can not be set against profits arising after that date.

18. The restriction covers non trading loan deficits, non trading losses on intangible fixed assets, excess management expenses and UK property business losses

Section 34, Schedule 14 Transfer of Deductions

Summary

1. Section 34 introduces a new Part 14A in Corporation Tax Act 2010 (CTA 2010) which includes two new substantive restrictions on the circumstances in which deductible amounts may be brought into account where there has been a qualifying in relation to a company (C). The deductible amounts are ones which, at the date of the qualifying change (the "relevant day"), can be regarded as highly likely to arise as deductions for an accounting period ending on or after that day. The first restriction is on claims for group relief and relief for trade losses against total profits for deductible amounts in accounting periods ending on or after the relevant day where the purpose, or one of the main purposes, of arrangements connected to the qualifying change is for the deductible amounts to be the subject of, or brought into account as a deduction in, such a claim. The second restriction is in respect of deductible amounts where there are 'profit transfer arrangements' (i.e. arrangements which result in an increase in the total profits of C, or a company connected to C) where the purpose, or one of the main purposes, of those arrangements is to bring the deductible amount into account as a deduction in any accounting period ending on or after the relevant day.

Details of the Schedule

2. Schedule 14 amends CTA 2010 by introducing a new Part 14A with the heading "Transfer of Deductions."

3. New Section 730A provides an overview of the Part.

4. New Section 730B explains the meaning of "deductible amount" and "qualifying change". A "deductible amount" is any expense of a trade or property business, an expense of management of an investment business, non-trading debits within the meaning of Parts 5 and 6 of the Corporation Tax Act 2009 (CTA 2009) (loan

relationships, derivative contracts) or a non-trading debit within the meaning of Part 8 CTA 2009 (intangible fixed assets). “Deductible amount” does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of Capital Allowances Act 2001 (CAA 2001). A “qualifying change” has the same meaning in Part 14A as in Chapter 16A of Part 2 CAA 2001. Subsection (2) explains the references to bringing an amount into account “as a deduction”.

5. New Section 730C provides for the restriction which applies to disallow deductible amounts for relevant claims.

6. Subsection 1 applies the section where a relevant claim is made for an accounting period on or after the qualifying change.

7. Subsection 2 defines a relevant claim as a claim for relief for trade losses against total profits (under section 37 of CTA 2010) or group relief (under Chapter 4 of Part 5 of CTA 2010) by C or a company connected with C.

8. Subsection 3 provides that if two conditions (A and B) are met the deductible amount may not be the subject of, or brought into account as a deduction in, a relevant claim.

9. Subsection 4 applies to allow any amount that could have been claimed or brought into account as a deduction in the claim if there had not been a qualifying change.

10. Subsection 5 explains condition A: on the relevant day it is highly likely that the deductible amount would be the subject of, or brought into account as a deduction in a relevant claim for an accounting period ending on or after the relevant day.

11. Subsection 6 explains that what is “highly likely” is determined having regard to any arrangements or events that take place on or before the qualifying change.

12. Subsection 7 explains condition B: where the purpose, or one of the main purposes, of any “change arrangements” is for the deductible amount to be the subject of, or brought into account as a deduction in a relevant claim.

13. Subsection 8 defines change arrangements as arrangements made to bring about or other connected to the qualifying change.

14. Subsection 9 provides that section 730C does not apply to a deductible amount to the extent that section 730D (2) applies to it (in s.730C(9)(a)) or a loss, or any part of a loss, to which section 433(2) of CTA 2010 applies (“sale of lessors”), derives from it (in s730C(9)(b)).

15. New Section 730D provides the restriction which disallows deductible amounts where there is a profit transfer.

16. Subsection 1 provides that section 703D applies where profits transfer arrangements are made which results in an increase in the total profits of C, or any connected company, in any accounting period ending on or after the relevant day.

17. Subsection 2 provides that if conditions D & E are met a deductible amount may not be brought into account by C, or any connected company, as a deduction in any accounting period ending on or after the relevant day.

18. Subsection 3 explains condition D: on the relevant day it is highly likely that the deductible amount would be brought into account by C or a connected company as a deduction in an accounting period ending on or after the relevant day.

19. Subsection 4 explains arrangements and events to have regard to when considering what is “highly likely”.

20. Subsection 5 explains condition E: where the purpose or one of the main purposes, of the profit transfer arrangements is to bring the deductible amount into account as a deduction in any accounting period ending on or after the relevant day.

21. Subsection 6 applies the just and reasonable provision contained in subsection 7 where if section 730D(2) applies and where the company would have had profits in that accounting period in the absence of any profit transfer arrangements and disregarding any deductible amounts.

22. Subsection 7 provides that the deductible amount is disallowed only in such a proportion that is just and reasonable.

23. Schedule 1 Paragraph 2 makes consequential amendments to CTA 2010.

24. Schedule 1 Paragraph 3 provides the commencement provisions and the date from which section 730C should be applied after section 432.

25. Schedule 1 Paragraph 3 subparagraph 2 provides that the amendments apply to a qualifying change on or after 20 March 2013, unless either arrangements to bring about the qualifying change had been entered into before that date or there was an agreement or common understanding between the parties as to the principal terms on which the qualifying change will be brought about

26. Schedule 1 Paragraph 3 subparagraph 3 provides that the provision in 730C(9)(b) does not apply prior to 26 June 2013.

Background

27. This section is one of two preventing loss buying introduced by this Act.

28. The section uses the term "qualifying change" as defined in Section 212C of Chapter 16A of Part 2 CAA 2001

29. Section 212C CAA2001 defines a qualifying change in relation to a company as -

- A change in ownership of a company,
- When a company becomes a member of a group
- When a company moves from a group into a consortium.
- When a consortium member increases it ownership of a consortium company.
- Where C ceases to carry on the whole or part of an activity and the activity (or part of it) begins to be carried on in partnership by two or more companies.
- When a partner increases its share in a partnership that is carrying out an activity

Current corporate tax loss buying rules

30. The general concept is that losses brought forward or after a change in ownership should be allowable only to the company and trade in which they occurred.

31. Section 39 of CTA 2010 provides that if a company sells its trade to a company that is not within the same 75% ownership then the cessation rules apply and the losses do not transfer.

32. Part 14 of CTA 2010 deals with realised losses where there is a change in ownership of a company (and where other circumstances apply). If the Part applies losses arising prior to the change are no longer available for periods after the change in ownership.

Section 35, Schedule 15: R&D EXPENDITURE CREDITS

Summary

1. Section 35 introduces Schedule 15 which introduces an 'Above the Line' (ATL) credit for research and development expenditure incurred on or after 1 April 2013. The ATL credit is introduced alongside the existing additional relief for expenditure on research

and development under Part 13 of CTA 2009 (known as the super-deduction) but will replace the super-deduction from 1 April 2016.

Details of the Schedule

2. Part 1 and paragraph 1 introduce a new Chapter 6A of Part 3 CTA 2009 (trading income).

3. New section 104A signposts various definitions and provisions relating to claims and confirms that the credit is a taxable profit of the trade.

4. New section 104B provides that a company cannot make a claim under Chapter 6A and Part 13 of CTA 2009 in relation to the same expenditure.

5. New section 104C sets out the meaning of "qualifying expenditure on sub-contracted R&D" for SME companies.

6. New section 104D applies to SME companies and sets out what is qualifying expenditure on R&D contracted out to a company.

7. New section 104E applies to SME companies and defines the conditions applying to expenditure on R&D contracted out to a company.

8. New section 104F defines the meaning of "subsidised qualifying expenditure" for SME companies.

9. New section 104G defines the meaning of "subsidised qualifying expenditure on in-house direct research and development " for SME companies.

10. New section 104H defines the meaning of "subsidised qualifying expenditure on contracted out research and development" for SME companies.

11. New section 104I defines the meaning of "capped R&D expenditure" for SME companies.

12. New section 104J defines the meaning of "qualifying expenditure on in-house direct research and development" for large companies.

13. New section 104K defines the meaning of "qualifying expenditure on contracted out research and development" for large companies.

14. New section 104L defines the meaning of "qualifying expenditure on contributions to independent research and development" for large companies.

15. New section 104M sets out the amount of the credit as a percentage of qualifying expenditure and that the percentage may be replaced by Treasury Order. It also provides for a different percentage for companies carrying on a "ring fence trade".

16. New section 104N outlines how the payment of credit is calculated and the order in which the various set-offs and restrictions should be applied. It also sets out how the payment of the credit will be taxed.

17. New section 104O defines the meaning of total expenditure on workers.

18. New section 104P defines the meaning of the total amount of a company's PAYE and NIC liabilities.

19. New section 104Q outlines how a credit can be surrendered to other group companies.

20. New section 104R outlines how tax deducted on the payment of a credit can be utilised including the order of set off.

21. New section 104S sets out restrictions to the payment of a credit if the company is not a "going concern", has outstanding PAYE or NIC liabilities or where the company's

tax return is being enquired into. It also sets out that a company will become entitled to the credit where it becomes a going concern again within the time limits for amending the tax return.

22. New section 104T defines the meaning of “going concern”.

23. New section 104U applies so as to treat SME insurance companies as large companies for the purposes of Chapter 6A.

24. New section 104V provides for certain non-proprietary insurance companies that compute profits on an I-E basis and which would otherwise be unable to fall within the provisions of new section 104A, to claim an R&D expenditure credit and for that credit to be treated as a taxable receipt.

25. New section 104W relates to group payments made for research and development activities carried out.

26. New section 104X is an anti-avoidance provision which prevents artificially inflated claims for credit.

27. New section 104 Y provides for various definitions.

28. Part 1 paragraphs 2 and 3 provide for consequential amendments to Part 13 and Schedule 4 of CTA 2009.

29. Part 2 provides for further consequential amendments.

30. Part 3 of the Schedule provides for the abolition of R&D relief given by way of a super-deduction from April 2016.

31. Part 4 provides that amendments made by Parts 1 and 2 have effect in relation to expenditure incurred on or after 1 April 2013 and amendments made by Part 3 have effect in relation to expenditure incurred on or after 1 April 2016.

32. Paragraph 29 provides that where a company elects to claim an R&D expenditure credit for accounting periods beginning before 1 April 2016 (or for expenditure incurred on or after 1 April 2013 where the accounting period straddles that date), then that company will no longer able to claim relief by way of a super-deduction under the large company scheme.

Background

33. Additional relief for expenditure by a large company on research and development is currently given as a super-deduction against corporation tax profits reducing the amount of tax payable.

34. To encourage more research and development by large companies it is proposed to replace the current deduction system with a payable credit (the ATL credit) to all large companies including those who have no liability to corporation tax. This will make the benefits more visible and certain.

35. The ATL credit applies for qualifying expenditure incurred on or after 1 April 2013 and will be introduced along side the existing super-deduction and will replace it in April 2016.

36. The underlying rules for identifying qualifying activity and calculating qualifying expenditure remain unchanged and the new credit will be calculated as a percentage by reference to the amount of qualifying expenditure on R&D.

37. The ATL credit will be a taxable receipt and will be paid net of tax to companies with no corporation tax liability.

38. The ATL credit will be paid at a higher percentage rate to companies in the ring fence to reflect the higher rate of tax paid by those companies and to reflect the current levels received under the super-deduction.

39. In calculating the payable element, the credit will be used firstly to reduce the corporation tax liability of the claimant company for the same accounting period.

40. Any payable element will then be limited by the PAYE/NIC liabilities of the company's R&D staff and those of Externally Provided Workers from group companies. Any amount above the cap may be carried forward to be treated as a credit for the following year.

41. If a claim is made, the payable element (after the PAYE/NIC cap has been applied) will be available to discharge any corporation tax liabilities of other accounting periods of the claimant company or the corporation tax liability of other group companies.

42. The balance after the cap and discharging of liability will be payable but under deduction of an amount equal to corporation tax at the full company rate applying for the accounting period (including the main rate and supplementary charge for ring fence trades) but subject to discharging any other liability of the company to the Commissioners.

43. Any notional tax retained will be carried forward and be available to discharge the claimant company's liability in preference to any ATL credit for the following year.

Section 36, Schedules 16, 17, 18: Relief for Television Production and Video Games Development

Summary

1. Section 36 and Schedules 16, 17 and 18 introduce three new reliefs from corporation tax for animation and high-end television production and for video games development.

Details of the Section

2. Section 36 bring in three Schedules which in turn;

- introduce two new reliefs for animation and high-end television production;
- introduce a new relief for video game development; and,
- provide for the consequential amendments to other parts of the Taxes Acts as a result of the new reliefs.

Details of the Schedules

Schedule 16

3. Schedule 16 introduces two new tax reliefs for high-end television and animation television production.

4. There are two parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

5. Paragraph 1 introduces a new part 15A to CTA 2009 concerning the new reliefs for animation and high-end television production. It also explains that there are 5 chapters in part 1 covering the introduction to the two reliefs, how activities are taxed, British programmes, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

6. New sections 1216A (1) to 1216A (6) set out the scope and basic concepts of the legislation contained within each Chapter.

7. New section 1216AA (2) defines the meaning of 'television programme' for the purposes of the Chapter.

8. New section 1216AA (3) clarifies that the section includes the internet.

9. New section 1216AA (4) provides that where qualifying programmes are commissioned as an individual series or serial that series or serial is treated as a single television programme. A single qualifying programme commissioned separately (for example a pilot programme) is treated as a single programme.

10. New section 1216AA(5) provides that a programme is treated as being complete when it is first in a form in which it can be reasonably regarded as ready for broadcast to the general public.

11. New section 1216AB (2) provides that a 'relevant programme' for the purposes of the legislation is one which meets certain conditions of A and B, and C and D.

12. New section 1216AB (3) sets out condition A which is that the programme is: a drama, a documentary, or animation. These terms are further defined at new section 1216AC.

13. New section 1216AB (4) sets out condition B which is that the programme is not an excluded programme as defined in section 1216AD.

14. New section 1216AB (5) sets out condition C, which is that a programme slot length must be greater than 30 minutes.

15. New sections 1216AB (6) sets out condition D which is that the average core expenditure, as defined by new section 1216AG, per hour of slot length, as defined by 1216AB (8), is not less than £1 million (one million pounds sterling).

16. New section 1216AB (7) defines 'slot length' for the purposes of new section 1216AB (6).

17. New section 1216AC (2) provides that for the purposes of new section 1216AB(3) a programme is a 'drama' if it consists:

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

    For the purposes of new section 1216AC (2) 'drama' also includes comedy.

18. New section 1216AC (3) provides that a relevant programme is to be treated as animation if at least 51% of total core expenditure is on animation.

19. New section 1216AD (1) provides that a television programme is an excluded programme (i.e. it is not within the scope of the reliefs) if it falls within any of the Heads set out in new sub sections 1216AD (2) to 1216AD (7).

20. New section 1216AD (2) provides that any advertisement or other promotional programme is an excluded programme.

21. New section 1216AD (3) provides that any news, current affairs or discussion programme is an excluded programme.

22. New section 1216AD (4) provides that quiz shows, game shows, panel shows, variety shows, chat shows or similar entertainment are excluded programmes.

23. New section 1216AD (5) provides that any programme consisting of or including a competition or contest, or the results of a competition or contest is an excluded programme.

24. New section 1216AD (6) provides that any broadcast of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed is an excluded programme.

25. New section 1216AD (7) provides that any programmes produced for training purposes is an excluded programme.

26. New section 1216AE (2) provides that there can only be one television production company in relation to a relevant programme.

27. New section 1216AE (3) sets out the general rule that governs whether a company is a television production company in relation to a relevant programme. The company must be responsible for pre-production, principal photography and post production of the relevant programme, as well as for delivery of the completed programme. The company must be actively engaged in planning and decision taking during those stages of a programme's production; and it must directly negotiate, contract and pay for rights, goods and services.

28. New section 1216AE (4) sets out a special rule for qualifying co-productions as defined in new section 1216AI. A company, which is a co-producer, in relation to a relevant programme must make an effective creative, technical and artistic contribution to the programme (so long as it does not do this in partnership). Co-producers who only provide finance are excluded.

29. New section 1216AE(5) recognises that there may be more than one company meeting the conditions of 1216AE(3) and (4) and provides that where this is the case, the company most directly engaged in the activities referred to is the television production company in relation to the relevant programme.

30. New sections 1216AE (6) makes it clear that it is possible that there may be no television production company in relation to the relevant programme.

31. New sections 1216AE (7) to (9) allows for a company to be regarded as a company not meeting the description in 1216AE (3) and (4) provided it makes an election in its company tax return for an accounting period. That election has effect in relation to relevant programmes which commence principal photography in that or any subsequent accounting period.

32. New sections 1216AF (1) provides that 'television production activities' includes work on development, pre-production, principal photography and post production of the programme.

33. New section 1216AF (2) provides that where any of the programme is computer generated, references to principal photography include computer generation of the images.

34. New section 1216AF (3) provides that HM Treasury may, by regulations amend subsections 1216AF (1) and (2) and in particular provide that certain activities are not television production activities.

35. New sections 1216AG (2) to (3) define what is meant by 'production expenditure' and 'core expenditure' in relation to the relevant programme.

36. New sections 1216AH (1) to (2) provide that for the purposes of the legislation "UK expenditure" means expenditure on goods or services that are used or consumed in

the United Kingdom. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies. The 'used or consumed' test does not focus on the supplier of goods and services, but instead concentrates on the recipient or customer as the means of determining UK qualifying expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.

37. New section 1216AI defines 'qualifying co-producer' and 'co-producer' for the purposes of new section 1216AE (4).

Chapter 2: Taxation of Activities of Television Production Company.

38. New section 1216B(2) to (3) provides that the activities of a television production company in relation to each programme will be treated as a separate trade, ("the separate programme trade") so that where a television production company makes more than one programme it will have more than one trade unless new section 1216AA(3) applies.

39. New section 1216B (4) sets out that a trade is treated as starting when pre-production begins or when any income is received from the relevant programme, whichever is earlier.

40. New section 1216BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.

41. New section 1216BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).

42. New section 1216BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the corresponding amount for the previous period and, as a credit, the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.

43. New section 1216BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.

44. New section 1216BB (1) to (3) set out that income from a relevant programme constitutes any receipts in connection with its making or from its exploitation. This includes:

- Receipts from the sale of the programme or rights in it;
- Royalties or other payments for use of the programme or aspects of it (for example characters or music);
- Payments for rights to produce games or other merchandise;
- Receipts received by the company by way of a profit share agreement; and,
- Income from relevant programmes held as capital assets (the income will be treated as revenue in nature).

45. New sections 1216BC (1) to (2) provide the basic rules for when costs on the relevant programme are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.

46. New section 1216BC Section (3) addresses the situation where a company is making a relevant programme that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. (3) ensures that such expenditure will instead be treated as being of a revenue nature.

47. New section 1216BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.

48. New section 1216BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.

49. New section 1216BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.

50. New section 1216BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.

51. New section1216BE (1) addresses the case where a company incurs expenditure on development of the relevant programme and this expenditure pre-dates the commencement.

52. New section 1216BE (2) treats such development expenditure as if it were expenditure incurred immediately after the company begins to carry on the trade.

53. New sections 1216BE(3) to (4) require the company to amend its tax return if it has previously taken such expenditure into account and allows any such amendment of a return to be made regardless of the normal time limits.

54. New section 1216BF provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Television Tax Relief

55. New sections 1216C(1) to (7) provide that for a relief to be available a relevant programme must satisfy a number of criteria and also set out how relief will be given and the procedure for making claims. The criteria include:

    - Being intended for broadcast;
    - Being a British programme as required by new section 1216CB; and,
    - Having the required level of core expenditure as required by new section 1216CE

56. New section 1216C (4) provides that where relief has already been given for R&D on the same expenditure then relief is not available for animation or high-end television. This is to prevent double claims on the same expenditure.

57. New section 1216CA (1) provides that a relevant programme must be intended for broadcast to the general public.

58. New section 1216CA (2) provides that the question of whether this condition is met is to be determined when the television production activities begin. And also provides for circumstances where a programme starts out being intended for broadcast even if subsequently the intention changes. However, where the original intention is not to broadcast the programme to the general public the condition will not be met.

59. New section 1216CB sets out the certification process for relevant programmes other than qualifying co-productions (see 1216AI for the meaning of ‘qualifying co-production’ and ‘co-producer’).

60. New sections 1216CB(1) provides that a television production company must apply to the Secretary of State for a relevant programme to be certified as British and that certain conditions must be met in a ‘cultural test’.

61. New section 1216CB (2) to (5) provide further details on the operation of the regulations.

62. New section 1216CB (6) provides that further details on certification of programmes is contained at new sections 1216CC and 1216CD.

63. New sections 1216CC(1) to (2) provide that applications for certification of the relevant television programme as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.

64. New sections 1216CC (3) and (4) define what is meant by an 'interim' certificate and a 'final' certificate'.

65. New sections 1216CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information provided for the purposes of the application and a declaration as to its truth.

66. New section 1216CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.

67. New section 1216CD (1) to (2) provide that the Secretary of State shall certify a relevant programme if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the relevant programme.

68. New sections 1216CD (3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.

69. New sections 1216CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).

70. New sections 1216CE (1) to (2) impose another condition for relief; that not less that 25 per cent of the core production expenditure on the relevant programme must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.

71. New sections 1216CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the relevant programme to be taken into account in calculating its profit or loss from its separate programme trade. The additional deduction and the payable tax credit together make up the new tax relief.

72. New section 1216CF (3) defines 'qualifying expenditure' for this purpose.

73. New section 1216CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.

74. New section 1216CG (1) applies for the first period of account in which the trade of producing the relevant programme is carried out. For this period, the additional deduction is given by E where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.

75. New section 1216CG (2) applies in the subsequent periods of account. In such periods the additional deduction is E– P where E is now either the lesser of the amount of qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which is UK expenditure and 80 per cent of that amount. P is the total amount of additional deduction for all previous periods.

76. New section 1216CG (3) allows HM Treasury to amend section 1216CG by regulations.

77. New section 1216CH(1) provides that a television production company (as defined in new section 1216AE) may claim a television tax credit in an accounting period for which it has a surrenderable loss.

78. New section 1216CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.

79. New section 1216CH (3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company's loss for the period and RUL is the amount of any relevant unused loss. RUL is defined further in new section 1216CH (4).

80. New section 1216CH (4) defines "relevant unused loss" of a company as that part of a loss neither surrendered for tax credit nor carried forward under section 45 of the Corporation Tax Act 2010.

81. New section 1216CH (5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1216CG (1).

82. New section 1216CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1216CG(2) and S is the aggregate of the amounts surrendered for television tax credit in previous periods as defined by new section 1216CI(1).

83. New section 1216CH (7) provides for any necessary apportionments where a period of account of the separate programme trade does not coincide with an accounting period.

84. New section 1216CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.

85. New section 1216CI (2) sets the payable tax credit rate as 25%.

86. New section 1216CI (3) provides that where part of the loss is surrendered a company's available loss will be reduced by the surrendered amount.

87. New section 1216CJ(1) provides that where a company is entitled to a television tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.

88. New section 1216CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set, the Commissioners' obligation under new section 1216CJ(1) is met.

89. New section 1216CJ (3) overrules new section 1216CJ (1) when the company's tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.

90. New section 1216CJ(4) overrules new section 1216CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due, no payment need to be made to the company.

91. New section 1216CJ (5) provides that a payment of a television tax credit is not income for the company for any tax purpose.

92. New section 1216CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.

93. New section 1216CK (2) provides that new section 1216CK (1) does not override the normal operation of new section 1216BD (when costs are taken to be incurred).

94. New section 1216CL is a general anti avoidance provision, which denies television production tax relief to the extent that it arises from artificially inflated claims.

95. New section 1216CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or television tax credit due.

96. New section 1216CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a television tax credit that it would not otherwise be entitled to, or a larger deduction or greater amount of television tax credit than it would otherwise be entitled to.

97. New section 1216CL (3) defines “arrangements”.

98. New sections 1216CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.

99. New section 1216CM (5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1216CM (1) and (3).

100. New section 1216CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1216CM.

101. New section 1216CN (2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.

102. New sections 1216CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.

103. New section 1216CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.

104. New section 1216CN(5) provides that a prosecution may only be brought in Northern Ireland by the Commissioners for HM Revenue and Customs or with the consent of the Director of Public Prosecutions for Northern Ireland.

Chapter 4: Programme losses

105. New section 1216D (2) sets out definitions used later in the section.

106. New sections 1216DA(1) to (2) provide for a restriction to losses arising while a programme is in production to the extent that they may only be carried forward to be set against profits of the separate programme trade in a subsequent period.

107. New section 1216DB (1) provides that the section applies to the accounting period during which a qualifying programme is completed or abandoned and to any subsequent accounting periods if the trade continues.

108. New section 1216DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period to a later accounting period is to be treated as a loss for the purposes of loss relief of the accounting period into which it is carried forward. This is subject to the restriction in new section 1216DB (3).

109. New section 1216DB(3) restricts the amount of any loss available to set sideways against other profits of the same or an earlier period, and to be surrendered as group relief, to the amount that is not attributable to television tax relief (see subsection (6)).

110. New section 1216DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to television tax relief.

111. New section 1216DB (6) explains how the loss for television tax relief is calculated. This loss is the amount of the total loss less the amount of loss that there would have been without the additional deduction under Chapter 3.

112. New section 1216DB (7) provides that 1216DB does not apply to losses carried forward or surrendered under new section 1216DC (terminal losses).

113. New section 1216DC(1) provides that this section applies when a television production company ceases to carry on a separate trade in relation to a relevant programme and has an amount of loss that remains to be carried forward (a terminal loss).

114. New sections 1216DC(2) and (3) provide that where a television production company with a terminal loss carries on another trade in relation to another qualifying programme it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.

115. New sections 1216DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a television production company in relation to another qualifying programme. The company with the terminal loss may surrender this loss to another television production company within the same group provided that that company makes a claim for the loss.

116. New section 1216DC (7) provides that HM Treasury may, by regulations, make adaptations or such modifications as appear to be appropriate to this section.

117. New section 1216DC (8) defines a 'qualifying programme'.

Chapter 5: Provisional Entitlement to Relief

118. New section 1216E (1) defines certain expressions for the purposes of Chapter 5.

119. New section 1216E (2) sets out a requirement for reporting in a company's return whether a relevant programme has been completed or abandoned.

120. New section 1216EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.

121. New section 1216EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which the interim certificate has been provided and must amend its return(s) accordingly.

122. New section 1216EA(3) provides that where a relevant programme is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend its return(s) accordingly.

123. New section 1216EA (4) deals with the abandonment of a relevant programme. If the company abandons television production activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.

124. New section 1216EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.

125. New section 1216EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the relevant programme, and that amount indicates that the condition in new section 1216CE will be met on completion.

126. New section 1216EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion

will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.

127. New sections 1216EB (3) and (4) deal with the completion of the relevant programme. If the relevant programme is completed or abandoned, its company tax return for the final accounting period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant programme. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.

128. New section 1216EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

129. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.

130. Paragraph 3 (1) provides that the amendments in the Schedule will have effect from 1 April 2013 (subject to State aid approval, which if later will be the date when the Schedule will have effect).

131. Paragraphs 3 (2) and (3) provides that where a company has an accounting period which straddles 1 April 2013 then periods before or after that date are, for the purposes of Part 15A, treated as separate accounting periods.

Schedule 17

132. Schedule 17 introduces a new relief for video games development.

133. There are 2 parts to the Schedule. Part 1 introduces amendments to the Corporation Taxes Act (CTA) 2009, whereas part 2 contains the commencement provisions.

Part 1: Amendments of CTA 2009

134. Paragraph 1 introduces a new part 15B to CTA 2009 concerning the new relief for video games development. It also explains that there are 5 chapters in part 1 covering the introduction to the relief, how activities are taxed, British video games, certification, qualifying expenditure, losses and entitlement to the relief.

Chapter 1: Introduction

135. New sections 1217A (1) to (6) set out the scope and basic concepts of the legislation contained within each Chapter.

136. New section 1217AA (2) provides that ‘video game’ does not include anything produced for advertising or promotional purposes or gambling.

137. New section 1217AA (3) provides that references to a video games includes the game’s soundtrack.

138. New section 1217AA (4) provides that a video game is regarded as being completed when copies of it can be made and these are made available to the general public.

139. New section 1217AB(2) provides that there can only be one video games development company in relation to a video game.

140. New section 1217AB(3) sets out the general rule that governs whether a company is a video games development company in relation to a video game. The company must be responsible for developing the game and it must be actively engaged in planning

and decision making during the design, production and testing of the game; and it must directly negotiate, contract and pay for rights, goods and services.

141. New section 1217AB(4) recognises that there may be more than one company meeting the conditions of 1217AB(3) and provides that where this is the case, the company most directly engaged in the activities referred to is the video games development company in relation to the relevant game.

142. New section 1217AB(5) makes it clear that it is possible that there may be no video games development company in relation to the relevant game.

143. New sections 1217AB (6) to (8) allow for a company not be regarded as a company not meeting the description in 1217AB (3) provided it makes an election in its company tax return for an accounting period. That election has effect in relation to relevant games which begin to be produced in that or any subsequent accounting period.

144. New section 1217AC(1) provides that 'video game development activities' include work involved in designing, producing and testing the video game.

145. New section 1217AC (2) provides that HM Treasury may, by regulations, amend subsection (1) and provide that certain activities are or are not video game development activities.

146. New section 1217AD (1) defines what is meant by 'core expenditure' in relation to the video game.

147. New section 1217AD(2) provides that any expenditure incurred in designing the initial concept for the video game (e.g. setting out the business case for making a game) and on further debugging a completed video game or carrying out maintenance in connection with a video game is not regarded as core expenditure.

148. New sections 1217AE(1) to (2) provide that for the purposes of the legislation "UK expenditure" means expenditure on goods or services that are used or consumed in the United Kingdom. The nationality of those providing the goods and services has no bearing on whether the expenditure qualifies. The 'used or consumed' test does not focus on the supplier of goods and services, but instead concentrates on the recipient or customer as the means of determining UK qualifying expenditure. Any apportionment between non-UK expenditure and UK expenditure is made on a just and reasonable basis.

149. New section 1217AE (3) provides that HM Treasury may, by regulations amend subsection (1).

Chapter 2: Taxation of Activities of Video Games development Company

150. New sections 1217B (2) to (3) provides that the activities of a video games development company in relation to each game will be treated as a separate trade, ("the separate video game trade") so that where a video games development company makes more than one game it will have more than one trade.

151. New section 1217B(4) sets out when a company is treated as beginning a video game trade which is the earlier of when income is received or the design starts.

152. New section 1217BA (1) provides the basic rules for the computation of amounts to be brought into account for the purposes of determining a profit or a loss.

153. New section 1217BA (2) explains how this works for the first period of account. It brings in as a debit the cost incurred and as a credit the proportion of the income determined by the formula set out in sub paragraph (4).

154. New section 1217BA (3) explains how this works for subsequent periods of account. It brings in as a debit the difference between the costs incurred to date and the

corresponding amount for the previous period and as a credit the difference between the proportion of total estimated income treated as earned at the end of the period and the corresponding amount for the previous period.

155. New section 1217BA (4) sets out the formula for calculating the proportion of total estimated income treated as earned at the end of the period of account.

156. New sections 1217BB(1) to (3) set out that income from a video game constitutes any receipts in connection with its making or from its exploitation. This includes:

- Receipts from the sale of the video game or rights in it;
- Royalties or other payments for use of the video game or aspects of it (for example characters or music);
- Payments for rights to produce games or other merchandise;
- Receipts received by the company by way of a profit share agreement;
- Income from games held as capital assets (the income will be treated as revenue in nature).

157. New section 1217BC (1) to (2) provide the basic rules for when costs on the video game are taken to be incurred. However, expenditure that is prohibited or limited by the Corporation Taxes Acts is excluded.

158. New section 1217BC (3) addresses the situation where a company is making a video game that is treated as a capital asset in its hands and such expenditure would be capital and naturally fall to be prohibited. Section (3) ensures that such expenditure will instead be treated as being of a revenue nature.

159. New section 1217BD (1) sets out the primary rule that costs are incurred when they are represented in the state of completion of the work in progress.

160. New section 1217BD(2) elaborates on this to make clear that payments in advance are ignored until the work is done and deferred payments are recognised to the extent that work is represented in the stage of completion.

161. New section 1217BD (3) makes clear that only amounts for which there is an unconditional obligation to pay can be treated as incurred.

162. New section 1217BD (4) ensures that where this obligation is linked to income being earned, then the cost can only be included when an appropriate amount of income has been brought into account.

163. New section 1217BE provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must also take into consideration all relevant circumstances.

Chapter 3: Video Games Tax Relief

164. New section 1217C(1) to (6) provide that for a relief to be available a video game must satisfy a number of criteria and also sets out how relief will be given and the procedure for making claims. The criteria include:

- Being intended for supply;
- Being a British video game as required by new section 1217CB; and,
- Having the required level of core expenditure as required by new section 1217CE.

165. New section 1217C (4) provides that where relief has already been given for R&D tax credits on the same expenditure then relief is not available for video games tax relief. This is to prevent double claims on the same expenditure.

166. New section 1217CA (1) provides that a video game must be intended for supply to the general public.

167. New section 1217CA (2) provides that the question of whether this condition is met is to be determined when the video game development activities begin. And also provides for circumstances where a game starts out being intended for supply even if subsequently the intention changes. However, where the original intention is not to supply the game to the general public the condition will not be met.

168. New sections 1217CB(1) to (6) provide that a video game development company must apply to the Secretary of State for a video game to be certified as British and that certain conditions must be met in a ‘cultural test’.

169. New sections 1217CC(1) to (2) provide that for applications for certification of the video game as British are to be made to the Secretary of State and that the application may be for an interim or final certificate.

170. New sections 1217CC (3) and (4) define what is meant by an ‘interim’ certificate and a ‘final’ certificate’.

171. New sections 1217CC(5) to (6) provide that companies must provide the Secretary of State with all documents and information to determine an application and that the Secretary of State may require additional information to be provided for the purposes of the application and a declaration as to its truth.

172. New sections 1217CC (7) to (9) provide that the Secretary of State may, by regulations, amend the application process, particulars required etc.

173. New section 1217CD(1) to (2) provide that the Secretary of State shall certify a video game if he is satisfied that it meets the requirements for an interim or final certificate. However, if the Secretary of State is not so satisfied, he shall not certify the video game.

174. New sections 1217CD(3) and (4) allows an interim certificate to be given subject to certain conditions, and provides that the certificate may, if the Secretary of State wishes, be given an expiry date. In any case an interim certificate expires when a corresponding final certificate is issued.

175. New sections 1217CD (5) and (6) provide that the Secretary of State shall revoke a certificate if it becomes clear that it should not have been issued. A revoked certificate is treated as never having been issued (unless the Secretary of State provides otherwise).

176. New sections 1217CE(1) and (2) impose another condition for relief; that not less that 25 per cent of the core expenditure on the video game must be UK expenditure. HM Treasury may vary this minimum percentage of UK expenditure by regulations.

177. New sections 1217CF(1) and (2) provide that the company may claim an additional deduction, based on its qualifying expenditure on the video game to be taken into account in calculating its profit or loss from its separate video game trade. The additional deduction and the payable tax credit together make up the new tax relief.

178. New section 1217CF (3) defines ‘qualifying expenditure’ for this purpose.

179. New section 1217CF (4) allows HM Treasury, by regulation, to amend subsection (3) and to provide that particular sorts of expenditure are or are not qualifying expenditure.

180. New section 1217CG (1) applies in the first period of account in which the separate video game trade is carried on. For this period, the additional deduction is given by E where E is the lesser of the amount of qualifying expenditure which is UK expenditure or 80 per cent of that amount.

181. New section 1217CG (2) applies in the subsequent periods of account. In such periods the, the additional deduction is E – P where E is now either the lesser of the qualifying expenditure to date (i.e. the sum for the current period and all subsequent periods) which

is UK expenditure or 80 per cent of that amount, which ever is less. P is the total amount of additional deduction for all previous periods.

182. New section 1217CG (3) allows HM Treasury to amend section 1216CG.

183. New section 1217CH(1) provides that a video games development company (as defined in new section 1217AB) may claim a video games tax credit in an accounting period for which it has a surrenderable loss.

184. New section 1217CH (2) defines the surrenderable loss. This is the lesser of the trading loss and the available qualifying expenditure.

185. New section 1217CH(3) calculates the available loss for an accounting period as L plus RUL where L is the amount of the company's loss for the period and, RUL is the amount of any relevant unused loss. RUL is defined further in new section 1217CH (4).

186. New section 1217CH (4) defines "relevant unused loss" of a company as that part of a loss neither surrendered for tax credit under new section 1217CI (1) nor carried forward under section 45 of the Corporation Tax Act 2010.

187. New section 1217CH (5) defines the available qualifying expenditure for the first period of account during which the trade is carried on as the amount E defined in 1217CG (1).

188. New section 1217CH(6) defines the available qualifying expenditure for subsequent periods as E minus S, where E is the amount defined in new section 1217CG(2) and S is the aggregate of the amounts surrendered for video games tax credit in previous periods as defined by new section 1217CI(1).

189. New section 1217CH (7) provides for any necessary apportionments where a period of account of the separate video game trade does not coincide with an accounting period.

190. New section 1217CI (1) provides that a company may surrender all or part of its surrenderable loss for a period.

191. New section 1217CI (2) sets the payable tax credit rate as 25%.

192. New section 1217CI (3) provides that where part of the loss is surrendered a company's available loss will be reduced by the surrendered amount.

193. New section 1217CJ(1) provides that where a company is entitled to a video games tax credit for a period, and it claims that credit, the Commissioners for Her Majesty's Revenue and Customs will pay the credit to the company.

194. New section 1217CJ(2) provides that an amount of credit that is payable, or an amount of interest payable under section 826 Income and Corporation Taxes Act 1988, may be set against any corporation tax that the company owes, and that if it is so set. The Commissioners' obligation under new section 1217CJ (1) is met.

195. New section 1217CJ (3) overrules new section 1217CJ (1) when the company's tax return is enquired into by HM Revenue and Customs, so that no payment need then be made to the company. HM Revenue and Customs may however make such provisional payments as it deems fit.

196. New section 1217CJ(4) overrules new section 1217CJ(1) so that when the company owes HM Revenue and Customs any amount of PAYE, Class 1 National Insurance contributions or any amount due no payment need to be made to the company.

197. New section 1217CJ (5) provides that a payment of a video games tax credit is not income for the company for any tax purpose.

198. New section1217CK (1) provides that no amount is to be included in costs for a period if it is still unpaid four months after the period ends.

199. New section 1217CK (2) provides that new section 1217CK (1) does not override the normal operation of new section 1217BD (when costs are taken to be incurred).

200. New section 1217CL is a general anti avoidance provision, which denies video games development tax relief to the extent that it arises from artificially inflated claims.

201. New section 1217CL(1) sets out that where a transaction is attributable to arrangements entered into (wholly or partly) for a disqualifying purpose, that transaction is disregarded in determining the amount of additional deduction or video games tax credit due.

202. New section 1217CL (2) sets out when arrangements are entered into for a disqualifying purpose. This is when their main object, or one of their main objects, is to enable a company to obtain an additional deduction or a video games tax credit that it would otherwise not be entitled to, or a larger deduction or greater amount of video games tax credit than it would otherwise be entitled to.

203. New section 1217CL (3) defines “arrangements”.

204. New section 1217CM (1) to (4) allow HM Revenue and Customs to disclose information to the Secretary of State for the purposes of his functions and also allows for the same information to be disclosed to the British Film Institute.

205. New section 1217CM (5) imposes a duty of confidentiality on any person to whom the information is disclosed under new sections 1217CM (1) and (3).

206. New section 1217CN (1) provides that a person commits an offence if he discloses information about an identifiable person in contravention of new section 1217CM.

207. New section 1217CN (2) provides a defence for a person charged with such an offence that he believed the disclosure to be lawful, or the information had already lawfully been made public.

208. New section 1217CN (3) and (6) sets out the penalties for a person convicted of wrongful disclosure.

209. New section 1217CN (4) provides that a prosecution may only be brought in England and Wales by the Director of Revenue and Customs Prosecution or with the consent of the Director of Public Prosecutions.

210. New section 1217CN(5) provides that a prosecution may only be brought in Northern Ireland by the Commissioners for HM Revenue and Customs or with the consent of the Director of Public Prosecutions for Northern Ireland.

Chapter 4: Video Game Losses

211. New section 1217D (2) sets out definitions used later in the section.

212. New section 1217DA(1) to (2) provide for a restriction to losses arising in while a video game is in development to the extent that they may only be carried forward to be set against profits of the separate video games trade in a subsequent period.

213. New section 1217DB (1) applies the section to the accounting period when a qualifying video game is completed or abandoned and to any subsequent accounting periods, if the trade continues.

214. New section 1217DB(2) provides that any trading loss carried forward under section 45 Corporation Tax Act 2010 from a pre-completion accounting period may be treated as a loss, for the purposes of loss relief, of the accounting period into which it is carried forward. This is subject to the restriction in new section 1217DB (3).

215. New section 1217DB(3) restricts the amount of any loss available to be set sideways against other profits of the same, or an earlier period, and to be surrendered as group relief to the amount that is not attributable to video games tax relief (see subsection (6)).

216. New section 1217DB(4) to (5) explain how the amount of loss that may either be deducted from total profits or surrendered as group relief will be restricted to the amount not attributable to video games tax relief.

217. New section 1217DB (6) explains how the loss for video games tax relief is calculated. This loss is the amount of the total loss less the amount of loss there would have been without the additional deduction under Chapter 3.

218. New section 1217DB (7) provides that 1217DB does not apply to losses carried forward or surrendered under new section 1217DC (terminal losses).

219. New section 1217DC(1) provides that this section applies when a video games development company ceases to carry on a separate trade in relation to the video game and has an amount of loss that remains to be carried forward (a terminal loss).

220. New section1217DC(2) and (3) provide that where a video games development company with a terminal loss carries on a another trade in relation to another qualifying video game it can, by election, treat such a loss as being a loss brought forward in the next accounting period following the cessation.

221. New section 1217DC(4) to (6) provide for the situation where a company with a terminal loss is in a group relationship with another company at the time of the cessation and that other company is a video games development company in relation to another qualifying video game. The company with the terminal loss may surrender this loss to another video games development company within the same group provided that company makes a claim for the loss.

222. New section 1217DC (7) provides that HM Treasury may, by regulations make adaptations or such modifications as appear to be appropriate to this section.

223. New section 1217DC (8) defines a 'qualifying video game'.

Chapter 5: Provisional Entitlement to Relief

224. New section 1217E (1) defines certain expressions for the purposes of Chapter 5.

225. New section 1217E (2) sets out a requirement for reporting in a company's return whether a video game has been completed or abandoned.

226. New section 1217EA (1) provides that a company is not entitled to relief in an interim accounting period unless an interim certificate accompanies its company tax return.

227. New section 1217EA (2) provides that if an interim certificate is revoked the company loses eligibility for any period in respect of which a certificate has been provided must amend its return(s) accordingly.

228. New section 1217EA(3) provides that where a video game is completed the company tax return must be accompanied by a final certificate, which then covers both the final period and any interim periods. If no such final certificate is provided the company loses eligibility for all periods and must amend it return(s) accordingly.

229. New section 1217EA (4) deals with the abandonment of a video game. If the company abandons video game development activities its tax return for the final accounting period may be accompanied by an interim certificate. The company does not lose entitlement to any earlier relief.

230. New section 1217EA (5) provides that if a final certificate is revoked, the company loses eligibility for all periods and must amend its return(s) accordingly.

231. New section 1217EB(1) provides that the company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for that period, a statement of the planned amount of UK expenditure on the video game, and that amount indicates the condition in new section 1217CE will be met on completion.

232. New section 1217EB(2) provides that where the condition in subparagraph (1) is met but it subsequently becomes apparent that the amount of UK expenditure on completion will be too low, the company loses eligibility for all periods and must amend its company tax return(s) accordingly.

233. New section 1217EB (3) and (4) deal with the completion of the video game. If the video game is completed, or abandoned, its company tax return for the final accounting period must be accompanied by a statement that it has been completed or abandoned, as the case may be, and by a final statement of UK core expenditure on the relevant video game. If the company tax return shows that the amount of UK core expenditure is too low and no such final statement is provided, the company loses eligibility for all periods(s) and must amend its company tax return(s) accordingly.

234. New section 1217EC overrides the normal time limits for amendments of assessments as necessary in order to allow the provisions of Chapter 5 to have effect.

Part 2: Commencement

235. Paragraph 2 allows HM Treasury, by order to appoint a day when amendments in the Schedule shall come into force.

236. Paragraph 3 (1) provides that the amendments in the Schedule will have effect in relation to accounting periods beginning on or after a day specified by HM Treasury (‘the specified day’).

237. Paragraph 3 (2) and (3) provides that where a company has an accounting period which straddles the specified day then periods before or after that date are for the purposes of Part 15B treated as separate accounting periods.

238. Paragraph 4 allows for any amendments to the design of the relief in order to be met, and in direct consequence of the requirements to meet, State aid approval. Consequential amendments for other parts of the Taxes Acts as specified in Schedule 18 are amended to take into account the effects of the amendments in Schedule 17.

Schedule 18

239. Paragraph 1 covers the necessary consequential amendments to ICTA 1988.

240. Paragraphs 2 to 5 cover the necessary consequential amendments to FA 1998

241. Paragraph 6 covers the consequential amendments to CAA 2001.

242. Paragraph 7 cover the necessary consequential amendments to FA 2007

243. Paragraphs 8 to 15 cover the necessary consequential amendments to CTA 2009

244. Paragraph 16 covers the necessary consequential amendments to FA 2009.

245. Paragraphs 17 to 20 covers the consequential amendments to Part 8A CTA 2010

246. Paragraph 21 provides for the consequential renumbering to CTA 2009.

247. Paragraphs 22 to 23 provide for commencement of the new reliefs.

Background

248. The new tax reliefs for animation and high-end television production will allow qualifying companies engaged in the production of animation and high-end television

intended for release to the general public to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit. Similarly the new video games development relief will allow eligible companies engaged in the production of qualifying video games to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.

249. Both the additional deduction and the payable credit are calculated on the basis of UK core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered.

250. For all three new reliefs the credit is based on the company's qualifying expenditure on the production of a qualifying animation, high-end television programme or video game of which at least 25% of the qualifying expenditure must be on goods or services used or consumed in the UK.

251. The animation or high-end television programme or game must be certified as a culturally British product to qualify for the tax credit.

252. The three new tax reliefs are part of the Government's growth agenda (as detailed in the Plan for Growth document published in March 2011). The aim is to help support technological innovation and ensure that animation, high-end television and video game production companies continue to contribute to UK economic growth and to British culture.

253. In June 2012 a stage 2 consultation document: 'Consultation on creative sector tax reliefs' was published giving more detail on the design proposals.

Section 37: Corporation Tax: Health Service Bodies: Exemption

Summary

1. Section 37 amends section 986 of the Corporation Tax Act 2010 (CTA 2010). The amendment ensures that certain health service bodies created (the new bodies) by the Health and Social Care Act 2012 (the Act) will be exempt from Corporation Tax (CT).

Details of the Section

2. Subsection 1 adds the new bodies at the appropriate place in section 986 CTA 2010. Section 986 provides the meaning of "health service body" for the purposes of the exemption from CT contained in section 985 of that Act.

Background

3. The Act is making significant changes to the structure of the National Health Service (NHS) in England. Some existing bodies, such as Primary Care Trusts, are to be abolished and new bodies established; other bodies will change their status (from special health authority to Non-Departmental Public Bodies). Subject to specific legislation these new bodies would be liable to CT.

4. The predecessor bodies were generally exempt from CT, as they were either part of the Department of Health or had specific exemption by virtue of sections 985 and 986 CTA 2010.

5. This section introduces legislation to similarly exempt the new bodies from CT.

Section 38: Chief Constables Etc (England and Wales): Exemption

Summary

1. Section 38 ensures that Chief Constables and the Commissioner of Police of the Metropolis (the new bodies) created by the Police Reform and Social Responsibility Act 2011 (the Act) will be exempt from corporation tax (CT).

Details of the Section

2. Subsection 1 inserts an exemption from CT for the new bodies at s987A Corporation Tax Act 2010 (CTA 2010).

3. Subsection 2 indicates the date from which the exemption will apply - 16 January 2012 for the Commissioner of Police of the Metropolis and 22 November 2012 for Chief Constables.

Background

4. The Act made significant changes to the structure of policing in England and Wales, specifically by creating Police and Crime Commissioners, The Mayor's Office for Policing and Crime and the aforementioned new bodies. Subject to specific legislation, these new bodies would be liable to CT.

5. The predecessor bodies, the Police Authorities, were exempt from CT by virtue of s984 CTA 2010 as they were local authorities within the meaning of s1130 CTA 2010. Each of the Police and Crime Commissioners and The Mayor's Office for Policing and Crime meet the definition of local authority for CT purposes and so are covered by s984.

6. This section introduces legislation to specifically exempt the new bodies from CT as they no longer fall within the definition of local authorities for the purposes of s1130 CTA 2010.

Section 39, Schedule 19: Real Estate Investment Trusts: UK Reits Which Invest in Other UK Reits

Summary

1. Section 39 and Schedule 19 allows the income from UK real estate investment trusts (REITs) investing in other UK REITs to be treated as income of the investing REIT's tax exempt property rental business. The property income distribution (PID) that a UK REIT receives from another UK REIT in which it invests will be tax exempt. For the purpose of the balance of business test, the investment by a REIT in another REIT will be included as an asset of the investing REIT's property rental business. The investing REIT must distribute 100 per cent of the PID it receives from investing in another REIT to its investors.

Details of the Schedule

2. Paragraph 2 amends section 530 Corporation Tax Act 2010 (CTA 2010). This section sets out the percentage of UK profits from a property rental business that a group or company UK REIT must distribute in an accounting period in order to fulfil the distribution of profits condition.

3. Paragraph 2(2) introduces a new requirement (new section 530(1) CTA 2010) that all of a group UK REIT's profits that are UK REIT investment profits must be distributed. UK REIT investment profits are defined at paragraph 7. The existing requirement to distribute at least 90 per cent of the rest of the profits is at new section 530 (1) (b) CTA 2010.

4. Paragraph 2(3) introduces the same requirement for company UK REITs as for a group UK REIT in respect of UK REIT investment profits.

5. Paragraph 3 makes consequential amendments to section 530A CTA 2010. This section was introduced in Finance Act 2012 and sets out the distribution of profits condition where there has been an increase in profits after the delivery of a tax return.

6. Paragraph 4 amends the balance of business condition in section 531 CTA 2010 to include relevant UK REIT shares within the balance of business assets condition for both group and company UK REITs. Relevant UK REIT shares are defined at subparagraph 4.

7. Paragraphs 5 and 6 make consequential amendments.

8. Paragraph 7 inserts new section 549A into CTA 2010. This section introduces the term "UK REIT investment profits" and defines it at for a group in new section 549A(5) and for a company is new section 549A (7). UK REIT investment profits are treated as profits of a UK property rental business and new section 549A(3) explains that references to property rental profits and similar terms within part 12 CTA 2010 include UK REIT investment profits. They are, however, treated as separate from other property rental business profits (new section 549A(2)).

9. Paragraph 8 makes consequential amendments to section 550 CTA 2010 required by the introduction of "UK REIT investment profits".

10. Paragraphs 9 (company) and 10 (group) apply Chapter 10 (joint ventures) to distributions that are UK REIT investment profits within new section 549A.

11. Paragraph 11 amends section 605 to ensure that UK REIT investment profits are not excluded from the definition of a property rental business.

12. Paragraph 12 is a consequential amendment required to ensure that UK REIT investment profits are included when considering deduction of tax at source.

13. Paragraph 13 sets out the operational date for the changes within the schedule.

Background

14. UK REITs are tax advantaged vehicles introduced to encourage investment in the property sector.

15. A REIT is exempt from corporation tax on its profits from a property rental business. It is required to distribute 90 per cent of its profits by way of a property income distribution (PID). A PID is treated in the hands of investors as income from property and taxed accordingly.

Section 40: Corporation Tax Relief for Employee Share Acquisitions Etc

Summary

1. Section 40 clarifies the rules on availability of corporation tax (CT) deductions where companies award shares or grant share options to their employees. It makes clear that, other than in specified circumstances, no CT deduction is available in relation to an employee share option unless shares are acquired pursuant to that option. It also makes clear that, except in specified circumstances, no other CT deductions should be made in cases where statutory CT relief is available. This legislation will have effect in relation to accounting periods ending on or after 20 March 2013.

Details of the Section

2. Subsection (2) introduces a new section 1038 Corporation Tax Act 2009 (CTA 2009) in place of the current section 1038. The existing legislation excludes other CT deductions

where relief for employee share acquisitions is available under Part 12 CTA 2009, and this remains the purpose of the revised section 1038.

3. New subsections 1038(1) and 1038(2) set out the rule that where relief is, or would be, available under Part 12, no other CT deduction is allowed in relation to the provision of shares or share options; or for any connected matter. By virtue of subsection 1038(4) these provisions apply for any accounting period, whether before or after the employee acquires the shares in question.

4. New subsection 1038(3) provides that in cases where section 1022 CTA 2009 (concerning the takeover of a company whose shares are subject to a share option) applies, the exclusion at subsection 1038(2) in relation to share options has effect for any new options granted on the takeover of the company as well as any relevant earlier qualifying option.

5. New subsections 1038(5), 1038(6) and 1038(7) broadly reproduce provisions in the current section 1038, setting out the expenses for which CT deduction is excluded under subsection 1038(2) and providing exceptions to this exclusion in specified circumstances.

6. New subsection 1038(8) disregards deductions relating to the provision of convertible securities that are not shares from the exclusion at subsection 1038(2) in certain cases.

7. Subsection (3) introduces new section 1038A CTA 2009, which clarifies the exclusion of CT deductions in respect of share options pursuant to which shares are not acquired by employees.

8. New subsection 1038A(1) sets out rules applying in the case of share options obtained by employees because of their employment. Subsection 1038A(1)(b) also applies this new section to other share options connected with an option covered by subsection 1038A(1)(a), for example new options issued on a takeover of a company. By virtue of new subsection 1038A(3) these provisions apply for any accounting period, whether before or after the employee obtains the option in question.

9. New subsection 1038A(2) provides that no CT deduction is allowable for any accounting period in relation to a share option or matters connected with it, unless shares are acquired pursuant to the option.

10. New subsection 1038A(4), 1038A(5) and 1038A(6) broadly reproduce provisions in the current section 1038, setting out the expenses for which CT deduction is excluded under new subsection 1038A(2) and providing exceptions to this exclusion in specified circumstances.

11. New subsections 1038A(7) and 1038A(8) provide that subsection 1038A(2) does not disallow a deduction for amounts on which an employee is subject to an income tax charge, or would have been subject to certain circumstances.

12. Subsections (5) and (6) provide that the new section 1038 applies for company accounting periods ending on or after 20 March 2013, regardless of when the acquisition of shares took place. However, the provision will not operate to deny a CT deduction in a company accounting period spanning 20 March 2013 where the shares were acquired before that date.

13. Subsections (7) and (8) provide that the new section 1038A applies for company accounting periods ending on or after 20 March 2013, regardless of when the share option was obtained. However, the provision will not operate to deny a CT deduction in an accounting period spanning 20 March 2013 where an option to acquire shares lapsed or otherwise ceased to be exercisable before that date.

Background

14. Where an employee obtains a share option or is awarded shares, CT legislation generally allows the employing company a CT deduction at the point when the employee acquires the shares and, where applicable, is charged to income tax on them.

15. These rules broadly aim to achieve symmetry between the availability of CT relief to the employing company and a charge to income tax on the employee (where applicable).

16. In addition there are more general provisions in CT legislation that a company's taxable trading profits should be calculated by reference to generally accepted accounting practice (GAAP), except where this is specifically overridden in tax legislation.

17. A statutory relief for employee share acquisitions was introduced in 2003 and was designed, where appropriate, to override GAAP. Accounting standards were subsequently introduced to require companies to recognise an accounting expense, measured at fair value, in respect of shares and share options they provide to employees.

18. The argument is sometimes made that companies can deduct accounting expenses recognised for share-based payments against CT, even if the option or award lapses and the employee does not acquire shares; or alternatively that both the accounting expenses and the statutory deduction can be deducted in cases where the employee acquires shares.

19. In the Government's view it is wrong for companies to claim CT deductions for accounting expenses relating to share-based payments where shares are not acquired by the employee, other than where this is specifically provided for in legislation; or to claim what are, in effect, two deductions in respect of an acquisition of shares by an employee. The law has been applied on that basis by HM Revenue & Customs (HMRC) since the current rules were introduced in 2003.

20. HMRC will continue to resist claims of this type, on the basis that they are inadmissible under the terms of existing legislation.

21. The present section is being introduced to clarify and confirm the position, and remove any uncertainty there may be among taxpayers and advisers about how the rules apply.

Section 41: Derivative Contracts: Property Total Return Swaps Etc

Summary

1. Section 41 responds to tax avoidance schemes involving property return swaps. Property total return swaps utilise the legislation in Corporation Tax Act 2009 (CTA 2009) which applies to swap contracts relating to land or to an index over the value of land. This section amends the legislation to prevent these provisions from being used to produce losses which are unrelated to real exposure to movements in property prices.

Details of the Section

2. Subsection (1) provides that Chapter 7 of part 7 of CTA 2009 is amended.

3. Subsection (2) inserts a new subsection 4A into section 643 of CTA 2009 and substitutes “and C” with “C and D” in subsection (1). Where section 643 and related provisions apply, the return from certain derivative contracts, relating to land or tangible movable property other than commodities is charged to corporation tax on chargeable gains.

4. Subsection 643(4A) introduces a new condition D, so that derivative contracts will only fall within section 643 if condition D is met.

5. Subsection (3) inserts new subsections (8) and (9) into section 650 of CTA 2009. Where that section and related provisions apply, the return from certain contracts involving a

capital value index over land, and also involving interest rates, is charged to corporation tax on chargeable gains.

6. Subsection 650 (8) introduces a new condition G which must be met for section 650 to apply to a derivative contract.

7. Subsection 650 (9) introduces a new condition H which must be met for section 650 to apply to a derivative contract.

8. Subsection (4) adds a new subsection 4A to section 659. Section 659 includes a formula in subsection (4) which sets how to calculate credits or debits which are to be charged to corporation tax on chargeable gains.

9. New subsection 659(4A) provides that where a derivative contract has the effect that the return arising from a contract is lower (i.e. closer to zero, or zero) than the actual change in the index over that period, then for the purposes of the formula in section 659(4), the figure for R% is the actual return, and not the movement in the index.

10. Subsections (5) and (6) provide for commencement of the amendments to Chapter 7 of Part 7. They provide that the amendments have effect in relation to accounting periods beginning on or after 5 December 2012. An accounting period beginning before, and ending on or after 5 December 2012, is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods, for the purposes of the amendments provided for by subsection (1).

Background

11. The amendments made by this section prevent use of the property total return swaps legislation to obtain tax advantages. In many circumstances, returns from swaps entered into by companies are taxed or relieved as income. However in some circumstances where the swap has an underlying subject matter of land, or an index of changes in the value of land, a return can be taxed or relieved as capital.

12. This legislation is being used within groups of companies, in effect to convert capital losses into income losses, by entering into swaps between different members of the group, although overall the swap does not result in the group getting any net exposure to property. The new legislation will rule out any capital return where swaps are intra-group.

13. The formula used in the legislation is also being exploited in an attempt to generate capital gains which exceed those actually arising from the swap. The legislation will limit any capital return to the actual return under the contract.

Section 42, Schedule 20: Corporation Tax: Tax Mismatch Schemes

Summary

1. Section 42 introduces Schedule 20 which responds to tax avoidance schemes involving a tax mismatch. Tax mismatch schemes exploit the tax treatment of loan relationships and derivative contracts in the Corporation Tax Acts 2009 and 2010. The amendments block schemes where a company benefits from a tax advantage by creating a mismatch using a loan relationship or derivative. The changes apply, although they are not limited to, schemes where a company enters a loan relationship with a partnership of which it is a member and a loan is accounted for differently by the company and the partnership to give a tax advantage.

Details of the Schedule

2. Schedule 20 inserts a new Part 21BA into CTA 2010. Part 21BA comprises sections 938O to 938V.

3. Section 938O sets out the operative rule if a company is at any time in an accounting period party to a tax mismatch scheme (TMS). "Scheme losses and profits" made by the company in that period are not to be brought into account as debits or credits for the purposes of Part 5 (loan relationships) and Part 7 (derivative contracts) of CTA 2009.

4. Section 938P defines a TMS. A scheme is a TMS if either of two Conditions is met:

- the first condition (Condition A) is that when the company enters into the scheme there is no practical likelihood that the scheme will fail to result in a "relevant tax advantage" (RTA) of £2m or more. A RTA is defined in section 938R; and
- the second condition (Condition B) is that the purpose, or one of the main purposes, of entering into the scheme is to obtain the chance of securing a RTA.

5. The tests under condition A and B are applied to the position that exists at the outset of the scheme.

6. Section 938Q defines "scheme loss" and "scheme profit" as a loss or profit made by a company in an accounting period in relation to a tax mismatch scheme (as defined in section 938P) if the loss or profit:

- arises from a transaction, or series of transactions, that forms part of the scheme – subsection (1)(a);
- is, or is comprised in, an amount that is brought into account as a debit or credit for the purposes of Part 5 or 7 of CTA 2009 – subsection (1)(b); and
- meets either of the asymmetry conditions in subsection (2) or (5) – subsection (1)(c).

7. The asymmetry condition in subsection (2) is that the loss or profit affects the amount of any RTA secured by the scheme.

8. Subsection (4) applies where a loss or profit affects, or may affect, the amount of any RTA but not all of the loss or profit affects or may affect it. In such a case just the part of the loss or profit that does or may affect the RTA is treated as a scheme loss or profit.

9. The second asymmetry condition, in subsection (5), applies if it becomes clear that a scheme will not (despite the fact that it is a TMS) produce a RTA.

10. Section 938R defines the term "relevant tax advantage" as an "economic profit" (see section 938S) which is not negligible that is made by the company over the whole scheme period, and arises because of asymmetries in the way that the company brings, or does not bring, amounts into account as debits and credits under the loan relationships or derivative contracts rules.

11. "Asymmetries" are defined in s938R(4) to include in particular asymmetries in timing and quantification.

12. Subsection (5) makes clear that an economic profit includes an increase in an economic profit and a decrease in an economic loss.

13. Subsection (6) defines scheme period to mean the period during which the scheme has effect.

14. Section 938S explains the meaning of references to economic profits and losses. It provides that an economic profit or loss takes into account profits or losses made as a result of the operation of the Corporation Tax Acts and any adjustments required to reflect the time value of money.

15. In determining the amount of an economic profit or loss made by the company over the scheme period, amounts are only to be taken into account to the extent that they relate to the times when the company is party to the scheme.

16. Section 938T makes clear that in determining whether a scheme is a TMS it is assumed that the company obtains the full tax benefit of any loss made in relation to a loan relationship or derivative contract over the scheme period. Similarly it is assumed that the company incurs the full tax cost of any profit made from a loan or derivative over the scheme period.

17. This ensures that the tax advantage must arise as a result of structurally asymmetrical tax treatment of the transactions and not because of circumstantial matters such as losses that might be available to shelter profits from the loan or derivative.

18. Section 938U defines "scheme" as including all arrangements, schemes and understandings of any type whether or not legally enforceable, whether involving a single transaction or series of transactions.

19. Section 938V is a scope or boundary provision. It ensures that in determining whether any amounts are brought into account apart from the tax mismatch rules (and so might give rise to a RTA), existing unallowable purpose, tax arbitrage, and tax treatment of financing costs and income rules are to be treated as of no effect. It follows that the tax mismatch rules apply in priority to those rules.

20. Paragraph 4 introduces references to the new tax mismatch legislation into Schedule 4 of CTA 2009.

21. Paragraph 5 makes a consequential amendment to the tax arbitrage legislation in section 231(8) of the Taxation (International and Other Provisions) Act 2010.

22. Paragraph 6 contains commencement provisions.

23. Paragraph 6(1) provides that the amendments made by Schedule 20 have effect in relation to schemes entered into at any time, including a time before the commencement date.

24. Paragraph 6(2) provides that section 938O does not apply to scheme losses or profits that relate to a time before the commencement date, or to scheme profits that relate to a time on or after that date, but are made in relation to a scheme entered into before that date.

25. Paragraph 6(3) gives the commencement date, which is 5 December 2012.

Background

26. This section aims to close a tax avoidance scheme in the area of loan relationships and derivatives.

27. The scheme targeted by the section involves schemes which aim to defeat the group mismatch legislation in part 21B of CTA 2010. That legislation prevents any tax advantage arising as a result of asymmetries arising between different companies in a group. An asymmetry may involve, for example, different members of a group of companies bringing different amounts into account in respect of the same loan or derivative. The new section will similarly prevent tax advantages from arising from asymmetries in other circumstances, not necessarily involving a group of companies, for example where a company brings a loan into account in one way, and a partnership of which the company is a member brings the loan into account differently.

Section 43: Tier Two Capital

Summary

1. Section 43 prevents the payments on banks' and parent undertakings of banks' Tier Two regulatory capital debt instruments from being treated as distributions for corporation tax (CT) purposes and ensures that the issue of such instruments does not break the

banks corporate group for CT group relief purposes. Both these changes are subject to an anti-avoidance rule to prevent abuse.

Details of the Section

2. New subsection (2) inserts new section 162(1A) into the Corporation Tax Act 2010 (CTA 2010). New section 162(1A) ensures that loans forming part of a banks' Tier Two capital are treated as 'normal commercial loans' for the purposes of the CT group relief rules. This change prevents a bank or a parent undertaking of a bank which issues Tier Two instruments from breaking its corporate group for CT purposes.

3. Subsection (3) inserts new section 164A into CTA 2010. New section 164A ensures instruments which form part of the bank's or parent undertaking of a bank's Tier Two capital resources are treated as though they are normal commercial loans and that this is not the case where a main purpose (or one of the main purposes) of a loan is obtaining a tax advantage.

4. New subsection (5) inserts new section 1032A into CTA 2010. New section 1032A(1) ensures that a payment made in respect of Tier Two securities is a not a distribution for tax purposes and that this is not the case where a main purpose (or one of the main purposes) of a payment is obtaining a tax advantage.

Background

5. Once the Capital Requirements Directive IV (CRD IV) is in force, bank's Tier Two capital must have more loss absorbing features than previously. Tier Two capital will also have to count as Tier Two throughout the life of the instrument (including after CRD IV is in force). Both these requirements have caused tax issues in relation to the CT distributions and group relief rules which these provisions seek to address.

6. This section was announced and came into force on 26 October 2012.

Section 44: Financing Costs and Income: Group Treasury Companies

Summary

1. Section 44 amends the provisions in Part 7 of the Taxation (International and Other Provisions) Act 2010 (TIOPA) on the treatment of financing expenses and financing income (the debt cap). It makes changes to the conditions that companies have to satisfy in order to make an election under section 316 TIOPA 2010 and to how the election applies to financing expenses and financing income.

Details of the Section

2. Subsection (1) substitutes new subsections (2) to (7) for subsections (2) to (8) of section 316 TIOPA 2010. New subsection (2) introduces a new criterion in addition to the three existing criteria for a company to be a group treasury company. The new criterion is that the company has made an election under section 316.

3. New subsection (3) provides that new subsection (4) applies to a company if all or substantially all of its activities are treasury activities and all or substantially all of its assets and liabilities relate to such treasury activities.

4. New subsection (4) provides that the relevant amount or relevant amounts of the company for the period of account of the worldwide group are not treated as financing expenses or financing income of the group treasury company. The effect of this is that the financing expenses and financing income of the group treasury company are not included in the group's debt cap computation.

5. If new subsection (4) does not apply, for example because the company cannot meet the provisions of new subsection (3) throughout the relevant period or the company's

activities are not substantially all treasury activities then the election has effect as described in new subsection(5).

6. New subsection (5) provides that the relevant amounts are not treated as financing expenses or financing income only to the extent that the amounts relate to treasury activities undertaken by the company. Consequently if a relevant amount does not relate to the company's treasury activities then it cannot be included in the election.

7. New subsection (6) allows for the extent of the relevant amount included in the election under new subsection (5) to be determined on a just and reasonable basis. New subsection (7) continues the current provision that a group treasury company election must be made within three years of the end of the period of account of the worldwide group.

8. Subsection (2) provides that the amendments apply to periods of account of the worldwide group beginning on or after 11 December 2012.

Background

9. Finance Act (FA) 2009 introduced a package of changes to the taxation of companies on their foreign profits. This package included a measure to restrict the interest and other finance expenses that can be deducted in computing the corporation tax payable by UK members of a worldwide group of companies. This is known as the debt cap.

10. The debt cap rules are now in Part 7 of TIOPA 2010. They broadly operate by requiring UK groups to compare their UK financing costs, as calculated under the rule, with the finance costs of their worldwide group. If the UK costs exceed the worldwide costs then the excess is disallowed and the UK companies do not get any relief for the excess.

11. Section 316 allows group treasury companies to make an election so that their financing expenses and financing income are excluded from the group's debt cap computation. This was originally intended to relieve the administrative burden on groups in complying with the debt cap by applying to treasury companies acting as a conduit for borrowing and lending by the group. Such companies would have a relatively large number of transactions on which a small amount would be made, sufficient to meet the treasury company's own finance costs.

12. It was possible for companies outside the original intention of the legislation to make a group treasury company election and so remove from the debt cap computation substantial amounts of financing expenses and financing income that would otherwise have been included. If the financing expenses and financing income were not included in the debt cap computation then they could not be subject to a debt cap disallowance or exemption. The changes made by this section ensure that the original intention of the legislation is restored.

Section 45: Condition for company to be an "investment trust"

Summary

1. Section 45 amends subsection 1158(2) Corporation Tax Act 2010 (CTA 2010).

Details of the Section

2. Subsection 1 makes a change to Condition A in subsection 1158(2) CTA 2010 so that, in order for a company to satisfy Condition A, all or substantially all of its business must be investing its funds in shares, land or other assets with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds.

Background

3. Changes to the tax rules for investment trusts were introduced by Section 49 Finance Act 2011. In order to be treated as an investment trust for an accounting period, a company must be approved by HMRC and meet Conditions A to C in section 1158(2) of CTA 2010 throughout that period.

4. Condition A, as currently drafted, is that 'the business of the company consists of investing its funds in shares, land or other assets with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds'.

5. The amendment makes it clear that provided all, or substantially all, of the business of a company is investing its funds in shares, land or other assets with the aim of spreading investment risk then ancillary activities will not prevent Condition A from being satisfied.

Section 46, Schedule 21: Community Amateur Sports Clubs

Summary

1. Section 46 introduces Schedule 21 which makes provision to amend the conditions a club must meet in order to be a registered Community Amateur Sports Club (CASC) under Chapter 9 of Part 13 of the Corporation Tax Act (CTA) 2010.

Details of the Schedule

2. Paragraph 2 of the Schedule amends the meaning of ‘open to the whole community’ under section 658(1A)(a) by amending section 659 of CTA 2010.

3. Sub-paragraph (2) of paragraph 2 replaces sub-paragraph (c) of section 659(1). The new subsection provides that the costs that need to be taken into account when considering whether a club is open to the whole community include the costs for membership, use of facilities and the costs of full participation in the activities of the club.

4. Sub-paragraph (3) of paragraph 2 inserts new subsections (2A), (2B), (2C) and (2D) into section 659.

5. New subsection (2A) specifies, for the purposes of new paragraph (c) of subsection 659(1), when the costs associated with membership of a club for any year represent a significant obstacle to membership of a club, use of its facilities or full participation in its activities.

6. The club will not be open to the whole community if those costs exceed an amount, to be specified by the Treasury in regulations, unless the club has made arrangements to ensure those costs are not a significant obstacle.

7. New subsections (2B) and (2C) provide that the Treasury may make regulations supplementing new subsection (2A).

8. New subsection (2D) disapplies the requirement in section 1171(4) of CTA 2010 that regulations and orders are made subject to the negative resolution procedure. The requirement is disapplied where the regulations are contained in an instrument which is subject to the draft affirmative resolution procedure.

9. Sub-paragraph (4) of paragraph 2 replaces subsection (3) of section 659 with new subsection (3), which specifies that a club may charge different fees for different forms of membership of the club and still be regarded as being open to the whole community. For example a club could offer a special class of membership at a reduced cost to people on a low income.

10. Paragraph 3 of the Schedule amends the meaning of ‘organised on an amateur basis’ in section 658(1A)(b) by amending section 660 of CTA 2010.

11. Sub-paragraph (2) of paragraph 3 inserts new sub-paragraph (ba) in section 660(1). It permits a club to pay players, subject to certain conditions, while still meeting the requirement to be organised on an amateur basis.

12. Sub-paragraph (3) of paragraph 3 amends section 660(4)(g) to specify that a club may pay players and officials the costs of subsistence as well as the costs of travel when a club team attends away matches.

13. Sub-paragraph (4) of paragraph 3 inserts new subsection (4A) into section 660, to define the meaning of the new term ‘subsistence expenses’ in amended section 660(4)(g).

14. Sub-paragraph (5) of paragraph 3 inserts new subsections (5A) and (5B) into section 660. New subsection (5A) provides conditions that may apply to the payment of players. The detail of these conditions will be specified in regulations made by the Treasury.

15. New subsection (5B) allows the Treasury to make regulations to supplement the conditions in (5A), in particular to provide when a person is or is not to be regarded as being paid to play, and to specify how the amounts paid to a player are to be calculated.

16. Sub-paragraphs (6) and (7) of paragraph 3 insert new subsections (8) to (13) into section 660. The new subsections allow the Treasury to make further regulations as to when a club is ‘organised on an amateur basis’, including provision about the ‘ordinary benefits of an amateur sports club’, and about who is to be regarded as a guest of a member for the purposes of section 660(1). The regulations may amend any provision of Chapter 9 of Part 13 of CTA 2010 and, if they do so, are subject to the draft affirmative resolution procedure.

17. New subsection (13) disapplies the requirement in section 1171(4) of CTA 2010 that regulations and orders are made subject to the negative resolution procedure. The requirement is disapplied where the regulations are contained in an instrument which is subject to the draft affirmative resolution procedure.

18. Paragraphs 4 and 5 of the Schedule introduce a new requirement that a club must meet in order to be considered to meet the ‘main purpose’ test in section 658(1A)(c).

19. Paragraph 5 inserts new section 660A into CTA 2010. New section 660A prevents a club from meeting the ‘main purpose’ test if the number of its members that do not participate in the club’s sporting activities exceeds a certain percentage of all the members of the club. This percentage will be specified in regulations made by the Treasury.

20. The Treasury may also make regulations in new section 660A defining when members of the club are to be regarded as participating, or participating occasionally, in the sporting activities of the club, and which activities are to be regarded as ‘sporting’.

21. New section 660A(5) disapplies the requirement in section 1171(4) of CTA 2010 that regulations and orders are made subject to the negative resolution procedure. The requirement is disapplied where the regulations are contained in an instrument which is subject to the draft affirmative resolution procedure.

22. Paragraphs 6 and 7 of the Schedule allow the Treasury to change the thresholds for the exemptions from corporation tax on trading income and income from property in sections 662 and 663 CTA 2010. If a threshold is reduced then draft regulations must made under the draft affirmative resolution procedure.

23. Paragraph 8 of the Schedule provides that the Treasury may specify a new ‘income condition’ which a club must meet in order to be a registered club. The new condition may restrict or prohibit the receipt of different types of the income, including income of

a specified description which could include, for example, income from non members. The regulations may amend any provision of Chapter 9 of Part 13 of CTA 2010 and, if they do so, are subject to the draft affirmative resolution procedure.

24. Paragraph 9 of the Schedule provides in subparagraph (1) that any powers conferred on the Treasury come into force on the day on which the Act is passed. Subsections (2) and (3) provide for the remaining amendments to be brought into force by a commencement order made by the Treasury.

25. Paragraph 10 of the Schedule provides that where provisions have retrospective effect, those provisions cannot be used to cancel the registration of a club from a date before the passing of this Act. The exception to this rule is where the club had provided HM Revenue & Customs (HMRC) with inaccurate information about its eligibility and the inaccuracy was deliberate or careless within the meaning of paragraph 3 of Schedule 24 to the Finance Act 2007.

Background

26. A sports club may be registered by HMRC as a Community Amateur Sports Club (CASC) provided it meets certain conditions. CASCs benefit from a number of tax reliefs, including an exemption from tax on certain income and gains (provided the club uses the income and gains for qualifying purposes), Gift Aid, and non-domestic rates relief.

27. The main eligibility conditions a club must meet in order to be registered are that it must:

- be open to the whole community
- be organised on an amateur basis and
- have as its main purpose the provision of facilities for, and the promotion of participation in, one or more eligible sports.

28. HMRC has carried out a review of the eligibility conditions contained in Chapter 9 of Part 13 of the Corporation Tax Act 2010 and concluded that the current legislation is unclear. The Schedule amends and clarifies the conditions for eligibility to the CASC scheme, and gives a number of powers to the Treasury to provide the detail of these conditions in regulations.

29. HMRC will publish a consultation document in spring 2013 setting out the Government’s proposals for the detail of those conditions.

30. Draft regulations will be published later in 2013, after the public consultation. To the extent that they amend primary legislation the draft regulations must be approved by the House of Commons before they can be made by the Treasury.

31. The amendments and the regulations may have retrospective effect. Retrospection is needed to enable HMRC to register a number of clubs whose applications have been on hold pending the outcome of its review of the legislation.

Section 47: Lifetime Allowance Charge: Power to Amend the Transitional Provision in Part 2 of Schedule 18 to FA 2011 Etc.

Summary

1. Section 47 amends Finance Act 2011 to introduce a power to amend the transitional provisions (known as ‘fixed protection 2012’) in FA 2011 in relation to the lifetime allowance.

Details of the Section

2. Subsection (2) provides a number of minor amendments to paragraph 14 of Schedule 18 to FA 2011.

3. Subsection (3) inserts new paragraphs 15 to 17 into Part 2 of Schedule 18. Part 2 of Schedule 18 provides for transitional protection for pension savers following changes to the lifetime allowance in Part 1 of Schedule 18.

4. New paragraph 15(1) provides a power for HMRC to amend paragraph 14 of Schedule 18 by regulations.

5. New paragraph 15(2) provides that the regulations under new paragraph 15 may add to the cases when paragraph 14 of Schedule 18 is to apply or cease to apply.

6. New paragraph 15(3) provides that regulations under new paragraph 15 may have effect from 6 April 2012 but only where that they do not increase any person’s liability to tax.

7. New paragraph 15(4) provides that where regulations are made before the end of 2013 and they do not have effect before 6 April 2013, the requirement not to increase a person’s liability to tax does not apply.

8. New paragraph 16 provides a power for HM Revenue & Customs to make regulations specifying how a notice of intention to rely on the transitional protection under paragraph 14 of Schedule 18 should be given.

9. New paragraph 17 provides that regulations made under new paragraphs 15 or 16 may include supplementary or incidental provision, are to be made by statutory instrument and are subject to the negative procedure.

10. Subsection (4) provides that the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 (SI 2011/1752) will continue to have effect.

Background

11. This section provides a power to amend Part 2 of Schedule 18 to FA 2011 in relation to fixed protection 2012. FA 2011 reduced the standard lifetime allowance from £1,800,000 to £1,500,000 with effect from 6 April 2012. A transitional protection regime, ‘fixed protection 2012’ was introduced in Part 2 of Schedule 18. Individuals with fixed protection 2012 have a lifetime allowance of the greater of £1,800,000 and the standard lifetime allowance. The new power will be used to help ensure that individuals do not lose fixed protection 2012 in circumstances outside their control.

Section 48, Schedule 22: Lifetime Allowance Charge: New Standard Lifetime Allowance for the Tax Year 2014-15 and Subsequent Tax Years

Summary

1. Section 48 amends the Finance Act 2004 (FA 2004), as it relates to the lifetime allowance for UK tax relieved pension savings. Schedule 21 introduces transitional provisions to protect pension savers affected by this reduction in the lifetime allowance and makes a number of consequential amendments to FA 2004 relating to the reduction in the lifetime allowance.

Details of the Section

2. The section provides for the standard lifetime allowance to be £1,250,000 for the tax year 2014-15 onwards and amends section 218(3) FA 2004 to provide that the power to increase the lifetime allowance by Treasury Order applies for any tax year subsequent to 2014-15.

Details of the Schedule

Part 1 "Fixed protection 2014"

3. Paragraph 1(1) provides for transitional protection ("fixed protection 2014") against the lifetime allowance charge from 6 April 2014 for those who do not have fixed protection under paragraph 14 of Schedule 18 to FA 2011, primary protection or enhanced protection.

4. Paragraph 1(3) provides for fixed protection 2014 to be lost if:
   - there is a benefit accrual (as defined in paragraph 1(4));
   - there is an impermissible transfer (as defined in paragraph 1(7));
   - there is a transfer of sums or assets that is not a permitted transfer (as defined in paragraph 1(8)); or
   - a new pension arrangement relating to the individual is made otherwise than in permitted circumstances (as defined in paragraph 1(9)).

5. Paragraphs 1(5) and (6) provide how to determine the increase in the value of the individual's rights under a cash balance or defined benefit arrangement and a hybrid arrangement under which cash balance or defined benefits may be provided.

6. Paragraphs 1(4) and (7) to (10) provide definitions of benefit accrual, impermissible transfers, permitted transfers, permitted circumstances and when a relevant contribution is paid.

7. Paragraph 1(11) provides that increases in an individual's rights under an arrangement are to be ignored for the purposes of determining whether benefit accrual has occurred if they don't exceed the relevant percentage in a tax year. This applies for defined benefits and cash balance arrangements as well as hybrid arrangements where the benefits to be provided may be defined benefits or cash balance benefits.

8. Paragraph 1(12) provides that the relevant percentage is an annual rate of increase specified in the scheme rules (or predecessor scheme rules if this is more favourable to the individual) as at 11 December 2012, plus any relevant statutory increase percentage (as defined in paragraph 1(14)) that may apply. Where there isn't a rate of increase specified in the scheme rules, the relevant percentage is either the annual percentage increase in the consumer prices index ('CPI') for September in the previous tax year or, if it is higher, the relevant statutory increase percentage.

9. Paragraph 1(15) provides that paragraph 1(16) applies when the individual's rights are under a deferred annuity contract and that contract limits increases in rights to annual increases in the retail prices index ('RPI').

10. Paragraph 1(16) provides that where paragraph 1(15) applies, the relevant percentage in paragraph 1(12)(b)(i), which allows for CPI increases, is replaced by the annual rate of increase in the value of the individual's rights during the tax year.

11. Paragraph 1(17) provides further detail on the calculation of the annual increase in RPI for the purposes of paragraph 1(15).

12. Paragraph 1(18) provides that paragraph 1(3) applies in relation to individuals who receive UK tax relief on pension savings in non-UK schemes, as if the non-UK scheme were a registered pension scheme, but that this is subject to paragraph 1(19).

13. Paragraph 1(19) provides that where the individual has an arrangement under a non-UK pension scheme, then the definition of benefit accrual is set out in paragraphs 1(20) and 1(21) for the purposes of paragraph 1(3)(a), and paragraph 1(4) does not apply.

14. Paragraph 1(20) provides that benefit accrual occurs at the end of the tax year where the pension input amount for a tax year is greater than nil.

15. Paragraph 1(21) provides that there is also benefit accrual if an individual takes some or all of their benefits during a tax year and the pension input amount for the period up to the time the benefits were taken is greater than nil.

16. Paragraph 2 provides a power for HMRC to amend paragraph 1 by regulations. These regulations may

- add to the cases when paragraph 1 is to apply or cease to apply;
- have effect before they are made, but not before 6 April 2014, provided that they do not increase any person's liability to tax.

17. Paragraph 3 provides a power for HM Revenue & Customs to make regulations specifying how a notice of intention to rely on fixed protection 2014 under paragraph 1 should be given.

18. Paragraph 4(2) and (3) provide that the regulations are to be made by statutory instrument and are to be subject to the negative procedure.

Part 2 Other provision

19. Paragraph 5 introduces a number of consequential amendments to Part 4 of FA 2004 in connection with the reduction to the lifetime allowance.

20. Paragraph 6(2) inserts new subsections 5BA and 5BB into section 218 of FA 2004. Subsection 5BA provides that where an individual has a lifetime allowance enhancement factor under sections 220, 222, 223 or 224 of FA 2004, (which apply a lifetime enhancement factor in respect of pension credits, relevant overseas individuals and transfers from recognised overseas pension schemes), and a benefit crystallisation event occurs between 6 April 2012 and 5 April 2014, then in calculating the individual's lifetime allowance the lifetime allowance enhancement factor is multiplied by £1,500,000 if this is greater than the standard lifetime allowance.

21. Subsection 5BB provides the order of precedence where an individual has more than one lifetime allowance enhancement factor.

22. Paragraph 6(3) inserts new subsection 5D into section 218 which provides for the reference to the standard lifetime allowance to be replaced by a figure of £1,500,000 where certain lump sum death benefits are paid (a 'benefit crystallisation event 7' occurs) on or after 6 April 2014 in respect the death of the individual in either tax year 2012-13 or 2013-14.

23. Paragraph 7(1) inserts new subsection 5A into section 219. Subsection 5A provides that where an individual has primary protection, when calculating the availability of the individual's lifetime allowance, if a benefit crystallisation event has previously occurred and a further benefit crystallisation event occurs on or after 6 April 2014, then for the purpose of calculating the adjustment of the relevant untaxed amount, reference to the current standard lifetime allowance is replaced by £1,500,000 where this is greater. This ensures that those with primary protection do not benefit from an increase in their available lifetime allowance if the current standard lifetime allowance is less than £1,500,000 when the adjustment is made.

24. Paragraph 8(2) inserts new sub-paragraphs (9) to (11) into paragraph 2 of Schedule 29 to FA 2004. Sub-paragraphs (9) to (11) provide that where an individual has primary protection and/or enhanced protection, and they don't have any existing lump sum protection, then the maximum pension commencement lump sum they can take will continue to be based on the 2013-14 lifetime allowance of £1,500,000 after the lifetime allowance is reduced to £1,250,000.

25. Paragraph 8(3) provides for the amendments made by paragraph 8(2) to have effect where the individual becomes entitled to the pension commencement lump sum on or after 6 April 2014.

26. Paragraph 8(4) substitutes sub-paragraphs 2 and 3 in paragraph 8 of Schedule 29 to FA 2004 in connection with the calculation of the maximum amount that can be paid as a trivial commutation lump sum where the individual has previously taken some pension benefits. The changes amend the way that any previously taken benefits are adjusted for the purposes of calculating the maximum amount. Prior to this change, the calculation was by reference to any change in the standard lifetime allowance. From 6 April 2014, the calculation is by reference to any change in the trivial commutation limit.

27. Sub-paragraph 2 sets out the formula for the adjustment where the pension benefits were taken before 6 April 2006 and sub-paragraph 3 sets out the formula where the pension benefits were taken on or after 6 April 2006.

28. Paragraph 8(5) provides for the amendments made by paragraph 8(4) to have effect where the nominated date is on or after 6 April 2014.

Background

29. Individuals can save as much as they like in a registered pension scheme subject to overall limits on the amount of tax relief their pension savings can benefit from. These limits are the lifetime and annual allowances. The Government announced on 5 December 2012 that tax relief for pension savings was to be restricted through a reduction in the lifetime and annual allowances.

30. The lifetime allowance is the maximum amount of pension and/or lump sum that an individual can take from their pension schemes that benefit from UK tax relief.

31. When an individual becomes entitled to their pension benefits, these benefits are tested to see if they exceed the individual's lifetime allowance. If they do exceed this, then there is a tax charge on the amount over their lifetime allowance. This tax charge is called the lifetime allowance charge. The rate of the lifetime allowance charge will depend on how the individual takes their benefits. Any amount over the lifetime allowance taken as a lump sum is taxable at 55 per cent whilst any amount used to provide a pension is taxable at 25 per cent.

32. Section 47 and Schedule 21 restrict tax relief for pension savings by reducing the level of the lifetime allowance provided for in section 218 of FA 2004.

33. The level of the standard lifetime allowance is reduced to £1,250,000 with effect from 6 April 2014. A new transitional protection ('fixed protection 2014') comes into force on the same date. Individuals with fixed protection 2014 have a lifetime allowance of the greater of £1,500,000 and the standard lifetime allowance.

34. Schedule 21 also makes a number of consequential changes to the existing pensions tax legislation in FA 2004.

Section 49: Annual Allowance: New Annual Allowance for the Tax Year 2014-15 and Subsequent Tax Years

Summary

1. Section 49 amends Finance Act 2004 as it relates to the annual allowance for UK tax relieved pensions which is lowered to £40,000 from 2014-15 onwards.

Details of the Section

2. Subsection 2 amends section 228(1) to reduce the level of the annual allowance to £40,000 from 2014-15.

3. Subsection 3 amends section 228(2) so that the power to vary the level of the annual allowance can only apply for 2015-16 and subsequent tax years.

Background

4. Individuals can save as much as they like in a registered pension scheme subject to overall limits on the amount of tax relief their pension savings can benefit from. These limits are the lifetime and annual allowances. The Government announced on 5 December 2012 that tax relief for pension savings was to be restricted through a reduction in the lifetime and annual allowances.

5. Section 3 reduces the level of the annual allowance provided for in section 228 of FA 2004. The annual allowance is the maximum amount of pension savings for a tax year that can attract income tax relief. The level of the annual allowance is reduced from £50,000 to £40,000, which will reduce the amount of annual pension savings that benefit from UK tax relief.

6. The new level of annual allowance will apply for the tax year 2014-15 and subsequent tax years. This will affect pension contributions made in pension input periods that end in 2014-15. A pension input period usually covers 12 months and may end on 5 April each year or on other dates nominated by the scheme administrator or the individual.

Section 50: Drawdown Pensions and Dependants' Drawdown Pensions

Summary

1. Section 50 allows all drawdown pensioners to choose to receive an authorised pension from their registered pension scheme of up to 120% of the amount of an equivalent annuity (increased from 100%).

Details of the Section

2. Subsection (1) amends pension rule 5 in section 165 of Finance Act 2004 ('FA 2004') to increase the maximum drawdown pension payable from 100% of the basis amount to 120% of the basis amount. Section 165 defines what are authorised pensions from a registered pension scheme for tax purposes. A drawdown pension is one of the categories of authorised pension payable to a member. Pension rule 5 fixes the maximum rate of a drawdown pension. The basis amount referred to in pension rule 5 is defined in Schedule 28 to the FA 2004. It is the rate of pension which would be payable if an individual of the same age as the drawdown pensioner were to apply their pension fund to buying a level single life annuity without a guaranteed term. The basis amount is commonly referred to as the amount of "an equivalent annuity" or "a comparable annuity".

3. Subsection (2) amends pension death benefit rule 4 in section 167 of FA 2004 to increase the maximum dependants' drawdown pension payable from 100% of the basis amount to 120% of the basis amount. Section 167 defines what are authorised pension death benefits from a registered pension scheme for tax purposes. A dependants' drawdown pension is one of the categories of authorised pension death benefit payable to the dependant of a deceased member. Pension death benefit rule 4 sets the maximum rate of this pension.

4. Subsections (3)(a) and (c) amend Schedule 16 to Finance Act 2011 (FA 2011) to switch off transitional protections which are no longer needed in situations when the amendments made by this section apply. Paragraphs 90 and 98 of Schedule 16 to FA 2011 give transitional protection from the full effect of sections 165 and 167 Finance Act 2004 to members and dependants whose current drawdown reference periods started on or after 7 April 2006. Paragraphs 90 and 98 provide for members and dependants to continue to be able to take a drawdown pension of up to 120% of the basis amount for all drawdown pension years starting before a "relevant date" instead

of their pension being restricted to 100% of the basis amount annually. The relevant date cannot be later than 5 April 2016. Subsection (5) provides when these amendments have effect.

5. Subsection (3)(b) and (d) ensure that individuals are not treated differently by reason of transferring their drawdown pension fund to another pension scheme. Most transfers of sums and assets held under drawdown arrangements from one registered pension scheme to another do not affect when the reference period ends. However the transitional protections under paragraphs 90 and 98 of FA 2011 are removed when the member or dependant transfers to another scheme. A new reference period has to start the day after the end of the drawdown pension year in which the transfer takes place. As a result, the basis amount (described in paragraph 2 of this Explanatory Note) and so the maximum drawdown pension available to draw from the beginning of the ensuing drawdown pension year has to be recalculated. Subsection (3)(b) and (d) provide that a new reference period no longer has to begin after the end of the drawdown pension year in which the transfer occurred. It follows that the basis amount does not need to be recalculated by reason of the transfer either.

6. Subsection (4)provides that subsections (1) and (2) increasing the maximum drawdown pension to 120% of the basis amount have effect for all drawdown pension years starting on or after 26 March 2013. The term "drawdown pension year" is defined in paragraphs 9 and 23 of Schedule 28 to FA 2004 as the period of 12 months starting when the individual first became entitled to drawdown pension and each succeeding period of 12 months. The date on which an individual's next drawdown pension year starts is not affected by whether or not it coincides with the start of a new reference period, nor by whether new funds have been added to the drawdown pension fund. So, for example, if a member first became entitled to drawdown pension on 1 June 2011, the higher maximum drawdown pension of 120% of the basis amount would first be available for the drawdown pension year starting on 1 June 2013, even if no new reference period starts on that date. And if the member has added to the drawdown pension fund between 1 June 2012 and 31 May 2013, this would make no difference to when the 120% multiplier first applies, which would still be for the drawdown pension year starting on 1 June 2013.

7. Subsection (6) provides that the amendments to Finance Act 2011 in subsection (3)(b) and (d) of the section have effect for transfers during a drawdown pension year ending on or after 25 March 2013. The effect of the provision is consequently not limited to transfers made after 25 March 2013. The provision also has effect for transfers made on or before 25 March 2013 on condition they take place during a drawdown pension year ending on or after 25 March 2013. The term "drawdown pension year" is explained in paragraph 6 of this Explanatory Note.

Background

8. The section is covered by a resolution made under the Provisional Collection of Taxes Act 1968. Under this resolution drawdown providers account for income tax under Pay As You Earn procedures before the 2013 Finance Act receives Royal Assent where they have made payments from a drawdown pension fund which are higher than 100% of the basis amount but are not more than 120% of the basis amount in a drawdown pension year beginning on or after 26 March 2013.

Section 51: Bridging Pensions

Summary

1. Section 51 enables a registered pension scheme to continue to pay a bridging pension until a member's state pension age. Previously, a bridging pension had to be reduced by age 65.

Details of the Section

2. Subsection (1) explains that the section is amending the provisions of Finance Act (FA) 2004.

3. Subsection (2) amends paragraph 2 of Schedule 28 to FA 2004 to provide that the age at which a bridging pension must be reduced is 65 or, if later, state retirement age (referred to as "pensionable age", which is defined in section 279(1) of FA 2004). It also ensures that if multiple reductions take place, those reductions when aggregated must not exceed the maximum reduction allowed.

4. Subsection (3) amends paragraph 1 of Schedule 29 to FA 2004 to remove the reference to age 65 from the description of an excluded pension commencement lump sum. This reflects the amendments made by subsection (2) and means that bridging pensions which reduce after the age of 65 will not be excluded lump sums as a result and will not be subject to unauthorised payments tax charges.

5. Subsection (4) repeals paragraph 21 of Schedule 23 to FA 2006, which inserted the wording omitted by subsection (3).

6. Subsection (5) brings the section into force for the tax year 2013-14 and subsequent tax years.

Background

7. A pension from a registered pension scheme is not normally allowed to be reduced when in payment.

8. There are some exceptions to this rule, one of which is where a 'bridging pension' is being paid.

9. A 'bridging pension' is the term used to describe a pension that is higher at the outset and then reduced at the age at which the individual can claim for the state pension.

10. If a pension is reduced at any time other than when permitted under paragraph 2(4) Schedule 28 FA 2004, all future payments of that pension are unauthorised payments and subject to the unauthorised payments tax charges.

11. The existing legislation meant that the bridging pension had to be reduced by the age of 65. However, changes to the age at which state pension is paid meant that this reduction might occur before the member could receive their state pension.

12. The changes made by this section will mean that pension schemes can continue to pay a bridging pension up to a member's state pension age without incurring unauthorised payments tax charges. The legislation will remain in line with the policy intention.

13. The Government announced at Budget 2012 that changes would be introduced with effect from 6 April 2013 to align tax rules with changes to state pension age being introduced by the Department for Work and Pensions.

Section 52: Abolition of Contracting Out of State Second Pension: Consequential Amendments

Summary

1. Section 52 repeals the specified provisions of the pensions tax legislation to reflect that contracting out of the state second pension through a defined contribution (money purchase) pension scheme was abolished from 6 April 2012. Following on from one of the repeals, the section also sets out an amendment to a further provision of the pensions tax legislation.

Details of the Section

2. Subsection (2) repeals subsection 188(3)(c) Finance Act 2004 (FA 2004) which provides that age-related rebates and minimum contributions paid to pension schemes by Her Majesty's Revenue and Customs (HMRC) are not eligible for tax relief as member contributions. As no such payments will be made by HMRC to pension schemes after 6 April 2015, this provision is repealed from that date.

3. Subsection (3) repeals subsection 188(6) FA 2004 which provides that for the purposes of sections 188 and 191 to 194 FA 2004, any part of the employer's minimum payments that is recovered from the employee is treated as a member contribution and is relievable. Because no employers' minimum payments have been paid since before 6 April 2012, no amounts will have been recovered from the employee, and this provision is no longer needed and is repealed from 6 April 2013.

4. Subsection (4) repeals subsection 190(5) FA 2004 which provides that the part of the employer's minimum payments that is recovered from the employee is not to be included when calculating whether the individual has exceeded the annual limit for relief which is set out in the remainder of that section. Because no employers' minimum payments have been paid since before 6 April 2012, no amounts will have been recovered from the employee, and this provision is no longer needed and is repealed from 6 April 2013.

5. Subsection (5) repeals subsection 196(5) FA 2004 which provides that employers' minimum payments (other than any part recovered from the employee) are included as employer contributions for the purposes of that section, which covers tax relief for employer contributions. Because no employer will have paid a minimum payment since before 6 April 2012, this provision is no longer needed and is repealed from 6 April 2013.

6. Subsection (6) repeals section 202 FA 2004 which provides that HMRC will gross-up the minimum contributions it pays in respect of an individual who is contracted out of the state second pension through a personal pension scheme and will pay a specified amount into the National Insurance Fund. The amount payable to that fund is the difference between the grossed up amount of the minimum contributions to the personal pension scheme and the amount of the minimum contributions. HMRC will no longer pay minimum contributions to pension schemes from 6 April 2015. To be able to deal with payments that are made on or just before 5 April 2015, the provision for HMRC to make payments to the National Insurance Fund under section 202(6) FA 2004 (and those in sections 202(1) to (4) which are used to calculate those payments) is extended to 6 April 2016. It will however not be needed from that date.

7. Whilst section 202 FA 2004 is largely repealed from 6 April 2016, HMRC will continue to need the ability to recover overpaid minimum contributions that could be made sometime after 5 April 2016. Subsection 202(5) engages the powers of recovery contained in section 30 of the Taxes Management Act 1970, by way of regulation SI2005/3450. As a result, section 202(5) is to be repealed by Treasury Order.

8. Subsection (7) repeals subsection 233(2) FA 2004 which provides that minimum payments including any amounts recovered from the employee are not included when calculating the individual's pension input amount for the purposes of the annual limit on pension contributions tax relief. As no minimum payments have been made since before 6 April 2012, this provision is no longer needed and is repealed from 6 April 2013.

9. Subsection (8) inserts new subparagraphs (2A) and (2B) into paragraph 5 of Schedule 29 FA 2004 (short service refund lump sum). Under the short service refund rules, where a lump sum which exceeds the total of the member's contributions to the scheme is paid the excess is an unauthorised payment on which the member and the scheme administrator are liable for tax charges. The wording inserted into paragraph

5 Schedule 29 by this subsection ensures that incentive payments and age-related rebates of National Insurance contributions paid to schemes by HMRC, and amounts of minimum payments recovered by the employer from the member prior to abolition, continue to qualify as member contributions. As sections 188(3)(c) and (6) are repealed (see paragraphs 2 and 3 above), these amendments are necessary to clarify the position in relation to the limit on a short service refund lump sum paid after 6 April 2013 where the relevant contributions were paid before 6 April 2012. These provisions take effect from 6 April 2013. The legislation permitting incentive payments was repealed by Pension Schemes Act 1993 but claims for incentive payments were permitted up to 5 April 2001, and these sums could still form part of a member's lump sum. Reference here puts the treatment of these sums beyond doubt.

10. Subsection (9) repeals paragraph 14(2) of Schedule 36 FA 2004 which provides that minimum payments, including any amounts recovered from the employee, do not count as relevant benefit accrual under paragraph 13(a) of Schedule 36. Relevant benefit accrual results in loss of enhanced protection. Because no minimum payments will have been made since before 6 April 2012, this provision is no longer needed and is repealed from 6 April 2013.

Background

11. Pensions Act 2007 and Pensions Act 2008 amended the legislation governing contracting out of the state second pension to bring into effect the abolition of contracting out through a defined contribution (money purchase) pension scheme from 6 April 2012.

12. The pensions tax legislation, which is mainly contained in FA 2004, takes account of the fact that contracting out through a defined contribution pension scheme is possible.

13. The pensions tax legislation is now being amended to remove the provisions which are no longer needed and make any further consequential changes. This keeps the tax legislation up to date and removes possible causes for misunderstanding or confusion.

14. The pensions tax provisions which relate to contracting out through a defined benefit (salary related) scheme are not affected by this section.

15. Some of the provisions take effect from 6 April 2013, as explained above. Other provisions will continue to have effect until 5 April 2015 or 5 April 2016. This ensures a sufficient period of time to deal with adjustments to an individual's tax relief where these necessarily have to be made at a later date. From 6 April 2015, any outstanding adjusting payments will be made to the individual rather than the scheme. By 6 April 2016, HMRC will have made all necessary payments to the National Insurance Fund in respect of minimum contribution payments that are made on or soon before 5 April 2015. The relevant pensions tax provisions will therefore be switched off accordingly.

Section 53: Overseas Pension Schemes: General

Summary

1. Section 53 makes changes to the provisions for qualifying recognised overseas pension schemes (QROPS) in Part 4 of Finance Act 2004. The changes enable HM Revenue & Customs (HMRC) to require overseas pension schemes to provide information which is necessary to ensure the proper operation of the legislation relating to QROPS. In addition there are some new rules about when a pension scheme may be excluded from being a QROPS.

Details of the Section

2. Subsection 1 amends section 150 of Finance Act 2004 to clarify the power to make regulations setting out conditions that apply to a "recognised overseas pension scheme".

3. Subsection 4 substitutes a new section 169(4) of Finance Act 2004 and introduces new sections 169(4A) and (4B). These provisions contain powers enabling HMRC to make regulations setting out information requirements; enable HMRC to require additional information from a new or existing QROPS; allow HMRC to obtain information from a pension scheme that has been a QROPS; and provide a power to apply the penalties set out in Part 7 of Schedule 36 to the Finance Act 2008 to a failure by a former QROPS to comply with the new information requirements.

4. Subsection 5 substitutes a new section 169(5)(a) of Finance Act 2004 to set out the circumstances in which it can be appropriate for a pension scheme to be excluded from being a QROPS.

5. Subsection 7 defines certain terms used in subsections (4) to (6), in particular "relevant requirement" which includes a requirement imposed under Part 1 of Schedule 36 to the Finance Act 2008. Information requirements mentioned in paragraph 14 of this note include a requirement imposed under that Part.

Background

6. The UK allows pension savings that have received UK tax relief to be transferred free of UK tax to overseas pension schemes, providing they are within an individual's lifetime allowance.

7. Pension schemes established outside the UK must meet statutory requirements set out in the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 before they are able to receive these tax-free transfers. Pension schemes that meet these requirements are known as qualifying recognised overseas pension schemes (QROPS).

8. In Budget 2012 the Chancellor announced changes to strengthen reporting requirements and powers of exclusion relating to QROPS to support changes made by secondary legislation on 6 April 2012 and 25 May 2012.

Section 54: Overseas Pension Schemes: Information and Inspection Powers

Summary

1. Section 54 makes changes to the provisions for qualifying recognised overseas pension schemes (QROPS) and former QROPS in Schedule 36 to Finance Act 2008. The changes ensure that the information and inspection powers for these pension schemes are similar to those for UK pension matters.

Details of the Section

2. Subsection 2 amends paragraph 34B of Schedule 36 to Finance Act 2008 to ensure that a notice requiring information or a document in connection with a QROPS or former QROPS may be made in the same way as it is for UK pension matters.

3. New sub-paragraph (4A) provides that a notice requiring old documents in relation to QROPS and former QROPS is extended to documents that originate up 10 years before the date of the notice.

4. Subsection 4 confirms that any change in the application of the information powers in paragraph 34B and 34C of Schedule 36 to Finance Act 2008 to former QROPS will affect all former QROPS, including those that ceased to be a QROPS before this paragraph is enacted.

Background

5. The information and inspection powers set out in Schedule 36 to Finance Act 2008 apply both to pension schemes established in the UK and those established outside the UK.

6. UK pension schemes are a special case and particular rules apply when HMRC issues a notice to require information or documents from a third party or a person who is not known.

7. The change brought about by the section ensures that the same rules in relation to inspection and requiring information apply for all pension matters, whether the pension scheme is registered in the UK or is a QROPS or former QROPS.

Section 55, Schedule 23: Employee Shareholder Shares

Summary

1. Section 55 introduces Schedule 23 which concerns the tax treatment of 'employee shareholder shares', which are shares provided in consideration of an agreement to be an employee shareholder. Subject to certain conditions, gains on disposals of employee shareholder shares worth up to £50,000 on receipt will be exempt from capital gains tax (CGT). In addition, subject to certain conditions, no income tax will be chargeable on the first £2,000 of share value received when an individual becomes an employee shareholder. For corporation tax purposes however, companies will be entitled to relief against this £2,000 amount where the general conditions for this relief are met. Individuals considering an employee shareholder agreement will also usually not be liable a tax charge when they receive independent legal advice in relation to that agreement.

Details of the Schedule

Part 1: Income tax treatment of employee shareholder shares

2. Part 1 of the Schedule amends provisions within the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).

3. Paragraph 2 amends section 19(2) of ITEPA to include an amount treated as earnings of an employee shareholder under new section 226A of ITEPA within rules that determine when non-money earnings are treated as having been received for relevant tax purposes.

4. Paragraph 3 introduces new sections 226A to 226D of ITEPA. They provide for the income tax treatment of employee shareholder shares, and for the £2,000 payment an employee shareholder is deemed to have made for shares in certain circumstances.

New Section 226A of ITEPA: Amount treated as earnings

5. New section 226A of ITEPA provides for amounts that are to be treated as earnings in relation to employee shareholder shares. New subsection (1) sets out the circumstances in which this new section applies. New subsection (7) makes clear that certain provisions that affect the market value of shares for other income tax purposes do not apply in determining the market value for the purposes of new subsection (1).

6. New subsections (2) and (3) provide that an amount equal to the market value of the employee shareholder shares, reduced by any payment an employee shareholder is deemed to have made for the shares under new section 226B of ITEPA, is to be treated as earnings of the employee shareholder from the employment for the year in which these shares are acquired.

7. New subsection (4) disapplies this provision for employee shareholder shares acquired pursuant to an employment-related securities option. Instead, the normal rules that

apply to shares acquired pursuant to employment-related securities options apply equally for employee shareholder shares so acquired. Any payment an employee shareholder is deemed to have made for the shares under new section 226B of ITEPA is taken into account when calculating any tax chargeable, as set out at paragraphs 12 to 14 of this Schedule.

8. New subsection (5) ensures that if subsection (2) applies, no other sums can constitute earnings from employment in respect of the acquisition of the shares.

9. New subsection (6) provides definitions of various terms used in the new sections 226A to 226D of ITEPA.

New Section 226B of ITEPA: Deemed payment for employee shareholder shares

10. New section 226B of ITEPA provides that, subject to certain conditions, an employee shareholder is deemed to have made a payment of £2,000 for employee shareholder shares. For the purposes of determining the date on which this payment is deemed to have been made, subsection (2) applies where all the employee shareholder shares are acquired on the same day and subsection (3) applies where employee shareholder shares are acquired on more than one day.

11. New subsections (4) and (5) set out arrangements for the allocation of this £2,000 deemed payment in cases where employee shareholder shares with a value in excess of this amount are acquired.

12. New subsection (6) makes this deemed £2,000 payment subject to conditions set out in new sections 226C and 226D of ITEPA.

13. New subsection (7) provides that an employee shareholder is treated as not having given any consideration (other than the deemed £2,000 payment where applicable) for shares they acquire as an employee shareholder.

14. New subsection (8) provides that subsection (7) of new section 226A of ITEPA also applies for the purpose of determining the market value of shares in new section 226B.

New section 226C of ITEPA: Only one payment deemed to be made under associated agreements

15. New section 226C of ITEPA ensures that the deemed payment set out in new section 226B of ITEPA is only available to the employee shareholder on the first occasion on which they acquire ‘qualifying shares’ under an employee shareholder agreement. New subsection (1) sets out this condition.

16. New subsections (2) and (3) define ‘qualifying shares’ for the purposes of the condition in new subsection (1) and provide that, for the purposes of this condition, any shares acquired under previous employee shareholder agreements with the same employing company, or with associated companies, are taken into account.

17. New subsection (4)(a) defines two companies as associated for the purposes of this condition if either one has control of the other, or both are under the control of the same person or persons. New subsection (4)(b) provides that for the purposes of this condition, where one company controls another when an employee shareholder agreement is made with an individual, that control is treated as continuing if a subsequent employee shareholder agreement is made with the same individual.

18. New subsection (5) excludes from new subsection 4(b) certain cases where a person who was an employee shareholder with a company that has been dissolved becomes an employee shareholder with an associated company. This is subject to two years having passed between the dissolution of the company in question and the subsequent employee shareholder agreement, during which time that individual has not been employed or engaged by any company associated with the dissolved company.

New section 226D of ITEPA: Shareholder or connected person having material interest in company

19. New section 226D of ITEPA prevents an employee shareholder benefiting from the deemed payment set out in new section 226B of ITEPA where they, or persons connected with them, have a material interest in their employer or a parent of their employer; or have had such a material interest at any time in the 12 months prior to the acquisition of the employee shareholder shares. New subsections (1) and (2) set out this condition.

20. New subsections (4) and (5) define a material interest for the purposes of this condition. New subsection (4) provides that an individual has a material interest in a company if at least 25 per cent of the voting rights in that company are exercisable by that individual, by persons connected with that individual, or by the individual and persons connected with them together. New subsection (5) provides that in the case of a close company, an individual has a material interest if, in any circumstances, at least 25 per cent of the net assets of the company would be available for distribution to that individual, persons connected with that individual, or the individual and persons connected with them together.

21. New subsection (7) provides that for the purposes of this condition, an individual has a material interest in a company if they, or persons connected with them, have an entitlement to acquire rights that would give them a material interest in the company. This also applies where an individual and any connected persons together have such an entitlement.

22. New subsection (8) provides that for the purposes of this condition, an individual has a material interest in a company if there are arrangements in place that would enable them, or persons connected with them, to acquire such an interest. This also applies where such arrangements would enable an individual and any connected persons together to acquire a material interest in a company.

23. Paragraphs 4 to 11 and paragraph 15 of the Schedule make amendments to various provisions of ITEPA to take into account employee shareholder shares and ensure that, where relevant, amounts treated as earnings under new section 226A of ITEPA are treated in the same way as other earnings from the employment.

24. Paragraph 12 amends section 479 of ITEPA to make clear that when calculating tax chargeable in relation to employee shareholder shares acquired pursuant to an employment-related securities option, the £2,000 payment deemed to have been made by the employee shareholder under new section 226B of ITEPA is regarded as the amount of consideration given for the shares, subject to the restrictions set out at new sections 226C and 226D of ITEPA.

25. Paragraphs 13 and 14 make clear that this is also the case in relation to employee shareholder shares acquired pursuant to a share option granted under the Enterprise Management Incentives tax advantaged employee share scheme, for which special rules apply when calculating any amounts of tax to be charged.

26. Paragraph 16 introduces new section 385A of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA).

New section 385A of ITTOIA: No charge to tax on purchase by company of exempt employee shareholder shares

27. New section 385A of ITTOIA prevents an income tax charge arising when employee shareholder shares are sold back to the company. It applies where the employee shareholder is no longer an employee or officer of the employer company (or an associated company) and ensures that payment received from the company gives rise to a gain (that may be exempt by virtue of Part 2 of this Schedule).

Part 2: Capital Gains Tax exemption for employee shareholder shares

28. Part 2 of the Schedule amends the Taxation of Chargeable Gains Act 1992 (TCGA).

29. Paragraph 18 of the Schedule inhibits the operation of the no gain no loss provisions for transfers between spouses and civil partners ensuring that the transferor benefits fully from the CGT relief and the transferee has a base cost on acquisition of the market value of the shares at the time of the transfer.

30. Paragraph 19 amends section 149AA of TCGA so that amounts treated as earnings for income tax purposes under Chapter 1 of Part 3 or new section 226A of ITEPA are deductible in computing gains and losses on employee shareholder shares, but no other consideration is treated as having been given for the acquisition of those shares.

31. Paragraph 20 introduces six new sections into Part 7 of TCGA relating to employee shareholders. These new sections provide for exemption from CGT and impose an upper limit on the value of the shares to which the exemption applies.

New section 236B of TCGA: Exemption for employee shareholder shares

32. New section 236B of TCGA provides that gains on exempt employee shareholder shares are not chargeable gains when the shares are disposed of by the person who acquired them under an employee shareholder agreement, and defines exempt employee shareholder shares as employee shareholder shares which meet the further requirements in new sections 236C and 236D of TCGA.

33. New subsection (3) defines various terms used in the new sections 236B to 236G of TCGA.

New section 236C of TCGA: Only first £50,000 of shares under associated agreements to be exempt

34. New subsection (1) provides that an employee shareholder share is exempt if, when it is acquired, the total value of all employee shareholder shares acquired under the relevant employee shareholder agreement, and under certain other employee shareholder agreements, does not exceed £50,000.

35. New subsections (2) and (3) provide that for the purpose of applying the £50,000 limit in new subsection (1), any shares acquired under previous employee shareholder agreements with the same employing company, or with associated companies, are taken into account.

36. New subsection 4(a) defines two companies as associated if either one has control of the other, or both are under the control of the same person or persons. New subsection (4)(b) provides that where one company controls another when an employee shareholder agreement is made with an individual, that control is treated as continuing if a subsequent employee shareholder agreement is made with the same individual.

37. New subsection (5) excludes from new subsection 4(b) certain cases where a person who was an employee shareholder with a company that has been dissolved becomes an employee shareholder with an associated company. This is subject to two years having passed between the dissolution of the company in question and the subsequent employee shareholder agreement, during which time that individual has not been employed or engaged by any company associated with the dissolved company.

38. New subsections (6) and (7) provide a means of determining which employee shareholder shares are treated as exempt where the number of shares acquired on a day takes the recipient over the £50,000 limit. The shares are deemed to be acquired in two tranches, one of which consists of the maximum number which may be acquired without breaching the £50,000 limit.

39. New subsections (8) and (9) provide for the value ascribed to shares on their acquisition to be their unrestricted market value and define 'unrestricted market value' as what the shares' market value would be but for any restrictions which apply to them (that is to say, any provision relating to the shares made by any contract, agreement, arrangement or condition). 'Restriction' follows the definition in section 432(8) of ITEPA.

New section 236D of TCGA: Shares not exempt if shareholder or connected person has material interest in company

40. New section 236D of TCGA prevents an individual from benefiting from exemption on employee shareholder shares where they, or persons connected with them, have a material interest in their employer or a parent company of their employer; or have had such a material interest at any time in the 12 months prior to the acquisition of employee shareholder shares. New subsections (1) and (2) set out this condition.

41. New subsections (4) and (5) define a material interest for the purposes of this condition. New subsection (4) provides that an individual has a material interest in a company if at least 25 per cent of the voting rights in that company are exercisable by that individual, by persons connected with that individual, or by the individual and persons connected with them together. New subsection (5) provides that in the case of a close company, an individual has a material interest if, in any circumstances, at least 25 per cent of the net assets of the company would be available for distribution to that individual, persons connected with that individual, or the individual and persons connected with them together.

42. New subsection (7) provides that for the purposes of this condition, an individual has a material interest in a company if they, or persons connected with them, have an entitlement to acquire rights that would give them a material interest in the company. This also applies where an individual and any connected persons together have such an entitlement.

43. New subsection (8) provides that for the purposes of this condition, an individual has a material interest in a company if there are arrangements in place that would enable them, or persons connected with them, to acquire such an interest. This also applies where such arrangements would enable an individual and any connected persons together to acquire a material interest in a company.

44. New subsection (9) provides definitions for 'arrangements' and other terms used in this section.

New section 236E of TCGA: Identification of exempt employee shareholder shares

45. New subsection (1) disapplies the share pooling and share identification rules in TCGA, which would normally apply both to exempt employee shareholder shares and to non-exempt employee shareholder shares taken together.

46. New subsections (2) and (3) permit a person who holds both exempt and non-exempt employee shareholder shares of the same class in a company, and who disposes of shares of that class to specify how many exempt shares they have sold (up to number they held).

47. New subsection (4) defines what is meant by shares in a company being 'of the same class' for the purposes of this section.

New section 236F of TCGA: Reorganisation of share capital involving employee shareholder shares

48. New section 236F of TCGA provides that the rules at section 127 of TCGA, which apply to shares involved in reorganisations of share capital, schemes of reconstruction or in share exchanges, do not apply to exempt employee shareholder shares

New section 236G of TCGA: Relinquishment of employment rights is not disposal of an asset

49. New section 236G of TCGA ensures that for capital gains tax purposes an individual is treated as having made no disposal of any asset in consideration of entering into an employee shareholder agreement.

Part 3: Corporation Tax

50. Part 3 of the Schedule amends the Corporation Tax Act 2009 (CTA 2009). It provides that for various purposes relating to corporation tax, any £2,000 payment deemed to have been made by an employee shareholder under new section 226B of ITEPA is to be disregarded.

51. Paragraphs 22 to 32 and paragraph 36 amend various provisions of CTA 2009 to take account of employee shareholder shares, and ensure that, where appropriate for the purposes of these provisions, any amounts treated as earnings under new section 226A of ITEPA are treated in the same way as other earnings. When read with new section 1038B of CTA 2009, these paragraphs also provide that any £2,000 payment deemed to have been made by an employee shareholder under new section 226B of ITEPA is disregarded when determining the amount of relief available to a company in relation to the employee shareholder's acquisition of shares.

52. Paragraph 33 introduces new section 1038B of CTA 2009 (employee shareholder shares), which provides that any £2,000 payment deemed to have been made by an employee shareholder under new section 226B of ITEPA is disregarded for various purposes of Part 12 CTA 2009 affecting the availability of relief, or the amount of any relief available to a company.

53. Paragraphs 34 and 35 amend sections 1292 and 1293 of CTA 2009 (in relation to 'qualifying benefits') to provide that where a corporation tax deduction in relation to employee shareholder shares is subject to conditions set out in these sections, any £2,000 payment deemed to have been made by an employee shareholder under new section 226B of ITEPA is disregarded for various purposes affecting the availability of deductions, or the amount of any deduction available to a company.

54. Paragraph 36 provides information relation to the definition of 'employee shareholder share'.

Part 4: Employment Income Exemption

55. Chapter 11 of Part 4 of ITEPA is amended to include new section 326B.

56. New section 326B(1) provides that no income tax liability arises on an individual in respect of reasonable costs of relevant independent advice whether or not they are paid or reimbursed by an employer.

57. New section 326B (2) sets out the meaning of 'relevant advice' for the purposes of this legislation.

Part 5: Commencement

58. Part 5 of the Schedule provides for the Treasury to make an order bringing this legislation into force.

Background

59. A new employment status, known as 'employee shareholder' status, has been established by the Growth and Infrastructure Act 2013. Individuals with this status will be known as 'employee shareholders'. Employee shareholders will be issued or allotted at least £2,000 worth of shares in consideration of an employee shareholder agreement.

Where the conditions set out in this Schedule are met, gains on employee shareholder shares will not be subject to capital gains tax when the shares are disposed of. There will be limits on the shares which qualify for this capital gains exemption, imposed by reference to the value of employee shareholder shares at the time they are acquired. In addition, for income tax purposes, employee shareholders will be deemed to have paid £2,000 for employee shareholder shares, subject to certain conditions set out in this Schedule. This deemed payment will be disregarded for various purposes relating to the corporation tax deduction available to a company when an employee shareholder acquires shares.

60. In addition, individuals who are considering adopting the new status must be provided with independent advice before entering into an agreement to do so. That independent advice must be funded or reimbursed by the employer and there will be no tax charges arising for the employee as a result.

Section 56: Seis: Income Tax Relief

Summary

1. Section 56 makes a minor amendment to the legislation relating to the calculation of income tax liability where Seed Enterprise Investment Scheme (SEIS) relief is in point, and amends the SEIS independence requirement at section 257DG(2) ITA 2007 to prevent the disqualification of "off the shelf" companies established by a corporate formation agent.

Details of the Section

2. Subsections 2 and 3 make minor amendments to sections 29 and 32 of ITA, to clarify how income tax liability is to be calculated in certain circumstances where SEIS relief has been given. These amendments take effect for the tax year 2013/14 and subsequent tax years.

3. Subsection 4 amends the independence requirement at section 257DG(2) ITA, in respect of shares issued on or after 6 April 2013. It does so by introducing the concept of an "on the shelf period", during which a company will not be disqualified by virtue of being under the control of another company. The "on the shelf period" is the period during which a company has issued only subscriber shares and has not yet commenced any trade or business.

Background

4. SEIS aims to incentivise the provision of equity capital to early stage unquoted companies which are carrying on or preparing to carry on qualifying trading activities. It does so by providing a range of income and capital gains tax reliefs for individual investors who subscribe for shares in companies which meet the requirements of the scheme.

Section 57: Seis: Reinvestment Relief

Summary

1. Section 57 extends the capital gains tax (CGT) relief for re-investing chargeable gains into seed enterprise investment scheme (SEIS) shares to gains realised on disposals of assets in the tax year 2013-14. Half the qualifying re-invested amount will be able to be set against the chargeable gains.

Details of the Section

2. Subsection 2 amends paragraphs 1(2) and 1(3)(a) of Schedule 5BB to include within relief chargeable gains accruing to the investor in the tax year 2013-14 (as well as those

accruing in the tax year 2012-13) where the investor is eligible for SEIS relief for that year; and substitutes paragraph 1(5) to provide that the amount of SEIS expenditure that can be set against the gain is 100% if the relevant year in which the gains accrue is 2012-13 and 50% if the relevant year is 2013-14.

3. Subsection 3 amends paragraph 2 of Schedule 5BB to apply the restrictions on relief to gains accruing in the tax year 2013-14 in the same way as for gains accruing in the tax year 2012-13.

4. Subsection 4 amends paragraph 5 of Schedule 5BB to deem a chargeable gain to accrue in the year in which the shares were issued (rather than the tax year 2012-13) when the amount of SEIS relief that applies to the shares is withdrawn or reduced.

5. Subsection 5 makes consequential amendment to section 150G of TCGA 1992, which introduces Schedule 5BB.

Background

6. SEIS was introduced in 2012. It is designed to help small early-stage companies raise equity finance by offering a range of tax reliefs to individual investors who purchase new shares in these companies. It complements Enterprise Investment Scheme (EIS) but, in recognition of the particular difficulties that very early stage companies face in attracting investment, offers tax relief at a higher rate than that offered by EIS.

7. To help stimulate interest and demand in SEIS, a CGT re-investment relief was introduced for one year. Under the relief, where a person disposes of assets that give rise to chargeable gains and re-invests all or part of the amount of the gains in shares that qualify for SEIS income tax relief, the amount re-invested can be set against the chargeable gains. This is subject to a £100,000 investment limit (which matches a similar cap on SEIS relief).

8. The section extends the relief for a further year but provides that half (rather than the whole) of the re-invested amount can be set against chargeable gains.

Section 58: Disincorporation Relief

Summary

1. Section 58 introduces legislation to allow a company to claim disincorporation relief. Disincorporation relief allows a company to transfer goodwill and interests in land to its shareholders so that no corporation tax charge arises to the company on the transfer.

Details of the Section

2. Subsection (1) limits the circumstances when a claim for disincorporation relief may be made. It limits claims to transfers of a business from a company to some or all of its shareholders provided that the transfer is a qualifying business transfer (as defined in section 2) and it takes place within the 5 year period starting on 1 April 2013.

3. Subsection (2) explains that the consequences of a claim are set out in new sections 162B and 162C of the Taxation of Chargeable Gains Act (TCGA 1992) and new section 849A of the Corporation Tax Act (CTA 2009).

4. Subsection (3) defines the term “the business transfer date” as the date on which the business was actually transferred unless transferred under a contract.

5. Where the business is transferred under a contract subsection (3)(a) uses the same rule as in section 28 of TCGA 1992 to determine the time of the transfer i.e. if the contract is unconditional the time of the transfer is the date the contract was agreed and if it is conditional the time of the transfer is the date on which the contract became unconditional.

6. Subsection (3)(b) provides for situations where a business is transferred under more than one contract and provides that the contract that transfers the goodwill of the business is the relevant contract to determine the business transfer date.

7. Subsection (4) provides that disincorporation relief will apply to business transfers occurring on or after 1 April 2013.

Background

8. In February 2012 the independent Office of Tax Simplification (OTS) published its final reports into small business tax. One of these reports identified a population of businesses operating as limited companies which would prefer to operate in unincorporated form and highlighted a number of tax charges and administrative issues that might currently discourage this.

9. At Budget 2012 the Government announced a consultation on the OTS proposals for a disincorporation relief. That consultation closed on 30 August 2012. The Government has considered all the responses to the consultation and will publish a summary of the responses on 11 December 2012.

10. Disincorporation relief responds to proposals made by the OTS, which recommended that a relief be introduced to remove the tax barriers that currently exist when business assets are transferred by a company to its shareholders who wish to continue the business as a going concern in an unincorporated form.

11. The current legislation requires a company to pay corporation tax under the Taxation of Chargeable Gains Act 1992 when chargeable gains arise on disposals of assets, and corporation tax under the intangible fixed assets rules at Part 8 of the Corporation Tax Act 2009 when credits arise from a realisation of goodwill, based on the market value of the asset at the time of the transfer.

12. Legislation will be introduced in the Finance Act with effect from 1 April 2013, to allow a company to transfer qualifying assets (land and goodwill used in the business) to shareholders as individuals who wish to continue the businesses in an unincorporated form. The relief will allow qualifying business assets to transfer at a reduced value for corporation tax.

13. Claims will be restricted to those businesses where the market value of the classes of qualifying assets does not exceed £100,000 and the relief will be available for a period of 5 years commencing from 1 April 2013 (subject to Royal Assent).

14. Joint claims must be made in writing to HMRC by the company and the shareholders who wish to continue the business within two years of the date of the transfer of qualifying assets. Other eligibility criteria will also apply. HMRC will publish guidance on what information will need to be included in the claim.

15. Disincorporation relief does not cover the tax charges that might arise to the shareholders when assets are distributed below market value in the course of a disincorporation.

Section 59: Disincorporation Relief: Qualifying Business Transfer

Summary

1. Section 59 defines a qualifying business transfer for the purpose of disincorporation relief. Disincorporation relief allows a company to transfer goodwill and interests in land to its shareholders so that no corporation tax charge arises to the company on the transfer.

Details of the Section

2. Subsection (1) provides that a qualifying business transfer is one where conditions A to E are met.

3. Subsection (2) provides that condition A is that the business must be transferred as a going concern.

4. Subsection (3) provides that condition B is that the business must be transferred with all of the assets of the business, or all assets apart from cash.

5. Subsection (4) provides that condition C is that the total market value of the assets that qualify for disincorporation relief must not exceed £100,000.

6. Subsection (5) provides that condition D is that all the shareholders to whom the business is transferred must be individuals.

7. Subsection (6) provides that condition E is that the shareholders must have held shares in the company throughout the 12 months prior to the business transfer date.

8. Subsection (7) confirms that the reference to individuals in condition D includes individuals acting as members of a partnership but excludes individuals acting as members of a limited liability partnership.

9. Subsection (8) provides that section 60 of TCGA 1992 applies for the purpose of disincorporation relief, so that the qualifying assets could be transferred to a nominee or bare trustee for individuals who are shareholders or the shares could be held by a nominee or bare trustee for an individual.

10. Subsection (9) defines the market value of an asset as its price if sold on the open market.

11. Subsection (10) defines qualifying asset as goodwill or an interest in land other than land held as trading stock.

Background

12. In February 2012 the independent Office of Tax Simplification (OTS) published its final reports into small business tax. One of these reports identified a population of businesses operating as limited companies which would prefer to operate in unincorporated form and highlighted a number of tax charges and administrative issues that might currently discourage this.

13. At Budget 2012 the Government announced a consultation on the OTS proposals for a disincorporation relief. That consultation closed on 30 August 2012. The Government has considered all the responses to the consultation and will publish a summary of the responses on 11 December 2012.

14. Disincorporation relief responds to proposals made by the OTS, which recommended that a relief be introduced to remove the tax barriers that currently exist when business assets are transferred by a company to its shareholders who wish to continue the business as a going concern in an unincorporated form.

15. The current legislation requires a company to pay corporation tax under the Taxation of Chargeable Gains Act 1992 when chargeable gains arise on disposals of assets, and corporation tax under the intangible fixed assets rules at Part 8 of the Corporation Tax Act 2009 when credits arise from a realisation of goodwill, based on the market value of the asset at the time of the transfer.

16. Legislation will be introduced in the Finance Act with effect from 1 April 2013, to allow a company to transfer qualifying assets (land and goodwill used in the business) to shareholders as individuals who wish to continue the businesses in an unincorporated form. The relief will allow qualifying business assets to transfer at a reduced value for corporation tax.

17. Claims will be restricted to those businesses where the market value of the classes of qualifying assets does not exceed £100,000 and the relief will be available for a period of 5 years commencing from 1 April 2013 (subject to Royal Assent).

18. Joint claims must be made in writing to HMRC by the company and the shareholders who wish to continue the business within two years of the date of the transfer of qualifying assets. Other eligibility criteria will also apply. HMRC will publish guidance on what information will need to be included in the claim.

19. Disincorporation relief does not cover the tax charges that might arise to the shareholders when assets are distributed below market value in the course of a disincorporation.

Section 60: Disincorporation Relief: Making a Claim

Summary

1. Section 60 explains how claims to disincorporation relief are to be made. Disincorporation relief allows a company to transfer goodwill and interests in land to its shareholders so that no corporation tax charge arises to the company on the transfer.

Details of the Section

2. Section 3 provides that a claim to disincorporation relief must be made jointly by the company and the shareholders to whom the business is transferred (subsection (1)) within 2 years from the business transfer date (subsection (2)).

Background

3. In February 2012 the independent Office of Tax Simplification (OTS) published its final reports into small business tax. One of these reports identified a population of businesses operating as limited companies which would prefer to operate in unincorporated form and highlighted a number of tax charges and administrative issues that might currently discourage this.

4. At Budget 2012 the Government announced a consultation on the OTS proposals for a disincorporation relief. That consultation closed on 30 August 2012. The Government has considered all the responses to the consultation and will publish a summary of the responses on 11 December 2012.

5. Disincorporation relief responds to proposals made by the OTS, which recommended that a relief be introduced to remove the tax barriers that currently exist when business assets are transferred by a company to its shareholders who wish to continue the business as a going concern in an unincorporated form.

6. The current legislation requires a company to pay corporation tax under the Taxation of Chargeable Gains Act 1992 when chargeable gains arise on disposals of assets, and corporation tax under the intangible fixed assets rules at Part 8 of the Corporation Tax Act 2009 when credits arise from a realisation of goodwill, based on the market value of the asset at the time of the transfer.

7. Legislation will be introduced in the Finance Act with effect from 1 April 2013, to allow a company to transfer qualifying assets (land and goodwill used in the business) to shareholders as individuals who wish to continue the businesses in an unincorporated form. The relief will allow qualifying business assets to transfer at a reduced value for corporation tax.

8. Claims will be restricted to those businesses where the market value of the classes of qualifying assets does not exceed £100,000 and the relief will be available for a period of 5 years commencing from 1 April 2013 (subject to Royal Assent).

9. Joint claims must be made in writing to HMRC by the company and the shareholders who wish to continue the business within two years of the date of the transfer of qualifying assets. Other eligibility criteria will also apply. HMRC will publish guidance on what information will need to be included in the claim.

10. Disincorporation relief does not cover the tax charges that might arise to the shareholders when assets are distributed below market value in the course of a disincorporation.

Section 61: Disincorporation Relief: Effect of Disincorporation Relief

Summary

1. Section 61 amends Taxation of Capital Gains Act 1992 (TCGA 1992) and Corporation Tax Act 2009 (CTA 2009) to give effect to disincorporation relief claims. Disincorporation relief allows a company to transfer goodwill and interests in land to its shareholders so that no corporation tax charge arises to the company on the transfer.

Details of the Section

2. The section inserts new provisions into existing legislation within Part 5 of TCGA 1992 and Part 8 CTA 2009.

3. Subsection (1) inserts new section 162B and new section 162C into TCGA 1992.

4. Subsection (1) of new section 162B provides that the section applies where a company transfers its business to its shareholders and a claim to disincorporation relief is made.

5. Subsection (2) provides that the transfer of any qualifying asset by the company is deemed to be for a consideration which is equal to the lower of the cost of the asset to the company, as determined by section 38 of TCGA 1992, and the market value of the asset.

6. Subsection (3) defines a qualifying asset as goodwill or an interest in land, other than land held as trading stock.

7. Subsection (4) excludes goodwill falling within new section 162C TCGA 1992 (post-FA 2002 goodwill) from subsection (2).

8. Subsection (1) of new section 162C TCGA 1992 provides that this section applies where a company transfers its business to its shareholders, a claim to disincorporation relief is made and any goodwill is post-FA 2002 (i.e. new section 849A CTA 2009 applies to the transfer of goodwill).

9. Subsection (2) provides that goodwill to which the section applies acquired by the shareholders from the company is acquired for a consideration equal to the transfer value determined by new section 849A CTA 2009.

10. Subsections 4(2) and 4(3) amend Chapter 13 of Part 8 CTA 2009, adding a new subsection 845(4)(e) (disincorporation relief) to the list of exceptions to the basic rule.

11. Subsection 4(4) inserts new section 849A CTA 2009 immediately after section 849 CTA 2009.

12. Subsection (1) of new section 849A provides that new section 849A CTA 2009 applies where a company transfers its business to some or all of its shareholders and a claim to disincorporation relief is made.

13. Subsection (2) provides that the transfer value of goodwill within Part 8 CTA 2009 is the lower of the tax written-down value of the goodwill or market value where the realisation of goodwill is dealt with under section 735 CTA 2009 (asset written down for tax purposes).

14. Subsection (3) provides that the transfer value of goodwill within Part 8 CTA 2009 is the lower of cost or market value where section 736 applies (asset shown in balance sheet and not written down for tax purposes).

15. Subsection (4) provides that the transfer value is nil where section 738 applies (asset not shown in balance sheet).

16. Subsection (5) provides that the tax written-down value is a reference to the tax written-down value immediately before the transfer.

17. Subsection (6) defines “the cost of the goodwill” as the cost recognised for tax purposes (sections 736(6) and (7) of CTA 2009).

18. Subsection (7) provides that the same definition of market value is to be used as that in section 845(5) of CTA 2009.

19. Subsection 4(5) of the section provides that the amendments made by this section have effect to business transfers occurring on or after 1 April 2013.

Background

20. In February 2012 the independent Office of Tax Simplification (OTS) published its final reports into small business tax. One of these reports identified a population of businesses operating as limited companies which would prefer to operate in unincorporated form and highlighted a number of tax charges and administrative issues that might currently discourage this.

21. At Budget 2012 the Government announced a consultation on the OTS proposals for a disincorporation relief. That consultation closed on 30 August 2012. The Government has considered all the responses to the consultation and will publish a summary of the responses on 11 December 2012.

22. Disincorporation relief responds to proposals made by the OTS, which recommended that a relief be introduced to remove the tax barriers that currently exist when business assets are transferred by a company to its shareholders who wish to continue the business as a going concern in an unincorporated form.

23. The current legislation requires a company to pay corporation tax under the Taxation of Chargeable Gains Act 1992 when chargeable gains arise on disposals of assets, and corporation tax under the intangible fixed assets rules at Part 8 of the Corporation Tax Act 2009 when credits arise from a realisation of goodwill, based on the market value of the asset at the time of the transfer.

24. Legislation will be introduced in the Finance Act with effect from 1 April 2013, to allow a company to transfer qualifying assets (land and goodwill used in the business) to shareholders as individuals who wish to continue the businesses in an unincorporated form. The relief will allow qualifying business assets to transfer at a reduced value for corporation tax.

25. Claims will be restricted to those businesses where the market value of the classes of qualifying assets does not exceed £100,000 and the relief will be available for a period of 5 years commencing from 1 April 2013 (subject to Royal Assent).

26. Joint claims must be made in writing to HMRC by the company and the shareholders who wish to continue the business within two years of the date of the transfer of qualifying assets. Other eligibility criteria will also apply. HMRC will publish guidance on what information will need to be included in the claim.

27. Disincorporation relief does not cover the tax charges that might arise to the shareholders when assets are distributed below market value in the course of a disincorporation.

Section 62: Attribution of Gains to Members of Non-Resident Companies

Summary

1. Section 62 modifies section 13 of the Taxation of Chargeable Gains Act (TCGA) 1992, an anti-avoidance provision dealing with assets held through non UK-resident closely controlled companies. It aims to secure compatibility with European Union law. It does this by introducing an exclusion from the scope of charge gains arising from assets used in genuine business activities, clarifying the treatment of furnished holiday accommodation for the purposes of the provision, and raises the threshold at which the charge applies to unconnected minority participators.

Details of the Section

2. Subsection (2) amends section 13(4) of TCGA 1992 to increase from one tenth to one quarter the threshold at which a UK participator (and persons connected with him) can have gains made by an overseas company apportioned to them.

3. Subsection (3) inserts two new paragraphs (ca) and (cb) into section 13(5) of the TCGA 1992. New paragraph (ca) excludes from the charge gains on assets used for the purposes of "economically significant activities" carried on wholly or mainly outside the UK. New paragraph (cb) introduces an exemption for gains where neither the acquisition, nor the disposal of the asset formed part of arrangements put in place for the purpose of avoiding tax.

4. Subsection (4) introduces a new section 13A into TCGA 1992. New section 13A clarifies the meaning of assets wholly outside the United Kingdom used; defines the meaning of "relevant period"; modifies the rules in Corporation Tax Act 2009; and defines the term "economically significant activities" for the purposes of furnished letting in relation to section 13(5)(b)

5. New section 13A(2) defines the meaning of "relevant period" for the purposes of assets used for the purposes of furnished lettings.

6. New section 13A(3) applies the rules governing furnished holiday lettings set out in Chapter 6 of Part 4 of the Corporation Tax Act 2009 with certain modifications.

7. New section 13A(4) defines the term "economically significant activities" for the purposes of section 13(5)(ca) and (cb).

8. New section 13A(5) defines "staff" for the purposes of the economically significant activities test.

9. Subsection (5) provides that the amendments made by the section have effect for disposals made on or after 6 April 2012.

10. Subsections (6) and (7) permit an election to be made to disapply the amendments for disposals made between 6 April 2012 and 5 April 2013.

Background

11. Section 13 TCGA 1992 is designed to prevent avoidance of tax on capital gains by sheltering them in an overseas closely controlled company. These are gains on which UK resident individuals or companies would otherwise be taxed had they disposed of the asset and realised the gain directly.

12. An infraction notice (Reasoned Opinion) was issued to the United Kingdom by the European Commission on 16 February 2011. The Commission argued that section 13 breaches the freedoms of establishment and movement of capital established by Articles 49 and 63 of the Treaty on the Functioning of the European Union.

13. These changes aim to ensure that the legislation is compatible with the Treaty while maintaining effective protection against tax avoidance.

Section 63: Heritage Maintenance Settlements

Summary

1. Section 63 amends existing anti-avoidance provisions to remove an anomaly. Settlors of certain types of heritage maintenance funds (HMFs) (also known as heritage maintenance settlements) are currently only eligible for a targeted relief from capital gains tax in respect of transfers of property into the trust if the trustees make an election under a statutory procedure. This can result in payments by the trust effectively being charged to income tax twice. The amendment made by the section prevents this happening.

Details of the Section

2. Subsection (1) amends section 169D(1) of the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Section 169D(1) TCGA 1992specifies the circumstances where anti-avoidance provisions at sections 169B and 169C do not apply. The effect of the amendment is to extend the circumstances specified by section 169D(1) TCGA 1992, to include not only those cases where trustees have made an election under section 508 of the Income Tax Act 2007, for that year, but also any case where the trustees could have made such an election, irrespective of whether they in fact did so.

Background

3. HMFs are a statutory device enabling property to be held in trust so that the income from that property can be used for the repair and maintenance of historic buildings which are open to the public. Subject to a number of prescribed conditions being met, there is relief from capital gains tax on transfers of such property into an HMF.

4. The relief is subject to a number of anti-avoidance provisions. One of these limits eligibility to those trusts that have elected that income from trust property is to be treated as accruing to the trust rather than the settler ("the election"); however the effect of the election is that payments to a settlor for use on the upkeep of the historic property triggers a further charge to tax upon the settlor.

5. The amendment made by this section retains a restriction upon eligibility for the relief; however, so long as the trust satisfies the conditions for making the election, the requirement that it actually have done so is removed.

Section 64, Schedule 24: EMI Options and Entrepreneurs' Relief Etc

Summary

1. Section 64 introduces Schedule 24 which extends entrepreneurs' relief to the disposal by an employee or officer of a company of shares in that company or a company in the same trading group when the shares meet the requirements of the enterprise management incentives (EMI) scheme. Relief applies from 6 April 2013 where the shares were acquired on or after 6 April 2012 as a result of that person exercising a qualifying option over them and that option had been granted at least one year before the date of the share disposal. The person disposing of the shares must have been an employee or officer of the company (or a company in the same trading group) throughout the year ending with the date of disposal. The relief is also extended to similar disposals that take place within three years of the company ceasing to be a trading company.

Details of the Schedule

2. Paragraph 1 of the Schedule widens section 169I of the Taxation of Chargeable Gains Act (TCGA) 1992, which, amongst other things, defines "Conditions" when a disposal by an individual of an asset consisting of (or consisting of interests in) shares in or securities of a company is a 'material disposal' that qualifies for entrepreneurs' relief. This legislation introduces two new conditions, C and D. A disposal is a material disposal if any of Conditions A to D apply.

3. New subsection 169I(7A) introduces new Condition C in relation to the disposal of 'relevant EMI shares' whilst the relevant company is a trading company or the holding company of a trading group.

4. New subsection 169I(7B) introduces new Condition D in relation to the disposal of 'relevant EMI shares' within three years of the relevant company ceasing to be a trading company.

5. New subsections (7C) to (7G) define "relevant EMI shares" for the purposes of subsections (7A)(a) and (7B)(a) as either:

   - shares acquired by an individual on or after 6 April 2013 as a result of exercising a qualifying EMI option within 10 years of the option being granted; or
   - shares acquired as replacements for such shares as a result of certain reorganisations.

   Shares acquired on exercise of an option following a disqualifying event are 'relevant EMI shares' if the exercise takes place within the period after which modified income tax consequences apply. New subsections (7P) to (7R) below make further provision for this purpose.

6. New subsections (7H) and (7I) allow, where there is a qualifying reorganisation, that the 1-year company and employment requirements at section 169I(7A)(c) be read as including that of and with the company whose shares are 'the original relevant EMI shares'.

7. New subsection (7J) provides that where the shares disposed of are replacement shares following a qualifying reorganisation, the question of whether the shares were acquired before the cessation date of the company for the purposes of section 169I(7B)(a) is determined by reference to the date 'the original relevant EMI shares' were acquired.

8. New subsection (7K) defines "the option grant date" for the purposes of determining the 1-year period for sections 169I(7A)(b) and 169I(7B)(b). This is the date on which the qualifying option was granted but is subject to the requirements in new subsections (7L) to (7O), which deal with the replacement of a qualifying option as part of a company reorganisation.

9. New subsection (7L) sets out that subsections (7M) and (7N) will apply where the option is a 'replacement option' as defined in the EMI code.

10. New subsection (7M) defines "the option grant date" as that on which the old option was granted.

11. New subsection (7N) provides that the 1-year company and employment requirements in section 169I(7A)(c) are to be met by reference to the company whose shares were the subject of the old option.

12. New subsection (7O) defines "the cessation date", for the purposes of section 169I(7B).

13. New subsections (7P) to (7R) modify new Conditions C and D at new subsections 169I(7A) and (7B) above where shares are acquired on the exercise of an option following a disqualifying event and the exercise takes place within the period after which modified income tax consequences apply. New subsection (7Q) holds that for the

purposes of Condition C the 1-year company and employment requirements end with the date of the disqualifying event; and new subsection (7R) holds that, for the purposes of Condition D, where the disqualifying event is the relevant company ceasing to meet the company requirement then the relevant shares must have been acquired before the end of the period after which modified income tax consequences apply.

14. Paragraphs 2 to 4 of the Schedule amend the share identification rules at sections 105 and 106A of the TCGA, which deal with acquisitions and disposals of shares on the same day and make general provision for share identification for capital gains tax purposes. They also ensure that 'relevant EMI shares' are defined for these purposes in the same way as for sections 169I(7C) to (7H).

15. New subsection 105(4) applies new subsection 105(5) where an individual acquires shares of the same class on the same day and some of those are 'relevant EMI shares'.

16. New subsection 105(5) sets out the treatment of the relevant EMI shares separate from other relevant shares.

17. New subsection 106A(5)(aa) provides that shares that are not relevant EMI shares are to be identified before relevant EMI shares when applying the rule in section 106A(5).

18. New subsection 106A(6A) provides that on disposal of a company's shares any relevant EMI shares are to regarded as being disposed of before other shares and the relevant EMI shares are to regarded as being disposed of on a 'first in, first out' basis.

19. New subsection 106A(6B) provides that those shares identified with relevant EMI shares by virtue of subsection 106A(6A) shall not be regarded as forming part of an existing holding, or constituting a holding, that is regarded as a single asset for the purposes of the TCGA.

20. Paragraph 5 of the Schedule provides that the amendments made by paragraphs 1 to 4 have effect in relation to disposals of shares on or after 6 April 2013, subject to subparagraph 6(4).

21. Paragraph 6 applies where shares are acquired during the tax year 2012-13 which would qualify as 'relevant EMI shares' if they were acquired on or after 6 April 2013.

22. Subparagraph 6(2) treats such shares as 'relevant EMI shares' where the individual makes no disposals of shares of that class in the 2012-13 tax year.

23. Subparagraph 6(3) provides that where shares of that class are disposed of in the tax year 2012-13 the individual may elect that the acquired shares are treated as 'relevant EMI shares'.

24. Subparagraphs 6(4) and 6(5) make consequential amendments pursuant to an election.

25. Subparagraph 6(6) provides that the election must be made (or revoked after it has been made) by 31 January 2014.

26. Subparagraphs 6(7) and (8) provide that shares in a company are not to be treated as being of the same class unless they would be treated as such by a relevant stock exchange (as defined in section 1005 of the Income Taxes Act 2007).

Background

27. Since 23 June 2010 capital gains tax for individuals has been charged at the rate of either 18 per cent or, for those paying the higher rate of income tax, 28 per cent.

28. Individuals may claim entrepreneurs' relief, under which qualifying chargeable gains are taxed at 10 per cent, on gains on disposals of shares in or securities of a company provided that throughout the period of one year immediately preceding the disposal (a) the claimant held a minimum five per cent stake in the company, (b) the company was either a trading company or the holding company of a trading group, and (c) the

claimant was an officer or employee of the company or of one or more companies of a trading group to which the company is a member. There is a lifetime limit to the relief, which was increased to £10 million from 6 April 2011.

29. Entrepreneurs' relief is also available on the disposal of shares of a business where the conditions (a) to (c) at paragraph 28 above were met throughout the period of one year immediately preceding the company ceasing to be a trading company without continuing to be or becoming a member of a trading group, or ceasing to be a member of a trading group without continuing to be or becoming a trading company and that date is within the period of three years immediately preceding the disposal. The relief may apply, for example, to the deemed disposal by a shareholder of his interest in shares when he receives a capital distribution on the liquidation or winding-up of a trading company.

30. The Enterprise Management Incentives (EMI) scheme provides tax and National Insurance contributions advantages for qualifying share options granted by companies with gross assets not exceeding £30 million, to help them recruit and retain employees. In addition to the gross assets test, EMI is limited to companies or groups which are independent and whose trade does not consist in excluded trading activities.

31. Budget 2012 announced the Government's intention to allow EMI shares to qualify for Entrepreneurs' Relief on disposal by the employee/officer.

32. A number of representations were made to the Government that the normal rule that requires ownership of the qualifying shares for one year prior to disposal (see paragraph 28 above), would limit the ability of EMI shares to qualify. This was because EMI options would typically be exercised just before the employing company was taken over, meaning that they would then not be owned by the employee for one year.

33. The Budget further announced that the measure would apply to shares acquired under the EMI scheme from 6 April 2012, but the one year share holding period meant it would have no effect for disposals made before 6 April 2013.

34. The legislation similarly applies to shares acquired on or after 6 April 2012 and disposed of on or after 6 April 2013 but allows the period the share option is held to be included towards the one year holding period requirement.

35. The legislation includes rules that modify the usual operation of the share identification rules in order to treat shares issued under the EMI scheme separately.

36. The inclusion of shares acquired from 6 April 2012 will affect the computation of gains on any disposal of shares of the same class during the tax year 2012-13. Therefore the new legislation will apply where there were such disposals only on the making of an election.

Section 65, Schedule 25: Charge on Certain High Value Disposals by Companies Etc

Summary

1. Section 65 introduces Schedule 25 which introduces a charge to capital gains tax (CGT) on both UK and non-UK resident non-natural persons (NNPs) in respect of gains accruing on the disposal of interests in high value residential property that are the subject of the annual tax on enveloped dwellings (ATED). Broadly, for the purposes of this legislation NNPs will be companies and certain collective investment schemes. Companies that are within the charge to UK corporation tax will be liable to this CGT charge in respect of such disposals rather than corporation tax. The charge will apply to gains on disposals on or after 6 April 2013. Increases (and decreases) in the value of property before then are outside the new charge but remain subject to the existing corporation tax rules on capital gains. This legislation should be read alongside the legislation introducing ATED.

Details of the Schedule

2. Part 1 of the Schedule makes changes to the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Paragraph 1 introduces the changes.

3. Paragraph 2 inserts a new subsection (2A) into section 1 of TCGA 1992 to charge companies to capital gains tax (CGT), and not corporation tax, to the extent that their gains are chargeable under section 2B (see paragraphs 8 to 15 below). Paragraph 2 also makes consequential amendments to section 1(2) and 1(3).

4. Paragraph 3 inserts new subsection (7A) into section 2 of TCGA 1992. With certain exceptions, section 2 restricts CGT to persons who are resident or ordinarily resident in the UK in the tax year in which gains arise, and sets out how losses are to be set off against gains in arriving at the net amount on which CGT is charged. New subsection (7A) disapplies these rules in relation to gains and losses in the tax year 2013-14 or later that are 'ATED-related' (see paragraph 35 and 45 to 51 below).

5. Paragraph 4 inserts new sections 2B, 2C, 2D, 2E and 2F into TCGA 1992.

6. Subsection (1) of new section 2B provides that a person (other than an excluded person) ("P") is chargeable to CGT in respect of 'ATED-related chargeable gains' accruing to P in a tax year on a 'relevant high value disposal' (as defined at new section 2C, see paragraphs 16 to 17 below). ATED-related chargeable gains are computed in accordance with new section 57A and Schedule 4ZZA (see paragraphs 35 and 45 to 51 below). Excluded persons (defined at section 2B(2)) are exempt from the charge.

7. Subsection (2) of section 2B explains which persons are 'excluded', and in what circumstances. Individuals, trustees and personal representatives are excluded persons if they are a member of a partnership and the gain accrues on a disposal of a partnership asset, or if they are a participant in a 'relevant collective investment scheme' and the gain accrues on property held for the purposes of the scheme. 'Relevant collective investment scheme' is defined at subsection (10).

8. Where individuals, trustees and personal representatives hold property directly – not via a partnership or through a collective investment scheme – they are also outside the scope of charge under section 2B. They will not be chargeable to ATED and their gains will therefore not be "ATED-related".

9. Subsection (3) of section 2B provides that 'ring-fenced ATED-related allowable losses' are deducted from the total ATED-related chargeable gains in arriving at the gains chargeable to CGT for a tax year. 'Ring-fenced ATED-related allowable losses' are defined at section 2B(10) and are also computed in accordance with new section 57A and Schedule 4ZZA.

10. Subsections (4) to (7) of section 2B ensure that ATED-related allowable losses can be used only once and are either set off against ATED-related chargeable gains in the same tax year or, when the losses exceed the gains for the year, the unused losses are carried forward and set off against ATED-related chargeable gains in later years.

11. Subsection (1) of new section 2C defines a "relevant high value disposal" as one that meets conditions A to D. These conditions are set out in subsections (2) to (5) and particular terms used are defined in subsection (6).

12. Subsection (7) of section 2C provides that where a period before 1 April 2013 is included in 'the relevant ownership period' the question whether P (or the responsible partners or the manager of the collective investment scheme in question) was chargeable to ATED is to be decided on the basis that ATED and its associated reliefs came into force on 31 March 1982. The effect is to treat days before 1 April 2013 as if they were subject to ATED (or relieved from ATED by one of the reliefs available) even though the tax was not in force at that time.

13. New section 2D defines “the threshold amount”. Subsections (1) and (2) of section 2D hold that the threshold amount is £2 million when the disposal is not a part disposal and P has not made any ‘relevant related disposals’ (as defined in subsection (7), see below). But the £2 million figure is reduced where either subsection (3), or subsection (5), or both apply, see below.

14. Subsections (3) and (4) of section 2D apply where the disposal in question is either a disposal of part of the chargeable interest, or where there is one or more “relevant related disposals”. In these cases the threshold amount is the fraction C/TMV of £2 million, with C being the consideration for the disposal and TMV the total market value of a notional asset consisting of the disposed of interest, any undisposed part of the chargeable interest and any chargeable interest which was the subject of a ‘relevant related disposal’ (see below) or would have been if P had disposed of it at that time. The adjusted amount produced by this formula is subject to further restriction where subsection (5) applies.

15. Subsection (5) and (6) of section 2D apply where the disposal is of the whole of a person’s fractional share either in the whole of an interest or in part of an interest (that is, where the interest is jointly owned, for instance by a partnership). In these cases the £2 million amount is reduced by reference to the person’s fractional share.

16. For example, if a person has a 75% share in the chargeable interest and subsection (3) does not apply, the £2 million figure is reduced to £1.5 million. If subsection (3) also applies, the £1.5 million figure is then reduced to the C/TMV fraction of that amount.

17. Subsection (7) of section 2D defines ‘relevant related disposal’ as any chargeable disposal made in the 6 years ending with the date of the current disposal which was a disposal of part of the same single-dwelling interest as the one that is the subject of the current disposal, or a disposal of the whole or part of a different single-dwelling interest in the same dwelling. Disposals before 6 April 2013 are excluded.

18. New section 2E of section 2D restricts the amount of a loss which is an ATED-related loss in some cases where the disposal meets all the conditions for it to be a relevant high value disposal except that the consideration for the disposal is less than the threshold amount for that disposal. Where the allowable deductions exceed that threshold amount, the ATED-related loss is restricted to the amount which it would have been if the consideration for the disposal had been £1 more than the threshold amount. This does not affect the amount of any loss that is not ATED-related, or the amount of any gain (whether it is ATED-related gain or not).

19. New section 2F reduces the amount of an ATED-related gain in cases where the CGT chargeable on the full gain could leave the vendor worse off than they would have been if they had sold their property for less than the threshold amount.

20. Subsection (2) of section 2F provides a ‘tapering relief’ so that the chargeable amount is the lower of (a) the full ATED-related gain and (b) 5/3 times the difference between the consideration for the disposal and the threshold amount for that disposal.

21. Subsections (3) and (4) of section 2F provide that, where only a proportion of a gain (the ‘relevant fraction’) is an ATED-related gain chargeable under section 2B, the amount excluded from charge under section 2B by subsection (2) is reduced by the same proportion.

22. For example, suppose that the consideration for the disposal is £2.6 million and threshold amount is £2 million. 5/3 of the difference between these figures is £1 million. If the whole of the gain on the disposal is ATED-related, section 2F(1) applies and any gain chargeable to CGT under section 2B is capped at £1 million. If only part of the gain is ATED-related, say 4/10, the ATED-related gain chargeable to CGT under section 2B is capped at 4/10 × £1 million = £400,000. The gain that is not ATED-related is unaffected.

23. Subsection (5) of section 2F confirms that subsections (1) to (4) do not affect the amount of an allowable loss accruing on the disposal of an asset, or the amount of any loss (whether it is an ATED-related loss or not).

24. Paragraph 5 inserts new subsection (3A) into section 4 of TCGA 1992. Section 4(3A) sets the rate of CGT on gains chargeable under section 2B (see paragraphs 8-15 above) at 28%.

25. Paragraph 6 inserts new subsection (4A) into section 8 of TCGA 1992. Section 8 provides certain rules for taxing gains, and relieving losses, of companies chargeable to corporation tax. Section 8(4A) prevents these rules from applying to ATED-related chargeable gains and allowable losses that are subject to the new CGT charge in the tax year 2013-14 or later.

26. Paragraph 7 inserts new subsection (1A) into section 13 of TCGA 1992. Section 13 is an anti-avoidance provision that attributes chargeable gains of certain types of non-UK resident company to some participators in the company. Section 13(1A) prevents ATED-related chargeable gains being attributed to participators under section 13. The company itself will be chargeable to CGT on its ATED-related chargeable gains.

27. Paragraph 8 amends section 16 of TCGA 1992 to allow a loss that accrues to a person resident outside the UK to be an allowable loss where a gain would have been chargeable under section 2B if a gain had accrued instead of a loss.

28. Paragraph 9 inserts new section 57A into TCGA 1992. Section 57A(1) introduces new Schedule 4ZZA, which makes provision about the computation of gains and losses on relevant high value disposals, including whether a gain or loss accruing on the disposal is ATED-related (see paragraphs 45 to 51 below). Section 57A(2) provides that if the computation under Schedule 4ZZA produces no ATED-related gain or loss then the gain or loss is to be computed ignoring the Schedule.

29. Paragraph 10 inserts new section 100A into TCGA 1992. Section 100A exempts from CGT gains which accrue to certain EEA UCITS on disposals of high value residential property. The EEA UCITS must be neither an open-ended investment company nor a unit trust scheme. The relevant terms are defined in subsection (2).

30. Subsection (2) of new section 100A defines three terms used in subsection (1). “EEA UCITS”, “unit trust scheme”, and “open-ended investment company” each have the same meaning as in Part 17 of the Financial Services and Markets Act 2000.

31. Paragraph 11 inserts new subsections (3ZA) and (3ZB) into section 161 of TCGA 1992. Section 161 applies where a trader either puts an asset they already own into the trade as trading stock, or where they take an asset out of trading stock. The new subsections (3ZA) and (3ZB) modify the rules in section 161 where a trader puts a property into trading stock.

32. Section 161(3) permits a trader to elect for the gain or loss that is latent in the asset they have taken into trading stock to be ‘rolled-over’ into the cost of the asset when it is held as trading stock. Subsection (3ZA) prevents the trader making that election in cases where any of that gain or loss would be ATED-related. Instead they may make an election for subsection (3ZB) to apply.

33. Subsection (3ZB) of section 161 provides for the ATED-related gain or loss latent in the asset when it is appropriated to trading stock to accrue and be chargeable to (or allowable for) CGT under section 2B at that time, and for the part of the gain or loss which is not ATED-related not to be chargeable (or allowable), but to be ‘rolled-over’ into the cost of the asset when held as trading stock.

34. Paragraph 12 inserts new paragraph (ba) into section 171(2) of TCGA 1992. Section 171 provides the general rule that assets transferred between companies that are in the same group of companies are treated as transferring the assets at a ‘no gain/no loss’

value. The rule is subject to various conditions and exceptions. Paragraph (ba) adds the new exception that 'no gain/no loss' treatment will not apply to a disposal where (as a result of not applying no gain/no loss treatment) the disposal gives rise to a gain or loss that is ATED-related.

35. Paragraph 13 inserts new section 187A into TCGA 1992. Section 187A modifies the operation of section 185, which produces a charge to tax on gains latent in assets when a company ceases to be resident in the UK for tax purposes. Section 185 treats the company as disposing of all its assets immediately before the time of emigration from the UK, thus crystallising latent gains and losses. Section 187A provides that, where the deemed disposal under section 185 generates an ATED-related gain chargeable to CGT under section 2B (or an ATED-related loss allowable under section 2B) the gain is not charged immediately (and a loss is not immediately available for set off). Instead the ATED-related gain or loss is treated as coming into charge (or being allowable) at a later time when the company disposes of the asset. Section 187A does not affect the treatment of any gain or loss produced under section 185 which is not ATED-related.

36. Paragraph 14 extends the scope of section 271 of TCGA 1992 so that gains which accrue on the disposal of investments held for the purposes of 'overseas pension schemes' (within the meaning given by section 150(7) of the Finance Act 2004) are not chargeable gains.

37. Paragraph 15 inserts into section 288 of TCGA 1992 definitions of the expressions 'ATED-related', which is to be construed in accordance with section 57A and Schedule 4ZZA, and 'relevant high value disposal', which has the meaning given by section 2C.

38. Paragraph 16 inserts new Schedule 4ZZA into TCGA 1992.

39. Paragraph 1 of new Schedule 4ZZA holds that the Schedule applies to determine the amount of the gain or loss on a relevant high value disposal that is ATED-related or not ATED-related.

40. Paragraphs 2 to 4 provide rules for computing the ATED-related gain where the chargeable interest disposed of was acquired before 6 April 2013 and disposed of on or after that date and no election has been made under paragraph 5 to Schedule 4ZZA (see below). The computational steps in relation to gains are as follows (for losses see paragraph 48 below).

   a. A 'notional post-April 2013' gain is computed on the assumption that the interest was acquired at its market value on 5 April 2013. The notional post-April 2013 gain is computed as if P, the person making the disposal, were chargeable to capital gains tax, not corporation tax, on chargeable gains. The effect of this is that indexation allowance is not allowed (but see (d) below).

   b. A 'notional pre-April 2013' gain is computed on the assumption that the interest was disposed of at its market value on 5 April 2013. The notional pre-April 2013 gain is computed on the basis that P is chargeable to corporation tax. The effect of this is to include a deduction for indexation allowance (IA) in arriving at the notional pre-April 2013 gain, if IA would have been due under the normal corporation tax rules.

   c. The 'notional post-April 2013 gain' is split into ATED-related and non ATED-related parts. The ATED-related part is the fraction CD/TD of the notional post-April 2013 gain, where CD is the total days chargeable to ATED (and not relieved from that tax) from 6 April 2013 to the day of disposal and TD is the total days from 6 April 2013 up to and including the day before the day of the disposal.

   d. The remainder of the notional post April 2013 gain is not (or non) ATED-related. This non ATED-related gain is reduced by an amount of 'notional indexation allowance'. The notional indexation allowance available is equal to the IA that would have been due if P were chargeable to corporation tax on the actual disposal and Schedule 4ZZA did not apply to compute the gain, less the amount of IA given in computing the notional pre-April 2013 gain (see (b) above), multiplied by the fraction (TD-CD)/TD.

e. The total gain on the disposal that is non ATED-related is the sum of the gain under (b), plus the gain under (d) above.

41. The computational steps are essentially the same for losses, but no notional indexation allowance is available to increase any non ATED-related loss (because indexation allowance under the normal rules cannot create or increase a loss).

42. Paragraph 5 allows the person chargeable to CGT (P) to elect that paragraphs 2 to 4 do not apply to a disposal of a chargeable interest it held on 5 April 2013. The election is irrevocable and must be made in a capital gains tax return (or an amendment to the return) for the tax year in which P disposes of the interest, or for the first tax year (from 2013-14 onwards) in which P makes a part disposal of the interest. An election covers only the chargeable interest in respect of which it is made.

43. Paragraph 6 provides computational rules where the chargeable interest is acquired after 5 April 2013, or where P acquired the interest before that date but elects under paragraph 5 for paragraphs 2 to 4 not to apply. The rules are broadly as outlined at paragraph 47(a), (c) and (d) (and paragraph 48, in the case of losses) above. Where P has elected under paragraph 5 for this paragraph 6 to apply, the days which are chargeable to annual tax on enveloped dwellings (CD) are calculated as if that tax were in force throughout the period of ownership, including periods before 2013-14 and TD is the total number of days in the period of ownership since acquisition or since 31 March 1982, whichever is the later.

44. Paragraph 7 provides for any adjustments necessary to give effect to a change in liability to tax caused by a change in the number of days in a period which are chargeable to ATED, after a claim for relief from ATED is made or altered.

45. Paragraph 17 inserts new paragraph 10A into Schedule 7A to TCGA 1992. Schedule 7A restricts the extent to which a company's losses may be set off against gains where the losses arose before the company became a member of a group of companies. Where an asset has been appropriated to trading stock and there has been an election under section 161(3ZA) (see paragraphs 38 - 40 above) to 'roll-over' a loss which is not ATED-related, then if the company becomes a member of a group of companies before the asset is sold in the course of the trade the effects of the election will be reversed. The cost of the asset as trading stock will be its market value at the time it was appropriated (without any 'roll-over') and the loss which is not ATED-related will be allowable at the time of the appropriation, but will be subject to restriction under Schedule 7A.

46. Part 2 of the Schedule amends other Acts. Paragraph 18 inserts new subsection (2A) into section 2 of the Corporation Tax Act 2009. Section 2(2A) excludes ATED-related gains (chargeable to CGT under section 2B) from the meaning of chargeable gains for corporation tax purposes. Paragraph 19 amends section 32 of the Corporation Tax Act 2010 to provide that, for determining whether a company is chargeable to corporation tax at the small profits rates (or is entitled to marginal relief) for the accounting period in question, its 'adjusted total taxable profits' are taken as the amount they would have been if no part of its chargeable gains and allowable losses for the period were chargeable to (or relievable for) CGT under section 2B of TCGA 1992 instead of to (or for) corporation tax.

47. Part 3 of the Schedule makes provision for commencement.

Background

48. In broad terms, capital gains tax (CGT) is charged on chargeable gains accruing to a person on the disposal of an asset, after deducting any allowable losses, if they are resident in the United Kingdom in the tax year in which the disposal takes place.

49. Companies within the charge to corporation tax have been excluded from CGT and are instead charged to corporation tax on their chargeable gains.

50. The Government announced the introduction of the annual tax on enveloped dwellings (ATED) at Budget 2012, which introduces an annual tax on high value residential UK property owned by certain non-natural persons (NNPs). Legislation for the ATED is in Part 3 of the Finance Act 2013.

51. This extension of the scope of capital gains tax supports the ATED by taxing gains on disposals of high value residential UK property by certain non-natural persons within the scope of the ATED, principally companies. The charge applies to both UK and non-UK resident NNPs in respect of disposals made on or after 6 April 2013. A form of rebasing will apply to ensure that pre 6 April 2013 gains remain outside the scope of the new CGT charge. Gains and losses within the scope of the new CGT charge will be excluded from the scope of corporation tax.

52. CGT will be charged at a rate of 28% (the rate applicable to trustees and individuals who pay income tax at the higher rate 40%), on disposals of UK residential property where the consideration exceeds £2m. The consideration threshold will be reduced proportionately where the person owns only part of the property or disposes of part of it, to ensure that the charge cannot be avoided though fragmentation.

Section 66: Currency Used in Tax Calculations: Chargeable Gains and Losses

Summary

1. Section 66 provides that companies must compute their chargeable gains and losses on disposals of shares, ships, aircraft and interests in shares in the currency which is their functional currency (or if they are UK resident investment companies which have made a designated currency election, that designated currency) at the time of the disposal.

Details of the Section

2. Subsection (1) amends Chapter 4 of Part 2 of the Corporation Tax Act 2010 (c. 4) (CTA10), which determines the currency to be used in tax calculations.

3. Subsection (2) inserts new subsection (3) after section 5(2) of CTA10 which refers to new section 9C for the application of section 5(1) so far as it relates to calculating chargeable gains.

4. Subsection (3) inserts a new section 9C. New section 9C(1) sets out that section 9C applies if a company disposes of a ship or an aircraft or shares or an interest in shares and, at some point during the ownership of the asset(s), the company had a functional currency which was not sterling, or made a designated currency election for tax purposes.

5. New section 9C(2) defines the term “relevant currency” to include functional currency or designated currency where the conditions in subsection 9C(3) are satisfied.

6. New section 9C(3) sets out the conditions when the relevant currency is the designated currency rather than the company’s functional currency.

7. New section 9C(4) provides the methodology for calculating a chargeable gain or allowable loss when the company has a relevant currency which is not sterling.

8. New section 9C(5) determines that subsections (6) to (10) apply to all computations of chargeable gains and losses on disposals of ships, aircraft, shares and interests in shares, regardless of whether or not the relevant currency is sterling at the time of disposal.

9. New section 9C(6) requires allowable expenditure incurred in a currency other than the relevant currency at the time of the expenditure to be translated into the relevant currency using the rate of exchange rate at the date of the expenditure.

10. New section 9C(7) provides for a recalculation of the base cost of the assets on each occasion when there is a change in relevant currency during their ownership.

11. New section 9C(8) provides that on disposal of assets, amounts received as consideration in a currency other than the relevant currency at that time must be translated into the relevant currency using the exchange rate at the date of disposal.

12. New section 9C(9) ensures any translations under section 9C(6) occur before any translations under section 9C(7), and that any translations under section 9C(7) are made in chronological order of the changes of relevant currency.

13. New section 9C(10) provides that where statute requires that the assets are treated for tax purposes as acquired for a deemed amount, then that amount is treated as being incurred on the date the assets are so acquired.

14. New section 9C(11) provides that any reference to a "ship" or "aircraft" for this purpose includes the benefit of finance lease and hire purchase contracts (as per section 67 of the Capital Allowances Act 2001 (c. 2)) under which ships and aircraft are acquired and contracts relate to plant and machinery which is a ship or aircraft.

15. New section 9C(12) defines the terms: "allowable expenditure"; "interest in shares" and "shares" for the purposes of the section.

16. Subsection (4) provides that these amendments will come into force in accordance with a Treasury order provision.

Background

17. All companies must currently compute all of their chargeable gains and losses in sterling. This section provides a limited exception to this rule which will ensure closer alignment between the tax and economic outcomes for companies that do not have a sterling functional currency. This should reduce barriers to commercial decision making by businesses faced with tax gains not matched by a gain of economic substance and reduce administrative burdens for businesses attempting to manage the effects of such gains.

Section 67: Allowances for Energy-Saving Plant and Machinery: Northern Ireland

Summary

1. Section 67 ensures that where Renewable Heat Incentive (RHI) tariffs, and should it be introduced at a future date Feed-in Tariffs (FIT), are paid in respect of heat or electricity generated (or gas or fuel produced) 100 per cent first-year allowances (FYAs) are not available under section 45A of Capital Allowances Act 2001 (CAA) for expenditure incurred on the plant and machinery (P&M) in Northern Ireland that generates or produces it. This brings Northern Ireland into line with the rest of the United Kingdom.

Details of the Section

2. This section extends the coverage of section 45AA CAA, which at present only applies to incentives given under RHI and FIT schemes extending to Great Britain. The section ensures that expenditure on P&M in Northern Ireland, where RHI is paid in respect of

heat generated (or gas or fuel produced) by that P&M, does not qualify for FYAs for energy-saving technologies.

3. The section also ensures that should a FIT scheme be introduced in Northern Ireland at a later date, expenditure on P&M, where FITs are paid in respect of electricity generated by that P&M, will be treated in the same way as the rest of the United Kingdom.

4. Subsection (4) introduces a new sub-section 45AA(5A). This sets out the dates from which the amendments to 45AA takes effect.

Background

5. Capital allowances allow the cost of capital assets to be written off in computing the taxable profits of a business. Most businesses are entitled to an annual 100 per cent allowance, the annual investment allowance (AIA), for their investment in most types of P&M up to an annual limit. The Government has announced that for the two year period 1 January 2013 to 31 December 2014 that limit will be increased from £25,000 per annum to £250,000. From 1 January 2015 it will revert to £25,000.

6. For expenditure above the AIA limit, writing-down allowances (WDA) are available at the main rate of 18 per cent or the special rate of 8 per cent per annum depending upon the type of P&M. FYAs may be available for expenditure on certain types of P&M as an alternative to AIA and WDA. Available at a rate of 100 per cent, they provide a targeted incentive to invest in particular P&M. Certain FYAs, often described as enhanced capital allowances or ECAs, are available for expenditure on designated energy-saving P&M that meets certain criteria required by the Energy Technology Criteria List.

7. The Energy Act 2008 provided for FITs to incentivise small scale electricity generation and RHI to support heat generation from renewable sources. A number of the technologies that qualify for FITs and RHI, also potentially qualify for FYAs. However, FYAs are intended to complement, rather than duplicate, the effects of other Government policies supporting such investments.

8. The legislation at Section 45AA CAA was introduced by Finance Act 2012 preventing FYAs in Great Britain from being available for expenditure on P&M from 1 April 2012 (corporation tax) or 6 April 2012 (income tax), where that P&M is in receipt of a tariff under either the FITs or the RHI schemes as set out in the Energy Act 2008. One exception to this is that FYAs are still available for expenditure incurred on renewable CHP until 31 March 2014 (corporation tax) and 5 April 2014 (income tax), even when RHI tariffs are paid.

9. An RHI scheme has recently been introduced for Northern Ireland As the legal vires for that scheme is the Energy Act 2011, section 45AA does not apply. To ensure consistency of treatment throughout the United Kingdom, section 45AA is being extended to include expenditure on RHI schemes in Northern Ireland. The amendment also ensures that should a FIT scheme be introduced into Northern Ireland, expenditure on such a scheme will be treated in the same way as the rest of the United Kingdom.

10. The amendment takes effect from 1 April 2013 (corporation tax) and 6 April 2013 (income tax). Where the expenditure is incurred on CHP systems, the changes take effect from 1 April 2014 (corporation tax) purposes and 6 April 2014 (income tax).

Section 68: Cars With Low Carbon Dioxide Emissions

Summary

1. Section 68 extends the 100 per cent first-year allowance (FYA) for expenditure incurred on cars with low carbon dioxide (CO) emissions and electric cars, which is due to expire on 31 March 2013, for an additional two years to 31 March 2015. In addition, the section reduces the emission thresholds that determine the rates of capital allowances available

on cars and the restriction of lease rentals. It also aligns the treatment of cars with other assets provided for leasing by excluding expenditure on cars provided for leasing from qualifying for FYAs.

Details of the Section

2. Subsection (1)(a) extends the period in which FYAs are available on cars with low CO emissions, including electric cars, by two years to 31 March 2015.

3. Subsection (1)(b) reduces the emissions threshold so that only cars emitting no more than 95 grams of CO per kilometre driven qualify for FYAs.

4. Subsection (2) makes a change so that cars provided for leasing no longer qualify for FYAs. It does this by repealing the override contained in section 46(5) Capital Allowances Act 2001 (CAA 2001) to General Exclusion 6 in section 46(2).

5. Subsection (3) amends the definition of a main rate car in section 104AA(4) CAA 2001 to those cars emitting no more than 130 grams of CO per kilometre driven. This means that cars emitting more than that amount only qualify for the special rate of writing down allowances (currently eight per cent per annum) rather than the main rate of writing down allowances (currently 18 per cent per annum). It also means that the lease rental restriction will apply to cars emitting more than 130 grams of CO per kilometre driven.

6. Subsection (4) removes subsections (2) and (3) from section 77 Finance Act 2008 which set the previous emission thresholds.

7. Subsection (7) provides that the revised threshold for the lease rental restriction will only apply to those lease contracts entered into after the date given by subsection (8).

Background

8. Capital allowances allow the cost of capital assets to be written off against taxable profits. They take the place of depreciation charged in the commercial accounts, which is not allowed for tax. Most businesses are entitled to an annual 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most plant and machinery (excluding cars) up to an annual limit of £25,000. For expenditure above that limit, writing-down allowances (WDA) are available, which are given at the main rate of 18 per cent or the special rate of eight per cent per annum.

9. FYAs, currently available at a rate of 100 per cent, are available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA.

10. Whilst cars are plant and machinery, there are special capital allowances rules that only apply to expenditure incurred on cars.

    - Expenditure on electric cars or cars with very low CO emissions (up to 95g/km driven from 1 April 2013) qualify for 100 per cent FYAs. This allowance aims to encourage investment in cleaner cars by providing a tax incentive for businesses to invest in those cars with the lowest CO emissions. It is complemented by wider measures including 100 per cent FYA for expenditure incurred on natural gas and hydrogen refuelling equipment which is also being extended to 31 March 2015.
    - Following the changes made by this section, expenditure on ‘main rate cars’ (those with CO emissions over the 95g/km threshold for FYA but no more than 130g/km) will be allocated to the main rate pool and qualify for 18 per cent writing down allowances on the reducing balance of expenditure.
    - Expenditure on cars with CO emissions exceeding 130 g/km will be allocated to the special rate pool and qualify for eight per cent writing down allowances on the reducing balance of expenditure.

11. In addition, whilst expenditure on the provision of plant or machinery for leasing has been, and continues to be, excluded from being first-year qualifying expenditure this exclusion has not applied to cars with low emissions. This section aligns the treatment of low emission cars with all other plant and machinery provided for leasing.

12. Some businesses hire or lease their cars rather than buy them. There are rules that restrict the tax deduction for hire expenses where the car has emissions equivalent to those that would be allocated to the special rate pool. This "lease rental restriction" reduces the amount of the rental payments that would otherwise be allowed in calculating a business's taxable profits by a flat rate disallowance of 15 per cent. For leases commencing on or after 1 April (corporation tax) or 6 April 2013 (income tax) the lease rental restriction will apply to cars over the 130g/km threshold.

Section 69: Gas Refuelling Stations: Extension of Time Limit for Capital Allowance

Summary

1. Section 69 extends the scheme for 100 per cent first-year allowance (FYA) for expenditure incurred on natural gas, biogas and hydrogen refuelling equipment, which is due to expire on 31 March 2013, for an additional two years to 31 March 2015.

Details of the Section

2. This section provides for the amendment of section 45E Capital Allowances Act 2001 by substituting "2015" for "2013" in section 45E(1)(a) as the new end date for the allowance.

Background

3. Capital allowances allow the cost of capital assets to be written off against taxable profits. They take the place of depreciation charged in the commercial accounts, which is not allowed for tax. Most businesses are entitled to an annual 100 per cent allowance, the Annual Investment Allowance (AIA), for their investment in most plant or machinery up to an annual limit of £25,000. For expenditure above that limit, writing-down allowances (WDA) are available, which are given at the main rate of eighteen per cent or the special rate of eight per cent per annum.

4. FYAs may be available for expenditure on certain types of plant or machinery as an alternative to AIA and WDA. FYAs, currently available at a rate of 100 per cent, accelerate the rate at which tax relief is available for capital spending and allow a greater proportion of the cost of an investment to qualify for tax relief against a business's taxable profits of the period in which the investment is made.

5. This allowance, which was introduced by the Finance Act 2002, aims to encourage the up-take of natural gas, hydrogen and biogas as fuels for vehicles by providing a tax incentive for businesses to invest in the necessary refuelling infrastructure. It also complements wider measures to encourage the up-take of alternatively fuelled vehicles, including 100 per cent FYAs for cars with low carbon dioxide emissions which is also being extended to 31 March 2015.

Section 70: First Year Allowance to Be Available for Ships and Railway Assets

Summary

1. Section 70 removes the general exclusions to first-year allowances for expenditure incurred on railway assets and ships with effect from 1 April 2013.

Details of the Section

2. Subsection (1) (a) and (b) removes general exclusions 3 and 4 respectively from section 46(2) Capital Allowances Act 2001 in respect of expenditure incurred on both ships and railway assets.

Background

3. Capital allowances take the place of depreciation charged in the commercial accounts, which is not allowed for tax.

4. Most businesses are entitled to an annual 100 per cent allowance, the annual investment allowance (AIA), for their investment in most plant and machinery (P&M) up to an annual limit. The limit is £250,000 for the two year period 1 January 2013 to 31 December 2014. Where a business's expenditure exceeds the AIA limit, writing-down allowances (WDA) are available, at either the main rate of 18 per cent or the special rate of 8 per cent per annum.

5. As an alternative to AIA and WDA there are a number of 100 per cent first-year allowances (FYAs) available for expenditure on certain types of P&M. FYAs provide a timing advantage over normal WDAs and incentivise investment in particular types of plant and machinery.

6. There are a number of general exclusions to FYAs. These exclusions include expenditure incurred on both ships and railway assets. The exclusion of these categories of expenditure arises because they have received beneficial treatment elsewhere in the capital allowances code. That beneficial treatment has however recently ceased and this section ensures that investors in these assets are treated consistently with others investing in similar assets in different industry sectors.

Section 71, Schedule 26: Restrictions on Buying Capital Allowances

Summary

1. Section 71 expands the application of Chapter 16A of Part 2 of the Capital Allowances Act 2001 (CAA 2001) which restricts the relevant excess of allowances after a qualifying change in relation to a company (C). It expands Chapter 16A to apply to all "qualifying activities" (under section 15 of CAA 2001) and not just trades, as currently. It also applies Chapter 16A where that relevant excess of allowances is £50 million or more (in any circumstances); or where the relevant excess is £2 million or more and less than £50 million (where the amount is not insignificant); or where the relevant excess is less than £2 million (and the qualifying change has an unallowable purpose).

Details of the Schedule

2. Schedule 26 Part 1 amends Chapter 16A CAA 2001.

3. Paragraph 2 amends 212B makes consequential amendments and introduces the requirement for a qualifying change to meet the "limiting conditions".

4. Paragraph 3 inserts 212LA after 212L providing the four limiting conditions.

5. Subsection (2) provides that Condition A is met where the relevant excess of allowances is £50 million or more.

6. Subsection (3) explains Condition B. Where the relevant excess of allowances is £2 million or more but less than £50 million and the amount is not insignificant in the context of the value of the benefits obtained by a "relevant person" through the qualifying change or "change arrangements" then Condition B is met.

7. Subsection (4) defines “relevant person” as the company acquiring the company or the activity in partnership or any person connected with the company acquiring the company or trade.

8. Subsection (5) explains Condition C. This is met if the amount of the relevant excess of allowances is less than £2 million and the qualifying change has an unallowable purpose. The subsection refers to section 212M which provides the definition of unallowable purpose.

9. Subsection (6) explains Condition D. This is met if there are arrangements the purpose of which is to procure that the relevant excess allowance is below the £50 million or £2 million tests or to procure that the relevant excess of allowances is a smaller proportion of the total amount or value of the benefits referred to in Condition B.

10. Subsection 7 defines the amount of the relevant excess and arrangements.

11. Paragraph (4) renames Chapter 16A “restrictions on allowance buying”.

12. Paragraphs 5-12 extend the restrictions on allowance buying to all other qualifying activities (under section 15 of CAA 2001) and provides the consequential amendments arising from this extension.

13. Paragraph 13 provides that the amendments apply to a qualifying change on or after 20 March 2013, unless either arrangements to bring about the qualifying change had been entered into before that date or there was an agreement or common understanding between the parties as to the principal terms on which the qualifying change will be brought about.

Background

14. Section 34 is one of two preventing loss buying.

15. Chapter 16A of Part 2 CAA 2001 was introduced in Finance Act 2010 in order to prevent tax-motivated capital allowance buying. Chapter 16A applies to situations where a company in a group decided not to claim all the allowances to which it was entitled and that company is then subject to a qualifying change.

16. Chapter 16A applies where there is a company C and

- the tax written down value (TWDV) of the company’s plant or machinery assets exceeds the balance sheet value (BSV) of those assets. This excess is the relevant excess of allowances.
- there is a “qualifying change of ownership” in relation to C; and in certain circumstances where the qualifying change has an “unallowable purpose”.

17. Prior to this amendment Chapter 16A applied to restrict claims to trading lossess either by set off in year by carry back or by group relief where there is a qualifying change with an unallowable purpose as one where the main purpose or one of the main purposes of the change arrangements is to obtain a tax advantage for any person.

Section 72: Hire Cars for Disabled Persons

Summary

1. Section 72 expands the definition of a disabled person in the Capital Allowances Act 2001 (CAA 2001) to include recipients of the Personal Independence Payment and the Armed Forces Independence Payment.

Details of the Section

2. The section amends section 268D(2) CAA 2001 to include reference to recipients of the Personal Independence Payment received under the Welfare Reform Act 2012 or the Welfare Reform Act (Northern Ireland) 2013 and to recipients of the Armed Forces Independence Payment, made under a scheme established under section 1 of the Armed Forces (Pensions and Compensation) Act 2004. The amendment applies to expenditure incurred on or after 1 April 2013.

Background

3. CAA 2001 provides certain benefits where cars are hired to disabled persons in that a car that falls within this definition can be treated as a short life asset (SLA).

4. The SLA regime enables tax allowances to be brought into line with the actual depreciation of plant or machinery when an item is scrapped or sold within eight years of its acquisition. This ensures that the total allowances given by this point match the actual net cost to the business, providing an advantage where the allowances would otherwise be less than the net cost.

5. The definition of a “disabled person” for capital allowances purposes is based on the receipt of certain types of allowances, including Disability Living Allowance (DLA).

6. The Welfare Reform Act 2012 made a number of significant changes to the welfare system including replacing DLA for people between 16 and 64 years of age with Personal Independence Payments. The Welfare Reform Act (Northern Ireland) 2013 will make similar changes in Northern Ireland. Personal Independence Payments are being introduced in phases, starting in April 2013.

7. On 22 October 2012 the Government announced its intention to introduce a separate payment for seriously injured service and ex-service personnel who are in receipt of a qualifying award from the armed forces compensation scheme, called the Armed Forces Independence Payment.

8. This section ensures that the definition of hire cars for disabled persons within CAA 2001 accommodates these changes.

Section 73 Contribution Allowances: Plant and Machinery

Summary

1. Section 73 makes amendments to capital allowances rules to confirm that where one business makes a capital contribution to another business’s capital expenditure on plant and machinery, only the contributor can claim capital allowances and not the recipient.

Details of the Section

2. Subsections (1)-(3) amend section 538 of Capital Allowances Act 2001, to confirm that it applies to contributions made towards capital expenditure on plant or machinery, and treats the contributor’s capital contribution as capital expenditure on the provision of plant or machinery for use in the contributor’s business.

3. Subsection (4) provides for the amendments to have effect on or after 4 June 2013 in relation to pooling of expenditure (in a computation submitted with a new or amended tax return), and in relation to new capital allowances claims.

4. Subsection (5) provides for the amendments to have always had effect, for the purposes of determining whether a recipient of a contribution can pool expenditure in tax computations, or can make new capital allowances claims.

5. Subsections (6) & (7) provides that there is no change to the legislation applicable to a contributor in relation to any past contribution made in a period for which the

contributor has already submitted a tax return (so, for a business making a capital contribution, this section is only relevant to current or future contributions).

6. Subsections (8) – (12) require a recipient of a contribution to bring into account in their capital allowances computations the unrelieved portion of any expenditure pooled in a computation submitted with a new or amended tax return since 1 January 2013, which could not be pooled under the capital allowances rules with the confirmatory amendments as provided for by subsections (1)-(3).

Background

7. The Government announced on 4 June 2013 its intention to introduce this legislation to have effect from that date, to protect the Exchequer from a tax risk arising from new capital allowances claims for historic expenditure by some gas and electricity distribution companies.

Section 74, Schedule 27: community Investment Tax Relief

Summary

1. Section 74 and Schedule 27 make provision for carry forward provisions for community investment tax relief (CITR), for both individuals and corporate investors. They introduce a restriction for corporate investors of the amounts of relief they can receive under the scheme. This restriction is to ensure that the scheme comes within EU rules authorising unnotified State aid if it meets de minimis criteria.

Details of the Schedule

2. Paragraph 1 amends Part 7 Income Tax Act 2007 (ITA 2007) (dealing with CITR for investors that are not companies) as set out in the paragraphs following.

3. Paragraph 2 amends section 335 ITA 2007 as a consequence of the introduction of the new section 335A.

4. Paragraph 3 introduces a new section 335A. This section allows the carried forward of any unused relief to a later year in which the investor is entitled to relief in respect of the investment.

5. Paragraph 4 amends the attribution rules in s357 ITA 2007 in relation to any loans, securities or shares.

6. Paragraph 5 amends the rules for the withdrawal of relief to include the new carry forward provisions where a reduction is withdrawn under section 335 (5) ITA. It amends s361 substituting new subsections (3) and (3A) to (3H) for existing subsections (3) to (7).

7. Paragraph 6 provides that the commencement date applicable to the changes in Paragraphs 1 to 5 is 6 April 2013 and provides that those changes are only to take effect from that date for investments made on or after 6 April 2013.

8. Paragraph 7 amends Part 7 of Corporation Tax Act 2010 (CTA 2010) (CITR for company investors) as set out in the paragraphs following.

9. Paragraph 8 amends s220 CTA 2010 as a consequence of the new section 220A carry forward provision.

10. Paragraph 9 introduces a new section 220A. This section allows the carry forward of any unused relief to a later year in which the investor is entitled to relief in respect of the investment.

11. Paragraph 10 amends the attribution rules in s240 CTA 2010 in relation to any loans, securities or shares.

12. Paragraph 11 amends the rules for the withdrawal of relief to include the new carry forward provisions where a reduction is withdrawn under s220 (5) CTA 2010. It amends section 244 CTA 2010 substituting new subsections (3) and (3A) to (3H) for existing subsections (3) to (7).

13. Paragraph 12 provides that the commencement date for these changes will be 1 April 2013 and provides that the changes to CTA 2010 will only take effect in relation to investments made in accounting periods beginning on or after 1 April 2013.

14. Paragraph 13 introduces a new section 220B in Part 7 CTA 2010. This section places limits on the amounts of CITR tax relief an investor company can obtain in any 3 year period. That limit is the difference between the total aid in that period from CITR and any carry forward relief (s220B (2)(a) plus de minimis aid from other sources (s220 (2) (b), and €200,000. Aid from CITR is only relevant if it results from investments made on or after 1 April 2013, although de minimis aid received by the company in the period prior to April 2013 will be included under subsection (2) (b). HM Revenue & Customs will issue separate guidance on how companies should calculate aid received by way of CITR.

Background

15. CITR was introduced in 2002 to encourage investment in disadvantaged communities.

16. To date it has raised in excess of £72 million from individual and corporate investors.

17. Investors invest into Community Development Finance Institutions which, in turn, invest in businesses in disadvantaged communities.

18. Previously a notified State aid, the scheme will become a de minimis aid within the meaning of Article 2 of the Commission Regulation (EC) No 1998/2006 as a result of these changes.

Section 75, Schedule 28: Lease Premium Relief

Summary

1. Section 75 and Schedule 28 limit lease premium relief available to a trader or intermediate landlord where leases are of more than 50 years duration. The section has effect for leases granted on or after 1 April 2013 in respect of companies and 6 April 2013 in respect of individuals or partnerships.

Details of the Schedule

2. Paragraph 2 adds new section 61(5A) to Income Tax (Trading and other Income) Act 2005 (ITTOIA). New section 61(5A) precludes the deduction of a trade expense where the charge on the landlord (the “taxed receipt”) in respect of the lease premium is within new section 292(4B) or (4C)

3. New section 292(4A) precludes the deduction of a property business expense where the charge on the landlord (the “taxed receipt”) in respect of the lease premium is within new section 292(4B) or (4C)

4. New section 292(4B) applies where the lease is only a long lease because of the operation of Rule 1 in section 303 ITTOIA 2005.

5. New section 292(4C) applies where the lease is only a long lease because of the operation of Rule 1 in section 243 Corporation Tax Act 2009 (CTA 2009).

6. Paragraph 6 adds new section 63(5A) to CTA 2009. New section 63(5A) precludes the deduction of a trade expense where the charge on the landlord (the “taxed receipt”) in respect of the lease premium is within new section 232(4B) or (4C)

7. New subsection 232(4A) precludes the deduction of a property business expense where the charge on the landlord (the “taxed receipt”) in respect of the lease premium is within new section 232(4B) or (4C)

8. New section 232(4B) applies where the lease is only a long lease because of the operation of Rule 1 in section 243 CTA 2009.

9. New section 232(4C) applies where the lease is only a long lease because of the operation of Rule 1 in section 303 ITTOIA 2005.

Background

10. A lease premium payment, made on granting a lease of less than 50 years, is taxed on the recipient landlord and relieved on the tenant where that tenant is a trader or an intermediate landlord. The premium would otherwise be a capital payment for tax purposes. Where the payment relates to a lease of more than 50 years, a premium is also treated as being within the lease premium regime if it falls within Rule 1 of section 303 ITTOIA 2005 or section 243 CTA 2009.

Section 76: Manufactured Payments: Stock Lending Arrangements

Summary

1. Section 76 amends the Income Tax Act 2007 (ITA 2007) and the Corporation Tax Act 2010 (CTA 2010) to respond to tax avoidance schemes involving stock lending arrangements. These amendments block schemes where part of a manufactured payment is paid in the form of an intra-group loan write-off, or other non-taxable form, to avoid tax charges which would otherwise arise on the manufactured payment.

Details of the Section

2. Subsection (1) amends section 596 of ITA 2007 as per subsections (2) and (3).

3. Subsection (2) substitutes subsection 1 of section 596 with a new subsection 596(1), which provides that section 596 applies if conditions A, B and C are met.

4. New subsections (1A) and (1B) set out conditions A and B which restate the previous conditions set out at section 596(1)(a) and (b) respectively.

5. New subsection (1C) sets out new condition C adds to the circumstances in which section 596 will apply by expanding the condition previously set out in section 596(1)(c). Subsection (1C) sets out the two different sets of circumstances for Condition C. The first is that no provision is made for making payments representative of the dividend or interest to the lender (subsection (1C)(a)). The second circumstance is that provision is made both for making payments representative of the dividend or interest (Section 1C (b)(i)) and another benefit, including the release of any liability to pay an amount (Section 1C (b)(ii)).

6. Subsection (3) replaces subsection (2)(a) from section 596 ITA 2007 with a new subsection 596 (2)(a).

7. New subsection 596(2)(a) sets out the consequences where Condition C is met because the case falls within either 596(1C)(a) or (b).

8. New subsection (2a)(i) provides that in a case falling within paragraph (1C)(a), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest.

9. New subsection (2a)(ii) provides that in a case falling within subsection (1C)(b), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount

representative of the dividend or interest. This is after adjusting for any amount paid and falling within subsection (1C)(b)(i).

10. Subsection (4) provides for similar amendments to be made to section 812 CTA 2010 through subsections (5) to (7).

11. Subsection (5) substitutes subsection 1 of section 812 with a new subsection 812(1) which provides that section 812 applies if conditions A to C are met. Conditions A and B restate the previous conditions set out at section 812(1)(a) and (b) respectively.

12. Subsection (1C) provides a new condition C that adds to the circumstances in which section 812 will apply by expanding the condition previously set out in section 812(1)(c). Condition C is met in two different sets of circumstances, which are either that no provision is made for making payments representative of the dividend or interest to the lender (subsection (1C)(a) or that provision is made both for making payments representative of the dividend or interest (subsection 1C(b)(i)) and another benefit, including the release of any liability to pay an amount (subsection 1C(b)(ii)).

13. Subsection (6) replaces subsection (2)(a) from section 812 CTA 2010 with a new subsection 812(2)(a).

14. New subsection 812(2)(a) sets out the consequences where either Condition C (a) or Condition C (b) because the case falls within either section 812(1C)(a) or (b).

15. New subsection (2a)(i) provides that in a case falling within paragraph (1C)(a), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest.

16. New subsection (2a)(ii) provides that in a case falling within subsection (1C)(b), the rules about manufactured payments apply as if the person who is the borrower under the arrangement were required under the arrangement to pay the lender an amount representative of the dividend or interest, but after adjusting for any amount paid and falling within subsection (1C)(b)(i).

17. Subsection (8) is a commencement provision. It provides for the amendments made by this section to come into effect on or after 5 December 2012.

Background

18. These changes close a tax avoidance scheme in the area of stocklending arrangements.

19. The scheme attempts to prevent a tax charge arising when a financial trader is involved in stock lending. In those circumstances a manufactured payment made to represent the dividend or interest arising on the securities which have been lent would be taxed as trading income.

20. Section 596 ITA 2007 and section 812 CTA 2010 apply where there is no provision for a manufactured payment to be paid to represent the dividends or interest received on the securities. In those circumstances, section 596 or section 812 apply so that a payment is deemed to be made to the lender, and the stock lender is taxed accordingly. The tax position of the borrower is not affected.

21. The scheme attempts to avoid that charge by arranging for some manufactured payment to be made, but also for part of the payment representing the dividend to be received in a non-taxable form. The new legislation will provide that when any benefit is received representing the dividend, then it will give rise to a charge on the stock lender as though an actual manufactured payment had been received.

Section 77, Schedule 29: Manufactured Payments: General

Summary

1. Section 77 introduces Schedule 29 which simplifies the tax treatment of manufactured dividends for corporation tax purposes, and of all manufactured payments for Income Tax purposes, and repeals the detailed rules setting out the current tax treatment of manufactured dividends and repos in Part 17 of the Corporation Tax Act 2010 (CTA 2010) and of manufactured payments and repos in Chapters 1-3 of Part 11 of the Income Tax Act 2007 (ITA 2007).

Details of the Schedule

2. Paragraph (1) introduces a new Part 11ZA into ITA 2007, comprising sections 614ZA to 614ZD.

3. Section 614ZA explains that Part 11ZA deals with the application of the Income Tax Acts to manufactured payment relationships and payments which represent dividends or interest.

4. Section 614ZB defines the terms “manufactured payment relationship”, “manufactured payment” and “securities”.

5. Subsection (1) provides that for the purposes of the Income Tax Acts a person has a manufactured payment relationship if conditions A to C are met.

6. Subsection (2) gives Condition A. It provides that Condition A is that under any arrangements an amount is payable by or to a person, or any other benefit is given by or to the person, including the release from a liability to pay an amount.

7. Subsection (3) sets out Condition B. Condition B is that the arrangements relate to the transfer of securities.

8. Subsection (4) sets out Condition C, which is that the amount or value of the other benefit referred to in Condition A is, or will be treated as, representative of a dividend or interest on the securities.

9. Subsection (5) provides that in subsection (2), the reference to an amount being payable or other benefit being given by the person includes a reference to an amount being payable, or other benefit being given by another person on behalf of that person.

10. Subsection (6) defines “manufactured payment” for the new Part 11ZA, as an amount, or the value of a benefit, within subsection (2). It also defines securities for the purposes of that part, providing that “securities” means shares in a company and loan stock or any similar security.

11. Section 614ZC sets out the tax treatment of the payer of a manufactured payment.

12. Subsection (1) explains that section 614ZC applies where a person has a manufactured payment relationship under which a manufactured payment is paid by or on behalf of the person.

13. Subsection (2) provides that no income deduction is allowed in respect of the manufactured payment, subject to subsection(3).

14. Subsection (3) provides that subsection (2) does not apply in relation to a company so far as the manufactured payment is brought into account in calculating the profits of a trade carried on by the person.

15. Section 614ZD sets out the treatment of the recipient of a manufactured payment.

16. Subsection (1) provides that subsection (2) applies if a person has a manufactured payment relationship under which a manufactured payment is payable to that person.

17. Subsections (2) and (3) provide that for the purposes of the charge to income tax on the income of that person, the Income Tax Acts apply to the person as if the manufactured payment were a dividend or interest on the securities, subject to subsections (4) to (7).

18. Subsection (4) provides that subsection(2) does not apply to the person mentioned in that section as far as the manufactured payment is brought into account in calculating the profits of a trade carried on by that person.

19. Subsection (5) provides that subsection (2) does not apply in relation to the person mentioned in that section for the purposes of double taxation relief (DTR) in respect of any dividend or interest.

20. Subsection (6) provides that where the manufactured payment is treated as a dividend under subsection(2), the person mentioned in that subsection is not entitled to a tax credit under Chapter 3 of Part 4 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005), in respect of the dividend.

21. Subsection (7) defines double taxation relief, for the purposes of the section as any relief given under or as a result of Part 2 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010).

22. Paragraph [2] introduces a new Part 17A into CTA 2010, comprising sections 814A to 814D.

23. Section 814A gives an overview of Part 17A, explaining that it deals with the application of the Corporation Tax Acts to manufactured dividend relationships and payments which represent dividends.

24. Section 814B defines “manufactured dividend relationship”, “manufactured dividend” and “the real dividend”. The definitions are modelled on the manufactured interest provisions in Chapter 9 of Part 6 of the Corporation Tax Act 2009 (CTA 2009).

25. Subsection (1) provides that a company has a manufactured dividend relationship if conditions A to C are met. Those conditions are as follows:

26. Subsection (2) gives Condition A. Condition A is that arrangements are in place which provide that an amount is payable by or to a company, or any other benefit is given by or to the company. A benefit can include the release from any liability to pay an amount.

27. Subsection (3) sets out Condition B. Condition B is that the arrangements relate to the transfer of shares in a company

28. Subsection (4) sets out condition C, which is that the amount, or the value of the other benefit referred to in Condition A is, or will be treated as, representative of a dividend on the shares.

29. Subsection (5) provides that the reference to an amount being payable or other benefits being given by the company includes a reference to the amount or benefit being given by another person on behalf of the company.

30. Subsection (6) provides further definitions for Part 17A. A “manufactured dividend” means an amount, or the value of a benefit, within subsection (2), and “the real dividend” means the dividend mentioned in subsection (4)(a).

31. Section 814C sets out the treatment for tax purposes of the payer of a manufactured dividend.

32. Subsection (1) provides that the section applies where a company has a manufactured dividend relationship under which a manufactured dividend is paid by or on behalf of the company.

33. Subsection (2) provides that no income deduction is allowed in respect of the manufactured dividend. This is subject to subsections (3) to (5).

34. Subsection (3) provides that subsection (2) does not apply in relation to a company as far as the manufactured dividend is brought into account in calculating the profits of a trade carried on by the company. In these circumstances a deduction may be available subject to satisfying the normal requirements.

35. Subsection (4) provides that subsection (5) applies if the manufactured dividend relates to investment business of the company and the company received the real dividend in the accounting period and the real dividend is taxed by virtue of section 548(5) CTA 2010 (recipients of distributions from REITs).

36. Subsection (5) provides that in these circumstances, the manufactured dividend is to be treated as expenses of management of the company's investment business for the accounting period.

37. Subsection (6) provides that subsection (7) applies if the manufactured dividend is referable to basic life assurance and general annuity business of the company, the company received the real dividend in the accounting period and the real dividend is taxed by virtue of section 548(5) CTA 2010 (recipients of distributions from REITs).

38. Subsection (7) provides that in these circumstances, the manufactured dividend is to be treated as a deemed BLAGAB management expense of the company for the accounting period.

39. Subsection (9) provides that references in section 814C(4) and (6) to a real dividend include references to a manufactured dividend which is treated as a real dividend as a result of the application of section 814D(2). This means that where a company receives a manufactured dividend, and pays a manufactured dividend representative of that manufactured dividend, it may qualify as an expense of management, or a BLAGAB management expense provided the other conditions of section 814C(4) or (6) respectively apply.

40. Subsection (10) defines what is meant by "referable to BLAGAB" business.

41. Section 814D provides for the tax treatment of the recipient of a manufactured dividend.

42. Subsection (1) provides that subsection (2) applies if a company has a manufactured dividend relationship under which a manufactured dividend is payable to it.

43. Subsections (2) and (3) provide that for corporation tax purposes, the manufactured dividend is treated as a dividend on the shares, subject to subsections (4) to (8).

44. Subsection (4) provides that subsection (2) does not apply to a company as far as the manufactured dividend is brought into account as profits of a trade carried on by the company.

45. Subsection (5) provides that subsection (2) does not apply in relation to a company for the purposes of double taxation relief, defined in subsection (9) as any relief given under or as a result of Part 2 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010).

46. Subsection (6) provides that part 9A of CTA 2009 (which deals with company distributions) has effect with the modification given in subsection (7).

47. Section (7) sets out the modification, which is that references in part 9A to the payer are to be treated as references to the company that pays the real dividend, and that the definition of the payer in section 931T of CTA 2009 is treated as omitted.

48. Subsection (8) provides that the company to which the manufactured dividend is payable is not entitled to a tax credit under section 1109 of CTA 2010 in respect of that manufactured dividend.

49. Subsection (10) gives section 814D priority over other legislation, so that it has effect regardless of section 358 of CTA 2009, or any other provisions of Part 5 of CTA 2009

which would otherwise prevent a loan relationships credit from being brought into account.

50. Paragraph 3 introduces various consequential and other amendments.

51. Paragraph 4 provides that the Taxation of Chargeable Gains Act 1992 (TCGA 1992) is to be amended.

52. Paragraph 5 replaces section 263B(7) TCGA 1992 with new text defining securities for the purposes of section 263B, replacing references to the same definitions in Part 17 of CTA 2010, which has been repealed.

53. Paragraph 6 repeals section 263D TCGA 1992, which concerns gains accruing to persons paying manufactured dividends.

54. Paragraphs 7, 8 and 9 make consequential changes to TCGA 1992 to reflect the repeal of section 263D.

55. Paragraph 10 amends the regulation making power in Section 263I, introducing definitions of manufactured overseas dividend, overseas securities, overseas dividend and securities, as these definitions are being repealed from ITA 2007.

56. Paragraph 11 amends the Finance Act 2004 to reflect the repeal of section 263D.

57. Paragraph 12 provides for amendments to ITTOIA 2005.

58. Paragraphs 13 and 14 amend sections 397(6) and 397A of ITTOIA 2005 to reflect the replacement of section 592 ITA 2007 with the similar provision in section 614ZD(6).

59. Paragraph 15 omits section 397B of ITTOIA 2005. That section refers to the treatment of manufacture overseas dividends from which tax has been deducted under section 581 ITA 2007. As that section, and the requirement to deduct tax, are being repealed, s397B will become redundant.

60. Paragraph 16 provides for amendments to ITA 2007.

61. Paragraph 17 amends section 2 of ITA 2007 (overview of Act) to reflect the repeal of Part 11, and the introduction of Part 11A.

62. Paragraph 18 provides for Chapters 1 to 3 of Part 11 (manufactured payments and repos) to be repealed, apart from section 596(5) which will be repealed separately, and makes a consequential change to section 606. The provisions of those chapters are either being replaced by sections 614ZA to 614 ZD or being repealed, in line with the new simplified regime.

63. Paragraph 19 amends section 647 ITA 2007. It introduces definitions of manufactured payments contract, overseas securities, overseas dividend and UK securities. This is necessary because section 647 currently refers to the definitions in section 578 and 581, which are being repealed.

64. Paragraph 20 amends section 658 ITA 2007, which supplements the regulation making powers in sections 656 and 657. Paragraph 19 introduces definitions of UK shares, UK securities and overseas securities into section 658. This is necessary because section 658 currently refers to the definitions in section 566 and 567, which are being repealed.

65. Paragraph 21 amends section 918(1) ITA 2007, which refers to manufactured dividends on shares in Real Estate Investment Trusts (REITs). It replaces a reference to section 573(1), which is being repealed, with a reference to section 614ZC(1).

66. Paragraph 22 amends section 919 ITA 2007, which concerns manufactured interest on UK securities. It replaces subsection (1), which refers to section 578(1) which is being repealed, with a similar subsection referring to section 614ZC(1).

67. Paragraph 23 repeals section 920 ITA 2007. That section contains the reverse charge provision, which imposes a requirement to deduct tax on a UK recipient of manufactured interest. That reverse charge requirement will no longer apply.

68. Paragraph 24 amends section 921 ITA 2007. That section applies to cases where interest is paid gross on underlying securities, and provides that section 919(2) does not require any deduction of a sum representing income tax on the payment of the manufactured interest.

69. Paragraph 25 repeals sections 922 to 925 ITA 2007. Those sections impose the requirement to deduct tax from manufactured overseas dividends, and the reverse charge. Those requirements will no longer apply.

70. Paragraph 26 makes consequential amendments to section 925A(2) ITA 2007.

71. Paragraph 27 makes a consequential repeal of section 925B ITA 2007. That section refers to the consequences of the reverse charge provisions, which are being repealed.

72. Paragraph 28 makes consequential changes to section 925C ITA 2007.

73. Paragraph 29 repeals subsections (1) and (1A) of section 926 ITA 2007, since those interpretation provisions apply to sections which are being repealed.

74. Paragraphs 30, 31 and 32 make various minor and consequential amendments to ITA 2007 following the repeal of Chapters 1-3 and sections 922-925.

75. Paragraph 33 provides for the Finance Act 2008 (FA 2008) to be amended, and makes consequential changes to Schedule 12 and Schedule 23 to reflect the repeals of Chapters 1-3 and sections 922 -925 of ITA 2007 and section 263D TCGA 1992.

76. Paragraph 34 provides for amendments to CTA 2009.

77. Paragraph 35 amends section 539 CTA 2009. It repeals section 539(7) which refers to interest deemed to be paid under section 812(2) CTA 2010 as that section is being repealed following the introduction of section 814B CTA 2010.

78. Paragraph 36 amends section 540(3) CTA 2009, deleting a reference to section 799 CTA 2010, which is being repealed.

79. Paragraph 37 amends section 550 CTA 2009. It deletes section 550(6) which refers to double taxation relief in respect of a manufactured overseas dividend, which will no longer be available, and inserts new subsections 550(5B – 5D) which provide that a borrower will not be entitled to double taxation relief as a result of section 550(3) unless actual overseas tax has been deducted from the manufactured payment.

80. Paragraph 38 amends section 1221(1) CTA 2009, which refers to amounts treated as expenses of management. It deletes section 1221(1)(i) and replaces the reference in that section to section 791(4) 2010, which is being repealed, with a reference to section 814C(5) 2010.

81. Paragraph 39 amends section 1248 CTA 2009. It repeals two references to section 799 CTA 2010, which is being repealed.

82. Paragraph 40 provides for amendments to the Finance Act 2009 (FA 2009), repealing paragraphs (4) and 13(b) which refer to provisions in ITTOIA 2005 and ITA 2007 which are being repealed.

83. Paragraph 41 provides for amendments to CTA 2010.

84. Paragraph 42 amends section 1 of CTA 2010, to reflect the repeal of Part 17 and introduction of Part 17A.

85. Paragraph 43 repeals Part 17 of CTA 2010. That Part contains provisions which apply to manufactured payments, stock lending, and repos, which are being replaced by sections 814A to 814D of CTA 2010, or which will no longer be required.

86. Paragraph 44 amends section 1109 (5) of CTA 2010. It inserts a reference to section 814D which provides that no tax credit is available for recipients of manufactured dividends, and repeals references in section 1109(5)(a) to legislation which is now repealed.

87. Paragraph 45 makes various repeals of paragraphs in Schedule 1 which refer to repealed legislation.

88. Paragraph 46 repeals a reference in Schedule 2 which refers to Part 17 of CTA 2010 as that Part is repealed.

89. Paragraph 47 makes consequential repeals from defined expressions in Schedule 4 CTA 2010.

90. Paragraph 48(1) provides for amendments to TIOPA 2010.

91. Paragraph 48(2) repeals section 85A(4)(b) which refers to sections 792 and 794 of CTA 2010, which are repealed.

92. Paragraph 48(3) and (4) repeal paragraph 113 from Schedule 7 and paragraph 82 from Schedule 8, both of which refer to repealed legislation.

93. Paragraph 49 amends Finance Act 2011. It repeals paragraphs 22 and 24 in Schedule 13, which refer to repealed legislation.

94. Paragraph 50 provides for amendments to Finance Act 2012. It repeals section 22, and paragraphs 220 to 223 of Schedule 16, all of which refer to repealed legislation, and amends the final line of section 78(3) to refer to section 814C in place of references to repealed legislation.

95. The provisions of Part 1 of this Schedule, which apply for income tax, and those of Part 2, which apply for corporation tax, will apply in respect of manufactured payments made on or after 1 January 2014. The provisions of Part 3, which are mainly repeals and consequential amendments, will apply from 1 January 2014.

Background

96. The legislation applying to manufactured payments is complex, and has been the subject of a number of avoidance schemes.

97. A consultation was carried out in 2012 which set out proposals for reforming and simplifying the legislation. Responses to the consultation document were supportive.

98. Legislation is therefore now being introduced to simplify the tax treatment of manufactured payments.

99. For corporation tax purposes, the current treatment of manufactured interest is not changed.

100. Manufactured dividends will be treated in two possible ways. When they are received by a financial trader, they will be taxed as trade receipts, and when paid by a financial trader they will generally be allowed as a trade deduction.

101. Generally, no specific provisions will be required to bring about this effect, and following the accounts prepared in accordance with GAAP will bring about this effect.

102. In other circumstances, the receipt of a manufactured dividend will not be taxable and the payment of a manufactured dividend will not be allowable as a deduction.

103. The current rules requiring tax to be deducted when a manufactured overseas dividend (MOD) is paid will be repealed. The reverse charge (under which a UK company receiving a MOD from which tax had not been deducted had to deduct tax and pay it to HMRC) has also been repealed.

Section 78: Relationship between Rules Prohibiting and Allowing Deductions

Summary

1. Section 78 provides for changes to income tax and corporation tax provisions governing the relationship between the rules prohibiting and those allowing deductions from profits of a trade or property business. In cases involving tax avoidance arrangements, the order of priority in determining if a deduction is allowable will be reversed so that a prohibitive rule will have priority over a permissive rule. These changes have effect from 21 December 2012.

Details of the Section

2. Subsection 1 adds new subsections (1A) and (4) to section 31 of the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 (trade profits: relationship between rules prohibiting and allowing deductions).

3. New subsection (1A) provides that in determining if a deduction is allowable in cases involving relevant tax avoidance arrangements, the order of priority is reversed so that a prohibitive rule will have priority over a permissive rule. This means that no deduction will be due if a prohibitive rule applies, notwithstanding that a deduction would otherwise be due under a permissive rule.

4. New subsection (4) defines relevant tax avoidance arrangements for the purposes of new subsection (1A).

5. Subsection 2 adds equivalent subsections to section 274 of ITTOIA 2005 (property businesses: relationship between rules prohibiting and allowing deductions).

6. Subsection 3 adds equivalent subsections to section 51 of the Corporation Tax Act (CTA) 2009 (trade profits: relationship between rules prohibiting and allowing deductions).

7. Subsection 4 adds equivalent subsections to section 214 of CTA 2009 (property businesses: relationship between rules prohibiting and allowing deductions).

8. Subsections (5) and (6) provide commencement rules.

9. Subsection (7) defines “an unconditional obligation” for the purposes of subsection (6).

Background

10. The Government has become aware of avoidance activity that seeks to exploit the priority rules for deductions from profits and intended to generate artificial loss relief for use by companies to reduce their corporation tax profits. This avoidance activity puts at risk substantial amounts of revenue.

11. It was announced on 21 December 2012 that legislation would be introduced, with effect from that date, to counter this avoidance by inserting targeted anti-avoidance rules in the income tax and corporation tax provisions governing the relationship between rules prohibiting and allowing deductions from profits of a trade or property business.

Section 79, Schedule 30: Close Companies

Summary

1. Section 79 introduces Schedule 30 which amends and extends Part 10 of the Corporation Tax Act 2010 (CTA10). The changes address three types of arrangement put in place to seek to avoid the charge to tax under section 455 CTA10 with effect for relevant loans, arrangements or repayments made on or after 20 March 2013.

Details of the Schedule

2. Part 1 and paragraph 1 introduce amendments to Part 10 CTA10.

Insertion of new Chapters 3A and 3B

3. Paragraph 2 inserts two new Chapters into Part 10 of CTA10:

   a. Chapter 3A which imposes a tax charge when close companies enter arrangements with a tax avoidance purpose; and

   b. Chapter 3B which dictates how certain repayments and return payments are treated.

   Both of these new Chapters are treated as having come into force on 20 March 2013 as announced by the Government on that day.

Amendments to section 455 CTA10

4. Paragraph 3 amends section 455 of CTA10. Broadly, under that section, if a close company makes a loan or advance of money to a relevant person (i.e. an individual or a company acting in a fiduciary or representative capacity) then there is a tax charge (known as “section 455 tax”) of 25 per cent of the amount of the loan or advance.

5. In addition to the charge on loans or advances to relevant persons, the amended section 455 puts beyond doubt that loans and advances to certain trustees and certain limited liability partnerships (LLPs) or other partnerships are subject to the section 455 tax, as follows:

   a. *Trustees:* where there is a loan or advance to trustees of a settlement in which at least one trustee or beneficiary (or potential beneficiary) is a participator (or an associate of such a participator) in the close company making the loan or advance.

   b. *LLPs or other partnership:* where at least one of the partners is an individual and that individual is a participator (or an associate of an individual who is a participator) in the close company making the loan.

   Example 1:

   - An individual (X) owns 100% of the shares – and is therefore a participator - in a close company (C Ltd).
   - X and C Ltd set up an LLP with themselves as the partners.
   - C Ltd makes a loan to the LLP.

   A close company, C Ltd, has made a loan to an LLP in which there is an individual partner who is also a participator in the close company, so the loan is chargeable to section 455 tax on the close company (unless one of the exceptions in sections 456 or 461 CTA 2010 applies).

6. As announced by the Government on 20 March 2013, the amendments to section 455 CTA10 have effect from that date.

Amendments to section 459 CTA10

7. Paragraph 4 ensures that from 20 March 2013, the restrictions on relief introduced by new section 464C and new section 464D also apply to any loans or advances treated as made to a relevant person under section 459 CTA10.

New Chapter 3A – charge to tax: other arrangements

8. Paragraph 5 inserts the new Chapter 3A.

Section 464A Charge to tax: conferring benefit

9. Section 464A imposes a new tax charge if during an accounting period a close company is party to arrangements under which benefit is directly or indirectly conferred on an individual who is a participator in the close company or an associate of such a participator.

10. Section 464A describes such “arrangements” for the purpose of this section.

11. Section 464A also contains provisions which:

    a. set the due and payable date for any tax chargeable under s464A;

    b. introduce a rule so that for the purposes of section 464A, a participator in a company which controls another company is to be treated as also a participator in the controlled company; and

    c. ensure section 464A only applies if the conferral of the benefit which would be chargeable does not give rise to a section 455 tax charge.

Example 2:

- X, an individual, is a participator in a close company (C Ltd).
- C Ltd and X are partners in a partnership. Under the partnership agreement, 80 per cent of the profits are allocated to C Ltd and charged on C Ltd at the corporation tax rate.
- C Ltd leaves its profits undrawn on capital account in the partnership and X draws on them.

There is a benefit conferred on X because X has received funds from C Ltd, a company in which X is a participator and there was no section 455 charge on C Ltd and no income tax charge on X. If the funds had been transferred directly from C Ltd to X, they would have been chargeable to income tax (if transferred as remuneration or a dividend) or section 455 (if they were transferred as a loan).

Example 3:

Using the structure described in Example 2, C Ltd could alternatively have drawn its profit share from the partnership but reintroduced some or all of the funds into the partnership as a capital contribution. At the point X then draws on these funds and seeks to argue that a tax charge does not arise when those funds are withdrawn, a benefit is conferred upon X in a similar way as for Example 2.

Section 464B Relief in case of return payment to company

12. Section 464B provides relief similar to that in section 458 CTA10 for loans.

13. If there is a section 464A tax charge on a benefit conferred, section 464B provides relief where the value is returned to the close company as a payment and without consideration being given for the payment.

14. Section 464B has time limits and claims rules which mirror those of section 458 CTA10.

Commencement of sections 464A and 464B

15. The provisions of sections 464A and 464B have effect for any arrangements to which the close company becomes a party on or after 20 March 2013.

New Chapter 3B: Treatment of certain repayments and return payments

16. Paragraph 6 inserts the new Chapter 3B into Part 10 of CTA10.

17. Under section 458 CTA10 and the new section 464B, relief is available to a close company if the loan or amount of the benefit is repaid to the close company. Chapter 3B dictates the treatment of certain repayments where the amounts cannot be described as genuine or enduring repayments.

    Section 464C introduces two rules which, if either applies, treat the affected repayment as being made in respect of a matched chargeable payment:

Rule One: the 30 day rule

18. Subsection 464C(1) applies where a close company has amounts outstanding (either a loan or advance, or the conferral of a benefit, which gives rise to a charge under sections 455 or 464A CTA10) and during any period of 30 days it:

    - receives repayments which:
        - repay a payment chargeable under sections 455 or 464A CTA2010;
        - have not been matched with a chargeable payment under s464C previously; and
        - total at least £5,000; and
        - makes new chargeable payments (which have not previously been matched with a repayment under section 464C):
            - in an accounting period which is later than the accounting period in which the original chargeable payment was made;
            - to the same person or their associate.

19. For subsection 464C(1) to apply, the repayments and new chargeable payments may be in the same accounting period, but the new chargeable payments must be made in a later accounting period than the original chargeable payments.

20. In these circumstances the repayments are treated as repayments of the new chargeable payments so far as the amount of the repayment does not exceed the amount of the new chargeable payment. Repayments are then available to set off against the original chargeable payments only to the extent the repayments are in excess of the new chargeable payments.

21. Subsection 464C(2) determines which new chargeable payments should be taken into account when considering the 30 day period – new chargeable payments which are repaid within the 30 day period under consideration are not taken into account.

Rule Two: Arrangements rule

22. Section 464C(3) applies if the 30 day rule does not apply to a repayment and the repayment is made under arrangements which result in a further amount being paid to the participator. In these circumstances, the repayment is to be treated as a repayment of the new chargeable payment (so far as the amount of the repayment does not exceed the amount of the new chargeable payment).

    Example 1:

    A Ltd lends a participator £20,000 which is still outstanding at the end of the accounting period. 35 days before the section 455 tax becomes due and payable, the participator receives a further £25,000 payment from the company. The original £20,000 is repaid using £20,000 of the £25,000 new loan.

    It is likely in this situation that the repayment of £20,000 would be treated as a repayment of £20,000 of the new £25,000 loan so the original loan would be treated as not repaid and so the section 455 tax would become due and payable.

    Example 2:

B Ltd lends a participator £30,000 which is still outstanding at the end of the accounting period. During the nine month period leading up to the due and payable date, the full amount is repaid using a 40 day bank loan. The bank loan is repaid using a further loan of £30,000 from the company.

There are clear arrangements here and so the original loan would be treated as not repaid and so the section 455 tax would become due and payable unless a further repayment was made.

Provisions applying to both the 30 day rule and the Arrangements rule

23. Subsections 464C(4) and (5) ensure that repayments and new chargeable payments are not matched more than once under these tests. If a repayment and chargeable payments have been matched under a previous operation of either subsection 464C(1) or subsection 464C(3), the repayments and chargeable payments will in effect be ignored for further operations of those subsections. Further, for any repayment/chargeable payment, consideration should be given as to whether the rule in section 464C(1) applies before consideration as to whether the rule in section 464C(3) applies.

24. Subsection 464C(6) applies to disregard any repayments which give rise to an income tax charge from consideration by this section. This means that the majority of dividends and remuneration presented purely as book entries can be ignored when applying section 464C.

Other features of Chapter 3B

25. Subsection 464C(7) and (8) allow the de minimis limits to be effectively varied by Treasury Order.

26. Section 464D provides for supplementary provisions for 464C including the assessments necessary to give effect to the restriction of relief and for when a person must amend their tax return to give effect to this restriction.

27. Subsection 464D(5) treats benefits conferred (under section 464A) and relief for payments relating to such benefits under section s464B as loans and loan repayments for the purposes of section 464C.

Commencement of Chapter 3B

28. As announced by the Government on 20 March 2013, the provisions of Chapter 3B apply to repayments (relating to section 455) and return payments (relating to section 464A) made on or after that date.

Part 2 of Section 79: Other Amendments

29. The Taxes Management Act 1970 (TMA70) is amended to ensure provisions which apply under this Act to the un-amended Chapter 3 also apply to the amendments and new Chapters introduced by this Schedule. The Finance Act 1998 (FA98) is amended at Schedule 18 to include the charge under section 464A in provisions which currently apply to the section 455 tax charge and to include amendments to the penalty provisions to take account of the new restrictions on relief. The amendments to the TMA70 and FA98 are treated as having come into force on 20 March 2013.

30. The Income Tax (Trading and Other Income) Act 2005 is amended so that if a relevant loan which was made to an LLP or partnership is released or written off, the person liable to income tax under section 417 of that Act is any partner who is an individual. If there is more than one individual, the liability is apportioned between the partners who are individuals on a just and reasonable basis.

31. The amendments under paragraph 14 have effect for loans or advance made on or after 20 March 2013.

Background

32. These provisions have been introduced to counter avoidance of the section 455 tax charge.

33. As part of its avoidance package in Budget 2013, the Government announced that it will be introducing legislation that amends and extends the rules governing the taxation of close company loans to their participators, with effect from 20 March 2013. A technical note was published on that date

Section 80: Decommissioning Relief Agreements

Summary

1. Section 80 provides that payments due under decommissioning relief agreements shall be made out of money provided by Parliament. It further provides some exceptions to the duty imposed by section 18(1) of the Commissioners for Revenue and Customs Act 2005.

Details of the Section

2. Subsection (1) provides that sums due under a decommissioning relief agreement shall be paid out of money provided by Parliament.

3. Subsection (2) defines a “decommissioning relief agreement” as an agreement between a Minister of the Crown and a qualifying company.

4. Subsection (3) defines a “qualifying company” for the purposes of a subsection (2).

5. Subsection (4) provides that for the purposes of subsection (2) the amount of tax relief in respect of decommissioning expenditure is to be determined in accordance with the decommissioning relief agreement, and may in some circumstances, which will be specified in the decommissioning relief agreement include tax relief in respect of expenditure that is not decommissioning expenditure.

6. Subsection (5) provides that a payment made under a decommissioning relief agreement is not to be regarded as income or a gain for the company for any purpose of the Tax Acts.

7. Subsection (6) provides that Section 18 (1) of the Commissioners for Revenue and Customs Act 2005, which restricts disclosure by Revenue and Customs officials, does not prevent disclosure of information to:

   a. a Minister of the Crown for the purposes of enabling that Minister to establish the extent of any liability under a decommissioning relief agreement; or,

   b. a party that has rights under a decommissioning relief agreement for the purposes of enabling that party to determine the reference amount.

8. Subsection (7) provides definitions , for the purposes of this section, for “company”, “cross-boundary field”, “decommissioning expenditure”, Minister of the Crown”, which includes HM Treasury, “ring fence trade”, the UK sector of a cross-boundary field” and “unitisation agreement”.

9. Subsection (8) provides that subsections (8) to (9) of section 30 of the Petroleum Act 1998, which define associated entity, apply for the purposes of subsection (1) of this section.

Background

10. The amendments made by this section form part of the Government’s wider package of measures to provide greater certainty in respect of decommissioning tax relief,

remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 81: Decommissioning Relief Agreements: Meaning of "Decommissioning Expenditure"

Summary

1. Section 81 defines "decommissioning expenditure" for the purposes of section 81

Details of the Section

2. Subsections (1) to (4) of this section define the categories of expenditure which constitute "decommissioning expenditure" for the purpose of section 81.

3. Subsections (5) and (6) provide that HM Treasury may amend this section by order, and this order may include transitional provision and savings. Where such an order is made it shall be subject to the negative resolution procedure.

Background

4. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 82: Decommissioning Relief Agreements: Annual Report

Summary

1. Section 82 introduces a requirement for HM Treasury to lay before Parliament an annual report on the Government's liabilities under decommissioning relief agreements.

Details of the Section

2. Subsection (1) of this section provides that in each financial year HM Treasury must prepare a report.

3. Subsection (2) defines the information which must be contained in the report.

4. Subsection (3) provides that the report for a financial year must be laid before the House of Commons as soon as is reasonably practicable after the end of that year.

5. Subsection (5) provides that this section has effect in relation to financial years ending on or after 31 March 2014.

Background

6. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 83: Decommissioning Relief Agreements: Effect of Claim on Prt

Summary

1. Section 83 makes a number of amendments to existing legislation which have the effect of ensuring that no tax relief can be obtained by a company in respect of expenditure, relief for which has already been obtained under a decommissioning relief agreement. These amendments also ensure that where a company's tax history is used to calculate

a payment under a decommissioning relief agreement in respect of any expenditure incurred by a claimant then that tax history will reflect that expenditure so incurred. The amendments come into force in relation to any sum payable to a company under a decommissioning relief agreement on or after the date of Royal Assent to Finance Act 2013.

Details of the Section

2. Subsection (1) provides that this section applies where a sum is payable to a claimant under a decommissioning relief agreement.

3. Subsections (2) and (3) provide that where expenditure incurred by the claimant, and taking into account its assessable profits, is used to calculate the payment under the decommissioning relief agreement then, for the purposes of petroleum revenue tax, the claimant's profits are treated as reduced by that expenditure as if the payment had been made by way of relief through a repayment of tax.

4. Subsections (4) and (5) provide that where expenditure incurred by the claimant is used to calculate the payment under the decommissioning relief agreement with reference to another company's assessable profits, then, for the purposes of petroleum revenue tax, that other company's profits are treated as reduced by that expenditure as if that other company had incurred the expenditure and the payment had been made by way of relief through a repayment of tax.

5. Subsection (6) provides the meaning of "assessable profit", "chargeable period", "company", "decommissioning relief agreement" and "the reference amount".

Background

6. Companies may obtain relief under a decommissioning relief agreement in respect of expenditure incurred for the purposes of tax. For petroleum revenue tax (PRT) this relief is calculated by reference to assessable profits arising in current and previous chargeable periods. Moreover in a situation where a claimant is incurring decommissioning expenditure as a result of another company defaulting on its decommissioning liability, the profits referred to may be in respect of companies other than the claimant.

7. This section reduces, for the purposes of PRT, assessable profits of a company where those profits have been used to calculate the reference amount under a decommissioning relief agreement. This is achieved by deeming expenditure to have been incurred and applied in the same way as provided for under the decommissioning relief agreement.

8. The effect of this section is to prevent a company obtaining tax relief in respect of profits that have already been used in order to provide relief through the decommissioning relief agreement.

9. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 84: Decommissioning Relief Agreements: Terminal Losses Accruing by Virtue of Another's Default

Summary

1. Section 84 makes amendments to existing petroleum revenue tax (PRT) legislation which have the effect of ensuring that, where a company that has rights under a decommissioning relief agreement has incurred decommissioning expenditure as a consequence of another company defaulting on its own decommissioning liability, the terminal loss provisions of paragraph 15 of Schedule 17 to FA 1980 will not apply with

the proviso that the disapplication of the terminal loss provisions by virtue of this section does not give rise to an allowable unrelievable field loss. The amendments come into force in relation to a default occurring on or after the date of Royal Assent to Finance Act 2013.

Details of the Section

2. Subsection (1) provides that this section applies where a company that has rights under a decommissioning relief agreement incurs decommissioning expenditure as a consequence of another company's default on a decommissioning liability, and but for paragraph 15 of Schedule 17 to FA 1980 a sum would be payable to the company under the decommissioning relief agreement.

3. Subsection (2) provides that paragraph 15 of Schedule 17 to FA 1980 does not apply.

4. Subsection (3) provides that any allowable unrelievable field loss that would arise as a result of subsection (2) is not to be regarded as arising.

5. Subsection (4) provides that this section does not affect the operation of section 83(3) or (5).

6. Subsection (5) provides definitions for "abandonment programme", "company", "decommissioning expenditure", "decommissioning relief agreement", "oil field", "relevant agreement" and "unrelieved portion".

Background

7. For the purposes of PRT paragraph 15 of Schedule 17 to FA 1980 provides for terminal losses in respect of a current participator in an oil field to be carried back and relieved against profits of a former participator in that oil field. This will result in a participator obtaining tax relief in respect of expenditure incurred by another participator.

8. In many cases the effect of this provision is recognised and mitigated through commercial arrangements between the parties involved which often provide for the participator incurring the expenditure to receive the benefit of the relief paid to a former participator.

9. However, where a participator incurs decommissioning expenditure as a result of another participator defaulting on its decommissioning liability then such commercial arrangements are unlikely to apply and the participator incurring the expenditure is denied the benefit of the relief paid to former predecessors in respect of that expenditure.

10. To address this issue this section disapplies paragraph 15 of Schedule 17 to FA 1980 where a participator has incurred decommissioning expenditure as a consequence of a default and has rights under a decommissioning relief agreement. In such cases, a participator will instead be able to achieve an equivalent amount of relief directly through a decommissioning relief agreement.

11. The section also ensures that the disapplication of paragraph 15 of Schedule 17 to FA 1980 by virtue of this section does not give rise to any allowable unrelievable field loss.

12. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 85: Decommissioning Relief: Decommissioning Relief Agreements: Claims under Agreement Not to Affect Oil Allowance

Summary

1. Section 85 restricts the operation of section 83 which has the effect of ensuring that there is no consequential reduction of profits by virtue of relief by way of oil allowance. The amendments come into force in relation to any sum payable to a company under a decommissioning relief agreement on or after the date of Royal Assent to Finance Act 2013.

Details of the Section

2. Subsection (1) provides that this section applies where a company that has rights under a decommissioning relief agreement incurs decommissioning expenditure as a consequence of another company's default on a decommissioning liability with the result that section 83 applies to reduce the profits of that company or any other company

3. Subsection (2) provides that the reduction in profits by virtue of section 83 does not have any effect for the operation of oil allowance under section 8(1) of OTA 1975.

4. Subsection (3) provides definitions for "abandonment programme", "company", "decommissioning expenditure", "decommissioning relief agreement", "oil field" and "relevant agreement".

Background

5. Companies may obtain relief under a decommissioning relief agreement in respect of expenditure incurred for the purposes of tax. For Petroleum Revenue Tax (PRT) this relief is calculated by reference to assessable profits arising in current and previous chargeable periods. Moreover in a situation where a claimant is incurring decommissioning expenditure as a result of another company defaulting on its decommissioning liability, the profits referred to may be in respect of companies other than the claimant.

6. Section 83 reduces, for the purposes of PRT, assessable profits of a company where those profits have been used to calculate the reference amount under a decommissioning relief agreement. This is achieved by deeming expenditure to have been incurred and applied in the same way as provided for under the decommissioning relief agreement. The effect of this is to prevent a company obtaining tax relief in respect of profits that have already been used in order to provide relief through the decommissioning relief agreement.

7. One of the consequences of the operation of section 83 is to make available additional oil allowance under the operation of section 8 of OTA 1975. This in turn may, under certain circumstances, have the effect of reducing the profits of other companies and, as a result, reduce relief available through the decommissioning relief agreement.

8. The effect of this section is to prevent section 83 from giving effect to further relief under the oil allowance provisions of section 8 of OTA 1975.

9. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 86: Decommissioning Relief: Removal of Iht Charges in Respect of Decommissioning Security Settlements

Summary

1. Section 86 removes the charge to inheritance tax (IHT) on property held in decommissioning security settlements. The section achieves this by amending the definition of relevant property at section 58(1) Inheritance Act 1984 (IHTA) to exclude property held in decommissioning security settlements from that definition. The change is treated as having come into force on 20 March 1993.

Details of the Section

2. Subsection 2 inserts a new section 58(1)(eb) to add property in a decommissioning security settlement as one of the categories of settled property in section 58(1) that is not to be regarded as relevant property. This has the effect of excluding such settlements from the IHT charges which would otherwise apply to relevant property.

3. Subsection 3 inserts new sections 58(6) and 58(7) into IHTA, which define the meaning of "decommissioning security settlement" and explain the meaning of certain terms used in these provisions respectively.

4. Subsection 5 provides necessary linkage to the Petroleum Tax Act 1987 so that the new exclusion in section 58(1) also applies to the equivalent of an approved abandonment programme under that Act.

5. Subsection 6 prevents the charge which would normally arise under section 65 IHTA when property ceases to be relevant property from applying if the only reason for that charge would be that the property in the decommissioning security settlement ceases to be relevant property as a result of the application of these new provisions.

Background

6. Property held in decommissioning security settlements, whether money or alternative provision such as standby letters of credit, is settled property for IHT purposes and as such is "relevant property" as defined in section 58(1) IHTA. Relevant property held in settlements is within the charge to IHT in accordance with the provisions contained in Part 3 of IHTA.

7. The change made by this section forms part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, removing barriers to the transfer of licence interests and increasing capacity for additional investment in the UK Continental Shelf.

Section 87: Decommissioning Relief: Loan Relationships Arising from Decommissioning Security Settlements

Summary

1. Section 87 removes the possibility of income arising in a decommissioning security settlement being taxed twice. The section achieves this by providing that loan relationship debits and credits are not brought into account in respect of a company's loan relationships, where they arise in relation to a decommissioning security settlement. This section has effect in relation to accounting periods beginning on or after the day that Finance Act 2013 receives Royal Assent.

Details of the Section

2. Subsection (1) inserts a new section 287A into Corporation Tax Act 2010.

3. Subsection (1) of section 287A provides that no loan relationship debits or credits are brought into account in respect of a company's loan relationships insofar as the loan relationship relates to a decommissioning security settlement.

4. Subsection (2) of section 287A defines "decommissioning security settlement".

5. Subsection (3) of section 287A provides the meaning of "abandonment programme" and "security".

Background

6. The legislation relating to the taxation of corporate debt is contained in Part 5 of the Corporation Tax Act 2009 (CTA 2009) which applies to loan relationships. Amounts brought into account as credits and debits for the purposes of these rules are those recognised in determining a company's profit and loss in accordance with generally accepted accounting practice.

7. It is possible that taxable loan relationship credits might arise where a company makes a payment into a decommissioning security settlement to meet future decommissioning costs. Where these funds are invested and earn interest the income may be taxed twice, once on the decommissioning security settlement and also as a loan relationship credit of the company.

8. This section ensures loan relationship credits and debits are not treated as arising for the purposes of Part 5, Chapter 3, CTA 2009 to a company where they arise in relation to a decommissioning security settlement.

9. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 88: Decommissioning Relief: Decommissioning Expenditure Taken into Account for Prt Purposes

Summary

1. Section 88 amends section 330B Corporation Tax Act 2010 (CTA 2010) to change the accounting period for which a deduction is given. The section provides that the deduction from profits provided by section 330B is given for the accounting period for which an addition to profits is provided by section 330A in respect of decommissioning expenditure.

Details of the Section

2. Subsection (1) provides that section 330B CTA 2010 is amended by subsections (2) to (6).

3. Subsection (2) inserts new paragraph (c) into subsection (1) of section 330B.

4. New paragraph (c) of section 330B(1) CTA 2010 is an additional condition which governs whether section 330B applies. The condition is that an amount equal to the appropriate fraction of the used-up amount of decommissioning expenditure is added under section 330A(2) in calculating the participator's adjusted ring fence profits for an accounting period.

5. Subsection (3) substitutes subsection (2) in section 330B.

6. New subsection (2) of section 330B provides the deduction to be made in respect of the PRT difference in calculating the adjusted ring fence profits for the accounting period.

7. Subsection (4) inserts a definition of 'the relevant percentage of the decommissioning expenditure' in section 330B(3) and makes consequential changes to two other definitions.

8. Subsection (5) makes a consequential amendment to section 330B(4).

9. Subsection (6) amends section 330B(7) to remove one definition and to provide that 'the used-up amount' takes the same meaning as in section 330A.

10. Subsection (7) provides that the amendments have effect in relation to expenditure incurred in connection with decommissioning carried out on or after Royal Assent to Finance Act 2013.

Background

11. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 89, Schedule 31: Decommissioning Relief: Miscellaneous Amendments Relating to Decommissioning

Summary

1. Section 89 introduces Schedule 31. Part 1 of Schedule 31 makes a number of amendments to existing legislation. These taken collectively have two effects. Firstly, they remove an anomaly whereby in the case of oil fields that were not subject to petroleum revenue tax (PRT), tax relief was not available for expenditure on obtaining an abandonment guarantee and expenditure incurred by a company as a result of another company's defaulting on its own abandonment commitments. Secondly, these amendments disapply, for the purposes of ring fence corporation tax (RFCT), PRT, and income tax (IT) in the context of oil activities, the general principle that a person is not entitled to relief in respect of expenditure to the extent that it has been met by another party's contribution (contribution and reimbursement rules). Part 2 of Schedule 31 provides for the taxation of any profit which arises to a person from the incurring of decommissioning expenditure as a consequence of the default of another person. The amendments come into force in relation to expenditure incurred on or after the date of Royal Assent to Finance Act 2013.

Details of the Schedule

Part 1

Expenditure on abandonment guarantees

2. Paragraphs 1 and 2 amend sections 225N and 225R of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) and sections 292 and 296 Corporation Tax Act 2010 (CTA) to ensure these sections also apply in respect of oil fields that are not subject to PRT.

Expenditure under abandonment guarantees

3. Paragraphs 3 and 4 provide that paragraph 8 of Schedule 3 and paragraph 2A of Schedule 5 to the Oil Taxation Act 1975 (OTA) do not apply to expenditure which is met out of a payment under an abandonment guarantee or security.

4. Paragraphs 5 to 7 omit sections and sub-sections in the Finance Act 1991 (FA), ITTOIA and CTA.

Reimbursement by defaulter in respect of abandonment expenditure

5. Paragraphs 8 to 10 omit sections in FA, ITTOIA and CTA so as to disapply, for the purposes of oil activities, the reimbursement rules.

Consequential amendments

6. Paragraphs 11 to 20 make minor consequential changes resulting from the amendments made by this Schedule.

Part 2

7. Paragraph 21 inserts section 298A into Corporation Tax Act 2010 (CTA 2010).

8. Subsection (1) of section 298A provides that the section applies if:

    a. a company carrying on a ring fence trade (‘the defaulter’) has defaulted on a liability to pay decommissioning expenditure,

    b. another company carrying on a ring fence trade (‘the contributing company’) pays an amount (‘the relevant contribution’) towards meeting the default, and

    c. the relevant contribution is less than the sum of the amounts within subsection (2).

9. Subsection (2) of section 298A provides that the amounts within this subsection are:

    a. any payments made to the contributing company by the guarantor under an abandonment guarantee,

    b. any reimbursement payments, and

    c. any tax relief which the contributing company obtains in respect of the relevant contribution.

10. Subsection (3) of section 298A provides that the difference between the sum of the amounts within subsection (2) and the relevant contribution (“the relevant difference”) is to be treated as a receipt of the contributing company’s ring fence trade for the relevant accounting period.

11. Subsections (4) to (6) of section 298A define “the certification date” and “the relevant accounting period”.

12. Subsection (7) of section 298A provides the basis on which the “relevant difference” is to be determined.

13. Subsection (8) of section 298A provides that where subsections (5) or (6) apply corporation tax is due and payable as if it were corporation tax for an accounting period beginning with the certification date.

14. Subsection (9) of section 298A provides that any additional assessment required to take account of a receipt under this section may be made at any time not later than 4 years after the end of the calendar year in which the certification date falls.

15. Subsection (10) of section 298A provides the meaning of certain terms used in this section.

16. Paragraph 22 inserts section 225V into Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005).

17. Section 225V replicates, for the purposes of ITTOIA 2005, the effect of new section 298A CTA 2010.

Background

18. Section 292 (1) and (2) CTA and section 225N ITTOIA provide that where expenditure on an abandonment guarantee qualifies for relief for PRT purposes it also qualifies as a deduction in computing ring fence income.

19. Section 296 CTA and section 225R ITTOIA operate where the PRT provisions in paragraph 2A of Schedule 5 to OTA apply.

20. The changes made by Schedule 1 ensure sections 292 (1) and (2) and 296 CTA and sections 225N and 225R ITTOIA apply in respect of non-PRT fields.

21. Schedule 1 also amends and repeals the RFCT, PRT and IT contribution and reimbursement rules. This is being done to ensure that companies which accept decommissioning security on a post-tax basis will receive full tax relief for any expenditure they incur in respect of a defaulting company's decommissioning obligations.

22. The amendments made by Schedule 1 form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

23. The amendments come into force in relation to expenditure incurred on or after the date of Royal Assent to Finance Act 2013.

Section 90: Decommissioning Relief: Expenditure on Decommissioning Onshore Installations

Summary

1. Section 90 extends the meaning of 'general decommissioning expenditure' for plant and machinery allowances to include onshore assets used for the purposes of offshore oil and gas production. This enables the special allowance which is available for decommissioning expenditure in respect of offshore assets to apply to such onshore assets.

Details of the Section

2. Subsection (1) provides that section 163 Capital Allowances Act (CAA) 2001 is amended by subsections (2), (3) and (4).

3. Subsection (2) amends subsection (1) of section 163 to extend the qualifying conditions for expenditure to be 'general decommissioning expenditure'.

4. Subsection (3) inserts new subsections (3B) and (3C) into section 163.

5. New subsection (3B) of section 163 requires that the expenditure must have been incurred on decommissioning plant or machinery:

   (a) which has been used for the purposes of a ring fence trade; and,

   (b) which is or forms part of a relevant onshore installation, or when last in use for the purposes of a ring fence trade was or formed part of such an installation.

6. New subsection (3C) of section 163 provides the definition of a 'relevant onshore installation'.

7. Subsection (4) amends subsection (5) of section 163 to include a definition of 'oil'.

8. Subsection (5) provides that the changes made by the section have effect in relation to expenditure incurred on decommissioning carried out on or after Royal Assent to Finance Act 2013.

Background

9. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 91: Decommissioning Relief: Expenditure on Decommissioning Certain Redundant Plant Or Machinery

Summary

1. Section 91 inserts new subsections into section 164 Capital Allowances Act (CAA) 2001. The subsections regard plant or machinery, which was redundant when acquired incidentally to the acquisition of an installation, as having been brought into use for the purposes of the ring fence trade, thus enabling expenditure on the decommissioning of the plant or machinery to qualify for relief.

Details of the Section

2. Subsection (1) inserts new subsections (1C), (1D) and (1E) into section 164 of CAA 2001.

3. New subsection (1C) of section 164 provides that if plant or machinery is incidentally-acquired redundant plant or machinery it is regarded as having been brought into use for the purposes of the ring fence trade.

4. New subsection (1D) of section 164 defines 'incidentally- acquired redundant plant or machinery'.

5. New subsection (1E) of section 164 provides the meaning of 'relevant installation', 'offshore installation', 'submarine pipeline' and 'relevant onshore installation'.

6. Subsection (2) provides that the change made by this section has effect in relation to expenditure incurred on decommissioning carried out on or after Royal Assent to Finance Act 2013.

Background

7. The amendment made by this section forms part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 92: Decommissioning Relief: Expenditure on Site Restoration

Summary

1. Section 92 inserts new sections 416ZA and 416ZB into Capital Allowances Act (CAA) 2001. Section 416ZA provides relief under the Mineral Extraction Allowances code for expenditure on site restoration incurred by a person who is or has been carrying on a ring fence trade. The section also provides that any resulting loss can access the extended period for which loss relief may be given for ring fence trades and the extended period within which a claim can be made.

Details of the Section

2. Subsection (1) provides that part 5 of CAA 2001 is amended by subsections (2) to (5).

3. Subsection (2) makes a consequential change to the definition of 'qualifying expenditure' in section 395 CAA 2001.

4. Subsection (3) inserts new subsection (2A) into section 403 CAA 2001. The new subsection provides that for the purposes of section 403 expenditure incurred on the restoration of a relevant site is not expenditure on acquiring a mineral asset.

5. Subsection (4) makes consequential changes to section 416 CAA 2001 (expenditure on restoration within 3 years of ceasing to trade).

6. Subsection (5) inserts new section 416ZA (ring fence trades: expenditure on site restoration) and new section 416ZB ('notional accounting period') into CAA 2001.

7. Subsection (1) of section 416ZA provides that if certain conditions are met the net cost of the restoration is qualifying expenditure for the relevant period in which that part of the work to which the expenditure relates was carried out.

8. Subsection (2) of section 416ZA provides the meaning of 'relevant period'.

9. Subsection (3) of section 416ZA provides that the qualifying expenditure for a notional accounting period is treated as incurred on the last day of trading.

10. Subsection (4) of section 416ZA provides that if the expenditure incurred is disproportionate to the work carried out in a relevant period, only so much of the net cost of the restoration as is proportionate is to be treated as qualifying expenditure for that period.

11. Subsection (5) of section 416ZA provides that subsection (4) does not prevent that part of the expenditure that is not allowable expenditure for the period from being treated as qualifying expenditure for a subsequent relevant period.

12. Subsection (6) of section 416ZA provides that if any expenditure is qualifying expenditure:

    (a) all the expenditure on the restoration is not deductible in calculating income for tax purposes; and,

    (b) none of the amounts subtracted to produce the net cost is to be treated as income for tax purposes.

13. Subsection (7) of section 416ZA provides that 'restoration' includes certain activities but does not include decommissioning any plant or machinery.

14. Subsection (8) of section 416ZA provides the meaning of a 'relevant site'.

15. Subsection (9) of section 416ZA provides the meaning of 'the net cost of the restoration'.

16. Subsection (10) of section 416ZA provides that all such adjustments are to be made as are necessary to give effect to this section.

17. Subsection (11) of section 416ZA provides the meaning of 'abandonment programme', 'approval', 'approved', 'foreign sector of the continental shelf', 'ring fence trade', 'oil', 'oil field' and 'UK marine area'.

18. Subsection (1) of section 416ZB provides the meaning of 'notional accounting period' for the purposes of section 416ZA in relation to a person who has ceased to carry on a ring fence trade.

19. Subsection (2) of section 416ZB provides that there are to be no notional accounting periods after the end of the post-cessation period.

20. Subsection (3) of section 416ZB provides the meaning of 'termination event' in relation to a notional accounting period.

21. Subsection (4) of section 416ZB provides the meaning of 'post-cessation period'.

22. Subsection (5) of section 416ZB provides the meaning of ‘the appropriate authority’.

23. Subsections (6) and (7) of section 416ZB provide further rules in respect of the meaning of ‘termination event’.

24. Subsection (8) of section 416ZB provides that expressions used in section 416ZB have the same meaning as they do in section 416ZA.

25. Subsection (6) makes a consequential change to section 416B (first year qualifying expenditure).

26. Subsection (7) provides that part 4 of CTA 2010 (loss relief) is amended by subsections (8) and (9).

27. Subsection (8) replaces a reference to section 403 CAA 2001 in section 40 CTA 2010 (ring fence trades: extension of periods for which relief may be given) with a reference to section 416ZA.

28. Subsection (9) amends section 43 CTA 2010 (claim period in case of ring fence or mineral extraction trades) to include section 416ZA and to make a consequential amendment.

29. Subsection (10) provides that the amendments made by this section have effect in relation to expenditure incurred on restoration carried out on or after Royal Assent to Finance Act 2013.

Background

30. The amendments made by this section form part of the Government’s wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Section 93, Schedule 32: Decommissioning Relieg: Restrictions on Allowances for Certain Oil-Related Expenditure

Summary

1. Section 93 introduces Schedule 32. Part 1 of Schedule 32 provide that where a connected person provides a decommissioning service to a person who is carrying on or has ceased to carry on a ring fence trade, the plant and machinery allowances in respect of decommissioning expenditure are restricted to the cost to the connected person of providing the service. Part 1 provides exceptions to this rule for certain expenditure to which the cost plus method is to be applied, and for expenditure in some circumstances where unconnected parties are co-licensees in the field. Part 1 also restricts allowances where a transaction, scheme or arrangement has an avoidance purpose. Part 2 of Schedule 32 provides similar rules where a connected person provides site restoration services to a person who is carrying on or has ceased to carry on a ring fence trade. Part 3 of Schedule 32 makes necessary amendments to the transfer pricing rules in TIOPA 2010.

Details of the Schedule

2. Paragraph 1 provides that Capital Allowances Act 2001 (CAA 2001) is amended by Part 1 of the Schedule.

3. Paragraph 2 inserts new sections 165A to 165E into CAA 2001.

4. Subsection (1) of section 165A provides that plant and machinery allowances are restricted under section 165B(1) if a connected person (S) provides a service to a person (R) who is carrying on or has ceased to carry on a ring fence trade and all or part of the consideration for the service is decommissioning expenditure.

5. Subsection (2) of section 165A provides more detail for the purposes of subsection (1)(b).

6. Subsection (3) of section 165A applies subsections (4) to (9) for the purposes of sections 165A to 165E.

7. Subsection (4) of section 165A provides more detail about what is included within ‘providing a service’.

8. Subsection (5) of section 165A defines ‘decommissioning expenditure’.

9. Subsection (6) of section 165A defines ‘decommissioning’.

10. Subsections (7) and (8) of section 165A provide further detail for the purposes of subsection (6).

11. Subsection (9) of section 165A provides the meaning of ‘R’s expenditure under the arrangement’.

12. Subsection (1) of section 165B provides that the amount if any by which R’s expenditure under the arrangement exceeds D is to be left out of account in determining R’s available qualifying expenditure.

13. Subsection (2) of section 165B provides the amount of D.

14. Subsection (3) of section 165B provides that subsection (2) is subject to sections 165C and 165D, which provide for D to be calculated differently in certain circumstances.

15. Subsection (4) of section 165B provides the amount of D if a service is provided by more than one connected person.

16. Subsection (1) of section 165C provides that section 165C applies to so much of R’s expenditure as relates to the supply by S of a service if the service is a planning or project management service, and the cost plus method is an appropriate method of applying the arm’s length principle to the provision of it.

17. Subsection (2) of section 165C provides that D is the sum of the cost to S of providing the service or the part of the service, and the appropriate percentage of that amount.

18. Subsection (3) of section 165C provides the meaning of ‘the appropriate percentage’.

19. Subsection (4) of section 165C provides that any expression used in section 165C and in the transfer pricing guidelines (as defined by section 164(4) TIOPA 2010) takes its meaning from those guidelines.

20. Subsection (1) of section 165D provides that section 165D applies where S decommissions the plant or machinery, there are one or more other participators in the relevant field and the decommissioning expenditure is apportioned between the participators in accordance with their shares in the oil won from the relevant field or their shares in the equity of that field.

21. Subsection (2) of section 165D provides the amount of D.

22. Subsection (3) of section 165D provides that where plant or machinery is or has been used in connection with winning oil from more than one relevant field, and the decommissioning expenditure is apportioned between those fields in accordance with the contribution from each field to the total of the oil won using that plant or machinery, subsections (1) and (2) apply to each such field as if subsection (1)(c) referred to the expenditure apportioned to that field.

23. Subsection (4) of section 165D provides that subsections (2) and (3) do not apply, and section 165B(2) applies instead, if the amount of consideration or the method of determining that amount to be received by S, or the apportionment of the liability for that consideration between the participators or the fields, is part of an avoidance scheme.

24. Subsection (5) of section 165D provides the meaning of ‘avoidance scheme’.

25. Subsection (6) of section 165D provides more detail on the meaning of ‘obtaining a tax advantage’.

26. Subsection (7) of section 165D provides that ‘licensee’, ‘oil’ and ‘oil field’ take their meaning from Part 1 of OTA 1975 and provides a definition of ‘other participator’ and ‘relevant field’.

27. Subsection (1) of section 165E provides that allowances under Part 2 CAA 2001 are restricted under subsection (5) if a person (R) who is carrying on or has ceased to carry on a ring fence trade enters into a transaction with another person (S) who receives from R consideration for services provided, all or part of that consideration is decommissioning expenditure and the transaction has, or is part of or occurs as a result of a scheme or arrangement that has, an avoidance purpose.

28. Subsection (2) of section 165E provides further detail as to the circumstances in which subsection (1) may be satisfied.

29. Subsection (3) of section 165E provides the circumstances in which a transaction, scheme or arrangement has an ‘avoidance purpose’.

30. Subsection (4) of section 165E provides more detail on the meaning of ‘obtaining a tax advantage’.

31. Subsection (5) of section 165E provides that all or part of R’s expenditure is to be left out of account in determining R’s available qualifying expenditure.

32. Subsection (6) of section 165E provides that the amount of expenditure to be left out of account is such amount as would or would in effect cancel out the tax advantage.

33. Paragraphs 3 to 7 provide consequential amendments to CAA 2001.

34. Paragraph 8 provides that the amendments made by Part 1 have effect in relation to expenditure incurred on decommissioning carried out on or after Royal Assent to Finance Act 2013.

35. Paragraph 9 inserts new sections 416ZC, 416ZD and 416ZE into CAA 2001.

36. Subsection (1) of section 416ZC provides that the amount of expenditure which is qualifying expenditure is restricted under section 416ZD(1) where a connected person (S) provides a service in connection with work on the restoration of a relevant site to a person (R) who is carrying on or has ceased to carry on a ring fence trade and all or part of the consideration for the service would be qualifying expenditure of R under section 416ZA.

37. Subsection (2) of section 416ZC provides more detail for the purposes of subsection (1)(b).

38. Subsection (3) of section 416ZC provides that subsections (4) and (5) apply for the purposes of sections 416ZC, 416ZD and 416ZE.

39. Subsection (4) of section 416ZC provides that ‘relevant site’ has the meaning given by section 416ZA(8).

40. Subsection (5) of section 416ZC provides more detail about what is included within ‘providing a service’.

41. Subsection (1) of section 416ZD provides that the amount if any by which the consideration for the service exceeds D is to be left out of account in determining the qualifying expenditure.

42. Subsection (2) of section 416ZD provides the amount of D.

43. Subsection (3) of section 416ZD provides that subsection (2) is subject to subsection (4) and section 416ZE which provide for D to be calculated differently in certain circumstances.

44. Subsection (4) of section 416ZD provides that section 165C and section 165E (subject to the modifications in subsection (5)) apply to an amount restricted under subsection (1) as they apply to an amount restricted under section 165B(1).

45. Subsection (5) of section 416ZD provides the modifications to which section 165E is to be subject.

46. Subsection (6) of section 416ZD provides the amount of D if a service is provided by more than one connected person.

47. Subsection (1) of section 416ZE provides that section 416ZE applies where S carries out the restoration of a relevant site, there are one or more other participators in the relevant field and the expenditure incurred in carrying out the restoration is apportioned between the participators in accordance with their shares in the oil won from the relevant field or their shares in the equity of that field.

48. Subsection (2) of section 416ZE provides the amount of D.

49. Subsection (3) of section 416ZE provides that in some circumstances subsections (1) and (2) apply to each such field as if subsection (1)(c) referred to the expenditure apportioned to that field.

50. Subsection (4) of section 416ZE provides that subsections (2) and (3) do not apply, and section 416ZD(2) applies instead, if the amount of consideration or the method of determining that amount to be received by S, or the apportionment of the liability for that consideration between the participators or the fields, is part of an avoidance scheme.

51. Subsection (5) of section 416ZE provides the meaning of ‘avoidance scheme’.

52. Subsection (6) of section 416ZE provides more detail on the meaning of ‘obtaining a tax advantage’.

53. Subsection (7) of section 416ZE provides the meaning of ‘relevant field’ in relation to the restoration of a relevant site.

54. Subsection (8) of section 416ZE provides that ‘licensee’, ‘oil’ and ‘oil field’ take their meaning from Part 1 of OTA 1975 and provides the meaning of ‘other participator’.

55. Paragraph 10 makes a consequential amendment to section 395(3) CAA 2001.

56. Paragraph 11 provides that the amendments made by Part 2 have effect in relation to expenditure incurred on restoration carried out on or after Royal Assent to Finance Act 2013.

57. Paragraph 12 provides that Part 4 of TIOPA 2010 (transfer pricing) is amended by paragraphs 13 to 15.

58. Paragraph 13 inserts paragraph (ba) into section 147(6) (list of exceptions to the basic rule stated in that section).

59. Paragraph 14 inserts new section 206A (modification of basic rule where allowances restricted for certain expenditure) into TIOPA 2010.

60. Subsection (1) of section 206A provides that section 206A applies where in a case to which section 165A(1) of CAA 2001 applies R’s available qualifying expenditure is restricted under section 165B(2) or section 165C of CAA 2001, or in a case to which section 416ZC(1) of CAA 2001 applies R’s qualifying expenditure is restricted under section 416ZD(2) or section 165C.

61. Subsection (2) of section 206A provides the amount which S is required to bring into account in calculating for tax purposes its profits and losses in relation to the service provided to R.

62. Subsection (3) of section 206A provides that section 147(3) and (5) do not apply to the extent they are inconsistent with subsection (2).

63. Subsection (4) of section 206A provides that in section 206A 'R' and 'S' have the meaning given by section 165A or 416ZC of CAA 2001.

64. Paragraph 15 inserts new subsection (3) into section 213 TIOPA 2010.

65. Subsection (3) of section 213 TIOPA 2010 provides that a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165E or 416ZC to 416ZE of CAA 2001.

66. Paragraph 16 provides that the amendments made by Part 3 have effect for accounting periods ending on or after Royal Assent to Finance Act 2013.

Background

67. The amendments made by this section form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

Sections 94 – 174, Schedules 33, 34, 35: Annual Tax on Enveloped Dwellings

Summary

1. Sections 94 to 174 and Schedules 33 to 35 introduce a new tax called the annual tax on enveloped dwellings. This is chargeable on companies, collective investment schemes and partnerships with company members who hold UK residential dwellings valued at greater than £2 million on specified valuation dates. The measure takes effect from 1 April 2013. The annual tax is in most cases payable on or before 31 October 2013 for 2013/14, and on or before 30 April each year subsequently. If the payer is not chargeable for the full year, a repayment claim can be made. The section provides a number of reliefs against the tax for, amongst other things, residential dwellings that are leased out in a property rental business; held for sale in a property development or trading business; exploited in a trade of permitting the public to visit, stay in or otherwise enjoy the property; or provided for employees to use in the owner's trade. There are also reliefs for charities and exemptions for public and national bodies and dwellings conditionally exempt from inheritance tax.

Details of the Sections

Section 94 – Charge to Tax

2. Subsection (1) provides for the new annual tax on enveloped dwellings to be charged.

3. Subsections (2) and (3) set out the two conditions that must apply on any day for the tax to be charged for a chargeable period: an interest (a "single-dwelling interest" ("SDI") in a UK dwelling exists of taxable value greater than £2 million, and a company, partnership or collective investment scheme meets the ownership condition in relation to that interest.

4. Subsection (4) defines the ownership condition for a company as entitlement to the single-dwelling interest (except where it is entitled as a member of a partnership or the purpose of a collective investment scheme).

5. Subsection (5) defines the ownership condition for a partnership other than a collective investment scheme as entitlement to a single-dwelling interest of a member of a partnership that is a company, as a member of the partnership.

6. Subsection (6) defines the ownership condition for a collective investment scheme as holding for the purposes of the scheme.

7. Subsection (7) provides for the ownership condition to be regarded as met in relation to the whole chargeable interest where a company is jointly beneficially entitled to a chargeable interest (as a member of a partnership or otherwise).

8. Subsection (8) defines the chargeable periods.

9. Subsection (9) refers to Section 95 of the legislation which provides a definition of “beneficially entitled”.

Section 95 – Entitlement to interests

10. Subsections (1) and (3) specify that entitled means beneficially entitled, and includes both sole and joint entitlement, and entitlement to partnership property as a member of a partnership, unless the contrary is specified.

11. Subsection (2) excludes entitlement in the capacity of a trustee or personal representative, and entitlement as a beneficiary under a settlement.

12. Subsection (4) defines settlement as having the same meaning as for Stamp Duty Land Tax (SDLT) in Part 4 of FA 2003

Section 96 – Person Liable

13. Subsection (1) requires the chargeable person to pay the annual tax on enveloped dwellings.

14. Subsections (2) and (5) define the chargeable person: where a company is entitled to a single dwelling interest, as the company; where a partnership is entitled to a single dwelling interest, the chargeable person is the responsible partners.

15. Subsection (3) defines the chargeable person for section 94(6) for the different types of collective investment schemes set out in this subsection.

16. Subsection (4) specifies the liability of the responsible partners to pay tax is joint and several.

17. Subsection (5) defines the responsible partners for subsection 2(b) as all who are members of the partnership on the first day of the chargeable period when the partnership meets the ownership condition with respect to the single dwelling interest.

18. Subsection (6) explains that the annual tax is “charged on” the chargeable person and that the person is said to be “chargeable to” the tax.

Section 97 – Liability of persons jointly entitled

19. Subsection (1) sets out the application of subsection 2 where there are one or more joint owners with a company on the first day that it is chargeable in a chargeable period.

20. Subsection (2) states that the company and other person/persons are jointly and severally liable for the tax charged.

21. Subsections (3) and (4) say where a company is entitled to a single dwelling interest as a member of a partnership, and another person who is not a partner is jointly entitled to the single dwelling interest on the first day the responsible partners are chargeable, the person is jointly and severally liable for the tax.

Section 98 - Collective Investment Schemes: liability for and collection of tax

22. Subsection (1) applies subsection 2 where the single dwelling interest is held for the purposes of a collective investment scheme.

23. Subsection (2) states that the major participants in the scheme on the first day in a chargeable period that it is within the charge to the tax are jointly and severally liable for the tax charged in relation to the single-dwelling interest.

24. Subsection (3) limits the amount of liability in relation to any participant to the limit of the market value of their holding in the scheme.

25. Subsection (4) defines holdings as the participant's interests or rights in the scheme.

26. Subsection (5) states that tax charged may be recovered from any depositary of a scheme, limited to the value of any property held by the scheme in the depositary.

27. Subsection (6) provides that the depository may retain out of any money in the scheme property it holds sufficient funds to pay any tax due and that the depository will also have a right of reimbursement against the participants in the scheme for any tax it has paid (whether my way of retention out of the scheme property or otherwise).

28. Subsection (7) defines "depositary" and "participant" as they are defined in the Financial Services and Markets Act 2000.

Section 99 – Amount of tax chargeable

29. Subsection (1) provides for the amount of tax to be charged for a single dwelling interest as specified under subsection (2) or (3).

30. Subsection (2) sets the tax to be charged as the annual chargeable amount if the chargeable person is within the charge on the first day of the chargeable period.

31. Subsection (3) provides that if the chargeable person is not within the charge on the first day of the chargeable period, then the charge is the relevant fraction of the annual chargeable amount.

32. Subsection (4) specifies the annual chargeable amount for a single-dwelling interest, based on band into which the taxable value of the interest falls on the relevant day.

33. Subsection (5) defines the relevant day for subsections (2) and (3) as the first day of the chargeable period or the first day on which the person is within the charge for the interest.

34. Subsection (6) defines the relevant fraction for calculating the annual chargeable amount as the number of days in the chargeable period from the relevant day, as a fraction of the chargeable period.

35. Subsection (7) directs to Sections 100 (Interim relief) and 105 (adjusted chargeable amount) of the legislation.

Section 100 – Interim Relief

36. Subsection (1) provides that interim relief may be claimed before the end of the chargeable period if that period contains one or more relievable days, days when (after being within the charge) the chargeable person is not within the charge, or when the taxable value of the single dwelling interest decreases (for instance on a part-disposal of the interest).

37. Subsection (2) sets out that relief must be claimed in a return or an amendment to a return.

38. Subsections (3) to (7) set out the tax payable when interim relief is claimed. This is made up of two parts. The first is the tax chargeable, after reliefs, for the period up to the day before submission of the return. The second is the tax, if any, that will be chargeable for the remainder of the period on the assumption that if tax is chargeable and not relieved on the day of submission of the return, this will continue to be the case for the remainder of the period.

39. Subsection (8) defines the day of the claim as the day of submission of the relevant return or amended return, and also the "first chargeable day" as the first day that the tax is chargeable in relation to the SDI.

40. Subsection (9) provides a signpost to sections 105 and 106, which cover provision about adjustment of the chargeable amount.

Section 101 – Indexation of annual chargeable amounts

41. Subsection (1) sets out that section 99(4) is to be amended for chargeable periods beginning on or after 1 April 2014, if the consumer price index (CPI) is higher for September in 2013, or any later year than it was for the previous September.

42. Subsection (2) provides for the annual chargeable amounts in section 99(4) that apply for the chargeable periods beginning in the previous 12 months to be substituted with the indexed amount.

43. Subsection (3) specifies the method of calculating the indexed amount.

44. Subsection (4) defines "consumer prices index" for the purposes of this section.

45. Subsection (5) requires the Treasury to make an order before 1 April 2014 and before 1 April annually thereafter, stating the annual chargeable amounts for chargeable periods beginning on or after that date.

Section 102– Taxable value

46. Subsection (1) defines the taxable value as equal to the market value on the last previous valuation date.

47. Subsection (2) sets out that the first valuation date for single-dwelling interests is 1 April 2012 and then there is a valuation date of 1 April every five years subsequently.

48. Subsection (3) defines valuation dates in respect of a single-dwelling interest to which a company is entitled (other than as a member of a partnership) also to include the date when a substantial chargeable interest in the dwelling is acquired or in part disposed of, if that is a qualifying event.

49. Subsection (4) defines valuation dates in respect of a single-dwelling interest to which a company is beneficially entitled as a member of a partnership also to include equivalent dates when the partnership acquires or part disposes of an interest.

50. Subsection (5) defines valuation dates in respect of a single- dwelling interest held for the purposes of a collective investment scheme also to include equivalent dates when an interest is acquired or part disposed of.

51. Subsection (6) confirms that references to disposal of part of a single-dwelling interest to include the grant of a chargeable interest.

52. Subsection (7) excludes the grant of an option from being a chargeable interest for the purposes of subsection (6).

Section 103 – Section 102: "substantial" acquisitions and disposals

53. Subsection (1) provides that an acquisition or a part disposal of a chargeable interest is substantial for the purpose of section 102 only if the chargeable consideration is £40,000 or more.

54. Subsections (2) and (3) provide that if the transaction is between connected parties or not at arms length, market value is to be used rather than chargeable consideration.

55. Subsections (4) and (5) include any linked transactions in the determination of whether the consideration is at least £40,000.

56. Subsections (6) and (7) include market value of linked transactions if they are not at arms length or are between connected parties.

57. Subsections (8) and (9) provide definitions of linked, purchaser, vendor and chargeable consideration.

58. Subsection (10) includes a grant of an interest as a disposal.

Section 104– No double charge

59. Section 104 provides for tax in respect of a single-dwelling interest to be charged only once for any chargeable day even if more than one person is the "chargeable person".

Section 105– "Adjusted chargeable amount"

60. Subsection (1) determines the tax chargeable for a chargeable period in which relief has been claimed for part of the period; the dwelling has ceased to be chargeable in the period; or there has been a change in the annual chargeable amount following a valuation date. It sets out that the adjusted chargeable amount of tax for a chargeable period is the total of the "daily amounts" for that period for all days on which the tax is chargeable in respect of the single dwelling interest.

61. Subsection (2) provides that the daily amount for any day when the single-dwelling interest is within the charge (an "included day") is the annual chargeable amount (determined using the taxable value of the single-dwelling interest applying on the day), divided by the number of days in the chargeable period.

Section 106 – Adjustment of amount chargeable

62. Subsection (1) provides that where the "adjusted chargeable amount" is greater than the initial charged amount, the amount of tax charged is taken to be increased at the end of the chargeable period.

63. Subsection (2) defines "the initial amount charged" as the tax charged under section 99.

64. Subsection (3) provides that subsection (4) applies when a claim for relief is made and the adjusted chargeable amount is less than the initial charged amount.

65. Subsection (4) provides that, where the "adjusted chargeable amount" is less than that self assessed, then the tax charged is to be reduced at the end of the chargeable period to the adjusted chargeable amount.

66. Subsection (5) provides for relief under subsection (3) to be claimed either in an annual tax on enveloped dwellings return or by amending an annual tax on enveloped dwellings return.

67. Subsection (6) specifies the deadline by which a claim for relief must be delivered as the end of the chargeable period following the one of the claim.

68. Subsection (7) provides that relief may be given by repayment or otherwise.

69. Subsection (8) signposts sections 160 and 163 for provisions relating to the payment of further amounts of tax.

Section 107 – Chargeable interests

70. Subsection (1) defines what a chargeable interest is for this Part.

71. Subsection (2) provides that for this Part, when two or more people are jointly entitled to a chargeable interest, it will not be regarded as consisting of separate interests corresponding to their shares (if any) arising from joint entitlement, but will be viewed as a whole.

72. Subsection (3) excludes exempt interests from being chargeable interests.

73. Subsection (4) lists the exempt interests for the purposes of this Part.

74. Subsection (5) defines a security interest for the purposes of subsection (4) (exempt interests for this Part).

75. Subsection (6) states that in respect of the application of this Part in Scotland, the reference to "rentcharge" in subsection (5) means, in Scotland, a "feu duty" or a payment in section 56(1) of the Abolition of the Feudal Tenure etc Scotland Act.

76. Subsection (7) provides for the Treasury to provide by regulations that any other descriptions of interest in or right over a dwelling may be an exempt interest.

Section 108 – Meaning of 'single-dwelling interest'

77. Subsection (1) introduces the section as defining "single dwelling interest".

78. Subsection (2) defines a single-dwelling interest as a chargeable interest that is exclusively in or over land which (on any day) consists of a single dwelling.

79. Subsection (3) provides that where a person is entitled to a chargeable interest in or over land that consists of two or more single dwellings, provisions referring to a "single-dwelling interest" operate as if the person had a separate chargeable interest over each dwelling and that the chargeable interest for each dwelling is thus a single-dwelling interest.

80. Subsection (4) provides that where a person is entitled to a chargeable interest in or over land that consists of non-residential land in addition to one or more single dwellings, provisions referring to a "single-dwelling interest" operate as if the person had a separate chargeable interest over each dwelling, with a further separate chargeable interest over the non-residential land, and the chargeable interest for each dwelling thus a single-dwelling interest.

81. Subsection (5) reference to a single-dwelling interest should be made to a single-dwelling interest "in" the dwelling concerned.

82. Subsection (6) defines each single-dwelling interest as distinct, even where dwellings stand successively on the same land.

83. Subsection (7) defines for the purposes of this Part "non-residential land" and also states that references to a dwelling include part of a dwelling.

Section 109 – Different interests held in the same dwelling

84. Subsection (1) applies subsection (2) where a company or a collective investment scheme holds two or more single-dwelling interests in the same dwelling for one or more days in a chargeable period.

85. Subsection (2) provides for this Part to have effect in respect of the chargeable period such that the taxable value of different interests held in the same dwelling is the sum

of the taxable values of the separate interests, and the separate interests constituted one single-dwelling interest.

86. Subsection (3) requires that in calculating the taxable values of the separate interests their market value is to be determined on the assumption that the interests are placed on the open market together at the appropriate valuation date.

Section 110 – Interests held by connected persons

87. Subsection (1) provides that where on any day entitlements to separate single-dwelling interests in the same dwelling are held by connected persons (e.g. company C and company or person P), the annual tax on enveloped dwellings applies as if each is entitled to the other's single-dwelling interest as well as their own.

88. Subsection (2) provides that where an interest in the dwelling is owned by a company (or a number of such interests are owned by companies) and the connected person is an individual the rules in the Part do not operate unless that interest has a value of greater than £500,000.

89. Subsection (3) provides similarly that where on any day, a single-dwelling interest is held for the purposes of a collective investment scheme and a connected person is entitled to a different single-dwelling interest in the same dwelling, the annual tax on enveloped dwellings applies to each as if the connected person were entitled to both interests and, for the collective investment scheme, both interests were held for the purposes of the scheme.

90. Subsection (3) provides an equivalent rule for interests in the same dwelling held for the purposes of two connected collective investment schemes.

91. Subsections (4) and (5) signposts section 97 and section 104 and also apply them to cases where the single dwelling interest is treated as held for different collective investment schemes.

92. Subsection (7) provides clarification of the application of this section in Scotland.

Section 111 – Different Interests held in the same dwelling – effect of reliefs etc

93. Subsection (1) also prevents the application of section 110 to public bodies and bodies established for national purposes.

94. Subsection (2) similarly prevents the application of section 110 to aggregate interests held by charitable companies, providers of social housing or where property is conditionally exempt from inheritance tax.

95. Subsections (3) and (4) apply to freehold and leasehold interests aggregated under section 110, or section 109 together with section 110. They provide that for the purpose of providing relief from the annual tax on enveloped dwellings, the aggregate interest is treated as being exploited in the way that the inferior interest actually is.

96. Subsection (5) restricts this if the inferior interest is of only part of the superior interest, so that the deeming of subsection (4) applies only to that part.

97. Subsection (6) defines the relevant relieving provisions as sections 132 to 150.

98. Subsections (7) to (9) provide definitions for subsections (3) to (5).

Section 112 – Meaning of "dwelling"

99. Subsection (1) states when a building or part of a building counts as a dwelling.

100. Subsection (2) provides for land such as a garden or grounds (including any buildings or structures on the land) that is or is intended to be occupied or enjoyed with the dwelling to be part of the dwelling.

101. Subsection (3) provides for land to be considered to be part of the dwelling where it subsists or is intended to subsist for the benefit of the dwelling.

102. Subsection (4) excludes a building or part of a building used for a purpose specified in section 116(2) or (3) of FA2003 from being considered a dwelling under subsection (1).

103. Subsection (5) makes clear that this use disqualifies the building, or part of the building, from being regarded as suitable for any other use.

104. Subsection (6) provides for the temporary unsuitability of a building for use as a dwelling to be disregarded when considering whether it is a dwelling for the purposes of this Part. This subsection does not affect any of the provisions in sections 126 to 131

Section 113 - Substantial performance of "off-plan" purchase

105. Subsection (1) applies subsection (2) to substantial performance of a contract to acquire a chargeable interest in land or a building to be constructed or adapted, beginning after substantial performance of that contract.

106. Subsection (2) defines the chargeable interest for the purposes of subsection (1)(b).

107. Subsection (3) disapplies subsection (2) if the subject of the contractual obligations cease to have effect before the construction or adaptation work is started.

108. Subsection (4) excludes a building that is used for a purpose specified in sections 116(2) or (3) of FA 2003 from being considered a dwelling under subsection (1).

109. Subsection (5) defines "contract" and the meaning of "substantially performed" for this section.

Section 114 – Power to modify meaning of "use as a dwelling"

110. Subsection (1) provides for the Treasury to amend this Part by order in order to specify cases where use of a building is to be use as a dwelling for sections 112(1) or 113(1).

111. Subsection (2) notes that the reference in section 116(8)(a) of FA 2003 to "the purposes of subsection (1)" includes a reference for the purposes of sections 112(1) and 113(1).

Section 115 – Parts of a greater whole

112. Subsection (1) provides that where a part of building that can be used a dwelling does not exclude it from being part of a larger single dwelling.

113. Subsection (2) provides that where a building or structure is in the garden or grounds of a dwelling and is enjoyed or occupied with the dwelling that, even where suitable for use as a single dwelling, it is still considered, in accordance with section 112(2) to be part of the larger single dwelling.

Section 116 – Dwelling in Grounds of another Dwelling

114. Subsection (1) and subsection (4) apply the annual tax on enveloped dwellings as if a "main dwelling" and an "associated dwelling" were one dwelling, if at the end of "the day in question" in a chargeable period certain conditions linking the dwellings are met.

115. Subsection (2) sets the conditions that need to be met: the properties must meet a common ownership condition, they must not have separate access from each other and the associated dwelling must stand in the gardens or grounds of the main dwelling. They must be separately occupied and enjoyed, as otherwise they will be part of the same dwelling (and section 115(2 would apply).

116. Subsection (3) defines common ownership for companies (subsection (3)(a)) as entitlement of the same or connected companies to the chargeable interests in each

dwelling. Dwellings pass the common ownership test also if chargeable interests in each are held for the purposes of the same collective investment scheme (subsection (3)(b)).

117. Subsection (5) and (6) disapply subsection (4) if on the day in question either the main dwelling or the associated dwelling is relieved from the annual tax on enveloped dwellings or is a charitable company that is exempt from ATED because it is deemed not to meet the ownership condition.

118. Subsection (7) excludes public bodies or bodies established for national purposes from being connected companies.

119. Subsection (8) states that an interest held for the same collective investment scheme, includes an interest held by a person connected with the scheme.

120. Subsection (9) defines "separate access" for an associated dwelling as access direct from a road or on land over which the occupant has a right of way or other separate land interest.

121. Subsection (10) outlines the meaning of "garden or grounds", "the person entitled to possession", and "separately entitled" for the purpose of this section.

Section 117 – Dwellings in the same building

122. Subsections (1) and (3) enable two dwellings to be "linked dwellings" if they are in the same building, they meet the common ownership condition and there is private access between them.

123. Subsection (2) defines common ownership for companies (subsection (3)(a)) as entitlement of the same or connected companies to the chargeable interests in each dwelling. Dwellings pass the common ownership test also if chargeable interests in each are held for the purposes of the same collective investment scheme (subsection 2(b)).

124. Subsection (4) and (5) disapply subsection (3) if one of the dwellings is relieved from the annual tax, except by the relief for dwellings open to the public (section 137) or is a charitable company that is exempt from ATED because it is deemed not to meet the ownership condition.

125. Subsection (6) ensures that public bodies or bodies established for national purposes cannot be connected with a company.

126. Subsection (7) provides that further dwellings in the same building are to be amalgamated with other amalgamated dwellings under this section (so that all of the dwellings are considered suitable for use as a single dwelling) if the additional dwellings are linked with any one of them.

Section 118 – Section 117: supplementary

127. Subsection (1) specifies that, for section 117(2)(b) purposes, the reference to an interest held for the purposes of the same collective investment scheme includes an interest to which a person connected with the scheme is entitled.

128. Subsection (2) says that for the purposes of section 117 private access between two dwellings is a route between them to which no third party has a right to access.

129. Subsection (3) provides the definition of "third party" for subsection (2) as someone who is neither entitled to possession of the dwellings mentioned in subsection (1) nor is connected with any of them.

130. Subsection (4) defines the "use" condition for section 22(1)(d) as being met where each of the two dwellings is either (a) occupied by a relevant individual or (b) intended to be or usually so occupied or (c) not occupied.

131. Subsection (5) provides the definition of "relevant individual" for subsection (4), including an individual who is a connected person; occupies the property on non-commercial terms; or who is employed by a relevant person in connection with that person's occupation of a dwelling in the building.

132. Subsection (6) specifies that a person entitled to the possession of a dwelling is one so entitled by an estate or interest in land.

Section 119 – Terraces etc

133. Section 119 provides for a terrace of houses or semi-detached houses that are (or include) dwellings to be considered buildings for the purposes of section 117 and 118.

Section 120 – Acquisitions and disposals of chargeable interests

134. Subsection (1) ensures that acquisitions however effected are treated as such.

135. Subsection (2) treats the surrender or release of an interest as an acquisition and disposal.

136. Subsection (3) treats the variation of an interest as an acquisition or disposal for the purpose of this legislation.

Section 121 – Date of acquisition or disposal

137. Subsection (1) says a person is treated as beginning to be entitled to an interest in land on the effective date of acquisition.

138. Subsection (2) provides that a person is treated as ceasing to be entitled to an interest in land on the effective date of the disposal.

139. Subsection (3) if the acquisition and disposal however are completed on the same day, then the acquisition is ignored in it precedes the disposal and the disposal is ignored if it precedes the acquisition.

140. Subsections (4) and (5) define the effective date of an acquisition and disposal as the completion date, but allow alternative dates to be provided by regulations.

Section 122 – Contract and conveyance: the purchaser

141. Subsection (1) applies this section where a person enters a contract to acquire a relevant chargeable interest and the acquisition is completed by a conveyance.

142. Subsection (2) provides that a person is not seen as having acquired a chargeable interest by reason of entering into the contract.

143. Subsection (3) where a contract is not completed but is substantially performed, this Part has effect as if the substantial performance was completion of the acquisition which the contract intended to achieve.

144. Subsection (4) provides that where subsection (3) applies and the contract is then completed through a conveyance, the completion (for the purposes of section 102) it is not deemed to have given effect to acquiring the chargeable interest.

145. Subsection (5) sets out the position where subsection (3) applies and the contract is subsequently rescinded or annulled before the contract is fully carried out, then this Part is effective as if P had disposed of the chargeable interest as per subsection (1)(a).

146. Subsection (6) defines "the relevant time" for the purposes of subsection (5).

147. Subsection (7) in a situation where subsection (3) applies and the contract is then varied or partially rescinded, resulting in a chargeable interest being acquired under contract which differs from that to which the contract originally related, this Part operates as if

the contract variation had resulted in purchaser P's disposal of the interest referred to in subsection (1)(a) and the substantial performance of the varied contract.

148. Subsection (8) applies subsection (7) if the parties proceed as if they had varied the contract without actually doing so.

149. Subsection (9) provides further definitions for this section.

Section 123 – Contract and conveyance: the vendor

150. Subsection (1) applies subsections (3) and (4) where a person enters a contract to dispose of a chargeable interest and the disposal is completed by a conveyance.

151. Subsection (2) provides that a person is not seen as disposing of a chargeable interest just because it has entered into the contract to dispose of a chargeable interest where the contract provides for disposal to be completed by conveyance.

152. Subsection (3) provides that a contract substantially performed but not completed will, for this Part be considered as though the substantial performance of the contract was completion of the disposal which the contract had intended.

153. Subsection (4) provides that where subsection (3) applies and the contract is later completed through a conveyance, for the purposes of section 8, it is not deemed that completion effected disposal of a chargeable interest.

154. Subsection (5) sets out the effect of this Part where subsection (3) applies along with other conditions that deem the vendor to have re-acquired the interest referred to in subsection (1)(a).

155. Subsection (6) defines "the relevant time" for the purposes of subsection (5).

156. Subsection (7) provides that where subsection (3) applies and the contract is subsequently varied or partially rescinded so as to alter the chargeable interest to be disposed of (so that it is not the same chargeable interest provided for in the original contract), the variation is treated as effecting the reacquisition by the vendor (V) of the interest referred to in subsection (1)(a) and the substantial performance of the varied contract.

157. Subsection (8) applies subsection (7) if the parties proceed as if they had varied the contract in the way subsection (7) sets out, without actually having varied the contract, as if they had.

158. Subsection (9) provides further definitions for this section.

Section 124 – New dwellings

159. Subsection (1) defines the valuation date for a new dwelling that is or has been constructed. It is the earlier of the completion day (the date construction is proposed to finish) or the date that the dwelling is first occupied.

160. Subsection (2) defines, for the purposes of subsection (1), what constitutes the construction of a new dwelling. It includes any alterations to an existing building but does not include a dwelling where section 125 (dwellings produced from other dwellings) or 128 (demolition and replacement: new dwellings) apply.

161. Subsection (3) defines for the purposes of subsection (1) completion day as the day on which the new dwelling is treated as having come into existence under the relevant legislation listed in this subsection.

162. Subsection (4) provides that references to "a building" also include a part of a building.

Section 125 – Dwellings produced from other dwellings

163. Subsection (1) applies this section where as a result of some structural alterations, an existing building that is a dwelling or dwellings, becomes a different dwelling or dwellings.

164. Subsection (2) defines the point when it is determined that a person has a single-dwelling interest in the old or new dwelling. This is when the conversion is completed, the old dwelling ceases to exist and the new dwelling has come into existence.

165. Subsection (3) defines the valuation date for the new dwelling as the day after the conversion is completed.

166. Subsection (4) defines when the conversion is completed as being the end of the day on which the new dwelling is, or all new dwellings are treated as having come into existence for the purposes of the legislation listed in this subsection.

167. Subsection (5) provides that references to “a building” also include a part of a building.

Section 126 – Demolition of a dwelling

168. Subsection (1) applies sections 127 to 129 where a dwelling is demolished on or after 1 April 2013.

169. Subsection (2) treats the building as not demolished for the purposes of determining whether a person has a single-dwelling interest in the property and its taxable value except where express provision to the contrary is made in sections 127 to 129.

170. Subsection (3) defines the date of the demolition for the purposes of subsection (1) as being after 1 April 2013 if a day after 1 April 2013 is the day demolition has begun and as a result the building is no longer suitable for use as a dwelling.

171. Subsection (4) provides that references to “a building” also include a part of a building.

Section 127 – Demolition without replacement

172. Subsection (1) applies subsection (2) if a person owning the old dwelling notifies an officer of Revenue and Customs that there is no intention to build any new dwelling on the site of the old dwelling.

173. Subsection (2) defines when the person is said to have a single-dwelling interest in the old dwelling from the day as defined by subsection (3).

174. Subsection (3) defines the date for subsection (2) when both the criteria are met of the demolition having begun and thereby rendering the building unsuitable to be used as a dwelling.

175. Subsection (4) requires a notification to be made in writing to an officer of Her Majesty’s Revenue and Customs under subsection (1).

176. Subsection (5) provides some further definitions for this section.

Section 128 – Demolition and replacement: new dwellings

177. Subsection (1) applies subsection (2) if new dwellings are built on the site of the old dwelling after its demolition.

178. Subsection (2) states that a person’s single-dwelling interest in new dwelling comes into existence at the point when the rebuilding is completed on the assumption that the old dwelling has ceased to exist.

179. Subsection (3) defines the valuation date of a single-dwelling interest in a new dwelling as the day after the rebuilding is completed.

180. Subsection (4) provides further definitions for the terms in subsection (1).

181. Subsection (5) confirms that reference to when rebuilding is complete is the earlier of completion day or the day the last of the new dwellings is first occupied.

182. Subsection (6) defines the reference to completion day in subsection (5) as the day on which the new dwelling or all new dwellings are treated as having come into existence for the purposes of the legislation listed in this subsection.

183. Subsection (7) provides that references to "a building" also include a part of a building.

Section 129 – Demolition and replacement: other cases

184. Subsection (1) applies section 129 where section 128 does not apply and where a building is constructed on the site of an old dwelling, after demolition.

185. Subsection (2) states that person's single-dwelling interest in the old dwelling is determined by assuming the old dwelling no longer existed at the end of the day on which a change of use from residential use was approved, or, the dwelling was last occupied, whichever is later.

186. Subsection (3) provides further definitions for the terms in subsection (1).

Section 130 – Conversion of dwelling for non-residential use

187. Subsection (1) applies this section where a building, or any part of it, has previously been suitable as a dwelling and is then altered so as to make is unsuitable to use as a dwelling.

188. Subsection (2) states that it is a question of fact whether the alterations at subsection (1)(b) above render the building or part unsuitable for use as a dwelling.

189. Subsection (3) provides that once planning permission or development consent has been granted for the alterations, the building or the part of it is unsuitable for use as a dwelling.

190. Subsection (4) defines "planning permission" for the purposes of this section.

191. Subsection (5) provides the references for the relevant planning enactments for the purposes of the definition in subsection (4).

192. Subsection (6) defines "development consent" for the purposes of this section.

Section 131 – Damage to a dwelling

193. Subsection (1) applies subsections (2) and (3) if damage occurs to a dwelling, resulting in the dwelling becoming temporarily unsuitable for occupation as a dwelling.

194. Subsections (2) to (4) state that the unsuitability is taken into account in applying the definition of "dwelling" only if it was accidental or caused by events that the relevant person had no control over, and the unsuitability lasts at least 90 days.

195. Subsection (5) states that if the conditions are satisfied the whole period including the first 90 days is taken into account, and work done on restoration is not to be treated as construction or adaptation of a building for use as a dwelling, which would put it within the charge.

196. Subsection (6) disapplies this is the damage was caused in the course of work that itself would anyway have rendered the property uninhabitable for at least a month.

197. Subsection (7) includes partial demolition and damage to part of a building.

198. Subsection (8) allows damage before 1 April 2013 to be taken into account.

Section 132 – Effect of Reliefs under Sections 133-150

199. Subsections (1) and (2) provide that if a chargeable period for a single dwelling interest includes days which are relievable as a result of the provisions listed in subsection (3), then the adjusted chargeable amount (see section 105) is calculated on the basis that the chargeable person is outside the charge for the interest on that day.

200. Subsection (3) sets out the provisions which provide for particular reliefs, including relief for dwellings held for a property rental business; property trade or development trade; a trade of opening to the public; a financial trade that acquired the dwelling in the course of lending; a trade using the dwelling for certain employees or partners; a farming trade; and providers of social housing.

201. Subsection (4) signposts section 106 which sets out how tax payable is to be adjusted at the end of the year if reliefs have been claimed.

Section 133 – Property rental businesses

202. Subsection (1) states that a day is a relievable day for a single-dwelling interest where it is being exploited as a source of rents or other receipts in a qualifying property rental business, or steps are being taken to secure that it will be exploited without undue delay.

203. Subsection (2) provides that a day is not a relievable day if a non-qualifying person is permitted to occupy the dwelling.

204. Subsection (3) defines a "qualifying property business" as a property rental business that is conducted on a commercial basis and with a view to profit. .

205. Subsection (4) defines a "property rental business" as a property business as defined in CTA 2009, whether or not it is liable to corporation tax on profits of that business.

206. Subsection (5) specifies that delay caused by commercial considerations or which cannot be avoided can be ignored in determining whether the company is taking steps to exploit the dwelling without undue delay.

207. Subsection (6) defines "excluded rents".

Section 134 - Rental property: preparation for sale, demolition etc

208. Subsection (1) provides that relief will be given in respect of a single-dwelling interest for which relief was previously given under section 133 (property rental businesses) but which is now unoccupied in four circumstances:

- where steps are being taken to sell that interest without delay;
- where steps are being taken to demolish that dwelling without delay and, if it is intended that a new dwelling will be constructed on the site, it is also intended that the new dwelling will be "used in a relievable way";
- where steps are being taken to convert the dwelling into a different dwelling without delay and it is intended that the new dwelling will be "used in a relievable way"; or
- where steps are being taken to convert the dwelling into a non-residential building without delay.

Relief will only be given under this section if, for each day after relief ceased to be available under section 133, relief was available under this section 134. In addition, the single-dwelling interest must have been held by the same person or by a "relevant partner" when relief was last given under section 133.

209. Subsection (2) defines "used in a relievable way" as where relief would be available in respect of the relevant dwelling under sections 133 (property rental business), 137 dwellings opened to the public, 148 farmhouses and 145 employee/partner occupation.

210. Subsection (3) defines "relevant partner" and "without undue delay".

Section 135 – Non-qualifying occupation: look forward and look back

211. Subsection (1) provides that subsection (2) applies where, on a day in a chargeable period, a single-dwelling interest is being exploited in a property rental business or steps are being taken to exploit it, if a non-qualifying individual is permitted to occupy the dwelling.

212. Subsection (2) provides that, in those circumstances and where the continuity of ownership condition is met, no further day in that chargeable period or the subsequent three chargeable periods will be a relievable day unless and until there is a day of "qualifying use" as defined in subsection (8). This is the "look forward" restriction on future claims to relief.

213. Subsection (3) provides that the "continuity of ownership" condition will be met on any day where the owner is entitled to the single dwelling interest or, if the owner carried on or intended to carry on the property rental business in partnership, another member of the partnership is beneficially entitled to the interest.

214. Subsection (4) provides that subsection (5) applies where a non-qualifying individual is permitted to occupy a dwelling on a day in a chargeable period.

215. Subsection (5) provides that, in those circumstances, no day is relievable in the period running from the start of the preceding chargeable period to the day the non-qualifying individual was permitted to occupy the single-dwelling interest (where the single-dwelling interest was held, during that period, by a relevant person). This is the "look back" restriction on any previous claims to relief in the period of (up to) two prior years.

216. Subsection (6) defines "relevant person" as the person beneficially entitled to the single dwelling interest on the day of non-qualifying occupation or, where the owner carried on the property rental business in partnership, any other member of that partnership.

217. Subsection (7) provides that subsection (5) does not apply where there is an intervening day which was relievable by virtue of the single-dwelling interest being exploited as a source of rents in the course of a property rental business.

218. Subsection (8) defines the terms "day of qualifying use" as a day when it is relievable because it is being exploited as a source of rents or other receipts; and provides that occupation of part of a dwelling is regarded as occupation of it all.

Section 136 – Meaning of "non-qualifying individual"

219. Subsection (1) sets out who is a "non-qualifying individual" for the purposes of sections 133 and 135 as, including an individual who is entitled to the single dwelling interest, connected individuals etc (including, for a partnership, qualifying members of the partnership and individuals connected with a qualifying member of the partnership).

220. Subsection (2) provides that a qualifying member of a partnership for subsection (1)(c) is a member who has at least a 50% or greater share in the income profits of the partnership or in the partnership assets.

221. Subsection (3) specifies that a collective investment scheme is a relevant scheme for subsection (1)(i) if it meets the ownership condition in respect of the single dwelling interest.

222. Subsection (4) defines a "major participant" in a collective investment scheme as an person who:

- is entitled to at least 50% of the profits or income arising from the scheme or of any profits or income arising from the scheme that may be distributed to participants; or

- would be entitled to 50% or more of the assets of the scheme on its winding up.

223. Subsection (5) clarifies what will be treated as profits or income arising from the scheme in question.

224. Subsection (6) modifies the way section 1122 of CTA 2010 works for subsection (1) by omitting rules about connected persons to partnerships.

225. Subsection (7) provides the meaning for “relative”, “settlor” and “settlement”.

226. Subsection (8) provides a requirement for the meaning for “trustee”.

Section 137 – Dwellings open to the public

227. Subsection (1) provides that a day in a chargeable period is a relievable day if either the first or second condition is met.

228. Subsection (2) provides that the first condition is met where the dwelling is being exploited as a source of income in the course of a qualifying trade in the normal course of which the public are offered the opportunity to make use of, stay in or otherwise enjoy the dwelling on at least 28 days in any year.

229. Subsection (3) provides that the second condition is met where steps are being taken to secure that the dwelling will be exploited in a qualifying trade of the nature set out in the first condition, so long as this is without delay, or any delay is from commercial considerations or cannot be avoided.

230. Subsection (4) defines a “qualifying trade” as one that is carried on commercially with a view to profit.

231. Subsection (5) provides that for the purposes of this section, a significant part of the interior of the dwelling has to be made available for persons permitted to use, stay in or enjoy the dwelling.

232. Subsection (6) sets out that size, nature and function of areas concerned are taken into account when determining whether they form a significant part of the interior of a dwelling.

Section 138 – Property developers

233. Subsection (1) says that a day in a chargeable period is a relievable day for a single-dwelling interest if the interest is held exclusively for the purpose of developing and reselling the land in the course of that trade.

234. Subsection (2) effectively disregards any intention to exploit the interest as a source of rents prior to sale in determining whether the land is held exclusively for development and resale.

235. Subsection (3) provides that a day is not a relievable day if a non-qualifying person is permitted to occupy the dwelling.

236. Subsection (4) defines a “property development trade” as a trade that includes buying and developing for resale residential or non-residential property, provided that is conducted on a commercial basis and with a view to profit.

237. Subsection (5) provides that references to “development” in this section shall include “redevelopment”.

Section 139 –Property developers: exchange of dwellings

238. Subsection (1) says that a day in a chargeable period is a relievable day if a single dwelling interest that was acquired in the course of a property development trade, and the acquisition ("the reverse acquisition") was part of a qualifying exchange.

239. Subsection (2) provides that a day is not relievable if a non-qualifying individual is permitted to occupy it.

240. Subsections (3) and (4) set out when an acquisition is part of a qualifying exchange. This is when the developer acquired the single dwelling interest in consideration of a new dwelling it, or a partnership of which it is a member, transferred in exchange.

241. Subsection (5) provides the conditions that need to be met for a building or part of it to be considered a "new dwelling".

Section 140 – Property developers: supplementary

242. Subsection (1) applies subsection (2) if a non-qualifying individual is permitted to occupy the dwelling to which the property developer is entitled in the course of its trade.

243. Subsections (2) and (3) provide that no further day until the end of the next three chargeable years is relievable, if the same company or a member of a partnership of which the company is a member, continues to hold the relevant interest.

244. Subsections (4) and (5) ensure that if a non-qualifying individual occupies the dwelling at any point in a chargeable period, earlier days within the that or the preceding period cannot be relievable days, unless they were before the company (or another member of any partnership of which the company is a member) acquired entitlement to the single dwelling interest.

245. Subsection (6) provides that subsection (5) does not apply where there is an intervening day which was relievable by virtue of exploitation by renting to a third party in a property rental business.

246. Subsection (9) defines the terms "non-qualifying individual" for this section and sections 138 and 139(property developers), and provides that occupation of part of a dwelling is regarded as occupation of it all.

Section 141 – Property traders

247. Subsection (1) says that a day in a chargeable period is a relievable day if the person beneficially entitled to that interest is carrying on a property trading business and holds the property as stock and solely for resale in the course of the business.

248. Subsection (2) provides that, a single-dwelling interest is not considered to be held for the sole purpose of resale by a person carrying on a property trading business if a non-qualifying individual is permitted to occupy it.

249. Subsection (3) defines a "property trading business" as a business which includes activities in the nature of a trade of buying and selling dwellings and which is carried on a commercial basis with a view to profit.

Section 142 – Property traders: supplementary

250. Subsections (1) and (2) provides if a non-qualifying individual is permitted to occupy the dwelling no further day in that chargeable period or the subsequent three chargeable periods will be a relievable day where the property trader (or a relevant partner) remains beneficially entitled to the single-dwelling interest.

251. Subsection (3) defines “relevant partner” as any other person who, at the time of non-qualifying occupation was a partner in a partnership that carried on the property trading business.

252. Subsections (4) and (5) provide that if a non-qualifying individual occupies the dwelling, earlier days in the relevant chargeable period, or preceding chargeable period are not relievable unless they were before the chargeable person (or a partner of the chargeable person) became entitled to the single dwelling interest.

253. Subsection (6) provides that subsection (5) does not apply where there is an intervening day which was relievable because a qualifying individual was permitted to occupy the single-dwelling interest.

254. Subsection (7) defines the terms “non-qualifying individual” and provides that occupation of part of a dwelling is regarded as occupation of it all.

Section 143 – Financial Institutions acquiring dwellings in the course of lending

255. Subsection (1) says that a day is relievable if a financial institution is entitled to the single dwelling interest as a result of it carrying on lending activities and it has the intention of reselling the interest without delay (except delay justified by commercial considerations).

256. Subsection (2) restricts this so, that renting to a non-qualifying disqualifies the owner from the relief.

257. Subsection (3) defines a “financial institution” in terms of the meaning given by section 564B of ITA 2007.

Section 144 - Section 143: supplementary

258. Subsection (1) provides that subsection (2) applies where, on a day in a chargeable period, a single-dwelling interest is held by a financial institution and a non-qualifying individual is permitted to occupy the dwelling.

259. Subsection (2) says that where the continuity of ownership condition is met, no further day in that chargeable period or the subsequent three chargeable periods will be a relievable day.

260. Subsection (3) defines the “continuity of ownership” condition as being met on any day where the financial institution is beneficially entitled to the single dwelling interest; or, where the financial institution carried on the lending business in partnership, another member of the partnership is beneficially entitled to the interest.

261. Subsection (4) and (5) state that if on a day in a chargeable period, a non-qualifying individual is occupying a dwelling, then the financial institution (or any partner who was at the time entitled to the interest) shall not be eligible for relief under section 143 on earlier days in that or the preceding chargeable period.

262. Subsection (6) provides that subsection (5) does not apply where there is an intervening day which was relievable because the interest was being rented to a qualifying individual in the course of a property rental business.

263. Subsection (7) defines the term “non-qualifying individual” and provides that occupation of part of a dwelling is regarded as occupation of it all.

Section 145 – Occupation by certain employees or partners

264. Subsection (1) provides that a day in a chargeable period is a relievable day where a single dwelling interest is held to make the dwelling available for use as a living accommodation for one or more qualifying employees or qualifying partners for the purposes of a qualifying trade.

265. Subsection (2) sets out that a qualifying trade must be carried on on a commercial basis and with a view to a profit.

266. Subsection (3) provides that making a dwelling available to a qualifying employee or partner also includes making it available to persons who are to share that accommodation with such an employee or partner as their family.

267. Subsection (4) provides the reference for the definition of "a relevant group member" in subsection (1)(a) as mentioned in paragraph 1(2) of Schedule 7 FA 2003.

Section 146 – Meaning of "qualifying employee" and "qualifying partner" in Section 145

268. Subsection (1) sets out "qualifying partner" where the trade mentioned in section 145 is carried out in partnership. It includes any individual member of the partnership with less than 10% share of the income profits of the partnership, in any company that beneficially owns the interest or in the partnership assets.

269. Subsection (2) sets out that "qualifying employee" means an individual employed for the purposes of the qualifying trade who has less than a 10% share of the income profits of the trade, in any company that beneficially owns the interest or in the single dwelling interest, except one who provides "excluded domestic services".

270. Subsection (3) defines excluded domestic services as employment duties that include the provision of services in connection with the occupation of the relevant dwelling (or a linked dwelling) by a non-qualifying individual.

271. Subsection (4) defines a "non-qualifying individual" as an individual connected to a beneficial owner of the interest.

272. Subsection (5) sets out when dwellings will be "linked" for the purposes of subsection (3). The first circumstance is where section 116(2) applies regarding a relevant dwelling and another dwelling. The second is one where a dwelling is linked to the relevant dwelling under section 117(1).

273. Subsection (6) sets out that employment includes the holding of an office.

274. Subsection (7) provides that, for the purposes of subsections (1)(c) and (2)(a)(iii), beneficial joint tenants (or, in Scotland, joint owners) entitled to a chargeable interest are treated as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

Section 147 – Meaning of "10% or greater share in a company"

275. Subsection (1) sets out that this section applies for the purposes of section 146.

276. Subsection (2) sets out an individual (P) as entitled to a 10% or greater share in a company if he or she possesses (directly or indirectly) or is entitled to acquire any of the shares or rights set out in that subsection.

277. Subsection (3) requires any rights P or any other person has as a loan creditor to be disregarded for the assumption in subsection (2)(d).

278. Subsection (4) sets out that for subsection (2), a person is treated as entitled to acquire anything which they are, or will at a future date, be entitled to acquire.

279. Subsection (5) provides that, if a person possesses any rights or powers on behalf of another (A), or may be required to exercise any rights or powers at A's direction or on A's behalf, those rights and powers shall be attributed to A. for the purposes of determining whether they are entitled to a 10% or greater share.

280. Subsection (6) provides for further attributions of rights and powers to a person (from their associates and from companies which they control, or that they control together with their associates).

281. Subsection (7) sets out the rights and powers to be attributed under subsection (6).

282. Subsection (8) provides for a person nevertheless to be treated as having 10% or greater share in a company if they are able to exercise or acquire direct or indirect control over the company's affairs even if the conditions in subsection (2) are not otherwise met.

283. Subsection (9) provides that the definitions for "associate", "control", "loan creditor" and "participator" are the same as in CTA 2010.

Section 148 – Farmhouses

284. Subsections (1) and (2) provide that a day in a chargeable period is a relievable day in relation to a single dwelling interest where the dwelling forms part of farming land, a person beneficially entitled to it (or a connected person) is carrying on a qualifying trade of farming and the farmhouse is occupied by a farm worker who occupies it for the purposes of the trade, a former long-serving farm worker or the surviving spouse or civil partner of a former qualifying farm worker.

285. Subsection (3) provides that farming is a qualifying trade only if it is carried on a commercial basis and with a view to profit.

286. Subsection (4) defines "farming" to include "market gardening" for the purposes of this Part and that otherwise these terms have the same meaning as in CTA 2010.

Section 149 – "Farm worker" and "former long-serving farm worker"

287. Subsection (1) requires a farm worker to have a substantial involvement in the day to day work of the trade or the direction and control of the conduct of the trade.

288. Subsection (2) requires a former long-serving farm worker to have been a farm worker in the qualifying trade for three consecutive qualifying years or three qualifying years out of any five year period.

289. Subsection (3) defines a qualifying period as one where the individual occupied the farmhouse for the purposes of the farming trade, the farmland was occupied for the purposes of the trade and the farmhouse was owned by the person claiming relief.

290. Subsection (4) regards occupation of part of a dwelling as occupation of it all.

Section 150 – Providers of social housing

291. Subsection (1) provides that a day is relievable if a profit-making registered provider of social housing is entitled to the single dwelling interest and the acquisition was funded with the assistance of public subsidy.

292. Subsections (2) and (3) relieve a non-profit registered provider of social housing or a registered social landlord if the housing provider is controlled by its tenants, the acquisition of the interest was funded with the assistance of a public subsidy, and the acquisition was from a qualifying body.

293. Subsection (4) provides the relevant definitions for this section.

Section 151 – Charitable companies

294. Subsection (1) provides that a charitable company is not treated as meeting the ownership condition when it holds the interest in the dwelling if it holds that interest for charitable purposes. However, where the conditions set out in subsection (3) are met then the day will be treated as an "excluded day" and tax will be charged.

295. Subsection (2) defines charitable purposes as use for the charitable purposes of the charitable company or another charity, or as an investment from which the profits are applied to the charitable purposes of the company.

296. Subsection (3) sets out the conditions that lead to a particular day in a chargeable period being an “excluded day”. The conditions are that: “the donor” has made or agreed to make a gift to the charitable company, arrangements have been entered into whereby the donor or a person linked to them is permitted (or will be permitted) to occupy the dwelling, and it is reasonable to assume that the arrangements and the gift would not have been entered into independently of each other.

297. Subsection (4) defines a “linked individual”. A linked individual means either the donor or a person who was, when the arrangements were entered into, an associate of the donor. An associate for the purposes of section 151 is defined in section 152.

298. Subsection (5) provides exclusions from the “excluded day” rules where one of the three conditions set out in the subsection is met. Those three conditions are: that the primary purpose of the charitable company includes opening the dwelling to the public, that the dwelling is being exploited commercially by being opened to the public, or, the dwelling will be opened to the public or sold without undue delay.

299. Subsection (6) defines “opening the dwelling to the public” and “without undue delay”.

300. Subsection (7) provides that for the purposes of subsection 6(a), the factors to be considered in establishing whether the condition is met are the size, nature and function of the areas concerned, to be taken into account in determining whether they form a significant part of the interior of the dwelling or of the garden or grounds.

301. Subsection (8) defines connected for this case as connected in a matter relating to the structure, administration or control of the charity, rather than the definition used in section 172.

Section 152- Section 151: supplementary

302. Subsection (1) defines what an associate of a donor is.

303. Subsections (2) and (3) provide definitions of some terms used in subsection (1).

304. Subsection (4) states that occupation of part of a dwelling counts as occupation of the dwelling.

305. Subsection (5) provides that the making of a gift and an agreement to make a gift are disregarded if they were made or agreed before Finance Act 2013 was passed.

306. Subsection (6) provides that arrangements entered into before Finance Act 2013 was passed are not taken into account unless a material alteration has occurred on or after the passing of the Act. A material alteration is one which affects anything in the arrangements relating to the occupation of the dwelling by the donor or their associates.

307. Subsection (7) - defines gift for the purposes of section 151 so that it includes disposals at less than market value.

308. Subsection (8) defines arrangements for the purposes of section 151 and this section.

Section 153 – Public bodies

309. Subsection (1) provides that a public body is not a company for the purposes of the annual tax on enveloped dwellings.

310. Subsection (2) defines a ‘public body’ by reference to section 66 of FA 2003 (transfers involving public bodies) so that it includes companies owned by other public bodies.

311. Subsection (3) provides for the Treasury to prescribe persons under section 66 FA 2003. That provision may be used to have different effects for annual tax on enveloped dwellings and for stamp duty land tax.

312. Subsection (4) defines a company for these purposes.

Section 154 – Bodies established for national purposes

313. Subsection (1) provides that a bodies listed in subsection (2) are not a companies for the purposes of the annual tax on enveloped dwellings.

314. Subsection (2) lists the 4 relevant bodies for the purposes of subsection (1).

Section 155 – Dwelling conditionally exempt from inheritance tax

315. Subsection (1) provides that subsection (2) applies if the single- dwelling interest (or a part of it) has been designated under the specific provisions referred to. Such designations are relatively rare.

316. Subsection (2) provides that where there a single-dwelling interest has been so designated, and remains so, that its taxable value is deemed to be zero.

317. Subsection (3) provides that subsection (4) applies if the single- dwelling interest (or a part of it) has been designated under different specific provisions than those in Subsection (1). Again, such designations are relatively rare.

318. Subsection (4) provides that where there a single-dwelling interest has been so designated, and remains so, that its taxable value is deemed to be zero.

319. Subsection (5) provides definitions relevant to this particular section.

Section 156 – Modification of reliefs

320. Subsection (1) provides a power for the Treasury to amend this part to provide further reliefs or exemptions from the tax. Paragraph (b) provides a power for regulations to amend or repeal any of the relief and exemption provisions in sections 132 to 155 and make any consequential amendments.

321. Subsection (2) sets out that further relief or exemption includes provision to additional persons and categories of person or to additional cases or circumstances.

Section 157 – Land sold to a financial institution and leased to a person

322. Subsection (1) provides that this section applies to alternative property finance arrangements under section 71A or section 72, Finance Act 2003 entered into between a financial institution and another person, where that institution purchases one or more dwellings under the “first transaction” (as defined under section 71A or section 72).

323. Subsection (2) provides that, where the person entering into the arrangements with the financial institution (the Lessee) is a company, this Part applies as if the interest held by the financial institution was actually held by the company and that the lease granted to the company under the “second transaction” had not been granted. In effect, the alternative property finance arrangements are ignored and the company is treated as owning the interest in the dwelling outright for the purposes of this Part.

324. Subsection (3) provides at what times the alternative finance arrangements will be considered to be in operation for the purposes of subsection (2).

325. Subsection (4) provides that, where a company is treated as holding an interest at a particular time under subsection (2), it shall be treated as holding it as a member of a partnership where it holds the leasehold interest (granted under the “second transaction”) as a member of the partnership.

326. Subsection (5) provides that, that, where the alternative finance arrangements operate for the benefit of a collective investment scheme, this Part applies as if the interest held by the financial institution was actually held by the lessee for the purposes of the collective investment scheme (and not by the financial institution) and that the lease granted under the "second transaction" had not been granted. In effect, the alternative property finance arrangements are ignored and the lessee is treated as owning the interest in the dwelling outright for the purposes of this Part.

327. Subsection (6) provides at what times the alternative finance arrangements will be considered to be in operation for the purposes of subsection (5).

328. Subsection (7) defines "financial institution", "the first transaction", "further transaction", "the leasehold interest" and "the second transaction" for the purposes of this section.

329. Subsection (8) defines "major interest in land" by reference to section 117 of Finance Act 2003.

330. Subsection (9) provides that, where the lessee is an individual, references to the lessee in subsections (5) and (6), include the lessee's personal representatives after his or her death.

Section 158 – Responsibility for collection and management

331. Section 158 provides for the HMRC Commissioners to be responsible for the administration and collection of the annual tax on enveloped dwellings.

Section 159 – Annual Tax on Enveloped Dwellings return

332. Subsection (1) requires a person to make a return with respect to an interest they hold in a dwelling for a chargeable period.

333. Subsection (2) requires the person to make a return within 30 days of coming into charge with respect to their interest in the single-dwelling.

334. Subsection (3) disapplies subsection (2) if that first day that the person becomes chargeable is a valuation date under section 124 or 125. In this case, the return is required by the end of the 90 day period.

335. Subsection (4) provides that subsection (6) applies if the person already held an interest in a single-dwelling interest and acquires a 'new interest' in the same dwelling in that same chargeable period.

336. Subsection (5) provides that, the person who holds the single-dwelling interest in subsection (4) must deliver a further return (over and above that already delivered) in respect of the single-dwelling interest following the acquisition of the new interest.

337. Subsection (6) provides that a further return required under subsection (4) must be made within 30 days of the effective date of the relevant acquisition of the new interest.

338. Subsection (7) requires the return ("annual tax on enveloped dwellings return") to be delivered to an officer of HM Revenue and Customs.

Section 160 – Return of adjusted chargeable amount

339. Subsections (1) and (2) require a further return for a chargeable period within 30 days of the end of the chargeable period if one of two conditions is met.

340. Subsection (3) modifies this in the case that liability for the year is altered by an event after the end of the year. In which case a further return is required within 30 days of the event causing the change.

341. Subsection (4) sets the first condition that the adjusted chargeable amount is greater than the amount initially charged, when no interim relief has been claimed.

342. Subsection (5) sets the second condition, that a claim or claims to interim relief have been made and the adjusted chargeable amount is greater than the amount payable under section 100.

343. Subsection (6) terms the further return a "return of the adjusted chargeable amount".

Section 161 – Return to include self-assessment

344. Subsections (1) and (2) requires an annual tax on enveloped dwellings return and a return of the adjusted chargeable amount to include a self assessment.

345. Subsections (3) to (5) specify the self assessments required in each return.

Section 162 – Returns, enquiries, assessments and other administrative matters

346. Subsections (1) and (2) refer to Schedule 1 which contains provisions for making returns, enquiries and related matters and provides that regulations may make any further amendments to the Schedule or to this Part as a consequence of amending the Schedule.

Section 163 – Payment of tax

347. Subsection (1) provides that the tax charged must be paid by the required filing date for the annual tax on enveloped dwellings return for the chargeable period.

348. Subsection (2) requires any tax payable as a consequence of the adjusted chargeable amount exceeding the amount payable under subsection 1 to be paid not later than the filing date for the adjusted chargeable amount return.

349. Subsection (3) requires tax payable as a result of an amendment to a return to be paid immediately or if the amendment is before the filing date, by the filing date.

350. Subsection (4) defines return for the purposes of subsection (3).

351. Subsection (5) says that tax on a determination or assessment must be paid within 30 days.

Section 164 – Information and enforcement

352. Section 164 introduces Schedule 2 which contains provisions for information and inspection powers (Part 1) and penalties (Part 2).

Section 165 – Collection and recovery of tax etc

353. Section 165 provides that the provisions of Schedule 12 to FA 2003 apply for collection of annual tax on enveloped dwellings.

Section 166 – Companies

354. Subsection (1) defines a company as any body corporate. A body corporate for the purposes of annual tax on enveloped dwelling is not taken to include a corporation sole nor a partnership.

355. Subsection (2) requires an appropriately authorised person, including a proper officer of the company, to act on behalf of the company in complying with the provisions under this Part.

356. Subsection (3) covers how service of a document can be made.

357. Subsection (4) provides that any tax due under this Part can be recovered from a proper officer of the company.

358. Subsection (5) provides for a proper officer to be reimbursed by the company for any amount that has been paid by the officer under subsection (4).

359. Subsection (6) lists who would be considered "the proper officer" of a company for the purposes of subsection (2).

360. Subsections (7), (8) and (9) provide rules for situations where a liquidator or administrator has been appointed for the company. The rules provide for the liquidator or administrator to act as "the proper officer" of the company, including what is to be done where more than one person has been so appointed.

Section 167 – Partnerships

361. Subsection (1) defines "Partnerships" for the purposes of this Part.

362. Subsection (2) provides for the application of provisions under this Part to partnerships and treats the partners as jointly beneficially entitled to the single-dwelling interest instead of the partnership itself.

363. Subsection (3) provides for a partnership to continue (and to be treated as the same partnership) for the purposes of this Part as long as at least one member of the partnership is the same as before and after any changes in membership.

364. Subsection (4) provides for a collective investment scheme not to be regarded as a partnership and that a member of a partnership whose assets are held for the purposes of a collective investment scheme is to be a treated as a participant in the scheme rather than a partner, for annual tax on enveloped dwellings purposes.

365. Subsection (5) provides for a representative partner or partners to act on behalf of the partnership in complying with this Part.

366. Subsection (6) provides for the nomination of a representative partner for the purposes of subsection (5).

367. Subsection (7) requires that notice of a nomination of a representative partner for the purposes of this section (or the revocation of such a nomination) must be made to an officer of HM Revenue and Customs to be effective.

Section 168 – Miscellaneous amendments and transitory provisions

368. Section 168 introduces Schedule 35 which contains provisions for certain amendments to other legislation (Part 1) and special rules for the first chargeable period (Part 2).

Section 169 – Orders and regulations

369. Subsections (1), (2) and (5) provide for any orders or regulations under this Part (which may make different provision for different cases and include consequential or transitional provisions or savings) to be made by statutory instrument under the negative resolution procedure.

370. Subsection (3) prevents this procedure applying to an order under section 101(5) (indexation of amount chargeable) or regulations to which subsection (4) applies.

371. Subsection (4) provides that an affirmative procedure is necessary for any statutory instrument containing provisions under section 156(1) to modify reliefs or exemptions other than to extend them, or provisions under section 162(2) which amend Schedule 1.

Section 170 – Meaning of "chargeable day" and "within the charge"

372. Section 170 defines "chargeable day" and "within the charge with respect to a single-dwelling interest" for the purposes of the annual tax on enveloped dwellings.

Section 171 – References to the state of affairs "on" a day

373. Section 171 defines "on" for the purposes of the annual tax on enveloped dwellings so that it means that the facts at the end of a day are assumed to have existed throughout that day.

Section 172 – Connected persons

374. Subsection (1) provides for the application of section 1122 of the Corporation Tax Act 2010 to determine who are connected persons for this Part.

375. Subsection (2) provides which persons are connected with a collective investment scheme for this Part.

376. Subsection (3) provides that a reference to a collective investment scheme in subsection (2) does not include a unit trust scheme.

377. Subsection (4) defines, for the purposes of subsection (2), what profits or income arising from a scheme means.

378. Subsection (5) sets out that for subsection (2), a person is treated as having anything which they are, or will at a future date, be entitled to acquire.

379. Subsection (6) provides that a person is to be attributed the rights and powers held by any associate (or two or more associates) of that person.

380. Subsection (7) defines "associate" by reference to Part 10 of CTA 2010, but provides that section 448 of that act is to be read so that a person is not an associate of another purely because they are in partnership.

Section 173 – Connected persons: cell companies

381. Subsection (1) provides that a 'cell' in a 'cell company' is treated as though it is a separate company when establishing who is connected to that company.

382. Subsection (2) provides that a company is a 'cell company' where either of the two conditions in subsections (3) or (4) is met.

383. Subsection (3) provides the rules for the first condition. These are where the company may (because of the laws it is incorporated under.

Section 174 – General interpretation of Part 3

384. Section 174 provides general interpretations for this Part as defined in various sections under this Part as well as defined elsewhere in other legislation.

Details of the Schedules

Schedule 33: Annual Tax on Enveloped Dwellings: Returns, Enquiries, Assessments and Appeals

385. This Schedule deals with returns, enquiries, compliance powers, appeals and other matters. It also empowers the Treasury to amend certain parts of the Schedule by regulation.

Part 1: Returns

386. This Part of the Schedule deals with returns. It provides for the contents of the return, defines delivery and covers amendment of a return.

387. Paragraph 1 deals with the contents of returns and allows for the Commissioners of HMRC to make provisions by regulation for the contents, form and method of delivery or to make different provision for different purposes. It provides the requirement of the return to include a declaration by the person that the return is complete and correct.

388. Paragraph 2 provides for the references in this Part to the delivery of an annual tax on enveloped dwellings return to be according to the requirements in section 159 and 161 or paragraph 1, or to the delivery of a return of adjusted chargeable amount to be according to the requirements in section 160 and 161 or paragraph 1.

389. Paragraph 3 provides for the amendment of a return and allows for the Commissioners of HMRC to require the form that amendment should to take. It also specifies the deadline by which the amendment to the return needs to be made.

390. Paragraph 4 provides for correction of returns by HMRC by notice to the chargeable person. HMRC can, by notice amend a return to correct obvious errors and omissions. The correction must be within nine months from the date the return is delivered. The chargeable person can amend the return so as to reject the correction, within three months of the date of issue of the notice of correction.

Part 2: Duty to Keep and Preserve Records

391. This Part of the Schedule deals with preservation of records.

392. Paragraph 5 sets out the duty of a person who is required to deliver a return to keep and preserve records, for the longer of:

- six years from the end of the chargeable period,
- the end of any enquiry, or
- the end of the enquiry window (this may be after six years if the return is submitted very late).

Records to be kept must include:

- all relevant documents relating to any relevant transaction, for example the contract of purchase, including financial records related to the transaction, and
- records relating to the valuation of the dwelling.

393. Paragraph 6 allows for the preservation of information instead of original records. It permits records to be kept in an alternative form (such as microfiche or an electronic facsimile) as long as the information they contain is preserved.

394. Paragraph 7 provides a penalty for failure to keep and preserve records of a maximum of £3,000, with the exception that no penalty is incurred if the facts which would have been demonstrated by the records is provided to HMRC by other documentary evidence.

Part 3: Enquiry into Return

395. This Part of the Schedule deals with enquiries into returns. It provides for the notice and scope of enquiry, the amendment of self-assessment during enquiry, referral of questions to tribunal during enquiry and completion of enquiry.

396. Paragraph 8 provides for an officer of HMRC to make enquiries into returns within 12 months of the relevant date defined as; the later of the filing date or the date of delivery, or, in the case of an amendment, the date of the amendment.

397. Paragraph 9 deals with the scope of enquiry. The enquiry can be into the amount of tax chargeable or the question of whether tax is chargeable on the relevant person with respect to an interest. Where an enquiry is made into an amended return after the enquiry period for the return has passed, the enquiries are limited to matters which are amended or affected by the amendment.

398. Paragraph 10 provides for the amendment of the return by an officer of HMRC during course of enquiry to prevent loss of tax where the amount stated in the self assessment contained in the return is insufficient. Where an enquiry is made into an amended return, it limits this to matters which are amended or affected by the amended return.

399. Paragraph 11 deals with the referral of questions to the tribunal during enquiry. It requires notice of the referral to be given jointly by the relevant person and HMRC.

400. Paragraph 12 provides for the withdrawal of notice of referral made under paragraph 11 by HMRC or the person who made the return.

401. Paragraph 13 deals with the effect of referral under paragraph 11 on an enquiry. It provides that a closure notice or an application for a closure notice cannot be made while proceedings under paragraph 11 are in progress.

402. Paragraph 14 provides that the determination of any question by the Tribunals under paragraph 11 is binding on the parties. It requires the officer of HMRC to take the determination into account when making any amendments to the return and limits the question determined from being reopened.

403. Paragraph 15 sets out which are the relevant Lands and other Tribunals for the referral of questions under paragraph 11.

404. Paragraph 16 deals with the completion of enquiry and requires HMRC to issue a closure notice stating whether an amendment is required or not and making the amendment if necessary.

405. Paragraph 17 provides for the person who made the return to seek from a tribunal a direction that HMRC should issue a closure notice.

Part 4: HMRC determination where no return delivered

406. This Part of the Schedule deals with determinations by HMRC where no return is delivered.

407. Paragraph 18 allows HMRC to make a determination of tax chargeable if an annual tax on enveloped dwellings return or a return of adjusted chargeable amount return is not delivered by the relevant filing date. It limits the time period in which the determination has to be made to 4 years after the end of the chargeable period when the return should have been made.

408. Paragraph 19 provides that the determination has the same effect as self-assessment by the person for enforcement purposes.

409. Paragraph 20 provides that if, after a determination under paragraph 18, the person makes a self-assessment, that self assessment supersedes the determination unless the self-assessment is delivered after the time limits set out. It also provides that where proceedings have begun for recovery of the tax charged by the determination and that determination is superseded by self-assessment before proceedings are concluded, these proceedings may continue but instead for the amount due on the self-assessment.

Part 5: HMRC Assessments

410. This Part of the Schedule provides for HMRC assessments in certain defined cases.

411. Paragraph 21 deals with HMRC's powers to make discovery assessments where an amount that should have been assessed under this Part has not been assessed, is less than it should be or relief has been given that is or has become excessive.

412. Paragraph 22 provides for an assessment to recover an excessive repayment of tax including any interest that may have been paid.

413. Paragraph 23 provides in paragraphs 24 to 27 for the references to 'the taxpayer' in relation to an assessment under paragraph 21 to be the chargeable person and in relation to an assessment under paragraph 22 to be the person referred to in paragraph 22(1).

414. Paragraph 24 sets out the circumstances where a discovery assessment can be made if the taxpayer has made a return. There are two circumstances; where the return is insufficient because the chargeable person's behaviour (or a person acting on their behalf) was careless or deliberate, or, that HMRC could not reasonably be expected to be aware that the return insufficient when it was delivered. Furthermore no assessment can be made if the return was made in accordance with generally prevailing practice at the time it was delivered.

415. Paragraph 25 provides the time limit for assessments. The general time limit is 4 years after the end of the relevant chargeable period. This time limit is extended to 6 years where the person making the return has behaved carelessly and to 20 years where the loss of tax was brought about deliberately, or they failed to comply with their obligation to make returns or to make a relevant disclosure of any tax avoidance scheme. In cases of joint ownership where one of the taxpayers is an individual who has died and the assessment is to be made on that individual, the assessments must be made on personal representatives within 4 years of the date of death and can only cover chargeable periods within the 6 years prior to death.

416. Paragraph 26 provides the definition of a loss of tax brought about carelessly or deliberately for the purposes of paragraphs 24 and 25.

417. Paragraph 27 provides procedure for making an assessment on a chargeable person and the contents of the notice of assessment.

Part 6: Relief in case of overpaid tax or excessive assessment

418. This Part of the Schedule deals with cases where a chargeable person is assessed twice in error. This is unlikely to occur since in almost all cases tax will only be collected as a result of the submission of a return. It also provides for cases where a chargeable person believes there has been an overpayment of tax.

419. Paragraph 28 provides that a person who believes they have suffered a double charge may claim relief. Claims must be made under the same provisions as Schedule 11A FA 2003 (Stamp Duty Land Tax: Claims not included in returns).

420. Paragraph 29 provides that a person may make a claim for repayment of an amount of Annual Tax on Enveloped Dwellings (ATED) that they believe they have overpaid or ATED that has been brought into charge that they believe is not payable. This is subject to the restrictions set out in paragraph 31.

421. Paragraph 31 provides that the Commissioners for HM Revenue & Customs are not liable to give effect to a claim for relief in respect of an overpayment or over-assessment of ATED where a claim falls within a case described in this paragraph (paragraph 31).

422. Paragraph 30 also sets out cases in which the Commissioners are not liable to give relief:

- Case A is where the claimant made a mistake in a claim or in failing to make a claim;
- Case B is where it is possible for the claimant to take other steps under the ATED legislation to remedy the overpayment or over-assessment;

- Case C is where the claimant could have taken other steps under the ATED legislation when they first knew, or ought reasonably to have known, of the overpayment or over-assessment, but that time has passed;

- Case D is where the grounds of the claim have already been put to the tribunal or HMRC (and treated as determined by a tribunal) by the claimant in the course of an appeal;

- Case E is where the claimant knew or ought reasonably to have known the grounds of the claim at a time when those grounds could have been put forward during an appeal to a court or tribunal (or before the date on which the Claimant withdrew an appeal to a court or tribunal);

- Case F is where the amount was paid or is liable to be paid following proceedings to enforce payment or by an agreement between the chargeable person and HMRC in connection to those proceedings; and

- Case G is where the amount was calculated by mistake and was in accordance with the practice generally prevailing at that time. Case G does not apply where tax is charged contrary to EU law.

423. Paragraph 31 provides that a claim cannot be made more than 4 years after the end of the chargeable period to which it relates and that a claim must be made under the same provisions as Schedule 11A FA 2003 (Stamp Duty Land Tax: Claims not included in returns).

424. Paragraph 32 ensures where a land transaction was entered into by a partnership, a claim under paragraph 30 must be made by all the partners who would have been liable to ATED at the start of relevant chargeable period or their representatives.

425. Paragraph 33 provides where the grounds on which a claim is made under paragraph 30 also provide grounds for making a discovery assessment, the normal restrictions on making such assessments do not apply to an assessment on the claimant. This is extended to assessments on partners who were members of the partnership at the effective date of a transaction and any who subsequently join the partnership.

426. Paragraph 34 extends claims to amounts paid under a contract settlement with HMRC and includes specific rules in relation to these claims.

Part 7: Reviews and Appeals

427. This part of the Schedule deals with appeals. The rights of appeal, the settlement of appeals by agreement and postponement applications are similar to those for Stamp Duty Land Tax.

428. Paragraph 35 provides a right of appeal against:

- amendments of self-assessment to prevent loss of tax (paragraph 10);

- a conclusion stated or amendment made by a closure notice (paragraph 16);

- an HMRC determination under paragraph 18;

- a discovery assessment (paragraph 21); and

- an assessment to recover overpaid tax (paragraph 22).

429. Paragraph 36 deals with the notice of appeal and the time limit of 30 days from the specified date, which is the date of the notice of amendment, closure, determination or assessment. The notice must state the grounds of the appeal. The paragraph also sets out the restricted grounds for an appeal against a determination.

430. Paragraph 37 provides the rules for appeals made outside the time limits set in paragraph 36. HMRC may agree to the late appeal or the tribunal may give its permission for the late appeal.

431. Paragraph 38 sets out that following notice of an appeal to HMRC, a number of steps may be taken for a review of the matter in question to be required by, or offered to, the appellant, or for the matter to be referred to the tribunal. There are specific rules for appeals to be notified to the tribunal after a review has commenced.

432. Paragraph 39 sets out the rules where the appellant has notified HMRC that they require a review of the matter in question.

433. Paragraph 40 sets out the rules for when HMRC offer an appellant a review of the matter in question. Including what happens if the appellant does not accept HMRC's offer and restrictions upon HMRC's ability to offer a review.

434. Paragraph 41 sets out the nature of the review under paragraphs 40 and 41 including the conclusions that can be reached and time limits for HMRC to provide its conclusions to the appellant, and what conclusion is deemed to be reached in the absence of HMRC making its conclusion.

435. Paragraph 42 sets out that the conclusion of the review has the effect of a settlement agreement (see paragraph 47) unless the appellant notifies the appeal to the tribunal.

436. Paragraph 43 sets out the rules for how an appellant notifies the tribunal of their appeal after they have requested a review including the time limits and restrictions for such notification.

437. Paragraph 44 sets out the rules for how an appellant notifies the tribunal of their appeal after they have been offered a review by HMRC including the time limits and restrictions for such notification.

438. Paragraph 45 provides interpretations of expressions used for the purposes of paragraphs 39 to 45.

439. Paragraph 46 sets out the rules for how appeals can be settled by agreement between an appellant and HMRC including the time limit for the taxpayer to withdraw from such an agreement.

440. Paragraph 47 provides that an appellant must still pay the tax assessed even where they have made an appeal. However, this requirement is subject to paragraphs 49 and 50.

441. Paragraph 48 sets out the rules for an appellant to make an application for the payment of tax to be postponed where they believe that the amendment or assessment overcharges the appellant to tax or the amount assessed is excessive. The paragraph also provides the time limits for making the application and also what action they can take if HMRC do not agree with to their application.

442. Paragraph 49 sets out the rules that apply where HMRC and the appellant are in agreement as to the amount of tax to be postponed.

443. Paragraph 50 sets out the actions that a tribunal can take in relation to an appeal notified to it, namely, to require the assessment; to be reduced, to stand, or to be increased.

444. Paragraph 51 provides that the decision of the tribunal is final and conclusive subject to any further appeal permitted by the rules in the Tribunals, Courts and Enforcement Act 2007 or in this Part.

445. Paragraph 52 provides rules for where there has been a determination of an appeal and tax is payable or has been overpaid as a result.

446. Paragraph 53 provides that where the taxpayer or HMRC appeal against the decision of the tribunal that the tax determined by the tribunal or court that has made the

determination is to be payable or repayable notwithstanding that the further appeal is pending.

447. Paragraph 54 sets out what is meant by references to “the tribunal” including to which tribunals different matters must be referred.

Part 8: Supplementary

448. Paragraph 55 provides for where two companies (potentially one as a member of a partnership) are jointly entitled to a single-dwelling interest for them to be jointly and severally liable and that they are obliged to deliver a single return.

449. Paragraph 56 provides the requirement for all the responsible partners of a partnership to be responsible for anything required by section 159, or section 160 or this Schedule.

450. Paragraph 57 provides for meaning of “filing date” for an annual tax on enveloped dwellings return or a return of adjusted chargeable amount.

Schedule 34: Annual Tax on Enveloped Dwellings: Information and Enforcement

451. This Schedule deals with information and enforcement powers, particularly the application of penalties to the annual tax on enveloped dwellings.

Part 1: Information and Inspection Powers

452. Paragraph 1 provides that Schedule 36 to FA 2008 (information and inspection powers) is amended so that its provisions apply to the annual tax on enveloped dwellings.

453. Paragraph 2 the amendments to Schedule 36 to FA 2008 will provide for HMRC officers (together with a person they may require to assist them) to inspect properties for valuation purposes.

454. Paragraph 3 inserts new rules in Schedule 36 to FA 2008 relating to notices HMRC may make requiring a chargeable person, or another person, to deliver information or documents. HMRC cannot make such a notice, or where necessary apply to the tribunal for approval of such a notice, unless; there is an open enquiry, HMRC has reason to believe there is an underpayment of ATED or an amount of ATED has been un-assessed, or, the notice is given to check other taxation matters.

455. Paragraph 4 inserts the necessary special rules in relation to notices for partnerships within the charge to ATED.

456. Paragraph 5 provides that the meaning of ‘tax’ in Schedule 36 includes annual tax on enveloped dwellings.

Part 2: Penalties

457. Paragraph 6 makes the necessary amendments to Schedule 24 to FA 2007 so that the rules for penalties for errors in returns apply to annual tax on enveloped dwellings returns.

458. Paragraph 7 makes the necessary amendments to Schedule 55 to FA 2009 so that the rules for penalties for a failure to make returns apply to annual tax on enveloped dwellings returns. The provisions are provided to come into force on the day that Royal Assent is given to this Act.

459. Paragraphs 8, 9 10, 11 and 12 make the necessary amendments to Schedule 56 to FA 2009 so that the rules for penalties for a failure to make payments on time apply to annual tax on enveloped dwellings returns. The provisions are provided to come into force on the day that Royal Assent is given to this Act.

Schedule 35: Annual Tax on Enveloped Dwellings: Miscellaneous Amendments and Transitory Provision

460. This Schedule deals with some miscellaneous amendments and provides transitory provision or the first the annual tax on enveloped dwellings.

Details of the Schedule

Part 1: Miscellaneous amendments

461. Paragraph 1 provides for annual tax on enveloped dwellings to be included in the taxes in the Provisional Collection of Taxes Act 1968.

462. Paragraph 2 provides for annual tax on enveloped dwellings to be included within the provisions relating to the disclosure of tax avoidance schemes (section 318 of FA 2004).

463. Paragraph 3 provides for annual tax on enveloped dwellings to be included as one of the taxes to which the definitions of 'charity', charitable company' and 'charitable trust' in Schedule 6 to FA 2010 apply.

Part 2: Transitory provision

464. Paragraph 4 provides for special rules for the first chargeable year (1 April 2013 to 31 March 2014) of annual tax on enveloped dwellings. In particular it provides for returns to be delivered by 1 October 2013 and for payment to be on 31 October 2013 for those dwellings held on 1 April 2013, or which would otherwise file returns prior to 1 October 2013.

Background

465. At Budget 2012 it was announced that an 'annual charge' on residential property owned in structures where stamp duty land tax ('SDLT') may not be paid on a future sale was to be introduced. The 'annual charge' was to be consulted on over the summer with a response to that consultation and draft legislation available in the Autumn.

466. That consultation has been completed and the response document and the draft legislation for the 'annual charge' published in December 2012 and January 2013. The 'annual charge' is to be known as the annual tax on enveloped dwellings ('ATED').

467. The ATED will be payable by certain non-natural persons that own interests in dwellings valued at more than £2 million. This tax will come into effect on 1 April 2013. It is an annual tax, and returns and payments will be required annually. Returns and payment will usually be due on 30 April, but for the first year returns will be due on 1 October 2013 and payment by 31 October 2013. The amount of tax payable will depend upon which of the fixed bands the dwelling is within.

468. The measure is part of a package of measures designed to ensure that individuals and companies pay a fair share of tax on residential property transactions and to reduce avoidance. Its aim was to dis-incentivise the ownership of high value residential property in structures that would permit the indirect ownership or enjoyment of the property to be transferred in a way that would not be chargeable to SDLT.

469. As part of the package, Finance Act 2012 package, Finance Act 2012 introduced a 15 per cent rate of stamp duty land tax on the acquisition by certain non-natural persons of properties costing more than £2 million. That Act provided only two exclusions from the higher rate charge; for companies acting solely in their capacity as trustees, and for property developers with a 2 year trading history.

470. The scope of the 15 per cent rate was included as part of the consultation on the annual tax on enveloped dwellings. In response to the consultation a number of reliefs are to be introduced in ATED and also further reliefs into the SDLT legislation. Where

possible the two reliefs should operate in tandem; so if the 15% of SDLT is paid on an acquisition then the property will be within ATED. In particular there are to be reliefs for; property rental businesses, property developers, property traders, trades that exploit a dwelling to generate income by providing access to a significant part of the interior, dwellings used to house employees or partners with a limited interest in the company or partnership, farmhouses, charities, social landlords, diplomatic property and sovereign and public bodies.

471. Relief will only apply if the property continues to satisfy the relevant qualifying conditions throughout the period of ownership. It is possible that a property could move into and out of the charge though out its ownership.

472. The intention of the measures is to stop or reduce the number of properties that will enter such complex ownership structures other than where the property is used in a genuine business (or owned by a specific category of person). For those who choose to continue to hold their property in such a manner, and are not relieved, there is to be a cost. Taken together with the introduction of the SDLT changes in Finance Act 2012 (and the changes in Finance Act 2013) the ATED will result in a reduction in the number of high value properties owned in such structures.

473. The annual tax on enveloped dwellings is a new tax and therefore it requires a set of rules regarding returns, enquiries, compliance powers in much the same way as other regimes administered by HMRC. The scheme adopted is based on the stamp duty land tax self-assessment regime, and that legislation is found primarily in Schedule 10 Finance Act 2003. This allows annual tax on enveloped dwellings to use established procedures which will be familiar to many tax and legal practitioners and HMRC. The legislation will be fully balanced by rights of appeal to the independent tax tribunals and when appropriate to the relevant lands tribunal.

474. Special rules regarding the filing of returns for the annual tax on enveloped dwellings are necessary in the first year as the legislation regarding the tax will only become law on Royal Assent being given to the Finance Act 2013. Obligations under that law can only be enforced at that point. So whilst the tax will be due for the chargeable period 1 April 2013 to 31 March 2014 the filing obligation for this year will be 1 October 2013 with payment by 31 October 2013. It also includes rules for the delivery of the return where the days the person is within the charge, with respect to the interest, do not include 1 April 2013.

Section 175: Open Ended Investment Companies and Authorised Unit Trusts

Summary

1. Section 175 provides for an amendment to existing legislation which will allow trustees to switch UK assets held in settlement made by non-UK domiciled individuals to investments in Open Ended Investment Companies (OEICs) and Authorised Unit Trusts (AUTs) without incurring inheritance tax. The changes made by this section will have retroactive effect so that no tax will have arisen in those trusts which already held AUTs or OEICs when changes introduced in section 186 to Finance Act (FA) 2003 came into effect. Nor will any tax have arisen in those trusts where UK assets were invested in OEICs and AUTs since the coming into effect of FA 2003.

Details of the Section

2. Subsection 1 adds new section 65(7A) to Inheritance Tax Act 1984 (IHTA) which exempts investments in OEICs and AUTs from a charge under that section.

3. Subsection 2 provides for the new section 65(7A) to have retroactive effect for investments made on and after 16 October 2002.

Background

4. Section 186 of Finance Act 2003 introduced Section 6(1A) to Inheritance Act 1984 (IHTA) which treats investments in OEICs and AUTs owned by non-UK domiciled individuals as excluded property. This has the effect of exempting such investments from the charge to inheritance tax under Section 1 of IHTA.

5. The same Act introduced an equivalent provision, Section 48(3A), to provide a similar exemption for holdings in authorised unit trusts or open ended investment companies held in trust provided the settlor was domiciled outside the UK when the settlement was made. The new provisions came into effect for transfers of value or events occurring on or after 16 October 2002.

6. Section 65 IHTA provides for a charge to tax where the property comprised in a settlement ceases to be relevant property. Excluded property is not relevant property and therefore by making investments in OEICs and AUTs excluded property, it automatically created a charge under section 65 on those investments. Section 65(7) provides for an exception to this charge where property comprised in a settlement ceases to be relevant property "by reason only that property comprised in a settlement ceases to be situated in the UK and thereby becomes excluded property by virtue of section 48(3)(a)".

7. The above section provides for a further exception to the s65 charge, similar to s65(7), in respect of property that is invested in AUTs and OEIC's and thereby becomes excluded property by virtue of section 48(3A)(a).

Section 176, Schedule 36: Treatment of Liabilities for Inheritance Tax Purposes

Summary

1. Section 176 introduces Schedule 36 which amends the inheritance tax (IHT) provisions relating to the treatment of liabilities. The schedule brings in restrictions and conditions that must be met before a liability is allowed as a deduction from the value of an estate so as to remove the tax advantage that is achieved by arrangements which exploit the current provisions.

Details of the Schedule

2. Paragraph 2 of the schedule amends section 162 of Inheritance Tax Act 1984 (IHTA) so that that a liability is first taken into account under the new provisions before the existing provisions of section 162 apply.

3. Paragraph 3 of the schedule inserts new sections 162A to C into IHTA.

4. New section 162A deals with liabilities incurred to finance excluded property. Property is 'excluded property' if it is situated outside the UK and the individual entitled to it is domiciled outside the UK, or if settled property is situated outside the UK and the settlor was domiciled outside the UK when the settlement was made.

5. New section 162A(1) provides that a deduction for a liability which has been incurred directly or indirectly to acquire, enhance or maintain excluded property is only allowable in so far as the conditions in sections 162A(2) to (4) are met. Otherwise the deduction will not be taken into account.

6. New section 162A(2) provides that where the excluded property has been disposed of, a deduction may be allowed to the extent that the consideration is subject to tax and has not been used to acquire, maintain or enhance further excluded property or to repay a liability that itself would not be allowable. The liability may be deducted only if the disposal is at full value and the proceeds form part of the estate so that they are chargeable to IHT.

7. New section 162A(3) is directed at cases where property ceases to be excluded property and becomes chargeable to IHT before the question of whether to take the liability into account arises. The deduction may be allowed to the extent that the property has not been disposed of and is subject to tax.

8. New section 162A(4) applies where the liability exceeds the value of the excluded property. A deduction for the excess liability may be made but only if that excess is not due to any of the reasons given in new section 162A(7). This subsection ensures that a deduction is not allowed where the excess liability has arisen by a deliberate manipulation of the value of the excluded property or the liability to obtain a tax advantage, as defined in new section 162A(8).

9. New sections 162A(5) and (6) are aimed at cases where the property financed by the liability becomes excluded property at some stage before deciding whether to take the liability into account. A deduction may only be allowed for the amount of any liability that exceeds the value of the excluded property, but only if that excess is not due to any of the reasons in new section 162A(7).

10. New section 162B deals with liabilities incurred to finance property which qualifies for certain reliefs ('relievable property').

11. New sections 162B(1) and (2) apply if the liability has been incurred to acquire, maintain or enhance property which qualifies for business property relief under section 104 IHTA. Section 162B(2) provides that the liability reduces the value of the relevant business property, so that only the net value of the property may then qualify for business property relief.

12. New sections 162B(3) and (4) apply if the liability has been incurred to acquire agricultural property which qualifies for agricultural property relief under section 116 IHTA, or to maintain or enhance its agricultural value. The liability reduces the agricultural value of the property, so that only the net agricultural value may then qualify for agricultural property relief.

13. New sections 162B(5) and (6) apply if the liability has been incurred to acquire land, trees or underwood which qualify for woodlands relief under section 125(2)(a) IHTA, to plant the trees or underwood, or to enhance or maintain the value of that woodland. The liability reduces the value of the trees or underwood, so that only the net value is left out of account.

14. New section 162B(7) provides that once a liability has been taken into account, it cannot be taken into account against another transfer by the same transferor.

15. New section 162B(8) disapplies subsection (7) for the purposes of a ten year anniversary (TYA) charge so that a liability can be taken into account again for subsequent TYA charges.

16. New section 162B(9) extends the provisions in subsections (1) to (4) and (7) to relevant property trust charges.

17. New section 162C gives details of supplementary provisions for the purposes of sections 162A and 162B.

18. New section 162C(1) explains that this section applies where a liability has been incurred to acquire, maintain or enhance the value of, a mixture of excluded property, relievable property and/or other property, and where the liability has been partially repaid before it has to be taken into account for the purposes of a deduction.

19. New section 162C(2) provides a priority rule for how the repayments should be applied to the liability. The repayment is first applied to any part of the liability that was not attributable to excluded property or relievable property, then to any part used to finance relievable property, and finally to any part used to finance excluded property. The result

is that the part of the liability that might be allowable as a deduction is treated as paid off first.

20. Paragraph 4 of the schedule introduces a new section 175A into IHTA which deals with repayment of liabilities after death.

21. New section 175A(1) provides that, in arriving at the value of a deceased person's estate, a deduction for a liability will only be allowable to the extent that the liability has been repaid on or after death out of assets in the estate or from excluded property that the deceased owned. The deduction must also not be disallowed by other provisions in IHTA.

22. New section 175A(2) sets out the conditions to be met before a deduction for a liability that has not been repaid may still be allowable. The unpaid part of the liability may be allowable if it is shown that there is a real commercial reason for not repaying the liability, and the main purpose of leaving any part of it unpaid is not to obtain a tax advantage as defined in new section 175A(5).

23. New section 175A(3) explains that a real commercial reason for a liability not being repaid is one where it is shown that the liability is to a person at arm's length, or that an arm's length creditor would not require the liability to be repaid.

24. New section 175A(4) specifies that for the purposes of the IHT exemption for transfers between spouses or between civil partners, where a liability is not repaid and is disallowed as a deduction, the increase in the value of deceased's spouse's or civil partner's estate is treated as the full value without any deduction for the disallowed liability.

25. New section 175(7) applies where a liability is attributable to a mixture of excluded property, relievable property and/or other property and has only been partially repaid after death. It provides a priority rule for how the partial repayments should be applied to the liability. The part of the liability that is attributable to excluded property is taken to be repaid first, followed by any part attributable to relievable property, and finally any remaining part.

26. Paragraph 5 of the schedule explains when the provisions come into effect. They will apply to deaths and other chargeable transfers which occur on or after 17 July 2013. In addition, the provisions in new section 162B will only apply to liabilities incurred on or after 6 April 2013.

Background

27. IHT is normally charged on the net value of a deceased person's estate after deducting liabilities outstanding at the date of death, reliefs, exemptions and the nil-rate band. The deduction for liabilities is given for the full value due to the creditors and is not limited to the amount actually repaid after death, or restricted if the liability has been incurred to acquire property which also qualifies for a relief or is not chargeable to IHT.

28. Reliefs are available for certain assets which are not chargeable to IHT in certain circumstances. These include business property relief, agricultural property relief and woodlands relief. Property which is situated outside the UK and which belongs to, or was settled by, a non-UK domiciled individual is 'excluded property'. It does not form part of a person's estate and is not chargeable to IHT.

29. IHTA includes limited provisions about when and how a liability should be taken into account. As a result, a tax advantage may arise where a liability is not repaid, or where the borrowed money is used to acquire property that is not liable to IHT.

30. The amendments made by this section will remove the tax advantage that arises from obtaining a deduction for a liability and either not repaying the liability after death, or acquiring an asset which is not chargeable to IHT. They will make certain arrangements

unattractive because the estate will no longer gain the double benefit of a relief or exclusion and the deduction of a liability. They will also ensure that the treatment of liabilities used to acquire relievable property will be consistent for IHT purposes regardless of the nature of the assets acquired or how the loan has been secured.

Section 177: Election to Be Treated as Domiciled in United Kingdom

Summary

1. Section 177 introduces provisions by which an individual who is, or has been, married to, or in a civil partnership with, someone who is domiciled in the UK can elect to be treated as domiciled in the UK for the purposes of inheritance tax (IHT).

Details of the Section

2. Subsection (2) adds a new subsection (5) to section 267 of IHTA. To apply section 267 it is necessary to determine the domicile status of an individual. New subsection (5) provides that any such determination is to be made without regard to new sections 267ZA and 267ZB (inserted by subsection (3)).

3. New subsections 267ZA(1) to 267ZA(4) provide that a person, or the personal representative for the person, may elect to be treated as domiciled in the UK for the purposes of Inheritance Tax (IHT) if they meet the required conditions.

4. New subsection 267ZA(5) specifies that the election in subsection (1) does not affect a person's domicile for the purpose of Government securities free of tax while in foreign ownership and certain other types of savings.

5. New subsection 267ZA(6) provides that an election is to be ignored when interpreting or applying Estate Duty Conventions and Double Taxation Agreements which determine the domicile of an individual.

6. New subsection 267ZA(7) explains that for the purposes of subsection 267ZA(6)(b), a qualifying double taxation relief arrangement is an arrangement which was made before this section comes into force and is specified under section 158 in an Order in Council but does not include arrangements which were subsequently specified by way of amendment to an existing Order in Council following the coming into force of the subsection.

7. New subsection 267ZA(8) provides that in determining whether or not a person is qualified to make an election, their domicile status is to be determined without regard to any deemed domicile treatment which occurs by virtue of section 267 IHTA.

8. New subsection 267ZB lays out how an election is made; the time period in which it must be made; that on the date specified in the notice the elector must have been married or in a civil partnership with their UK domiciled spouse or civil partner; that an election made under the new provisions cannot be revoked; and the circumstances under which an election will cease to have effect.

Background

9. IHT charge is based on domicile status. UK-domiciles pay IHT on their worldwide assets, whereas non-domiciles only pay IHT on their UK assets

10. Transfers between spouses and civil partners, whether gifts made during a person's lifetime or transfers on the death of one of the couple, are generally exempt from IHT.

11. Where the spouse or civil partner to whom assets are transferred does not have a UK domicile, transfers are capped at £55,000. This cap is intended to address the risk that an individual whose domicile is outside of the UK, could remove assets abroad following

an IHT-exempt transfer from their UK-domiciled spouse or civil partner to escape any IHT on their subsequent disposal.

Section 178: Transfer to Spouse Or Civil Partner Not Domiciled in United Kingdom

Summary

1. Section 178 increases the lifetime limit on transfers from one UK domiciled spouse or civil partner to another domiciled elsewhere that are exempt from inheritance tax (IHT).

Details of the Section

2. Subsection (2) amends section 18(2) of Inheritance Tax Act 1984 (IHTA), altering the amount that can be transferred on an IHT-exempt basis from an individual who is domiciled in the UK to a spouse or civil partner who is domiciled elsewhere from its existing level of £55,000 to an amount defined by reference to the prevailing IHT exemption limit at the time of the transfer.

3. Subsection (3) adds a new subsection 2A to section 18 IHTA. New subsection 2A provides that for the purposes of subsection 2, the exemption limit is defined by reference to the table of rates of tax in Schedule 1 IHTA.

Background

4. IHT charge is based on domicile status. UK-domiciles pay IHT on their worldwide assets, whereas non-domiciles only pay IHT on their UK assets

5. Transfers between spouses and civil partners, whether gifts made during a person’s lifetime or transfers on the death of one of the couple, are generally exempt from IHT.

6. Where the spouse or civil partner to whom assets are transferred does not have a UK domicile, transfers are capped at £55,000. This cap is intended to address the risk that an individual whose domicile is outside of the UK, could remove assets abroad following an IHT-exempt transfer from their UK-domiciled spouse or civil partner to escape any IHT on their subsequent disposal.

Section 179: Fuel Duties: Rates and Rebates from 1 April 2013

Summary

1. Section 179 amends the rates of duty and rates of rebate on products charged to duty under the Hydrocarbon Oil Duties Act 1979 (HODA). These changes come into effect on 1 April 2013. The rates of duty and rates of rebate are the same as those set out in section 19 of Finance Act 2011. That section came into effect at 6pm on 23 March 2011 and the rates set out in it represent the rates of duty currently being paid.

Details of the Section

2. Subsection (2) substitutes new rates of duty in section 6(1A) of HODA for unleaded petrol, aviation gasoline, light oil other than unleaded petrol or aviation gasoline and heavy oil.

3. Subsection (3) substitutes new rates of duty in section 8(3) of HODA for road fuel gases.

4. Subsections (4) – (6) substitute new rebates in sections 11(1) (heavy oil), 14(1) (light oil) and 14A(2) (biodiesel) of HODA; this amends the effective rate of duty on fuel oil, gas oil, light oil for use as furnace fuel and biodiesel for off-road use.

5. Subsection (7) revokes secondary legislation that further negated the effect of increases in rates of duty in section 20 of the Finance Act 2011 from 1st January 2013.

Background

6. In the Autumn Statement 2012 it was announced that in order to support motorists and businesses with the high cost of fuel, the fuel duty increases that were planned for 1 January 2013 would be cancelled.

7. Section 20 of the Finance Act 2011 increased the rates set out in section 19 of that Act with effect from 1 January 2012. That increase was negated until 1st August 2012 by the Excise Duties (Road Fuel Gas)(Reliefs)(No.2) Regulations 2011 (S.I. 2011/3064) in relation to road fuel gas and by the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2011 (S.I. 2011/2904) in relation to the other fuels.

8. The increases were further deferred by means of section 188 of the Finance Act 2012, which provided that the HODA has effect as if the amendments made by section 20 of the Finance Act 2011 had never been made for the period on or after the 1 August 2012 until 1 January 2013.

9. Following the Autumn Statement the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2012 (S.I. 2012/3055) and The Excise Duties (Road Fuel Gas) (Reliefs) Regulations 2012 (S.I. 2012/3056) negated the increases in duty provided by section 20 of the Finance Act 2011 with effect from 1 January 2013.

10. These changes now amend the rates of duty in HODA to reflect the effective current rates of duty so that the increases in duties provided by section 20 of the Finance Act 2011 will not become payable.

Section 180: Rates of Alcoholic Liquor Duties

Summary

1. Section 180 provides for increases in the rates of excise duty charged on spirits, wine and made-wine, and cider and perry, and an overall reduction in the rates of excise duty on beer to have effect on and after 25 March 2013.

Details of the Section

2. Subsection (2) substitutes a new rate of excise duty for spirits in section 5 of the Alcoholic Liquor Duties Act 1979 (ALDA). The previous rate of £26.81 is replaced by £28.22.

3. Subsection (3)(a) substitutes a new rate of excise duty for lower strength beer in section 36(1AA)(za) of ALDA. (This is beer of a strength exceeding 1.2 per cent but not exceeding 2.8 per cent).The previous rate of £9.76 is replaced by £9.17.

4. Subsection (3)(b) substitutes a new standard rate of excise duty for beer in section 36(1AA)(a) of ALDA. (This is beer of a strength which exceeds 2.8% and is not small brewery beer).The previous rate of £19.51 is replaced by £19.12.

5. Subsection (4) substitutes a new rate of excise duty for high strength beer in section 37(4) of ALDA. (This is beer of a strength exceeding 7.5 per cent). The previous rate of £4.88 is replaced by £5.09.

6. Subsection (5)(a) substitutes a new rate of excise duty for sparkling cider of a strength exceeding 5.5 per cent in section 62(1A)(a) of ALDA. The previous rate of £245.32 is replaced by £258.23.

7. Subsection (5)(b) substitutes a new rate of excise duty for still cider of a strength exceeding 7.5 per cent in section 62 (1A)(b) of ALDA. The previous rate of £56.55 is replaced by £59.52.

8. Subsection (5)(c) substitutes a new rate of excise duty for all other ciders in section 62(1A)(c) of ALDA. The previous rate of £37.68 is replaced by £39.66.

9. Subsection (6) provides for the replacement of the Table of rates of duty on wine and made-wine in Schedule 1 to ALDA with a new table showing the new rates of duty:

- Wine or made-wine of a strength not exceeding 4 per cent: £82.18;
- Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent: £113.01;
- Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not being sparkling: £266.72;
- Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent: £258.23;
- Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or more, but not exceeding 15 per cent: £341.63;
- Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent: £355.59; and,
- Wine or made-wine of a strength exceeding 22 per cent: £28.22.

Background

10. This section increases the excise duty rates on spirits, wine and made-wine, and cider and perry by 2 per cent above the Retail Price Index (RPI) and reduces the excise duty rates on beer by 6 per cent for lower strength beer, 2 per cent for the standard rate of beer duty. The duty rate for high strength beer will increase by 4.3 per cent which will result in the total duty rate for high strength beer being reduced by 0.75 per cent.

Section 181: Rates of Tobacco Products Duty

Summary

1. Section 181 provides for changes in the rates of excise duty on tobacco products (cigarettes, cigars, hand-rolling tobacco, other smoking tobacco and chewing tobacco) to have effect from 6 pm on 20 March 2013.

Details of the Section

2. Subsection (1) substitutes a new table of rates of duty into Schedule 1 to the Tobacco Products Duty Act 1979. The duty rates on tobacco products are changed as follows:

    i. cigarettes – the *ad valorem* element remains unchanged at 16.5 per cent; the specific duty is increased from £167.41 to £176.22 per 1000 cigarettes;

    ii. cigars – increased from £208.83 to £219.82 per kilogram;

    iii. hand-rolling tobacco – increased from £164.11 to £172.74 per kilogram; and

    iv. other smoking tobacco and chewing tobacco – increased from £91.81 to £96.64 per kilogram.

3. Subsection (2) provides for the new table of duty rates to have effect from 6 pm on 20 March 2013.

Background

4. Smoking kills half of all long-term users and is the biggest single cause of inequalities in death rates between the richest and poorest in the UK. The Government is committed to maintaining high tobacco duty rates to support health objectives and the public finances. Research has consistently shown that the price of tobacco products negatively affects demand.

5. Pre-announced increases of 2 per cent above inflation on all tobacco product duties will be maintained in 2014/15.

6. The duty increase, together with the consequential VAT, will on average increase the price of a packet of 20 cigarettes by 26p, a pack of 5 small cigars by 9p, a 25 gram pack of hand-rolling tobacco by 26p; and a 25 gram pack of pipe tobacco by 14p.

Section 182: Meaning of "Tobacco Products"

Summary

1. Section 182 amends section 1 of the Tobacco Products Duty Act 1979 (TPDA). It is designed to narrow the general exemption granted to herbal smoking products, so that exemption is only granted to products used exclusively for medical purposes. This change comes into force on 1 January 2014.

Details of the Section

2. Subsections (2), (4) and (5) of the section remove the existing references to herbal smoking products.

3. Subsection (3) invokes an exemption for non-tobacco smoking products which are used exclusively for medical purposes.

4. Subsection (6) makes the changes effective on and after 1 January 2014.

Background

5. This section amends section 1 of TPDA to correctly implement the following European legislation: Council Directive 2011/64/EC on the structure and rates of excise duty applied to manufactured tobacco (the Directive), specifically the second paragraph of Article 2.2.

6. Article 2.1 of the Directive sets out which tobacco products Member States should apply excise duty to.

7. Article 2.2 extends the definition to include products which may not contain tobacco but otherwise match the descriptions, for example, they are intended to be smoked.

8. Within Article 2.2 it is stated that products containing no tobacco and used exclusively for medical purposes are not to be treated as tobacco products.

9. The Directive is specific about which non-tobacco smoking products should be exempted from the application of excise duty - that is those products used exclusively for medical purposes. The current UK legislation does not specifically reflect this. In the TPDA (section 1, subsections 1.3 and 6) exemption was granted generally to herbal smoking products, rather than to those herbal smoking products used exclusively for medical purposes.

10. This section addresses that anomaly and aligns the UK legislation with the European Directive.

11. An additional advantage of this section is that it will address the small but increasing risk of tax evasion. This stems from traders importing and dealing in products which claim to be herbal smoking products, but in fact contain tobacco and are therefore liable to duty. There will be no advantage to wrongly declaring goods as herbal smoking products when they are taxed at the same rate as their tobacco counterparts.

Section 183: Rates of Gaming Duty

Summary

1. Section 183 increases the gross gaming yield (GGY) bands for gaming duty in line with inflation for accounting periods starting on or after 1 April 2013.

Details of the Section

2. Subsection (1) substitutes a new table for the existing table in section 11 (2) of the Finance Act 1997 which has the effect of increasing the gross gaming yield bands for gaming duty.

Background

3. Gaming Duty is charged on any premises in the UK where dutiable gaming takes place. Dutiable gaming includes the playing of casino games such as roulette, baccarat, and blackjack. The amount of duty is calculated by reference to bands of (GGY) (i.e. gross profits) for that accounting period. For example, duty will be paid at a rate of 15 per cent on the first £2,242,500 of GGY, then 20 per cent for the next £1,546,000 of GGY, and so on. Gaming Duty is charged on premises in respect of accounting periods of six months, normally beginning on 1 April and 1 October, with an interim payment which is calculated and due after three months.

4. The change made by this section increases the GGY bands but makes no changes to the rates. The basis of revalorisation of the bands is the Retail Price Index (RPI) for the year ended 31 December 2012. In this case the RPI was calculated at 3.1 per cent.

Section 184: Combined Bingo

Summary

1. Section 184 amends section 20A of the Betting and Gaming Duties Act 1981 (BGDA) which provides the accounting arrangements for games of combined bingo.

Details of the Section

2. Subsection (2) amends section 20A(3) of BGDA 1981 to define the payments that may be taken into account for the purpose of calculating the duty liability from combined bingo.

3. Subsection (3) removes section 20A(4) of BGDA 1981. Section 20A(4) is the qualifying condition that the game is played entirely in the United Kingdom. Removal of subsection 20A(4) will enable bingo promoters in the United Kingdom to offer games in conjunction with promoters outside the United Kingdom without affecting their own bingo duty liability.

4. Subsection (4) provides that these new accounting arrangements will have effect for bingo duty accounting periods that begin on or after the date of Royal Assent to Finance Act 2013.

Background

5. Bingo duty is charged at 20 per cent of a person's bingo profits, calculated by reference to receipts and expenditure on winnings. Bingo that is promoted by more than one person and played simultaneously at more than one place is known as combined bingo. To prevent double counting of payments that are transferred between promoters, as contributions to prize funds, special accounting provisions apply to combined bingo. These accounting provisions only apply where the bingo is played entirely in the United Kingdom.

6. This section will modify the accounting arrangements and remove the qualifying condition that the game is played entirely in the United Kingdom. This will enable bingo promoters in the United Kingdom to offer games in conjunction with promoters elsewhere without affecting their own bingo duty liability.

Section 185: Air Passenger Duty: Rates of Duty from 1 April 2013

Summary

1. Section 185 provides for changes to the rates of air passenger duty (APD). The rates for APD are set out in section 30 of Finance Act 1994. The reduced and standard rates of APD to Band A destinations are unchanged. Reduced rates to all other destinations bands will rise by £2, and standard rates by £4. These changes come into effect in relation to the carriage of passengers beginning on or after 1 April 2013.

Details of the Section

2. Sub-section 2 amends the APD rates to Band B destinations.

3. Sub-section 3 amends the APD rates to Band C destinations.

4. Sub-section 4 amends the APD rates to Band D destinations.

Background

5. In response to industry's request for Government to give sufficient advance notice of changes in APD rates, Budget 2012 announced that APD rates for 2013-14 would increase by the retail price index (RPI).

Section 186: Air Passenger Duty: Miscellaneous Provision

Summary

1. Section 186 introduces legislation to give HM Revenue & Customs (HMRC) the power to implement special accounting arrangements in relation to annual accounting and to specify the detail of these arrangements in regulations.

Details of the Section

2. Subsection 1 inserts new subsections (2A) to (2D) into section 38 of Finance Act 1994 (FA 1994).

3. New subsection (2A) provides that payments based on an estimate of liability may be required at prescribed times during a prescribed period.

4. New subsection (2B) and (2C) provide that such payments are to be calculated in accordance with the regulations, and are to be treated as payments made on account of the person's duty liability for the period.

5. New subsection (2D) provides that where this results in an overpayment of duty, the regulations must make provision that this is to be repaid or treated as duty paid for other periods, or both.

6. Subsections 2 and 3 inserts 'South Sudan' into Part 2 of Schedule 5A to FA 1994, and applies this change from 9 July 2011.

Background

7. To help minimise administrative burdens HMRC are introducing an accounting scheme which will allow operators to submit annual returns. This section provides that payments on account may be required and that the calculation of these amounts and the time when they must be paid are prescribed in regulations.

8. The section also updates the list of territories in Schedule 5A to include South Sudan, which was formally recognised on 9 July 2011.

Section 187: Ved Rates for Light Passenger Vehicles, Light Goods Vehicles, Motorcycles Etc

Summary

1. Section 187 provides for changes to certain rates of vehicle excise duty (VED) by amendment of the Vehicle Excise and Registration Act 1994 (VERA). Changes to the rates take effect in relation to vehicle licences taken out on or after 1 April 2013.

Details of the Section

2. Subsection (2) amends Schedule 1 to VERA to increase the general rate of duty by £5 to £225 for vehicles with an engine size of more than 1549cc and by £5 to £140 for vehicles with an engine size of 1549cc or less.

3. Subsection (3) amends paragraph 1B of Schedule 1 to VERA to change most of the graduated rates of duty which apply generally to light passenger vehicles first registered on or after 1 March 2001. Table 1 provides the rates payable on a first vehicle licence for a vehicle and table 2 provides the rates on all other licences for a vehicle registered on or after 1 March 2001. Table 2 operates so that vehicles emitting over 225 grams of carbon dioxide per kilometre that were registered in the United Kingdom or overseas before 23 March 2006 pay a lower rate than those registered from 23 March 2006 onwards.

4. Subsection (4) amends paragraph 1J of Schedule 1 to VERA to increase the rate of duty by £5 to £220 for Light Goods Vehicles which are not lower-emission vans and by £5 to £140 for lower-emission vans. Lower-emission vans are models which met the Euro 4 air quality pollutant emissions standard early and were registered on or after 1 March 2003 and before 1 January 2007, or that met the Euro 5 air quality pollutant emissions standard early and were registered on or after 1 January 2009 and before 1 January 2011.

5. Subsection (5) amends paragraph 2(1) of Schedule 1 to VERA to increase the rate of duty by £1 to £17 for motorbicycles and motortricycles with an engine size of not more than 150cc; by £1 to £37 for motorbicycles with an engine size of over 150cc but not more than 400cc; by £2 to £57 for motorbicycles with an engine size of over 400cc but not more than 600cc; and by £2 to £78 for motorbicycles with an engine size over 600cc, motortricycles with an engine size over 150cc and trade licences for motorcycles.

Background

6. The rate of Vehicle Excise Duty (VED) chargeable on vehicles is dependent on various factors including the vehicle type, engine size, date of first registration and exhaust pipe emissions data. The rate applying to cars registered on or after 1 March 2001 is generally determined by the vehicle’s carbon dioxide emissions. A reduced rate of VED applies to cars using alternative fuels or featuring a hybrid fuel-electric powertrain. Alternative fuels include Liquefied Petroleum Gas, Compressed Natural Gas and high blend (at least 85 per cent content) bioethanol.

7. The rate applying to vans registered on or after 1 March 2001 is lower if the van met reduced pollution requirements early, that is, before certain emissions requirements became mandatory for new vans.

8. Cars and vans registered prior to March 2001, and all motorcycles, are taxed by reference to the engine size.

9. This year the Government intends to increase VED rates by no more than inflation. VED rates for Heavy Goods Vehicles (HGVs) and buses are frozen.

10. The changes in rates apply to all vehicle licences taken out on or after 1 April 2013 regardless of the commencement date on the licence.

Section 188: Not Exhibiting Licence: Period of Grace

Summary

1. Section 188 provides a 14 day waiver on vehicle owners displaying a newly issued tax disc within their vehicle.

Details of the Section

2. Subsection (1) removes the existing Vehicle Excise and Registration Act 1994 (VERA) provision of a five working days display waiver, when a keeper of a vehicle has applied for a new tax disc ahead of their existing disc's expiry or ahead of the expiry of a period of statutory off-road notification.

3. Subsection (2) introduces new section 33A to VERA which defines the situations where a tax disc would otherwise have to be displayed, so as to include new vehicles and vehicles that have entered onto the UK register for the first time, vehicles that have changed keepership, vehicles that have been relicensed for continued use on the public road by an existing keeper, and vehicles where a replacement licence is needed.

4. These situations embrace the supply of new vehicles by motor dealers, the importation of vehicles by owners that are already or are intending to become permanently resident in the UK, used vehicle sales by and between private owners and by motor dealers where a tax disc is no longer present and a new disc has been applied for to enable a vehicle to be individually used on the public road, as well as the renewal of motor dealers' trade licences.

5. New section 33A to VERA replicates the existing provision on the expiry cessation of a period of statutory off-road notification declared under section 22(1D) of the Act, but by omission removes reference to an annual basis to the declarations. The section also replicates and replaces an existing Road Vehicles (Registration and Licensing) Regulations 2002 display waiver provision for replacement tax discs whilst slightly widening its application to cover replacement trade licences.

Background

6. The section enables the Driver and Vehicle Licensing Agency to reduce tax disc postage costs by extending the display waiver period and broadening the range of applicable situations. The Agency is centralising its issuing of tax discs onto call centre and internet applications to save administration costs. Tax disc applicants will still have the choice to receive their disc immediately at the Post Office.

7. The Agency is also putting statutory off-road notification declarations onto a once only indefinite basis, to save the owners of laid-up stored vehicles from the burden of annual declaration.

Section 189: Vehicles Not Kept Or Used on Public Road

Summary

1. Section 189 removes reference in the Vehicle Excise and Registration Act 1994 (VERA) to an annual requirement to renew statutory off-road notifications. This will enable regulations made under that Act to be modified to set notifications on a one-off indefinite basis.

Details of the Section

2. Subsection (2) amends section 7A of VERA which provides for a supplement to be payable if a vehicle at any point ceases to be appropriately covered for vehicle excise duty purposes. Specifically, the amendment removes reference to a requirement to renew statutory off-road notification annually in order for the vehicle to remain "appropriately covered". With the removal of this reference, it will be possible to amend regulations made under VERA which set the requirements for statutory off-road notification. It is the intention to move from an annual notification requirement to a one-off indefinite notification.

3. Subsection (3) makes a similar amendment to Schedule 2A of VERA in relation to the provisions dealing with the release of vehicles immobilised for vehicle excise duty purposes. In certain circumstances, the Schedule provides for the release of vehicles which had a valid statutory off-road notification in place at the time the immobilisation device was fitted. This amendment specifically removes reference to the requirement to renew a statutory off-road notification annually. As above, this will permit the amendment of regulations made under the Act to provide for a one-off indefinite statutory off-road notification.

Background

4. The Driver and Vehicle Licensing Agency is putting statutory off-road notification declarations onto a once only indefinite basis, to save the owners of laid-up stored vehicles from the burden of annual declaration.

Section 190, Schedule 37: vehicle Licences for Disabled People

Summary

1. Section 190 and Schedule 37 amend the Vehicle Excise and Registration Act (VERA) 1994 to give a 50 per cent discount to rates of Vehicle Excise Duty (VED) to persons receiving the standard mobility component of Personal Independence Payment (PIP), and a complete exemption to those receiving either the enhanced mobility component of PIP, or Armed Forces Independence Payment (AFIP).

Details of the Schedule

2. Paragraph 2 of the Schedule amends section 19 VERA 1994 to confer eligibility for a rebate of the original amount charged for a licence to persons taking out licences at the new discounted or exempt rates. The rebate is calculated by reference to the number of complete months remaining on the existing licence.

3. Paragraph 3 of the Schedule amends section 22ZA VERA 1994 to provide that information relating to a welfare payment recipient may be supplied in support of the administrative functions for a 50 per cent discount to rates of VED or an exemption.

4. Paragraph 4 of the Schedule introduces definitions of the relevant welfare payments to VERA 1994.

5. Paragraph 5 amends Part 1 of Schedule 1 to VERA 1994 to introduce a new provision giving a 50 per cent discount to rates of VED to persons receiving the standard mobility component of PIP. The discount only applies to one vehicle, and remains in effect during any period of the recipient's treatment as in-patient at hospital or similar institution. The vehicle is either to be registered in the name of the recipient or of a person appointed to manage the affairs of a recipient unable to manage their own affairs, or in either case, their nominee.

6. Paragraph 6 amends Schedule 2 of VERA 1994 to add receipt of either the enhanced mobility component of PIP or of AFIP as qualifying conditions for exemption from VED. The exemption remains in effect during any period during which a person in

receipt of the enhanced mobility component of PIP receives treatment as in-patient at a hospital or similar institution. The vehicle is either to be registered in the name of the recipient or of a person appointed to manage the affairs of a recipient unable to manage their own affairs, or in either case, their nominee.

Background

7. The Welfare Reform Act (WRA) 2012 introduced the PIP which will be phased in gradually with effect from 8 April 2013.

8. The Ministry of Defence announced the introduction of the AFIP benefit (for armed forces personnel injured in action since 2006) in summer 2012.

Section 191: Repayments of Value Added Tax to Health Service Bodies

Summary

1. Section 191 adds, from 1 April 2013, four new categories of National Health Service (NHS) body to the list of bodies within the definition of Government departments which may claim refunds of the VAT they pay on certain goods and services.

Details of the Section

2. The section amends section 41(7) of the Value Added Tax Act 1994 to add the National Health Service Commissioning Board, clinical commissioning groups, the Health and Social Care Information Centre and the National Institute for Health and Care Excellence to the list of bodies to be regarded as persons exercising functions on behalf of a Minister of the Crown.

Background

3. Section 41(3) provides that a Government department may claim a refund of the VAT it pays on certain goods and services, if and to the extent that the Treasury so directs. This is to ensure that VAT is not an obstacle to the contracting out of activities to the public and voluntary sectors.

4. Section 41(6) provides that “Government department” includes “any body of persons exercising functions on behalf of a Minister of the Crown”. For the purposes of subsection (6) bodies listed in subsection (7) are to be regarded as a body of persons exercising functions on behalf of a Minister of the Crown”.

5. The bodies named in section 41(7) are NHS bodies.

6. The Health and Social Care Act 2012 establishes the four new categories of NHS body referred to in the section.

7. This section ensures that the bodies referred to in the section may reclaim the VAT they pay on certain goods and services as provided for in section 41(3).

Section 192, Schedule 38: Valuation of Certain Supplies of Fuel

Summary

1. Section 192 introduces Schedule 38 which updates UK VAT law on how the use of business road fuel for private journeys should be taxed. It brings two concessions into law and brings UK law clearly within its European vires. It imposes no additional burdens on taxpayers in doing so and preserves all options previously available to taxpayers. The section establishes an option for taxpayers to account for VAT on the private use of road fuel on a flat rate basis and provides for a table of charges for private use of road fuel, similar to the one that is currently set out in section 57 of the Value Added Tax Act 1994 (VATA), to be set out to this purpose. It takes the annual

revalorisation of that table to take account of changes in pump prices of road fuel out of the Budget process. Instead HM Revenue & Customs (HMRC) will be required to update the table in the future, outside of the Budget process and to a formula set out in a Treasury Order approved by Parliament.

Details of the Schedule

2. Paragraph 2 amends Schedule 6 VATA (valuation: special cases) by inserting a new Part 1 to that Schedule which provides an optional flat rate scheme for valuing deemed supplies which arise when a business's road fuel is used in private journeys for no consideration.

3. New paragraph A1 sets out the conditions to determine when a deemed supply (for no consideration) of road fuel, which arises by virtue of paragraph 5(1) of Schedule 4 VATA, may be valued on a flat-rate basis. The supply must have arisen in circumstances where an individual uses road fuel, which the taxable person has acquired as a business asset, for private journeys. The taxable person may opt for all such supplies made to be valued under the flat rate scheme. If the taxable person opts to use the flat rate scheme for such deemed supplies all such supplies to all individuals in the relevant prescribed accounting period are to be valued on the flat-rate basis.

4. New paragraph B1 requires HM Treasury to make provision for the valuation of supplies on a flat-rate basis and to set out in an order a base valuation table which determines how supplies are to be valued. It enables HM Treasury to set out detailed rules on how the table is to be interpreted. An order under this provision must also require the Commissioners of HMRC to regularly revalorise the amounts in the base table so as to reflect changes in road fuel prices and to set out the revalorised figures in an updated valuation table which must be published by HMRC. The updated valuation table must be published before it takes effect together with a statement specifying the date from which the table has effect.

5. New paragraph C1 preserves a number of necessary rules and definitions that are currently in sections 56 and 57 VATA and brings them into Schedule 6. These stipulate which cars fall within the flat rate scheme, set out what happens if an employee drives more than one car or one car is driven by several employees and define "employment", "car" and "road fuel". This paragraph also provides a power for HM Treasury to amend the definition of road fuel.

6. Part 2 places all of the previously enacted paragraphs of Schedule 6 VATA under a new Part of that Schedule and a new heading. This does not change any of those paragraphs or how they should be construed.

7. Paragraph 3 provides for an exception to the standard rule for valuing deemed supplies so that, where a taxable person has opted to use the flat rate scheme for deemed supplies of road fuel, the standard valuation rule does not apply.

8. Paragraph 4 repeals sections 56 and 57 VATA.

9. Paragraph 5 amends section 97 VATA so that any order made under new Part 1 of Schedule 6 is subject to affirmative resolution procedures.

10. Paragraph 6 inserts a new paragraph 2A into Part 2 of Schedule 6. This is an anti-avoidance provision and replaces a previous anti-avoidance rule which appeared in section 56(2). It prevents under-taxation of private use of fuel by the charging of an artificially low consideration by a taxable person to his employee. It automatically values any supply for consideration made by a taxable person to an employee or partner, or another connected person, which is charged at less than an open market value (OMV), at the OMV.

11. Paragraph 7(1) sets out that the new flat-rate scheme will come into force on 1 February 2014. Paragraph 7(2) amends section 56(2) VATA with effect from 11 December 2013 to ensure that there is only one anti-avoidance rule in force.

12. Paragraph 8 provides for the new anti-avoidance rule in new paragraph 2A of Schedule 6 VATA to be treated as coming into force on 11 December 2012 and has effect for any supplies of road fuel made between 11 December 2012 and Royal Assent to the Finance Act 2013, that were at made at less than the OMV, but only to the extent that the fuel supplied has not been made available to the person receiving the supply before Royal Assent.

Background

13. This section achieves four objectives. These are (a) to bring two concessions into law, (b) to amend the current legislation so that it is compatible with EU law, (c) to streamline how the law is set out to aid small business's understanding; and, (d) to simplify how the valuation tables are updated over time.

14. The changes made preserve all of the options for dealing with private use of business road fuel that are currently available. These are: (a) to treat all road fuel purchased as a business asset and declare scale charges to account for private use under the optional flat rate scheme; (b) keep accurate records of mileage split between business and private journeys (such records can be used to either apportion fuel purchases so that only fuel for business journeys is counted as a business asset, or to accurately value deemed supplies of fuel); and, (c) not to treat road fuel as a business asset, in which case no deemed supplies can arise. HMRC will provide improved guidance for taxpayers so that they may choose the option that best suits them with the minimum of compliance cost in doing so.

Section 193: VAT: Reduced Rate for Energy-Saving Materials

Summary

1. Section 193 amends the legislation relating to the reduced VAT rate for the installation of energy-saving materials (ESM). Its effect is to reduce the scope of this reduced rate to residential accommodation, removing buildings intended for use solely for a relevant charitable purpose.

Details of the Section

2. The section amends Items 1 and 2 of Group 2 of Schedule 7A to the Value Added Tax Act 1994 (VATA) by removing the references to buildings intended for use solely for a relevant charitable purpose so that the reduced rate is restricted to supplies of services of installing ESM in residential accommodation.

Background

3. The UK applies a reduced rate of 5 per cent VAT to the supply and installation of certain ESM (listed in the attached Annex) in a building that consists of a dwelling or a number of dwellings, a building or part of a building used for a relevant residential purpose, a caravan used as a place of permanent habitation, a houseboat or a building intended for use solely for a relevant charitable purpose (i.e. by charities for non-business purposes or as village halls or similar buildings).

4. The relevant UK legislation for the reduced rate of VAT can be found at Section 29A of Schedule 7A VATA. The EU vires for this legislation can be found at article 98 of, and Category (10) of Annex III to, the Principal VAT Directive Category (10) (Category (10) refers to the '*provision, construction, renovation and alteration of housing, as part of a social policy*').

5. The European Commission (Commission) has taken the view the UK is unlawfully applying the reduced rate because ESM are not listed in Category (10) and also because the UK has applied a reduced rate to their installation as part of an environmental, not a social, policy. In addition, buildings intended to be used solely for a relevant charitable purpose are not, in any case, housing as referred to in Category (10). The UK Government disagrees with the Commission's first two points but accepts its final point, namely that charitable non-business buildings and village halls cannot properly be described as housing. The UK Government has therefore introduced this legislation to restrict this reduced rate to supplies of services of installing ESM in residential accommodation

Section 194: Pre-Completion Transactions: Existing Cases

Summary

1. Section 194 amends section 45 of the Finance Act 2003 (transfers of rights) to put beyond doubt that certain types of SDLT avoidance schemes involving an onward sale (a 'subsale' or other 'transfer or rights'), which is not to be completed for a number of years, are ineffective The amendments will have retrospective effect to 21 March 2012.

Details of the Section

2. Subsection (1) provides for amendments to be made to section 45 of FA 2003 and for those amendments to apply in relation to (i) agreements for the grant or assignment of an option or (ii) a transfer of rights (subsale) entered into between 21 March 2012 and but before the day on which the Finance Bill receives Royal Assent.

3. Subsection (2) amends section 45(1A) to exclude agreements for the grant or assignment of an option from being a transfer of rights within section 45(1)(b).

4. Subsection (4) inserts new subsections (3A), (3B) and (3C) into section 45.

5. New subsection 45(3 A) (of FA 2003) provides that the disregard at subsection 45(3) does not apply where -

   - the secondary contract is substantially performed but not completed at the same time as the substantial performance or completion of the original contract,
   - the original purchaser (or a person connected with them) is in possession of the land at any time after substantial performance or completion of the secondary contract, and
   - the main purpose, or one of the main purposes, of the original purchaser in entering into the subsale is the obtaining of a tax advantage.

6. The result of these changes is that the completion of the original contract is not disregarded and the purchaser in that transaction is liable to pay any SDLT due on their purchase.

7. Subsections (5) to (7) provide that the new subsection 45(3A) applies both where only part of the land is subsold and in cases of successive subsales.

8. Subsections (8) to (12) provide that, in cases to which the amendment to section 45(1A) or new subsection 45(3A) apply, the purchaser under the original contract must submit a land transaction return or, if one has been submitted already, an amendment to it, no later than 30 September 2013.

Background

9. It was made clear in Budget 2012 that the Chancellor of the Exchequer would not hesitate to use retrospective legislation to close down future stamp duty land tax (SDLT)

avoidance schemes. These changes are being made in response to the continued use of such schemes.

10. Section 45 of the Finance Act 2003 provides, broadly, that there is only one charge to SDLT where the purchaser of an interest in land, before completing that purchase, sells on the interest in land to another person.

11. This measure is intended to address particular SDLT avoidance schemes that attempt to abuse section 45. The schemes involve an onward sale (a 'subsale' or other 'transfer or rights') which is not to be completed for a number of years. The intended result of the arrangement is that the immediate purchaser is left in possession of the property but bears no SDLT liability, while the transfer of rights is for a small amount of consideration and so falls below the SDLT threshold.

12. It is claimed that the transactions in these schemes fall within section 45 and that therefore no SDLT is payable on the initial purchase. The Government does not believe that section 45 produces the result claimed and these changes put this beyond doubt.

13. Further legislation was also introduced in Finance Act 2013 to reform the transfer of rights (subsale) rules in section 45 of Finance Act 2003. These further changes apply to transfers of rights entered into on or since the Finance Bill received Royal Assent, 17 July 2013.

Section 195Schedule 37: Stamp Duty Land Tax: Pre-Completion Transactions

Summary

1. Section 195 introduces Schedule 37 which retains relief for intermediate purchasers where rights under a land transaction are transferred by way of: (i) an assignment of rights; and/or (ii) qualifying subsale. It charges the end purchaser with Stamp Duty Land Tax (SDLT). It specifies the types of transactions which qualify for relief and also clarifies the legislation to protect against avoidance schemes which seek to circumvent the charge to SDLT.

Details of the Schedule

2. Paragraphs 1 and 2 amend Part 4 of Finance Act 2003 (FA 2003) by amending the transfer of rights rules applying to section 45 FA 2003. The new section 45 introduces a new Schedule 2A to the FA 2003 which contains the substantive provisions.

3. Paragraph 3 inserts a new Schedule 2A which contains provisions about transactions that are entered into before completion of contract. It replaces the term "transfer of rights" with the term "pre-completion transaction" (see Schedule 2A paragraph 1(2)).

Meaning of "pre-completion transactions" and associated terms

4. Schedule 2A Paragraph 1 sets out that Schedule 2A applies where: (i) there is an acquisition of a chargeable interest that is to be completed by a conveyance; and (ii) there is a pre-completion transaction (see paragraph 1(2)).

5. Sub-paragraphs (2) – (8) provide the meaning of a "pre-completion transaction" and related terms such as "the original purchaser", "the original contract", "part of the subject matter of the original contract" and "the transferee". It also sets out certain transactions that are not pre-completion transactions and where Schedule 2A does not apply.

6. Sub-paragraph (5) allows a novation or any other transaction that discharges the original contract to be a pre-completion transaction for the purposes of Schedule 2A.

7. Sub-paragraph (6) provides that where there is a pre-completion transaction that is an assignment of rights (see paragraph 2(1)) that cannot be an "original contract" as set out in paragraph 1(1)(a)).

Other key expressions in relation to pre-completion transactions

8. Schedule 2A Paragraph 2 sets out other key expressions for the purposes of Schedule 2A.

9. Schedule 2A Paragraph 3 provides that entering into a pre-completion transaction does not in itself incur a charge to SDLT. The operation of section 44 FA 2003 and the remaining paragraphs of Schedule 2A still, however, need to be applied where there is a pre-completion transaction.

Assignments of rights: application of rules about consideration and completion

10. Schedule 2A Paragraph 4 deals with the treatment of the transferee in cases where there is an assignment of rights and sets out what is meant by substantial performance by the transferee or anyone connected with the transferee.

11. Sub-paragraph (1) provides that the provisions of paragraph 4 apply if the pre-completion transaction is an assignment of rights.

12. Sub-paragraph (2) provides that where the original contract is completed by a conveyance to the transferee, that conveyance is taken to effect the completion of the original contract and the provisions of section 44(10) FA 2003 are disregarded.

13. Sub-paragraph (3) provides for the amount of chargeable consideration for the transferee's acquisition where either: (i) sub-paragraph (3)(a) (conveyance of the subject-matter to the transferee); or (ii) sub-paragraph (3)(b) (substantial performance) applies. Sub-paragraph (5) provides that the consideration includes any amount given by the transferee (or a connected person in accordance with the provisions in paragraph 4(6)) whether in acquiring the relevant interest in land or for the assignment of rights (see paragraph 4(9))

14. Sub-paragraph (7) sets out the circumstances in which the transferee is to be regarded as having substantially performed the original contract.

15. Sub-paragraph (8) provides that section 44(6) and 44(7) FA 2003 (meaning of "possession" and "substantial amount of consideration" in relation to substantial performance) have the same meaning for the purposes of sub-paragraph (7).

16. Sub-paragraph (9) sets out what is meant by "consideration" for the purposes of paragraph 4(5). It includes any consideration: (i) for the acquisition of the subject-matter of the land transaction; (ii) any consideration for the acquisition of the subject matter the original contract; and (ii) any consideration for entering into or for the transferee's acquisition of the rights to which that contract relates.

Assignment of rights: transferor deemed to make a separate acquisition

17. Schedule 2A Paragraph 5 deems the transferor as making a separate acquisition (a "notional land transaction") where there is an assignment of rights.

18. Sub-paragraph (1) provides that where there is an assignment of rights and the original contract is either: (i) substantially performed by the transferee; or (ii) completed by conveyance to the transferee, the effective date of that land transaction is deemed to be the effective date of the notional land transaction and the original purchaser is the deemed purchaser under that notional land transaction.

19. Sub-paragraph (2) sets out that where there are preceding assignments of rights (an additional land transaction "associated with" the assignments of rights) prior to substantial performance or completion by conveyance of the original contract (an "implemented assignment of rights") there is deemed to be an "additional land transaction" for each such assignment of rights other than the first (which is the subject-matter of the notional land transaction) with a deemed amount of chargeable consideration for each such transaction.

20. Sub-paragraph (3) provides that Schedule 4 FA 2003 applies for determining the chargeable consideration for a notional land transaction (which does not form part of a chain of transactions that are pre-completion transactions) provided that the chargeable consideration is: (i) the total consideration given under the original contract by the transferee (or anyone connected with them) (Amount A – see sub-paragraph A5(a) and (c)); and (ii) the purchaser (or anyone connected with them) under the notional land transaction (Amount B - see sub-paragraph B5(a) and (b)).

21. Sub-paragraph (4) provides that Schedule 4 FA 2003 also applies for determining the chargeable consideration where there are a series of notional land transactions (additional land transactions) provided that the chargeable consideration is: (i) the consideration given under the original contract by the transferee (or anyone connected with them), as well as any consideration given by any transferee (or anyone connected with them) in any prior completion transaction in that series (Amount A - see sub-paragraph A5(a), (b) and (c)); (ii) the purchaser (or anyone connected with them) under any additional land transaction (Amount B - see sub-paragraph B5(a) and (b)); and (iii) any consideration given in any preceding assignment of rights (see sub-paragraph (6)) by the purchaser under that transaction (or anyone connected with them) (Amount C - see sub-paragraph C5 (a) and (b)).

22. Sub-paragraph (5) sets out the rules for calculating the consideration for the notional land transaction/any additional land transactions in a series of pre-completion transactions and set outs out what is meant by Amount A, B and C in paragraph 5(3) and 5(4).

23. Sub-paragraph (6) sets out the meaning of "preceding assignment of rights" for the purposes of sub-paragraph (5).

24. Sub-paragraph (7) provides the meaning of the term "related assignment of rights" for the purposes of sub-paragraph (2).

Effect of rescission, annulment etc of the original contract on SDLT charged on a notional land transaction under paragraph 5(1)

25. Schedule 2A Paragraph 6 sets out the SDLT position where there is a notional land transaction as a result of the original contract being substantially performed and then the original contract is subsequently rescinded or annulled (in whole or in part). The transferee's position is covered by the normal provisions in section 44 FA 2003 but paragraph 6 is required to allow the transferor to claim back an appropriate amount of SDLT.

26. Sub-paragraphs (2) and (3) provide that where (to any extent) the original contract is rescinded or not carried into effect for any other reason, any SDLT paid on a related notional land transaction or additional land transaction has to be repaid to an appropriate extent by HMRC. Any repayment must be claimed through an amendment to the land transaction return.

Assignments of rights of a part of the subject-matter of the original contract

27. Schedule 2A Paragraph 7 sets out the position in relation to assignments of rights of part of the subject matter of the original contract.

Assignments of rights: identity of "the vendor"

28. Schedule 2A Paragraph 8 sets out the provisions regarding the identity of the vendor where there is an assignment of rights (see paragraph 2(1)) and: (i) the subject matter of the original contract is conveyed to the transferee; or (ii) there is substantial performance of the original contract.

29. Sub-paragraph (3) provides the general rule that references to the vendor where there is an assignment of rights will be read as the vendor under the original contract.

30. Sub-paragraph (4) provides that references to the vendor where the original contract was substantially performed before the transferee was entitled to call for a conveyance

should be read as the purchaser under the original contract when that contract was substantially performed.

31. Sub-paragraph (5) sets out that in certain specified provisions references to the vendor will be read as including: (i) the vendor under the original contract; and (ii) the transferor under any relevant assignment of rights (see sub-paragraph (9)).

32. Sub-paragraph (6) provides the list of the specified provisions where sub-paragraph (5) applies.

33. Sub-paragraph (7) provides the definition of "relevant land transactions" for the purposes of paragraph 8. These are land transactions that are effected by a conveyance to the transferee or substantially performed by that transferee or a notional land transaction within paragraph 5(1)(b) or any additional land transaction within paragraph 5(2).

34. Sub-paragraph (8) provides that for the purposes of ascertaining whether or not the linked transactions rules in section 108(1) FA 2003 apply, references to the vendor will be read as the vendor under the original contract or the transferor under any relevant assignment of rights.

35. Sub-paragraph (9) provides a definition of "relevant assignments of rights" for the purposes of paragraph 8.

Free-standing transfers: application of rules about consideration and substantial performance

36. Schedule 2A Paragraph 9 deals with the treatment of the transferee in cases where the pre-completion transaction is a free-standing transfer (as defined in paragraph 2(2)).

37. Sub-paragraph (2) provides that the consideration for any transaction effecting the acquisition of the subject-matter of the free-standing transfer shall include any consideration given for that free-standing transfer.

38. Sub-paragraph (3) provides that any acquisition under sub-paragraph (2) includes any acquisition deemed to take place as a result of substantial performance of a contract without completion (under section 44 (4) FA 2003).

39. Sub-paragraph (4) provides that where the transferee (or its assignee) takes any action that falls within section 44(5) FA 2003 (substantial performance) that is deemed to effect the substantial performance of the original contract.

40. Sub-paragraph (5) sets out the position where there are successive free-standing transfers under paragraph 9. In this case, each successive free-standing transfer is treated as a separate contract to which section 44 FA 2003 applies and sub-paragraph (4) applies with regard to substantial performance for each such contract.

41. Sub-paragraph (6) provides that references to the transferee (or its assignee) in relation to any action taken by that person in accordance with sub-paragraph (4) include anyone connected with that person.

42. Sub-paragraph (7) provides that references) to the transferee's assignee in this paragraph will be read as a person who is entitled to exercise rights under the free-standing transfer as a result of a transaction that is an assignment of rights, for example, in a mixture or series of pre-completion transactions that includes both assignments of rights and free-standing transfers.

Free-standing transfers and pre-completion transactions where there is mixture of both assignments of rights and free-standing transfers: identity of "the vendor"

43. Schedule 2A Paragraph 10 sets out various provisions regarding the identity of the vendor in free-standing transfers and, as the case may be, where there is a mixture of free-standing transfers and assignments of rights.

44. Sub-paragraph (2) provides that references in paragraph 10 to “the relevant land transaction” should be read as the last free-standing transfer (in any chain of pre-completion transactions or otherwise) as set out in paragraph 9(2) or an assignment of rights which follows a free standing transfer and there is: (i) a conveyance to the transferee of the subject matter to which that assignment of rights relates; or (ii) substantial performance by the transferee.

45. Sub-paragraph (3) provides that references in paragraph 10 to “the specified transaction” should be read as the last free-standing transfer (in any chain of pre-completion transactions or otherwise) as set out in paragraph 9(2) or the original contract which is either conveyed to or substantially performed by the transferee.

46. Sub-paragraph (4) provides the general rule that references to the vendor in the relevant land transaction (see paragraph 10(2)) will be read as the vendor or transferor under the “first appropriate transaction” which (subject to the provisions of paragraph 11) is the original contract (see paragraph 11(1)).

47. Sub-paragraph (5) sets out that in certain specified provisions references to the vendor in a free-standing transfer will be read as: (i) the vendor under the original contract; and (ii) each person who is transferor under any relevant pre-completion transaction (see sub-paragraph (8)).

48. Sub-paragraph (6) provides the list of the specified provisions where sub-paragraph (5) applies.

49. Sub-paragraph (7) provides that for the purposes of ascertaining whether or not the linked transactions rules in section 108(1) FA 2003 apply, references to “the vendor” will be read as the vendor under the original contract or the transferor under any relevant pre-completion transaction.

50. Sub-paragraph (8) provides a definition of “relevant pre-completion transaction” for the purposes of paragraph 10.

Other key expressions for the purposes of paragraph 10

51. Schedule 2A Paragraph 11 sets out the meaning of certain expressions used in paragraph 10.

52. Sub-paragraph (1) sets out that, subject to other provisions in paragraph 11, “the first appropriate transaction” in paragraph 10 is the original contract.

53. Sub-paragraph (2) provides that where the original contract is not performed as the same time, and in connection with, the performance of the specified transaction (see paragraph 10(3)), “the first appropriate transaction” is the pre-completion transaction in relation to that original contract, provided that pre-completion transaction meets the conditions set out in sub-paragraph (3).

54. Sub-paragraph (3) sets out the conditions in order for the pre-completion transaction to fall within the definition of “the first appropriate transaction”.

55. Sub-paragraph (4) sets out the meaning of “performed” for the purposes of paragraph 11. In relation to a contract for a land transaction, it is treated as “performed” on the earlier of: (i) substantial performance; or (ii) completion. In relation to a free-standing transfer, it is treated as “performed” when the subject-matter of that free-standing transfer is acquired.

56. Sub-paragraph (5) provides that where there is a series of two or more contracts the original contract is the first contract in the series and the specified transaction is the last pre-completion transaction in the series. Sub-paragraph (6) provides that the specified transaction is the last pre-completion transaction before the transferee acquires the subject-matter of the contract.

Minimum consideration rule

57. Schedule 2A Paragraph 12 provides for a minimum consideration rule for pre-completion transactions (both assignments of rights and free-standing transfers) where there is a relevant connection between the parties (see paragraph 12(3)).

58. Sub-paragraph (2) provides that where there is a relevant connection between the parties in a pre-completion transaction, the amount of consideration for the ultimate or final acquisition is: (i) the consideration it would normally be in the absence of paragraph 12; or (ii) if higher, the first minimum amount (see paragraph 13); or (iii) if higher than both amounts in (i) and (ii) above, the second minimum amount (see paragraph 14).

59. Sub-paragraph (3) sets out the meaning of "relevant connection between the parties". It provides that there is a "relevant connection between the parties" if: (i) the transferee and transferor in relation to a pre-completion transaction are connected with each other (see paragraph 20) or not acting at arm's length; or (ii) sub-paragraph 4 applies.

60. Sub-paragraph (4) sets out how the relevant connection between the parties test should be applied where there are a series of pre-completion transactions. It applies if the transferor in a pre-completion transaction that precedes the implemented transaction (see paragraph 12(3)) is connected with or not acting at arm's length to the transferee under that implemented transaction.

61. Sub-paragraph (5) sets out that references to the "original contract" in paragraph 13 and paragraph 14 where the implemented transaction forms part of a series of contracts with common subject-matter shall be read as a reference to the first contract in that series.

Calculation of minimum amounts for the purposes of the minimum consideration rule

62. Schedule 2A Paragraph 13 sets out the meaning of first minimum amount and how this is calculated for the purposes of paragraph 12.

63. Sub-paragraph (1) provides that the "first minimum amount" (see paragraph 12(2)(b)) is in respect of a chargeable interest that is acquired under a land transaction (see paragraph 4(4) and 9(2)): (i) the amount of consideration for the subject matter of the original contract (if the whole of the subject matter of that contract is acquired); or (ii) the amount of consideration just and reasonably apportioned (if a part of the subject-matter of the original contract is acquired).

64. Sub-paragraph (2) provides that if certain conditions are met (see sub-paragraph 3) the first minimum amount is total of any consideration required to be given by the transferor (the first T – see sub-paragraph (4)) under the terms of the contract for the first T's acquisition (see sub-paragraph (5)) of the subject matter of that contract and, if not included, any consideration required to be given by the first T under any pre-completion transaction where the first T is a transferee.

65. Sub-paragraph (3) sets out the conditions that need to be met for the first minimum amount to apply.

66. Sub-paragraph (4) sets out the meaning of "the first T" for purposes of paragraph 13.

67. Sub-paragraph (5) provides a definition of "the transfer to the first T" for the purposes of paragraph 13(2). It is the pre-completion transaction where the first T is a transferee or the original contract (if T (see Condition B in sub-paragraph (3)) is the original purchaser).

68. Sub-paragraph (6) provides the meaning of "original contract" and "tax advantage" for the purposes of this paragraph.

Calculation of the second minimum amount for the purposes of the minimum consideration rule

69. Schedule 2A Paragraph 14 sets out how the second minimum amount is calculated for the purposes of paragraph 12. It is the total amount of consideration given by relevant parties (see paragraph 14(3)).

70. Sub-paragraph (2) sets out the formula for ascertaining the net amount of consideration given by a relevant party. This sub-paragraph and the provisions of sub-paragraph (4) require that the calculation is carried out for each party.

71. Sub-paragraph (3) provides that (subject to paragraph 14(4)) the relevant parties for the purposes of the calculation of the second minimum amount are: (i) the original purchaser; and (ii) the transferee including, where there are successive pre-completion transactions, all transferees in the chain of transactions.

72. Sub-paragraph (4) provides that where a pre-completion transaction (an "implemented transaction") is part of a chain of pre-completion transactions in relation to an original contract (see paragraph 12(5)), only the following are relevant parties: (i) a person who is a transferee or a transferor under the implemented transaction; (ii) a person who is a transferor in a preceding transaction (see sub-paragraph (7)) prior to an implemented transaction where that transferor is connected with or not acting at arm's length to the transferee under the implemented transaction; (iii) the transferee under a pre-completion, if the transferor in (ii) above is a relevant party.

73. Sub-paragraph (5) provides that any amounts given by connected parties and parties not acting at arm's length are treated as given by the relevant party for the purposes of the formula in paragraph 14(2).

74. Sub-paragraph (6) provides that amounts to be given in respect of an implemented transaction where that transaction relates to a part of the subject-matter of the original contract, those amounts are to be adjusted and determined on a just and reasonable basis. This includes any preceding transactions of a part prior to any implemented transaction.

75. Sub-paragraph (7) sets out the meaning of the "the original contract" and "preceding transaction" for the purposes of paragraph 14.

Relief for the original purchaser in assignment of rights cases

76. Schedule 2A Paragraph 15 sets out the conditions for relief from SDLT where there is an assignment of rights.

77. Sub-paragraph (1) provides that relief is available if: (i) there is an assignment of rights and a person is liable to SLDT in respect of the notional land transaction (see paragraph 5(1)) or any additional land transaction (see paragraph 5(2)); and (ii) the original contract had not been substantially performed when the assignment of rights was entered into.

78. Sub-paragraph (2) sets out that no SDLT is chargeable on the notional land transaction or additional land transaction if relief is claimed under this paragraph.

79. Sub-paragraph (3) provides that relief is not available if the land transaction under paragraph 4 is exempt from charge by reason of the alternative property finance rules.

80. Sub-paragraph (4) sets out that any relief must be claimed by the submission of a land transaction return.

Relief for the original purchaser in qualifying subsale cases

81. Schedule 2A Paragraph 16 sets out the conditions for relief from SDLT where there is a qualifying subsale.

82. Sub-paragraph (1) provides that relief from SDLT is available where the pre-completion transaction is: (i) a qualifying subsale (see sub-paragraph (8)); (ii) the original purchaser would (apart from this paragraph) be liable to SDLT on the land transaction effected by completion or substantial performance of the original contract; (iii) the qualifying subsale is performed at the same time as and in connection with the original contract; and (iv) relief is claimed in a land transaction return in accordance with sub-paragraph (6)

83. Sub-paragraph (2) provides that where the qualifying subsale is for the whole of the subject-matter of the original contract, no liability to SDLT arises on that transaction.

84. Sub-paragraph (3) provides that where the qualifying subsale relates to part of the subject-matter of the original contract then full relief is not available but the amount of the consideration is reduced accordingly.

85. Sub-paragraph (4) sets out that there may be more than one reduction in SDLT for qualifying subsales of a part which relate to the same original contract.

86. Sub-paragraph (5) provides that relief from SDLT under this paragraph is not available if: (i) the original contract was substantially performed before the qualifying subsale was entered into; or (ii) the transaction effected by the qualifying subsale is exempt from charge by virtue of the alternative property finance rules.

87. Sub-paragraph (6) provides that relief under this paragraph must be claimed by the submission of a land transaction return.

88. Sub-paragraph (7) sets out the meaning of "performed" in respect of a contract for land transaction under this paragraph. It is the earlier of substantial performance or completion.

89. Sub-paragraph (8) defines what is meant by a "qualifying subsale".

Relief for successive subsales

90. Schedule 2A Paragraph 17 provides how the conditions for relief set out in paragraph 16 apply to situations where there are successive subsales.

Tax avoidance arrangements

91. Schedule 2A Paragraph 18 denies relief if a pre-completion transaction forms part of tax avoidance arrangements; this requires consideration of the purpose or purposes of the original purchaser.

92. Sub-paragraph (1) denies relief under paragraph 15 and paragraph 16 if the assignment of rights and/or the qualifying subsale (as the case may be) forms part of any tax avoidance arrangements.

93. Sub-paragraph (2) sets out the meaning of "tax avoidance arrangements".

94. Sub-paragraph (3) sets out the meaning of "tax advantage".

95. Sub-paragraph (4) sets out the meaning of "arrangements".

96. Sub-paragraph (5) provides that (for the avoidance of doubt) nothing in paragraphs 12, 13 and 14 (the minimum consideration rule and the calculation of the first minimum amount and the second minimum amount) affects the breadth of sections 75A -75C FA 2003 (anti-avoidance rules).

Exclusion of transactions from duty to make returns etc

97. Schedule 2A Paragraph 19 provides a power for the Treasury to make regulations to: (i) remove the requirement to deliver a land transaction return (where relief is being claimed) in certain cases (for both assignments of rights and free-standing transfers); and (ii) alter the condition that a relief has to be claimed for certain types of transaction/ provide that the deeming provision for a notional land transaction (see paragraph 5) does not apply in certain cases. This power is subject to section 114 FA 2003.

Definition of connected persons

98. Schedule 2A Paragraph 20 provides that the definition of connected persons in section 1122 of CTA 2010 applies to the Schedule.

Interpretation of Schedule

99. Schedule 2A Paragraph 21(1) and (2) set out a list of key expressions used in the Schedule and where those expressions are defined.

100. Sub-paragraph (3) provides that there is only one original purchaser where a chargeable interest is acquired but cases involving joint purchasers are disregarded.

101. Paragraphs 4 -10 are a series of consequential amendments to FA 2003 as a result of the insertion of Schedule 2A.

102. Paragraph 11 provides that the amendments made in Schedule 2A apply to transfers of rights (within section 45 FA 2003) and pre-completion transactions (which replaces the term “transfers of rights”) entered into on or after Royal Assent to Finance Act 2013.

Background

103. The Government announced in Budget 2012 that it would consult on reforming section 45 FA 2003. A consultation document was published on 17 July and closed on 9 October 2012. A consultation response document was published on 11 December alongside the legislation in the draft Finance Act 2013. The second consultation on the draft legislation closed on 6 February 2013. Revised legislation was included in FB 2013, published on 28 March 2013.

104. The current law achieves two broad outcomes where a transfer of rights takes place. The transferee is charged SDLT on a single land transaction which is an amalgam of the transfer of rights and the ultimate acquisition of the land. Any acquisition by the transferor is disregarded if it is completed at the same time and in connection with the acquisition by the transferee.

105. The Schedule broadly produces the same outcome as the current rules, but is more robust against attempted avoidance.

106. The amendments give relief to assignments of rights and qualifying subsales. They set out what is meant by a “pre-completion transaction” and how assignments of rights and free-standing transfers (all other transactions that do not fall within the definition of an assignment of rights) are to be treated. In assignments of rights and qualifying subsales, the transferor will be regarded as making an acquisition of a chargeable interest for SDLT purposes and will need to make a land transaction return in order to be able to claim relief. The transferor will be able to make a claim for full relief in certain circumstances. The relief will be subject to an avoidance purpose test.

107. The position for the transferee will remain broadly the same with the exception of the introduction of an anti-avoidance minimum consideration rule for connected parties or non-arm’s length transactions.

Section 196, Schedule 40: Stamp Duty Land Tax Relief from 15% Rate

Summary

1. Section 196 introduces Schedule 40 which provides for a number of reliefs from the higher rate of Stamp Duty Land Tax charged by Schedule 4A Finance Act 2003. This rate is charged on acquisitions of interests in dwellings of value greater than £2 million by certain companies, partnerships with company members and collective investment schemes. The reliefs reduce the rate of tax chargeable to that applying to acquisitions of high value residential properties by others. They exclude from the higher rate dwellings held for a number of commercial purposes.

Details of the Schedule

2. Paragraph 1 is introductory

3. Sub-paragraph 2(1) states that Schedule 4A FA 2003 is to be amended. Twelve new paragraphs replace the existing relief for property development trades with relief for a wider range of commercial uses of the dwelling. Eight new paragraphs provide for giving and withdrawing the relief in cases subject to Alternative Finance Arrangements.

Three sections of FA 2003 are amended, and one new section added, to deal with the tax return and payment consequences of withdrawal of relief.

4. Sub-paragraph 2(2) inserts new paragraphs 5 to 5K and 6A to 6H to replace the existing paragraph 5 in Schedule 4A FA 2003. This paragraph currently provides relief only for certain property developers.

5. New paragraphs 5 and 5A deal with relief for property rental businesses, property development trades and property trading businesses. New Paragraphs 5B to 5K deal with trades making a dwelling available to the public, financial institutions acquiring dwellings in the course of lending, dwellings for employee occupation and farmhouses.

6. New paragraphs 6A to 6H modify these reliefs where the dwelling is subject to alternative finance arrangements

7. Sub-paragraph 2(3) substitutes a new Paragraph 5 into Schedule 4A

8. New sub-paragraph 5(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15% rate on certain transactions, if the interest in land is acquired exclusively for one of four purposes:

   (a) exploitation as a source of rents or other receipts in a property rental business;

   (b) development, redevelopment and resale in a property development trade;

   (c) as an exchange property in a property development trade; and

   (d) resale in a property trading business.

9. New sub-paragraph 5(2) states that the interest is not to be regarded as exclusively acquired for one of these purposes if it is intended that certain types of individual ("non-qualifying individuals") will be permitted to occupy the dwelling.,.

10. New sub-paragraph 5(3) defines terms used in paragraphs 5(1) and 5(2), including requirements that trades be on a commercial basis with a view to profit

11. Sub-paragraph 5(4) inserts new paragraphs 5A to 5K into Schedule 4A

12. New sub-paragraph 5A(1) defines a non-qualifying individual, in a way that is analogous to that for the annual tax on enveloped dwellings, but by reference to the purchaser of the land.

13. New paragraphs 5B to 5K provide other reliefs for properties as follows:

14. New sub-paragraph 5B(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15% rate on certain transactions, if certain conditions are met, that are set out in new sub-paragraph 5B(2).

15. New sub-paragraph 5B(2) states one set of conditions to be that the interest in the property is acquired with the intention that the dwelling to be used in a qualifying trade, and that reasonable commercial plans have been made to exploit the property without delay, unless delay is justified by commercial considerations or is unavoidable.

16. New sub-paragraph 5B(3) defines a qualifying trade as one which involves offering the public the opportunity to stay in, make use of, or otherwise enjoy the dwelling, provided it is carried on on a commercial basis and in the normal course the dwelling is made available to the public for at least 28 days in any year.

17. New sub-paragraphs 5B(4) and (5) require that the public must be permitted to use a significant proportion of the interior of the building for the trade to qualify, taking into account the size, nature and function of the part which they are permitted to use.

18. New sub-paragraphs 5C(1) and (2) disapply Paragraph 3 of Schedule 4A FA 2003, which imposes the 15% rate on certain transactions, to the acquisition of land if the

purchaser is a financial institution carrying on a business involving the lending of money, in so far as the land is acquired for resale and in connection with the lending activities. Financial Institution is defined in modified Paragraph 9 of Schedule 4A FA 2003: see sub-paragraph 2(6) of Schedule 38.

19. New sub-paragraph 5D(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15% rate on certain transactions, if conditions set out in new Paragraph 5D(2) are met. It specifies that they can only be met if the purchaser or a relevant group member (defined in sub-paragraph 5D(6)) carries on or is to carry on a qualifying trade.

20. New sub-paragraph 5D(2) sets out that the conditions are that the dwelling is acquired for the purpose of making it available as living accommodation for “qualifying individuals”, for purposes that are solely or mainly purposes of the qualifying trade.

21. New sub-paragraph 5D(3) clarifies that the accommodation can be for individuals generally or for specifically identified individuals.

22. New sub-paragraph 5D(4) defines a qualifying trade as one carried on on a commercial basis with a view to profit.

23. New sub-paragraph 5D(5) specifies that provision for an individual includes provision for the individual’s family living with the employee.

24. New sub-paragraph 5D(6) defines a group of companies as the same as a group for Stamp Duty Land Tax group relief purposes.

25. New sub-paragraph 5E(1) defines a qualifying partner as an individual who is a member of a partnership of which the person carrying on the qualifying trade in new sub-paragraph 5D(1) is also a member..

26. New sub-paragraph 5E(2) defines a qualifying individual as an individual employed for the purposes of the qualifying trade .

27. New sub-paragraph 5E(3) prevents relief being given if the individuals to whom it is proposed the dwelling is to be made available are likely to include members of the partnership who have a 10% or greater share in the income profits of the partnership, in a company holding the interest in the dwelling or in the interest itself.

28. New sub-paragraph 5E(4) similarly prevents relief if individuals to whom the dwelling is likely to be made available include employees of the relevant trade who have a 10% or greater share of the income profits of the trade, or in any company holding the interest in the dwelling or in the interest itself. Additionally relief is prevented if the individuals include those employed to provide excluded domestic services. These are defined in new sub-paragraph 5E(5).

29. New sub-paragraph 5E(5) defines excluded domestic services as services in connection with actual or intended occupation of the dwelling or a linked dwelling by an individual specified in new sub-paragraph 5E(6).

30. New sub-paragraph 5E(6) specifies the individual referred to in new sub-paragraph 5E(5) as one who is connected with a person beneficially entitled (or who is to be beneficially entitled) to the higher threshold interest in the dwelling.

31. New sub-paragraph 5E(7) defines linked dwellings according to the definitions in the Annual Tax on Enveloped Dwellings legislation.

32. New sub-paragraph 5E(8) treats beneficial joint tenants (in Scotland, joint owners) as having equal shares in the dwelling.

33. New Paragraph 5C(9) applies here the definition of a 10% or more share in a company set out in section 145 of FA 2013 (the annual tax on enveloped dwellings legislation).

34. New sub-paragraph 5F(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15% rate on certain transactions, if the higher threshold interest is in or over a dwelling used, or to be used, as a farmhouse and the conditions set out in new paragraph 5F(3) are met.

35. New sub-paragraph 5F(1) disapplies Paragraph 3 of Schedule 4A FA 2003, which imposes the 15% rate on certain transactions, if the higher threshold interest is in or over a dwelling that is, or is to be, a farmhouse and the conditions set out in new paragraph 5F(3) are met.

36. New sub-paragraph 5F(2) defines a farmhouse for these purposes as a dwelling that forms part of land that is occupied (or to be occupied) for the purposes of a farming trade and which is appropriate in character to the size of the farm and the nature and scale of the farming trade to be carried on there.

37. New sub-paragraph 5F(3) states that the conditions are (i) for the dwelling to be occupied for the purposes of the farming trade by a qualifying farm worker, (ii) that reasonable commercial plans have been made for such occupation to start without delay except where justified by commercial considerations or is unavoidable, and (iii) that occupation by a qualifying farm worker is expected to continue as part of the normal way that farming trade is carried on.

38. New sub-paragraph 5F(4) defines a qualifying farm worker as an individual who occupies the farmhouse for the purposes of a farming trade in which he or she has substantial day to day involvement.

39. New sub-paragraph 5F(5) defines a qualifying trade of farming as one carried on on a commercial basis and with a view to profit.

40. New sub-paragraph 5F(6) states that a person who occupies part of a dwelling is treated as occupying the dwelling.

41. New sub-paragraph 5F(7) applies the definition of “farming” from Corporation Tax Act 2010 but with the inclusion of market gardening as defined in Corporation Tax Act 2010.

42. New paragraphs 5G – 5K provide that the reliefs from the higher rate of Stamp Duty Land Tax may, in certain circumstances, be withdrawn if the relevant conditions cease to be met within the three years following the acquisition of the interest.

43. New sub-paragraph 5G(1) provides that reliefs within paragraph 5 (property rental businesses, property development trades and property trading businesses) may be withdrawn under sub-paragraph 5G(2).

44. New sub-paragraph 5G(2) withdraws relief under paragraph 5 if, at any time in the three years following the acquisition, one or more of the requirements in paragraph 5G(3) are not met.

45. New sub-paragraph 5G(3) sets out the requirements that (i) the interest, or any derived interest, in the dwelling, if still held by the purchaser, is held exclusively for the purposes of one or more of a property rental business, a property development trade or property trading business and (ii) no non-qualifying individual (as defined in 5(7)) is permitted to occupy the dwelling.

46. New sub-paragraph 5G(4) provides that, if it is not reasonable to expect the dwelling to be used for the intended purpose because of circumstances beyond the purchaser’s control, the requirement that the interest is held for the purposes of one or more of a property rental business, property development trade or property trading business does not apply.

47. New sub-paragraph 5G(5) provides that sub-paragraph 5G(6) will apply if, within the three years following the acquisition, the activity for which the property interest was

acquired which qualified it for relief under paragraph 5 either has not begun or has ceased.

48. New sub-paragraph 5G(6) provides that an interest will only be treated as being held for a purpose eligible for relief if reasonable steps are being taken to ensure that that purpose is carried out.

49. New sub-paragraph 5G(7) applies the definition of non-qualifying individual from paragraph 5A.

50. New sub-paragraphs 5H(1) and (2) provide that relief from the 15% rate for trades which involve opening a dwelling to the public may be withdrawn if, at any time in the three years following the acquisition, the requirement in paragraph 5H(3) is not met.

51. New sub-paragraph 5H(3) sets out the requirements that the interest (if still held by the purchaser) is being exploited as a source of income in the course of a qualifying trade, as is any interest held by the purchaser derived from that interest.

52. New sub-paragraph 5H(4) provides that relief will not be withdrawn if, due to circumstances beyond the purchaser's control, it is not reasonable to expect the dwelling to be exploited as a source of income in the specified way.

53. New sub-paragraph 5H(5) and (6) provide that if, within the three years following the acquisition, the exploitation of the interest as a source of income in a qualifying trade either has not begun or has ceased, the relevant interest will only be treated as being exploited as a source of income in a qualifying trade if reasonable steps are being taken to ensure that the interest begins to be so exploited or that such exploitation resumes.

54. New sub-paragraphs 5I(1) and (2) provide that relief from the 15% rate for financial institutions acquiring the property interest in the course of lending may be withdrawn if any of the requirements in sub-paragraph 5H(3) are not met in the three years after the acquisition of the interest.

55. New sub-paragraph 5I(3) provides two requirements: that the purchaser continues to be a financial institution carrying on a business of lending money, and the interest is held for the purpose of resale in that business.

56. New sub-paragraph 5I(4) restricts these requirements to times in the three years when the purchaser holds the interest acquired or any interest derived from it.

57. New sub-paragraph 5I(5) provides that relief will not be withdrawn if, due to circumstances beyond the purchaser's control, it is not reasonable to expect the requirements to be met.

58. New sub-paragraph 5J(1) provides that relief from the 15% rate for dwellings for occupation by certain employees and partners may be withdrawn under sub-paragraph 5G(2).

59. New sub-paragraph 5J(2) withdraws relief if, at any time in the three years following the acquisition, any requirement in paragraph 5J(3) is not met.

60. New sub-paragraph 5J(3) sets out the requirements that:

   a. the purchaser (or a group member) carries on a qualifying trade;

   b. the dwelling is made available to one or more qualifying individuals for use as living accommodation; and

   c. the dwelling is made available solely or mainly for trade purposes.

61. New sub-paragraph 5J(4) provides that these requirements only apply while the purchaser still holds the interest acquired (or an interest derived from that interest).

62. New sub-paragraph 5J(5) provides that relief will not be withdrawn if, due to circumstances beyond the purchaser's control, it is not reasonable to expect these requirements to be met.

63. New sub-paragraph 5J(6) provides that sub-paragraph 5G(7) will apply if, within the three years following the acquisition, the dwelling has not begun to or has ceased to be made available as accommodation within the conditions for the relief.

64. New sub-paragraph 5J(7) provides that a dwelling will only be treated as being made available to one or more qualifying individuals for use as living accommodation if reasonable steps are being taken to ensure that the dwelling will begin to be, or will return to being, so available.

65. New sub-paragraph 5K(1) provides that relief from the 15% rate for farmhouses may be withdrawn under sub-paragraph 5K(2).

66. New sub-paragraph 5K(2) withdraws relief if, at any time in the three years following the acquisition, the requirements in paragraph 5K(3) are not met.

67. Sub-paragraph 2(5) inserts new paragraphs 6A-6H in Schedule 4A FA 2003. These paragraphs modify the application of Schedule 4A for cases which involve alternative finance arrangements.

68. New paragraph 6A deals with alternative finance arrangements which come within section 71A, section 72 or section 73, FA 2003.

69. New sub-paragraph 6A(1) provides that paragraph 6A will apply where any of section 71A, section 72 or section 73 applies and the major interest purchased under the first transaction includes a higher threshold interest.

70. New sub-paragraph 6A(2) defines "the first transaction" for the purposes of this paragraph.

71. New sub-paragraph 6A(3) provides that the condition in paragraph 3(3) (that the purchaser is a company, or that the purchase is made by or on behalf of a partnership with a corporate member or for the purposes of a collective investment scheme) is only treated as being met in respect of the first transaction where that condition is satisfied in respect of the second transaction.

72. New sub-paragraph 6A(4) provides that the first transaction will qualify for a relief under paragraphs 5(1), 5B(1), 5D(2) or 5F(1) where the second transaction qualifies for the relief in question (assuming, for this purpose, that the subject matter of the second transaction is a higher threshold interest and so within the scope of those reliefs even if it is not).

73. New sub-paragraph 6A(5) provides that the first transaction will not qualify for relief under paragraphs 5(1), 5B(1), 5D(2) or 5F(1) except in accordance with sub-paragraph (4) (i.e. only where the second transaction would qualify for relief under any of those provisions).

74. New sub-paragraph 6A(6) provides that "the second transaction" shall have the same meaning in this paragraph as in section 71A, 72 or 73 (as appropriate).

75. New paragraph 6B deals with alternative finance arrangements which come within section 72A.

76. New sub-paragraph 6B(1) provides that paragraph 6B will apply where section 72A applies and the major interest purchased under the first transaction includes a higher threshold interest.

77. New sub-paragraph 6B(2) provides that whether the condition in paragraph 3(3) is met is to be determined as if the financial institution was not one of the purchasers acquiring a major interest in land under the first transaction.

78. New sub-paragraph 6B(3) provides that paragraphs 5 to 5F also apply as if the financial institution was not one of the purchasers under that transaction.

79. New sub-paragraph 6C(1) provides that, where a first transaction is split into two transactions under paragraph 2(4), paragraph 6A or 6B applies to both transactions.

80. New sub-paragraph 6C(2) provides that, where the second transaction (for the purposes of paragraph 6A) includes a chargeable interest other than a higher threshold interest, that fact is ignored when determining whether the transaction (i) meets the condition in paragraph 3(3) or (ii) qualifies for relief under paragraphs 5(1), 5B(1), 5D(1) and 5F(1).

81. New paragraphs 6D-6H provide for the situation where a transaction within paragraph 6A or 6B has been allowed relief from the higher rate of SDLT, and that relief has subsequently been withdrawn.

82. New sub-paragraph 6D(1) provides that paragraph 6D applies where relief has been allowed under paragraph 5 for a business of letting, trading in or developing properties in respect of an alternative property finance transaction within paragraph 6A(4) or 6B(3).

83. New sub-paragraph 6D(2) states that the relief will be withdrawn where at any time in the following three years (the control period) a relevant requirement ceases to be met.

84. New sub-paragraph 6D(3) specifies that the "relevant requirements" are that: (i) any relevant interest held by the relevant person is held exclusively for a purpose which is relievable under paragraph 5 (that is to say, a business of letting, trading in or developing properties); and (ii) no non-qualifying individual is permitted to occupy the dwelling.

85. New sub-paragraph 6D(4) confirms that it does not matter for the purposes of this paragraph whether the relevant interest is held by the relevant person jointly (or in Scotland, in common) or otherwise.

86. New sub-paragraph 6D(5) defines "relevant interest" in respect of any relief allowed under paragraph 6A(4).

87. New sub-paragraph 6D(6) defines "relevant interest" in respect of any relief allowed under paragraph 6B(3).

88. New sub-paragraph 6D(7) defines "non-qualifying individual" and "the relevant person" for the purposes of this paragraph.

89. New sub-paragraph 6E(1) provides that the requirement in paragraph 6D(3)(a) - that any relevant interest is held exclusively for a purpose which is relievable under paragraph 5 - does not apply where it is no longer reasonable to expect the interest to be held for that purpose due to an unforeseen change of circumstances that is beyond the relevant person's control.

90. New sub-paragraph 6E(2) provides that sub-paragraph (3) will apply where an interest is acquired for a relievable purpose but that, at some point during the three year control period, the activity in question has either not begun or has ceased.

91. New sub-paragraph 6E(3) provides that, for the purposes of paragraph 6D(3)(a), the relevant interest will only be treated as held for the purpose in question if reasonable steps are being taken to ensure that that purpose is carried out.

92. New sub-paragraph 6E(4) defines "control period" "relevant interest", "the relevant person" and references to "initial interest" for the purposes of this paragraph.

93. New sub-paragraph 6F(1) provides that paragraph 6F applies where relief has been allowed under paragraph 5B (for a trade involving making a dwelling open to the public) in respect of an alternative property finance transaction within paragraph 6A or 6B.

94. New sub-paragraph 6F(2) states that the relief will be withdrawn where, at any time in the following three years (the control period), the requirement in sub-paragraph (3) ceases to be met.

95. New sub-paragraph 6F(3) specifies that the dwelling must be held and exploited by the relevant person (whether jointly, in common, or otherwise) as a source of income in the course of a qualifying trade.

96. New sub-paragraph 6F(4) provides that the requirement in sub-paragraph (3) does not apply where it is no longer reasonable to expect the interest to be exploited in that manner due to an unforeseen change of circumstances that is beyond the relevant person's control.

97. New sub-paragraph 6F(5) provides that sub-paragraph 6F(6) will apply where an interest is acquired for exploitation as a source of income in the course of a qualifying trade but that, at some point during the three year control period, the relevant person has either not begun or has ceased to exploit the interest in that manner.

98. New sub-paragraph 6F(6) provides that the requirement for the interest is exploited as set out in subparagraph (3) will be treated as met only if reasonable steps are being taken to ensure that such exploitation begins or is resumed.

99. New sub-paragraph 6F(7) defines "the relevant person" for the purposes of this paragraph and provides that a reference to a major interest in land includes an undivided share in such an interest.

100. New sub-paragraph 6G(1) provides that paragraph 6G applies where relief has been allowed under paragraph 5D (dwellings for occupation by certain employees etc) in respect of an alternative property finance transaction within paragraph 6A or 6B.

101. New sub-paragraph 6G(2) states that the relief will be withdrawn where, at any time during the control period when a relevant person holds a relevant interest, any requirement in sub-paragraph (4) ceases to be met.

102. New sub-paragraph 6G(3) defines the "control period" as being the three years from the effective date of the first transaction.

103. New sub-paragraph 6G(4) specifies the requirements as:

    a. the relevant person (or a relevant group member) must be carrying on a qualifying trade;

    b. the dwelling must be made available as mentioned in paragraph 5D(2)(a) (that is to say, to one or more qualifying individuals for use as living accommodation); and

    c. the dwelling is made so available for the purposes of that qualifying trade.

104. New sub-paragraph 6G(5) provides that the requirements in sub-paragraph (4) do not apply where it is no longer reasonable to expect that they will be met due to an unforeseen change of circumstances that is beyond the relevant person's control.

105. New sub-paragraph 6G(6) provides that sub-paragraph (7) will apply where the relevant interest has not begun to be made available in accordance with sub-paragraphs (4)(b) and (c), or has ceased to be made available in that manner during the control period.

106. New sub-paragraph 6G(7) provides that the requirements under sub-paragraphs (4)(b) and (c) will be treated as being met only if reasonable steps are being taken to ensure that the dwelling will begin to be, or will return to being, made available as required by those subparagraphs.

107. New sub-paragraph 6G(8) provides that, where the relevant person is a company, "relevant group company" means a member of a the same group of companies as the relevant person in accordance with paragraph 1(2) of Schedule 7.

108. New sub-paragraph 6G(9) defines "relevant interest" and "the relevant person" for the purposes of this paragraph and provides that a reference to a major interest in land includes an undivided share in such an interest.

109. New sub-paragraph 6H(1) provides that paragraph 6H applies where relief has been allowed under paragraph 5F (farmhouses) in respect of an alternative property finance transaction within paragraph 6A or 6B.

110. New sub-paragraph 6H(2) states that the relief will be withdrawn where, at any time during the control period when a relevant person holds a relevant interest (whether jointly, or in common, or otherwise), any requirement in sub-paragraph (4) ceases to be met.

111. New sub-paragraph 6H(3) defines the "control period" as being the three years from the effective date of the first transaction.

112. New sub-paragraph 6H(4) specifies the requirements are that:

   a. the land mentioned in paragraph 5F(2)(a) is occupied for the purposes of a qualifying trade of farming; and

   b. the dwelling is occupied for the purposes of that trade by a qualifying farm worker.

113. New sub-paragraph 6H(5) provides that the requirements in sub-paragraph (4) do not apply where it is no longer reasonable to expect that they will be met due to an unforeseen change of circumstances that is beyond the relevant person's control.

114. New sub-paragraph 6H(6) provides that sub-paragraph 6H(7) will apply where, during the control period, a requirement in sub-paragraph (4) has not begun, or has ceased to be met.

115. New sub-paragraph 6H(7) provides that the requirements under sub-paragraph (4) will be treated as being met only if reasonable steps are being taken to ensure that the requirements begin to be, or return to being, satisfied.

116. New sub-paragraph 6H(8) defines "relevant interest" and "the relevant person" for the purposes of this paragraph and provides that a reference to a major interest in land includes an undivided share in such an interest.

117. Sub-paragraph 2(6) provides that references to "financial institution", "property development trade", "property rental business", "property trading business", "qualifying farm worker", "qualifying trade" and "qualifying trade of farming" should be inserted, at the appropriate places, in paragraph 9 of Schedule 4A.

118. Paragraph 3 amends section 81 FA 2003 which provides that, where relief is withdrawn in certain circumstances, a purchaser is obliged to file a further land transaction return.

119. Sub-paragraph 3(2) inserts two new sub-sections into section 81 FA 2003 to provide for further returns to be filed where the relief from the 15% rate is withdrawn.

120. New sub-section 81(1A) provides that where relief from the 15% rate is withdrawn under new paragraphs 5G-5K (summarised above), the purchaser must deliver a further return within 30 days after the relevant date provided for in new sub-section 81(1B).

121. New sub-section 81(1B) specifies, for each relief, the relevant date from which the 30 day period, in which the further return must be delivered, is calculated.

122. Sub-paragraph 3(3) amends sub-section 81(2A) FA 2003 so that it does not apply to new-subsection 81(1A).

123. Sub-paragraph 3(5) inserts a new sub-section 81(5) which provides that Schedule 10 will apply to a return under new-subsection 81(1A) as it applies to a return under section 76, but that references to the "effective date" of the transaction in that

schedule are to be read as references to the appropriate relevant date specified in new subsection 81(1B).

124. Paragraph 4 inserts a new section 81ZA in FA 2003 to provide for further returns to be filed where the relief from the 15% rate is withdrawn in the context of an alternative finance arrangement.

125. New sub-section 81ZA(1) provides that, where relief from the 15% rate is withdrawn under any of new paragraphs 6D, 6F, 6G or 6H (summarised above) the relevant person must deliver a return to HMRC within 30 days of the date of the disqualifying event (as determined under sections 81ZA(3) and (4)). The return must contain a self-assessment of the additional tax which has become chargeable as a result of the relief being withdrawn (which will be calculated by reference to the rates of SDLT which were in force at the effective date of the transaction which was relieved and not the rates in force when the relief is withdrawn).

126. New sub-section 81ZA(2) provides that Schedule 10 will apply to a return under section 81ZA as it applies to a return under section 76, but that:

a. references to the "effective date" of the transaction in that schedule are to be read as references to the date of the disqualifying event ; and

b. references to the purchaser are to be read as references to the relevant person (so far as that is necessary under new section 81ZA(1) or new section 85(3)).

127. New sub-section 81ZA(3) defines "the date of the disqualifying event" as the first day in the control period on which a relevant requirement was not met.

128. New sub-section 81ZA(4) defines what is a "relevant requirement" in respect of each relief.

129. New sub-section 81ZA(5) defines "the control period" for the purposes of this section.

130. New sub-section 81ZA(6) defines "alternative finance arrangements" and "the relevant person" for the purposes of this section.

131. Paragraph 5 inserts two new sub-sections into section 85 FA 2003 to modify the liability to tax where relief from the 15% rate is withdrawn in the context of an alternative finance arrangement.

132. New sub-section 85(3) provides that, where relief is withdrawn in respect of a transaction entered into as part of alternative finance arrangements, sub-section 85(1) (which states that the purchaser is liable to pay any tax in respect of a chargeable transaction) does not apply in relation to the additional tax which becomes payable. Instead, it is the relevant person who must pay that additional tax.

133. New sub-section 85(4) provides that the "relevant person" means the person, apart from the financial institution, who entered into the alternative finance arrangement.

134. Paragraph 6 inserts a new sub-section into section 86 FA 2003 to deal with the payment of tax where relief from the 15% rate is withdrawn in the context of an alternative finance arrangement.

135. New sub-section 86(2A) provides that the tax payable where relief is withdrawn must be paid by the filing date for the return required under section 81ZA(1) in respect of the withdrawal.

136. Paragraph 7 modifies the entry for "settlement" in the table of definitions in section 122 FA 2003.

Background

137. Finance Act 2012 introduced a 15 per cent rate of stamp duty land tax on the acquisition by certain non-natural persons of properties costing more than £2 million. The measure formed part of a package designed to ensure that individuals and companies pay a fair share of tax on residential property transactions and to reduce avoidance. Its aim was to dis-incentivise the ownership of high value residential property in structures that would permit the indirect ownership or enjoyment of the property to be transferred in a way that would not be chargeable to SDLT

138. The section is to have effect for land transactions where the effective date is on or after the date Royal Assent is given to Finance Act 2013. The effective date is normally the date on which a contract is completed, but may be earlier if the land is occupied or the consideration for the transaction is given before that date.

139. Finance Act 2012 provided only two exclusions from the higher rate charge; for companies acting solely in their capacity as trustees, and for property developers with a 2 year trading history.

140. The scope of the 15 per cent rate was included as part of the consultation on the annual tax on enveloped dwellings that was held over Summer 2012.

141. In response to the consultation a number of reliefs will be introduced to reduce the SDLT rate to that applicable to purchases not within the higher rate of SDLT (currently 7 per cent). The new property developer relief no longer has the 2 year trading history condition. Further reliefs are also to be introduced for property rental businesses, property traders, trades that exploit a dwelling to generate income by providing access to a significant part of the interior, dwellings used to house employees or partners with a limited interest in the company or partnership, and farmhouses.

142. Relief will only apply if the property continues to satisfy the relevant qualifying conditions throughout the three years following purchase. If it does not, additional SDLT will become payable.

143. The intention is to stop or reduce the number of properties that will enter such complex ownership structures other than where the property is used in a genuine business. Taken together with the introduction of the annual tax on enveloped dwellings (‘ATED’) from 1 April 2013 on such property owned by non-natural persons, this will result in a reduction in the number of high value properties owned in such structures.

Section 197 and Schedule 41: Stamp Duty Land Tax: Leases

Summary

1. Section 197 introduces Schedule 41 which amends Schedule 17A of the Finance Act 2003 (FA 2003). Schedule 17A makes special provision for Stamp Duty Land Tax (SDLT) on certain types of lease transactions. The amendments will abolish the rules on abnormal rent increases. They will also simplify the reporting requirements where a lease continues after the expiry of its fixed term and where an agreement for a lease is substantially performed before the actual lease itself is granted.

Details of the Schedule

2. Paragraph 1 provides for amendments to be made to Part 4 of FA 2003 (in which Schedule 17A is contained).

Leases that continue after a fixed term

3. Paragraphs 2 and 3 amend paragraph 3 of Schedule 17A.

4. Paragraph 3 of Schedule 17A applies where a lease continues after the expiry of its fixed term. Currently, it provides that, where a lease continues after the end of its fixed term,

it is treated as extended (in yearly increments). If any additional tax is due in respect of the extended lease, a return, together with the tax due, must be submitted to HMRC within 30 days after the expiry of the original (or previously extended) fixed term.

5. Paragraph 2 amends paragraph 3(3) of Schedule 17A to provide that, where a lease is treated as extended under that paragraph, notification of any additional tax due need not be given until 30 days after the end of the period of extension. It also provides that, where the lease is terminated before the end of the one-year period of extension, notification is required within 30 days of the date of termination. It also provides that no additional tax is due payable, and therefore no return is required under paragraph 3 where, during a period (or further period) of continuation, a new lease is granted in circumstances where paragraph 9A applies.

6. Paragraph 3 inserts a new paragraph 3A into Schedule 17A. Paragraph 3A provides, in essence, that paragraph 3 does not apply in cases where a new lease is granted within one year of the date of expiry of the original fixed term (or of any one-year extension). Instead, the new lease is treated as beginning immediately after that date. Any rent payable in relation to the extended lease is treated as payable under the new lease. It also provides that the paragraph (that is, paragraph 3A) does not apply where paragraph 9A applies. Paragraph 9A applies where a backdated lease is granted to a tenant holding over.

7. Paragraph 4 amends section 87 of FA 2003, by specifying “the relevant date” for the purpose of any interest payable on unpaid tax when paragraph 3(3) applies.

8. Paragraph 5 amends section 119(2) of FA 2003, by adding paragraph 3(4) of Schedule 17A to the list of provisions that provide for a different “effective date” from that set out in section 119(1).

Agreement for lease

9. Paragraph 6 changes the rules that apply when an agreement for lease is substantially performed before the lease itself (“the actual lease”) is granted. The current rules are contained in paragraph 12A and 19 of Schedule 17A. Paragraph 19 makes provision for leases (or, where appropriate, missives of let) in Scotland.

10. Paragraph 12A applies where, before a lease is granted, an agreement for lease is entered into and the agreement is substantially performed. The agreement is treated as the grant of a lease beginning on the date of substantial performance. If the transaction is notifiable, a return has to be submitted, and any tax chargeable paid, within 30 of the date of substantial performance. When the actual lease is granted, the notional lease is treated as surrendered and the actual lease is treated as if it were granted in consideration of the surrender of the notional lease. A second return is required for the actual lease. Relief is available for any period of overlap between the notional and actual leases.

11. Paragraph 6(2) replaces paragraph 12A(3) with a new paragraph 12A(3) and inserts new paragraphs 12A(3A) and 12A(3B).

12. The new paragraph 12A(3) provides that, where an agreement for lease has been substantially performed and a lease is subsequently granted, the notional lease is treated as a lease granted on the day of substantial performance, for a term beginning on that day and ending at the end of term of the actual lease. The consideration for the lease is the total rent (and any other consideration) payable over its term.

13. The new paragraph 12A(3A) provides that, where paragraph 12A(3) applies, the actual lease is disregarded except for the purposes of section 81A of FA 2003. Section 81A requires a return, or further return, to be submitted when a transaction is linked with an earlier transaction and the effect of the later transaction is that the earlier transaction becomes notifiable or there is any additional tax to pay.

14. The new paragraph 12A(3B) provides that the notional and actual leases are linked for purposes of section 81A and that, if there is any additional tax to pay, it is lessee under the actual lease who must submit a further return and pay the tax.

15. Paragraph 6(3) replaces paragraphs 19(2) and (4) of Schedule 17A with new paragraphs 19(2), 19(2A), 19(2B), 19(4), 19(4A) and 19(4B). These make similar provisions for Scotland.

Abnormal rent increases

16. Paragraph 7 repeals paragraphs 14 and 15 of Schedule 17A and makes consequential amendments to FA 2006 and the Scotland Act 2012. Paragraphs 14 and 15 impose an additional SDLT charge where there is a rent increase after the first five years of the term of a lease and this increase is 'abnormal'. Broadly speaking, an increase is abnormal if the rent doubles, or more than doubles, after the fifth year. HMRC must be notified each time there is an abnormal increase.

Commencement

17. Paragraph 8 provides that the amendments made by paragraphs 1 to 7 will have effect from the date on which Finance Bill 2013 receives the Royal Assent:

- The abolition of the rules on abnormal rent increases will apply to any increases on or after that date.
- The changes to the rules on fixed term leases will apply where the period of continuation begins on or after that date.
- The amendments concerning substantial performance will apply where the effective date of the actual lease is on or after that date.

Background

18. Following representations from stakeholders, it was announced at Budget 2012 that the Government would explore ways of simplifying the complex rules that apply to certain lease arrangements. Informal consultation took place over the summer with industry representatives and other interested stakeholders.

19. Taking account of these discussions, the Government has decided to abolish the abnormal rent increases provisions and streamline the reporting requirements where a lease continues after the expiry of its fixed term and where an agreement for lease is substantially performed before the actual lease is granted.

Section 198: Standard Rate of Landfill Tax

Summary

1. Section 198 amends section 42(1)(a) and 42(2) of the Finance Act (FA) 1996 to increase the standard rate of landfill tax for disposals of waste made or treated as made on or after 1 April 2014.

Details of the Section

2. Subsections (2) and (3) substitutes “£72” to “£80” in sections 42(1)(a) and 42(2) of FA 1996.

Background

3. In the June 2010 Budget, the Government confirmed that the standard rate of landfill tax would rise by £8 per tonne on 1 April each year up to and including 2014. The Government also announced a floor under the standard rate of landfill tax so that the rate will not fall below £80 per tonne from 2014-15 to 2019-20.

4. The Government announced in Budget 2013 that the lower rate of landfill tax, for less polluting qualifying wastes, currently £2.50 per tonne, will remain frozen in 2014-15.

Section 199: Climate change levy: MAIN RATES

Summary

1. Section 198 amends Schedule 6 to the Finance Act (FA) 2000 (Schedule 6) to increase the rates of climate change levy (CCL) broadly in line with current inflation, with effect from 1 April 2014.

Details of the Section

2. Subsections (1) and (2) replace the table of rates in Schedule 6 and give the commencement dates.

Background

3. CCL came into effect in April 2001. It is a tax on the non-domestic (i.e. business, service and public sector) use of energy (gas, electricity, liquefied petroleum gas and solid fuels), and is aimed at promoting energy efficiency and the use of renewable energy, in order to help meet the UK's international and domestic targets for cutting emissions of greenhouse gases.

4. Since they were first increased in 2007 the rates have kept pace with inflation so that the levy maintains its environmental effect. On each occasion the rates have increased the changes have been legislated for in the previous year's FA.

Section 200, Schedule 42: Climate Change Levy: Supplies Subject to Carbon Price Support Rates Etc.

Summary

1. Section 200 introduces Schedule 42 which amends Schedule 6 (Schedule 6) to the Finance Act 2000 to provide for the introduction of the carbon price floor in Great Britain, as it applies to coal and other solid fossil fuels, gas and liquefied petroleum gas (LPG) used in most forms of electricity generation, with effect from 1 April 2013. The Schedule is split into four parts:

- Part 1 repeals the carbon price floor provisions set out in Finance Acts 2011 and 2012, from 26 March 2013.
- Part 2 re-enacts the previous legislation in this Schedule in an amended and consolidated form, with effect from 1 April 2013. It provides for the carbon price support (CPS) rates of climate change levy (CCL) ('the CPS rates') and sets the rates for 2013-14. It sets out the scope of the tax and provides for the Commissioners for HM Revenue & Customs (HMRC) to make regulations to give effect to the tax.
- Part 3 sets the CPS rates for 2014-15 with effect from 1 April 2014.
- Part 4 sets the CPS rates for 2015-16 with effect from 1 April 2015.

Details of the Schedule

Part 1 – Earlier provision not to have effect

2. Paragraph 1 repeals all previous carbon price floor primary legislation, which was set out in section 78 of, and Schedule 20, to the Finance Act 2011 and Parts 1 and 2 of Schedule 32 to the Finance Act 2012.

Part 2 – New provisions having effect from 1 April 2013

3. Paragraph 3 inserts references to four new paragraphs of Schedule 6 into paragraph 4(2)(b) of Schedule 6 to provide that references to taxable supplies include deemed supplies subject to the CPS rates.

4. Paragraph 4 inserts a new sub-paragraph (2A) into paragraph 5 of Schedule 6 to make the electricity produced by exempt unlicensed electricity suppliers liable to the CCL if their generating capacity is above 2 megawatts (MW) and they are producing electricity from commodities that are subject to the CPS rates or would be subject to such CPS rates if these applied in Northern Ireland.

5. Paragraph 5 inserts references to four new paragraphs of Schedule 6 into paragraph 6(2A) of Schedule 6 to provide that CCL is chargeable on deemed supplies of gas used in electricity generation.

6. Paragraph 6 amends paragraph 14 of Schedule 6 (exemption for supplies to electricity producers):

   - Sub-paragraph (2) amends sub-paragraphs (2)(b) and (3)(b) to extend the exemption from the main rates of CCL to auto-generators and exempt unlicensed electricity suppliers with a generating capacity above 2MW.
   - Sub-paragraph (3) inserts new sub-paragraph (3ZA) to exclude stand-by generators from the scope of the exemption.
   - Sub-paragraph (4) inserts new sub-paragraph (3B) to clarify that the exemption from CCL for supplies of coal and other solid fossil fuels, gas and LPG to generating stations does not apply to deemed supplies of these commodities that are subject to the CPS rates.
   - Sub-paragraph (5) removes unnecessary definitions which are now defined in amended paragraph 147 of Schedule 6.

7. Paragraph 7 inserts new sub-paragraph (4A) into paragraph 15 of Schedule 6 (exemption for supplies to combined heat and power stations) to clarify that the exemption from CCL for supplies of coal and other solid fossil fuels, gas and LPG does not apply to deemed supplies of these commodities that are subject to the CPS rates.

8. Paragraph 8 amends paragraph 17 of Schedule 6 (exemption for self-supplies of electricity) to remove the exemption from CCL on self-supplies of electricity when made by auto-generators and exempt unlicensed electricity suppliers that are not CHP stations, stand-by generators or small generating stations. It provides that partly exempt CHP stations will continue to be liable to CCL on self-supplies that do not qualify for exemption under regulations made by HM Treasury (the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005).

9. Paragraph 9 amends paragraph 21 of Schedule 6 (regulations to avoid double charges to levy) to exclude deemed supplies of coal and other solid fossil fuels, gas and LPG used to generate electricity from the scope of the power to make regulations to avoid double charging.

10. Paragraph 10 inserts four new paragraphs into Schedule 6:

    - New paragraph 24A provides that when commodities subject to the CPS rates are brought onto, or arrive at, an electricity generating station in Great Britain that is not a CHP station, a small generating station or a stand-by generator, the owner of the station will be deemed to have made a supply of those commodities to himself.
    - New paragraph 24B provides that when commodities subject to the CPS rates are brought onto, or arrive at, a CHP station in Great Britain that is not a small generating station, the operator of the station will be deemed to have made a supply

to himself of the quantity of the commodities that are referable to production of electricity.

- New paragraph 24C provides that if a quantity of a commodity is treated as not being referable to the production of electricity and it is later determined that it was so referable and should have been the subject of a deemed supply under new paragraph 24B, the operator of the station is deemed to make a deemed self-supply of that quantity.
- New paragraph 24D authorises the Commissioners for HMRC to make regulations to give effect to new paragraphs 24A to 24C and 42A to 42D.

11. Paragraph 11 inserts new paragraph 38A into Schedule 6 to provide that deemed supplies of commodities subject to the CPS rates are to be treated as taking place when the fuel is brought onto, or arrives at, the generating station or CHP station. It also provides that where there is a deemed supply because it is later determined that a quantity of a commodity should have been the subject of a deemed supply or because the amount of CCL paid on the original deemed supply was too low, the time of supply is treated as taking place upon the later determination.

12. Paragraph 12 makes consequential amendments to paragraph 39 of Schedule 6 (regulations as to time of supply) to provide that the Commissioners for HMRC may make regulations as to the time of supply under the new deemed supply provisions set out in this Schedule.

13. Paragraph 13 inserts new sub-paragraph (1B) into paragraph 42 of Schedule 6 (amount payable by way of levy) to provide that the main, reduced and lower rates of CCL set out in sub-paragraph (1) do not apply to deemed supplies of commodities used to produce electricity.

14. Paragraph 14 inserts four new paragraphs into Schedule 6:

- New paragraph 42A provides that, for deemed supplies of commodities used to generate electricity under new paragraphs 24A and 24B, the rates of CCL that apply are the CPS rates, subject to the provisions of new paragraphs 42B and 42C. It sets out the CPS rates, which are expressed in monetary amounts per unit of each fossil fuel.
- New paragraph 42B provides that, in the case of the CPS rate on coal and other solid fossil fuels, the rate is to be calculated with reference to the gross calorific value. It also provides that the gross calorific value of any coal slurry content from a coal mine is to be left out of the calculation of the calorific value, in effect exempting coal slurry from a coal mine from the CPS rate for coal.
- New paragraph 42C makes various provisions for reductions in the amount of CPS rates payable where carbon capture and storage technology is installed by electricity generators.
- New paragraph 42D provides for a further deemed supply where it is later determined that the amount of levy paid on an initial deemed self-supply was too low. The amount payable on the further deemed supply is the difference between what was originally paid on the first deemed supply and what ought to have been paid.

15. Paragraph 15 inserts new sub-paragraph (aa) into paragraph 55(1) of Schedule 6 (notification of registrability) to provide that a person who expects to make deemed self-supplies of commodities used to generate electricity must (if not already registered for CCL) notify the Commissioners for HMRC of that fact.

16. Paragraph 16 inserts three new sub-paragraphs into paragraph 62 of Schedule 6 (tax credits) to enable the Commissioners for HMRC to make regulations providing for a credit in cases where a commodity on which the CPS rate has been paid is removed

from the site of a generating station or where there has been an overpayment on deemed supplies subject to the CPS rates.

17. Paragraph 17 makes consequential amendments to paragraph 146 of Schedule 6 (regulations and orders) relating to when Treasury Regulations must be made under the draft affirmative procedure in respect of the description of an exempt unlicensed supplier.

18. Paragraph 18 inserts new definitions arising from this Schedule into paragraph 147 of Schedule 6 (interpretation) and makes consequential amendments arising from the amendments made by paragraph 17 of the Schedule.

- Paragraph 19 inserts new paragraphs 152A and 152B into schedule 6:
- New paragraph 152A defines an exempt unlicensed electricity supplier as a person who has an exemption under the Electricity Act 1989 or the Electricity Supply (Northern Ireland) Order 1992.
- New paragraph 152B defines a small generating station as a generator of not more than 2MW generating capacity and provides that, in determining whether a generating station is a small generating station, the capacity is considered to be the combined generating capacity of all generating stations, other than CHP stations and stand-by generators, owned by a person or connected persons and, in the case of CHP stations, all stations covered by the same CHPQA certificate taken together.

19. Paragraph 20 makes consequential amendments to Regulation 5 of the Climate Change Levy (Electricity and Gas) Regulations 2001 by correcting the references to paragraphs in Schedule 6 that relate to "exempt unlicensed electricity supplier" as a result of changes made to Schedule 6 by this Schedule.

20. Paragraph 21 provides for Part 2 of this Schedule (paragraphs 2 - 22) to come into force on 26 March 2013.

21. Paragraph 22 provides that amendments made by paragraphs 6(2) and (3) of this Schedule are to have effect for the purpose of determining if a supply of gas or electricity is exempt from levy where it is actually supplied on or after 1 April 2013 and, in the case of any other supply, whether it is exempt from levy where the supply is treated as taking place on or after 1 April 2013. It also provides that amendments made by paragraph 8 of this Schedule are to have effect for the purpose of determining if a supply of electricity is exempt from levy where it is consumed on or after 1 April 2013 and that amendments made by paragraph 10 of this Schedule have effect in relation to supplies of CPS commodities (coal and other solid fossil fuels, gas and LPG) brought on to or arriving at a site on or after 1 April 2013.

Part 3 – Carbon price support rates from 1 April 2014

22. Paragraph 23 amends paragraph 42A of Schedule 6 to set out the CPS rates for the year commencing 1 April 2014.

Part 4 – Carbon price support rates from 1 April 2015

23. Paragraph 24 amends paragraph 42A of Schedule 6 to set out the CPS rates for the year commencing 1 April 2015.

Background

24. The CCL came into force on 1 April 2001 with the purpose of encouraging energy efficiency. The main primary legislation is set out in Schedule 6 to the Finance Act 2000. Among the exemptions from the tax are those for taxable commodities used in generating electricity.

25. In order to encourage new and additional investment in low-carbon power generation, the Government announced at Budget 2011 that, following consultation, it would introduce a carbon price floor from 1 April 2013, which it would achieve by amending CCL legislation (and fuel duty legislation for oils used in electricity generation since oils are not subject to CCL). Supplies of coal and other solid fossil fuels, gas and LPG used in most forms of electricity generation would become liable to newly created CPS rates of CCL, which would be different from the main CCL rates levied on consumers' use of these commodities (and electricity). The amount of fuel duty reclaimable on oil used in electricity generation would be adjusted to establish new CPS rates of fuel duty. The changes needed to fuel duty are all set out in separate secondary legislation and are not covered in this Schedule.

26. The Government announced at the Autumn Statement on 5 December 2012 that, subject to discussions with the European Commission, Northern Ireland will be exempt from the carbon price floor. This exemption was confirmed at Budget 2013.

27. Schedule 20 to the Finance Act 2011 and Schedule 32 to the Finance Act 2012 amended Schedule 6 to provide for the setting up of the CPS rates of CCL. Following further informal consultation since Budget 2012 the need for further changes to carbon price floor legislation has been identified to meet industry concerns. These changes are set out in the Tax Impact and Information Note published on 11 December 2011. Since the changes would have necessitated significant amendments to the earlier legislation set out in Finance Acts 2011 and 2012 that had not yet come into force, the earlier legislation is being repealed and replaced by this Schedule. This will consolidate all primary legislation for the carbon price floor into this one Schedule.

Section 201: Insurance Premium Tax: Contracts That are Not Taxable

Summary

1. Insurers do not have to charge insurance premium tax (IPT) on contracts of insurance in relation to motor vehicles where, subject to other specified conditions being satisfied, the vehicle is used or intended for use by a handicapped person who is in receipt of a specified benefit. Section 201 adds further references to the list of specified benefits so that the IPT reliefs that currently apply to vehicles used by persons who are in receipt of the mobility component of a disability living allowance (DLA) will additionally apply to vehicles used by persons who receive the mobility component of a Personal Independence Payment (PIP) or receive an Armed Forces Independence Payment (AFIP).

Details of the Section

2. Section 201 amends paragraph 3 of Schedule 7A to the Finance Act 1994 by adding appropriate references to the new PIP and AFIP benefits.

Background

3. As part of the June 2010 Budget, the Government announced its intention to reform DLA with effect from 2013-14. Proposals for replacing DLA with the new PIP formed part of the consultation on welfare reform, and the new PIP was introduced in Part 4 of the Welfare Reform Act 2012. AFIP is an additional new benefit targeted at disabled armed forces service personnel. Both new benefits will have effect from 8th April 2013 and are being phased in over a period of time with the intention that they will eventually replace DLA.

4. As both PIP and AFIP will be phased in for new applicants, the relevant legislation needs to refer DLA, PIP and AFIP until such time as DLA has been completely phased out.

Section 202: Bank Levy: Rates from 1 January 2013

Summary

1. Section 202 amends the rates at which the bank levy is charged from 1 January 2013 onwards.

Details of the Section

2. Subsection (1) introduces amendments to the bank levy legislation.

3. Subsection (2) increases the bank levy rates from 1 January 2013.

4. Subsection (3) amends Paragraph 7, Schedule 19, Finance Act 2011 so that it applies where some or all of the chargeable period falls before 1 January 2013. It introduces into the table of rates at paragraph 7(2) the new bank levy rates for the period 1 January 2013 onwards.

5. Subsection (4) removes the rates shown in Paragraph 5, Schedule 34, Finance Act 2012 (old rates) which have been superseded by the new rates.

6. Subsection (5) provides that the new rate changes made by subsections (2) to (4) are treated as having come into force on 1 January 2013.

7. Subsections (6) to (12) provide transitional provisions for collecting the additional amounts of bank levy that arise from the introduction of the new rates.

8. Subsection (6) states that transitional provisions apply where an entity (E) is charged to the bank levy for an accounting period in respect of a chargeable period that falls wholly or partly on or after 1 January 2013 and one, or more, of the instalment payments for the accounting period in question are due and payable before Royal Assent of Finance Act 2013.

9. Subsection (7) provides that the new rates are to be ignored when determining the amount of any instalment payment that is due before Royal Assent (pre-commencement instalment payments). These continue to be paid at the old rates.

10. Subsection (8) provides that where there is at least one instalment payment for the accounting period of E which is due and payable on or after Royal Assent (post-commencement instalment payments), the amount of the first such instalment payment is increased by the adjustment amount.

11. Subsection (9) provides that where E does not have any post-commencement instalment payments, the adjustment amount will be due and payable 30 days after Royal Assent.

12. Subsection (10) explains how to determine the "adjustment amount" for the purposes of subsections (8) and (9). The adjustment amount is the difference between the pre-commencement instalment payments calculated firstly on the basis that the new rates are ignored (i.e. using the old rates) and then on the basis that the new rates are not ignored.

13. Subsection (11) ensures that references within the provisions of Corporation Tax (Instalment Payment) Regulations 1998 (S.I. 1998/3175) to regulations 4A to 4D, 5, 5A or 5B of those Regulations are to be read as including references to subsections (6) to (10).

14. Subsection (12) ensures that section 59D of the Taxes Management Act 1970, which provides the general rule for the collection of corporation tax, is also subject to subsections (6) to (11).

15. Subsection (13) provides definitions of terms used in this section.

Background

16. The bank levy is an annual balance sheet charge based upon the chargeable equities and liabilities of all UK banks and building society groups, foreign banks and banking groups operating in the UK and UK banks in non-banking groups from 1 January 2011 onwards.

17. Bank levy is treated as if it is corporation tax, and the relevant entity or, in the case of a banking group, the "the responsible member" (see paragraph 54, Schedule 19) is required to both make a return of the bank levy (as part of its company tax return) and to pay the bank levy.

18. Entities that pay the bank levy are required to do so under the provisions of The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175).

Section 203: Bank Levy: Rates from 1 January 2014

Summary

1. Section 203 amends the rates at which the bank levy is charged.

Details of the Section

2. Subsection (2) increases the bank levy rates from 1 January 2014.

3. Subsections (3) to (6) amend Paragraph 7, Schedule 19, Finance Act 2011 so that it applies where some or all of the chargeable period falls before 1 January 2014. It introduces into the table of rates at paragraph 7(2) the new bank levy rates for the period 1 January 2014 onwards.

Background

4. The bank levy is an annual balance sheet charge based upon the chargeable equities and liabilities of all UK banks and building society groups, foreign banks and banking groups operating in the UK and UK banks in non-banking groups from 1 January 2011 onwards.

5. Bank levy is treated as if it is corporation tax, and the relevant entity or, in the case of a banking group, the "the responsible member" (see paragraph 54, Schedule 19) is required to both make a return of the bank levy (as part of its company tax return) and to pay the bank levy.

6. Entities that pay the bank levy are required to do so under the provisions of The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175).

Section 204: No Deductions for UK Or Foreign Bank Levies

Summary

1. Section 204 makes a number of amendments to Schedule 19 to the Finance Act 2011 (FA 2011). It puts beyond doubt that recharges of the Bank Levy are not an allowable deduction for the purposes of income tax and corporation tax whether recharged directly or via a third party. It also provides that foreign bank levies are not an allowable deduction for the purposes of income tax or corporation tax.

Details of the Section

2. Subsection (2) amends paragraph 46, Schedule 19 of FA 2011to make it clear that an indirect recharge of the Bank Levy is also not an allowable deduction for the purposes of income tax and corporation tax.

3. Subsection (3) inserts new paragraph 69A into Part 7, Schedule 19 of FA 2011.

4. New paragraph 69A(1) provides that no deduction will be allowed for the purposes of income tax or corporation tax where a foreign bank levy corresponds to the Bank Levy. It also provides that any amounts paid or received in respect of meeting or reimbursing a corresponding foreign bank levy are not taken into account in determining the profit or loss for income tax or corporation tax purposes of any member of the relevant group.

5. New paragraph 69A(2) makes it clear that the same criteria are used to determine whether foreign bank levy corresponds to the Bank Levy as are used for double taxation relief.

6. Subsection (4) makes consequential amendments to paragraph 3, Schedule 19 and to the title of Chapter 7, Schedule 19 of FA 2011 following the extension of the scope of Chapter 7.

7. Subsection (5) provides that the provisions introduced by the section will have effect for any periods of account commencing on or after 1 January 2013.

8. Subsection (6) provides that subsections (3) and (4) will apply to periods beginning before 1 January 2013 in respect of any corresponding foreign bank levy that is the subject of a claim for double taxation relief made on or after 5 December 2012.

9. Subsection (7) provides that where a company has a period of account straddling the 1 January 2013 then it will be treated as if it had two periods of account. One for a period ending on 31 December 2012 and one for a period beginning on 1 January 2013.

Background

10. Part 7 of Schedule 19 to FA 2011 provides for double taxation relief to be given where a bank or banking group is doubly charged to the UK bank levy and an equivalent foreign levy.

11. There is a general prohibition which applies to income tax, corporation tax or capital gains tax preventing further relief by way of a deduction against profits or gains where credit relief is given to alleviate double taxation. This section aligns the treatment of amounts paid either directly or indirectly in respect of foreign bank levies with this general prohibition.

12. The section also extends the principle that a bank levy is not an allowable deduction to foreign bank levies by putting beyond doubt that such levies, whether paid directly or by way of a recharge, are not an allowable deduction for the purposes of income tax and corporation tax.

Section 205 Bank Levy Definition of High Quality Liquid Assets

Summary

1. Section 205 amends the bank levy definition of high quality liquid assets (HQLA) to put beyond doubt that HQLA for bank levy purposes are identical in concept to the regulatory definition of assets qualifying for the Prudential Regulation Authority's liquid assets buffer. The section has effect from 1 January 2011.

Details of the Section

2. Subsection (1) amends Paragraph 70, Schedule 19, Finance Act 2011 to confirm that the bank levy definition of HQLA mirrors the regulatory definition of assets that are eligible for inclusion in a firm’s regulatory liquid assets buffer.

3. Subsection (2) provides that the changes made by subsection (1) are to be treated as always having had effect in relation to chargeable periods ending on or after 1 January 2011.

Background

4. The bank levy is an annual balance sheet charge based upon the chargeable equity and liabilities of all UK banks and building society groups, foreign banks and banking groups operating in the UK and UK banks in non-banking groups from 1 January 2011 onwards.

5. Bank levy is treated as if it is corporation tax, and the relevant entity or, in the case of a banking group, the "the responsible member" (see paragraph 54, Schedule 19) is required to both make a return of the bank levy (as part of its company tax return) and to pay the bank levy.

6. In determining chargeable equity and liabilities a deduction is permitted for any high quality liquid assets that are included within, or could be included within a firm's regulatory liquid assets buffer.

Sections 206 – 215, Schedule 43: General Anti-Abuse Rule

Summary

1. Sections 206 to 215 and Schedule 43 introduce a general anti-abuse rule (GAAR) that provides for counteraction of tax advantages arising from tax arrangements that are abusive. The GAAR applies to income tax, corporation tax including amounts chargeable/treated as corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, and stamp duty land tax. It will also apply to the annual tax on enveloped dwellings due to be enacted with effect from 1 April 2013. Schedule 41 outlines the procedural requirements relevant to the application of the GAAR by HM Revenue & Customs (HMRC).

Details of the Sections

2. Section 204 sets out the purpose of the GAAR, noting that it applies only to "tax arrangements" which are "abusive" (see paragraphs 4 and 5 below) and listing the various taxes covered by the GAAR (see paragraph 1 above).

3. Section 207 sets out how 'tax arrangements' and 'abusive' are defined for the purposes of the GAAR.

4. Subsection (2) defines "abusive" tax arrangements. Arrangements are "abusive" if entering into them or carrying them out cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions. Again, all circumstances must be taken into account and the section includes a non-exhaustive list of circumstances which must be considered.

5. Subsection (4) lists examples of things which might indicate that the tax arrangements are abusive. Tax arrangements may be abusive if they give rise to certain results (such as a tax result which differs from the economic result) but only if it is reasonable to assume that the result was not anticipated when the relevant tax provisions were enacted.

6. Subsection (5) notes that a possible indicator of non-abusive arrangements is that the tax arrangements accorded with established practice at the time they were entered into and HMRC had, at that time, indicated its acceptance of that practice.

7. Section 208 defines the term "tax advantage". This is a similar meaning to other uses of the term elsewhere in the Tax Acts, and is not an exhaustive definition.

8. Section 209 explains that the tax advantages arising from abusive tax arrangements are to be counteracted by the making of just and reasonable adjustments, whether in respect of the tax in question or any other tax to which the GAAR applies. So, for example, an abusive arrangement may attempt to reduce or eliminate a charge to capital gains tax, but the counteraction may involve an adjustment to income tax.

9. Subsection (4) confirms that tax is to be charged in accordance with any adjustment that imposes or increases a liability to tax.

10. Subsection (5) provides for the various ways in which the adjustments that are required to be made (whether by HMRC or by the person to whom the tax advantage arises) may be made.

11. Subsection (6) confirms that: HMRC must comply with the procedural requirements set out in Schedule 41 before making any such adjustments; and that any time limits imposed elsewhere in the tax legislation apply to the power to make adjustments under the GAAR.

12. Subsection (7) notes that any adjustments made have effect for all purposes. This means that the adjustments are deemed to have effect for purposes other than just counteracting the tax advantage. They might, for example, adjust the base cost of an asset for a future capital gains disposal event.

13. Section 210 sets out the process by which consequential relieving adjustments may be made.

14. Subsection (1) sets out that the section is only applicable where the counteraction of a tax advantage is final. But, in a case where counteraction has been self-assessed, the section will not apply unless the taxpayer has notified HMRC of the counteraction. Subsection (8) explains when a counteraction is regarded as final for these purposes.

15. Subsection (4) explains that adjustments may be made in respect of any period and may affect any person. However, subsection (5) specifies that HMRC may not make consequential adjustments which result in an increased tax liability for any person.

16. Subsection (6) extends the application of existing administrative provisions for certain taxes to claims for consequential adjustments under the GAAR and so provides a consequential adjustments claim procedure in respect of each of the taxes covered by the GAAR.

17. Subsection (9) lists the means by which a consequential adjustment may be made and stipulates that time limits imposed by or under any other enactment do not constrain the making of consequential adjustments under the GAAR.

18. Section 211 sets out information relating to proceedings before a court or tribunal.

19. Subsection (1) imposes the burden of proof on HMRC in any proceedings before a court or tribunal in connection with the GAAR. HMRC must show that there are tax arrangements which are abusive and that the adjustments made to counteract the resulting tax advantages are just and reasonable.

20. Subsection (2) requires a court or tribunal, in determining any issue in connection with the GAAR, to take into account HMRC guidance (as approved by the GAAR Advisory Panel at the time the arrangements were entered into) and any opinion of the GAAR Advisory Panel about the arrangements.

21. Section 212 sets out how the GAAR fits with other parts of the tax code.

22. Subsection (1) provides that all priority rules, as defined in subsection (2), are to have effect subject to the GAAR. This means, for example, where a rule such as section 464 of CTA 2009 stipulates that tax may only be charged under that Part in respect of the relevant subject matter (in that case, loan relationships), the GAAR can override the effect of this rule, picking up the exception set out in section 464(2) of CTA 2009.

23. Subsection (3) lists examples of priority rules found in tax legislation.

24. Section 213 makes an amendment to the administrative provisions contained in Taxes Management Act (TMA 1970) to provide that the procedural requirements set out in

section 42(2) of TMA 1970 in relation to certain claims do not apply to consequential adjustment claims under the GAAR.

25. Section 214 provides definitions.

26. Section 215 sets out the commencement and transitional rules.

27. Subsection (1) provides that the GAAR applies to any tax arrangements entered into on or after Royal Assent to Finance Act 2013 ("the Commencement Date").

28. Subsection (2) specifies that, where the tax arrangements under consideration form part of other arrangements entered into before the Commencement Date, the other arrangements should be ignored in determining whether the tax arrangements in question are abusive. However, subsection (3) notes that the other arrangements may be taken into account as evidence that the tax arrangements under consideration are not abusive.

Details of the Schedule

29. Schedule 41 sets out procedural arrangements for the GAAR, including the arrangements for the GAAR Advisory Panel. It explains how matters are referred to the Panel, time limits, what information is to be provided (and how), and how the Panel's opinions are delivered.

30. Paragraph 1 defines "the GAAR Advisory Panel" and "the Chair".

31. Paragraph 2 defines "designated HMRC officer".

32. Paragraph 3 requires a designated HMRC officer ("designated officer") to notify a taxpayer in writing where the officer considers that the taxpayer has obtained a tax advantage which should be counteracted under the GAAR and lists the information which must be contained in the notice.

33. Paragraph 4 specifies that the taxpayer has 45 days from the day on which the notice is given to provide written representations in response to the notice to the designated officer. The designated officer may extend the 45 day period at the written request of the taxpayer.

34. Paragraph 5 provides that, if no representations are made by the taxpayer, a designated officer must refer the matter to the GAAR Advisory Panel (the "Panel").

35. Paragraph 6 requires any representations made by the taxpayer to be considered by a designated officer. If the designated officer considers that counteraction is still appropriate the matter must be referred to the Panel.

36. Paragraph 7 sets out the information which must be provided to the Panel by the designated officer when making a referral. This includes any comments which the designated officer has on any representations made by the taxpayer.

37. Paragraph 8 requires the designated officer to notify the taxpayer (at the same time as the referral is made) that the matter is being referred to the Panel and lists the information which must be included with the notice.

38. Paragraph 9 allows the taxpayer 21 days, from the day on which the notice under paragraph 8 is given, to make written representations to the Panel about the notice sent by the designated officer under paragraph 3 or about any comments provided to the Panel by the designated officer under paragraph 7(b). The Panel may extend the 21 day period at the written request of the taxpayer.

39. Paragraph 10 sets out the arrangements for the Chair to appoint a sub-panel of the Advisory Panel to give an opinion on cases, and how information is provided to the sub-panel.

40. Paragraph 11 requires the sub-panel to produce either one opinion notice stating the joint opinion of all sub-panel members or two or three opinion notices which together state the opinions of all sub-panel members. Sub-paragraph (2) requires the sub-panel to give a copy of the opinion notice(s) to the designated officer and the taxpayer.

41. Sub-paragraph (3) explains what must be included in an “opinion notice”, confirming that the sub-panel members must consider whether the entering into and carrying out of the tax arrangements is a reasonable course of action in relation to the relevant tax provisions, taking account of the various circumstances and indicators listed in section 206. An opinion notice must also include the reasons for the opinion.

42. Sub-paragraph (4) notes that, for the purposes of giving their opinion(s), the sub-panel is to assume that the arrangements are tax arrangements.

43. Sub-paragraph (5) notes that a reference to any opinion of the Panel in Part 5 is a reference to the contents of any opinion notice.

44. Paragraph 12 requires the designated officer to consider the opinion of the Panel and then notify the taxpayer in writing as to whether or not the tax advantage is to be counteracted under the GAAR. If the notice states that the tax advantage is to be counteracted, sub-paragraph (2) requires the notice to specify, in addition, the adjustments required, and any steps required to be taken by the taxpayer, to give effect to the counteraction.

45. Paragraph 13 clarifies that a designated officer may take any action under Schedule 41 where the officer considers that a taxpayer might have obtained a tax advantage. Therefore, any notice given by a designated officer under this Schedule may be given on the assumption that a tax advantage has been obtained.

Background

46. This section was announced at Budget 2012 following the publication, in November 2011, of a report by an independent study group led by Graham Aaronson QC. The Government accepted the group’s recommendations that a general anti-abuse rule (GAAR) targeted at artificial and abusive tax avoidance schemes would be the right approach for the UK.

47. A consultation document on the GAAR, which included draft legislation, was published on 12 June 2012. The consultation ran until 14 September 2012. A number of changes were made to the original draft of the legislation in order to reflect comments received during the consultation process. A response document was published on 11 December 2012 to summarise the responses to the consultation, note the various amendments to the draft legislation and explain why these changes (and not others) were made. Revised draft legislation and draft guidance were published for technical consultation on 11 December 2012.

Section 216, Schedule 44: Vulnerable Beneficiary Trusts

Summary

1. Section 216 introduces Schedule 44, which:

- extends the definition of ‘disabled person’ for the purposes of a trust with a vulnerable beneficiary to include individuals in receipt of personal independence payment by virtue of entitlement to the daily living component, armed forces independence payment or constant attendance allowance, including by way of an increase in disablement pension;
- ensures that a person remains a ‘disabled person’ if he or she would be entitled to receive a qualifying welfare benefit were it not for them being in a publicly funded institution (such as a hospital) or abroad; and,

- harmonises rules that limit how the capital and income of these trusts may be applied.

Details of the Schedule

2. Paragraph 1 provides for the amendment of the Inheritance Act (IHTA) 1984.

3. Paragraph 2 amends section 71A of IHTA 1984.

4. Subparagraph (2) amends section 71A(3)(c)(ii) to provide that any of the trust income that is applied is to be applied for the benefit of the bereaved minor.

5. Subparagraphs (3) and (4) add new sections 71A(4)(za) and (4A) to (4E) to IHTA 1984, which provide that powers that enable trustees to apply in a tax year up to an ‘annual limit’ of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the bereaved minor do not disqualify a trust from being a qualifying trust for the benefit of a bereaved minor. The amounts and circumstances may be amended by Treasury order.

6. Paragraph 3 amends section 71B of IHTA 1984 to provide that payments within the annual limit do not give rise to a charge to inheritance tax.

7. Paragraph 4 amends section 71D of IHTA 1984.

8. Subparagraph (2) amends section 71D(6)(c)(ii) to provide that any of the trust income that is applied is to be applied for the benefit of the person aged between 18 and 25.

9. Subparagraph (3) adds new section 71D(6A) to IHTA 1984, which make provision in relation to protective trusts.

10. Subparagraphs (4) and (5) add new sections 71D(7)(za) and (7A) to (7E) to IHTA 1984, which provide that powers that enable trustees to apply in a tax year up to an ‘annual limit’ of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the person aged between 18 and 25 does not disqualify a trust from being a qualifying trust for the benefit of a person aged between 18 and 25. The amounts and circumstances may be amended by Treasury order.

11. Paragraph 5 amends section 71E of IHTA 1984 to provide that payments within the annual limit do not give rise to a charge to inheritance tax.

12. Paragraph 6 amends section 89 of IHTA 1984.

13. Subparagraph (2) amends section 89(1)(b) to provide that any of the settled property or income that is applied is to be applied for the benefit of the disabled person.

14. Subparagraph (3) adds new sections 89(3) to (3E), which provide that powers that enable trustees to apply in a tax year up to an ‘annual limit’ of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person. The amounts and circumstances may be amended by Treasury order.

15. Subparagraphs (4) and (5) amend the definition of a disabled person and define it as having the meaning given by new Schedule 1A to the Finance Act 2005 (introduced at paragraph 19 to this Schedule).

16. Paragraph 7 amends section 89A of IHTA 1984.

17. Subparagraph (2) applies to section 89A the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

18. Subparagraph (3) amends section 89A(2) to provide that any of the trust income that is applied is to be applied for the benefit of the disabled person.

19. Subparagraph (4) amends sections 89A(5) and (6) to include the assumption that the beneficiary is entitled to receive personal independence payment when resident outside the UK or in a care home, hospital or prison.

20. Subparagraph (5) adds new sections 89A(6A) to (6F), which provide that powers that enable trustees to apply in a tax year up to an 'annual limit' of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the person with a condition expected to lead to a disability do not disqualify a trust from being a qualifying trust for the benefit of a person with a condition expected to lead to a disability. The amounts and circumstances may be amended by Treasury order.

21. Subparagraph (6) amends section 89A(8) to include a definition for "WRA 2012" (the Welfare Reform Act 2012).

22. Subparagraph (7) amends the heading to section 89A in recognition that a person may be disabled at the time of self-settlement, but not a 'disabled person' as defined.

23. Paragraph 8 amends section 89B of IHTA 1984.

24. Subparagraph (2) applies to section 89B the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

25. Subparagraph (3) makes provision in relation to protective trusts.

26. Paragraph 9 provides for the commencement of paragraphs 2 to 8.

27. Subparagraph (2) ensures that sections 89 and 89A of IHTA 1984 continue to apply to property transferred on or after 8 April 2013 to settlements that were created before and which have remained unchanged since that date, or that arise after that date under a will executed before, or under a will in the same terms as a will executed before, that date.

28. Paragraph 10(1) and (2) amends section 89B and adds new section 89C to IHTA 1984, which provide that any of the settled property that is applied is to be applied for the benefit of the disabled person; and that powers that enable trustees to apply in a tax year up to an 'annual limit' of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person. The amounts and circumstances may be amended by Treasury order.

29. Paragraphs 10(3) and (4) provide that new section 89C commences from Royal Assent and for transition.

30. Paragraph 11 provides for the amendment of the Taxation of Chargeable Gains Act (TCGA) 1992.

31. Paragraph 12 amends section 169D of TCGA 1992.

32. Subsection 2 amends section 169D(3) to provide that any of the settled property that is applied is to be applied for the benefit of the disabled person; and that any of the trust income that is applied is to be similarly applied for the benefit of the disabled person or that the disabled person is entitled to all of the income.

33. Subparagraph (3) adds new sections 169D(4A) to (4F), which make provision in relation to protective trusts; and provide that powers that enable trustees to apply in a tax year an 'annual limit' of up to the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person. The amounts and circumstances may be amended by Treasury order.

34. Subparagraph (4) applies to section 169D the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

35. Subparagraph (5) omits subsection 169D(10) in consequence of new subsection 169D(4B).

36. Subparagraph (6) provides for the commencement of paragraph 12.

37. Subparagraph (7) ensures that section 169D(2) continues to apply for settlements created before 8 April 2013 which have remained unchanged since that date, or that arise after that date under a will executed before, or under a will in the same terms as a will executed before, that date.

38. Paragraph 13 amends paragraph 1 of Schedule 1 to TCGA 1992.

39. Subparagraph (2) provides that any of the settled property that is applied is to be applied for the benefit of the disabled person; and that any of the trust income that is applied is similarly to be applied for the benefit of the disabled person or that the disabled person is entitled to all of the income.

40. Subparagraph (3) adds new paragraphs 1(1A) to (1E), which provide that powers that enable trustees to apply in a tax year up to an 'annual limit' of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person. The amounts and circumstances may be amended by Treasury order.

41. Subparagraph (4) amends paragraph 1(2) in consequence of new paragraph 1(1A).

42. Subparagraph (5) applies to paragraph 1the new definition of disabled person at new Schedule 1A to the Finance Act 2005.

43. Subparagraph (6) provides for the commencement of paragraph 10.

44. Subparagraph (7) ensures that sections 3(1) to (5C) and 3A continue to apply for settlements provided for under paragraph 1(1) of Schedule 1 to the TCGA 1992, created before 8 April 2013 and which have remained unchanged since that date, or that arise after that date under a will executed before, or under a will in the same terms as a will executed before, that date.

45. Paragraph 14 provides for the amendment of the Finance Act (FA) 2005.

46. Paragraph 15 amends section 34 of FA 2005.

47. Subparagraph (2) provides that any of the trust income that is applied is to be applied for the benefit of the disabled person or that the disabled person is to be entitled to all of the income.

48. Subparagraph (3) substitutes new sections 34(3) to (3E) for section 34(3), which provide that powers that enable trustees to apply in a tax year up to an 'annual limit' of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the disabled person do not disqualify a trust from being a qualifying trust for the benefit of a disabled person. The amounts and circumstances may be amended by Treasury order.

49. Paragraph 16 amends section 35 of FA 2005.

50. Subparagraph (2) amends section 35(3)(c)(ii) to provide that any of the trust income that is applied is to be applied for the benefit of the bereaved minor.

51. Subparagraph (3) substitutes new sections 35(4) to (4E) for section 35(4), which provide that powers that enable trustees to apply in a tax year up to an 'annual limit' of the lower of £3,000 or 3% of the maximum value of the settled property in that period for the benefit of persons other than the bereaved minor do not disqualify a trust from being a qualifying trust for the benefit of a bereaved minor. The amounts and circumstances may be amended by Treasury order.

52. Paragraph 17 holds that the meaning of "disabled person" is that given by new Schedule 1A to the Finance Act 2005.

53. Paragraph 18 provides for the commencement of paragraphs 15 to 17.

54. Paragraph 19 inserts new Schedule 1A to FA2005.

55. Paragraph 1 of new Schedule 1A provides a list of the various meanings of "disabled person".

56. Paragraphs 2 to 7 of new Schedule 1A treat a person as a disabled person if he or she would be entitled to receive a relevant payment or allowance were it not for them being resident outside the UK or in a care home, hospital or prison.

57. Paragraph 8 of new Schedule 1A defines various terms used in the Schedule.

58. Paragraph 20 defines "relevant settlement" for the purposes of paragraphs 9(2), 12(7) and 13(7).

Background

59. Special tax rules exist for trusts for the benefit of a vulnerable beneficiary. The rules:

    - reduce, following an election and annual claim, the trustees' tax liability on income and chargeable gains to an amount that, broadly, would be chargeable on the beneficiary if the gains had accrued and/or the income had arisen directly to that person;
    - extend the annual exempt amount of chargeable gains that applies to trusts to match that available to individuals;
    - ignore the normal charges to inheritance tax for trusts; instead, the property is treated as part of the beneficiary's estate on their death.

60. The Welfare Reform Act 2012 introduces personal independence payment, which will replace disability living allowance (DLA) for working age people (16 to 64). The existing definition of a vulnerable beneficiary for tax purposes relies in part on whether the person is in receipt of DLA, so a new definition is required.

61. Current limitations on how the income and capital of a qualifying vulnerable beneficiary trust can be applied differ between taxes. In some cases, up to 50% of the capital can be applied for the benefit of a person other than the vulnerable person without the loss of the favourable tax position.

62. HMRC consulted on the changes brought into effect by this Schedule between 17th August and 8th November 2012.

Section 217: Unauthorised unit trusts

Summary

1. Section 217 provides a power for HM Treasury to introduce regulations about the tax treatment of the trustees or unit holders of unauthorised unit trusts (UUTs). It also sets out the scope of what those regulations may provide for.

Details of the Section

2. Section (1) provides the power to make provision by regulation about the treatment of the trustees or unit holders of UUTs for the purposes of income tax, corporation tax, capital gains tax or stamp duty land tax.

3. Section (2) sets out further details about the scope of the regulations made under this section. This includes conferring or imposing powers or duties on HM Revenue &

Customs officers, modifying any legislation, and specifying descriptions of different types of UUTs. The regulations may also contain provisions required to deal with transitional provisions.

4. Section (3) provides a definition of terms used in the section.

Background

5. Following the conclusion of a review of high risk areas of the tax system, begun at Budget 2011, this section enables the introduction of new tax rules in regulations for UUTs and their investors.

6. The main objective of the review is to prevent UUTs being used for avoidance purposes, but it will also simplify the rules and reduce administrative burdens.

Section 218, Schedule 45: Statutory Residence Test

Summary

1. Section 218 and Schedule 45 introduce rules which determine an individual's residence for tax purposes. The rules are referred to collectively as the statutory residence test. The Schedule determines an individual's tax residence status by applying three sets of tests in order of priority: five automatic overseas tests; four automatic UK tests; and the sufficient ties test. An individual who is resident under the test will be resident for a full tax year. The Schedule provides cases in which the rule that a resident individual is taxed on the basis of residence for the whole year is relaxed in certain circumstances; in those circumstances the year is known as a "split year". The Schedule also provides that certain income and gains that arise during a period of temporary non-residence shall be charged to UK tax when the individual resumes UK residence.

Details of the Section

2. This section introduces the Schedule which contains the statutory residence test and makes related provision. The section also contains a power allowing the Treasury to make any incidental, supplemental, consequential, transitional or saving provision in consequence of the Schedule. Any such Order is subject to the negative resolution procedure and must be laid before the House of Commons only.

Details of the Schedule

Part 1

The Rules

Introduction

3. Paragraph 1 defines the purpose of this Part of the Schedule.

4. Sub-paragraph (3) of paragraph 1 states that the rules do not provide a residence test for parts of the UK but for the UK as a whole.

5. Sub-paragraph (4) of paragraph 1 specifies the different taxes covered by the statutory residence test:

- income tax;
- capital gains tax; and
- inheritance tax and corporation tax (to the extent that the residence status of individuals is relevant to them).

Interpretation of enactments

6. Paragraph 2 specifies how the statutory residence test applies to the interpretation of other enactments.

7. Sub-paragraph (3) of paragraph 2 provides that the tax residence status determined by the statutory residence test applies for a full tax year, so that an individual is resident for every day in a tax year or not at all in that year. Sub-paragraph (4) of paragraph 2 explains that there are rules in Part 3 of this Schedule which relax the effect of that rule (without changing residence status) in certain circumstances.

8. Sub-paragraph (5) of paragraph 2 provides that the effect of this Schedule may be overridden by any express provision to the contrary in, or falling to be recognised and acknowledged in law by virtue of, any other legislation.

9. Examples of such provision include section 41 of the Constitutional Reform and Governance Act 2010 (which treats members of the House of Commons and House of Lords as resident in the UK for tax purposes) and Articles 12 and 13 of the Protocol on the Privileges and Immunities of the European Communities (which provides rules on the tax status of individuals who work for the European Union).

The basic rule

10. Paragraphs 3 and 4 provide that an individual (P) is UK resident if either the automatic residence test (see paragraph 5) or the sufficient ties test (see paragraph 17) is met for a tax year. If neither test is met for a tax year P is non-resident for that year.

The automatic residence test

11. Paragraph 5 sets out the automatic residence test. The automatic residence test is met if P meets at least one of the automatic UK tests (see paragraphs 6 to 10) and none of the automatic overseas tests (see paragraphs 11 to 16).

The automatic UK tests

12. Paragraph 7 specifies the first automatic UK test, which is met for a tax year if P spends 183 days or more in the UK in that year.

13. Paragraph 8 specifies the second automatic UK test.

14. Sub-paragraph (1) of paragraph 8 applies if P has a home in the UK during all or part of the tax year and P spends a "sufficient amount of time" in that home in that year. P will be UK resident for the tax year if, while P has that home, there is at least one period of 91 consecutive days (at least 30 of which fall within the tax year) throughout which condition A or condition B (or a combination of those conditions) is met.

15. Sub-paragraph (2) of paragraph 8 sets out condition A, which is that P has no home overseas.

16. Sub-paragraph (3) of paragraph 8 sets out condition B, which is that P has one or more homes overseas but each of those homes is a home at which P spends no more than a "permitted amount of time" in the tax year.

17. Sub-paragraph (4) of paragraph 8 specifies that P spends a "sufficient amount of time" in a UK home if P is present there at any point on at least 30 separate days in the tax year.

18. Sub-paragraph (5) of paragraph 8 specifies that P spends no more than a "permitted amount of time" in an overseas home is P is present there at any point on fewer than 30 days in the tax year.

19. Sub-paragraph (6) of paragraph 8 provides that the references to P being present in a home on at least, or fewer than, 30 days are to 30 separate days, whether consecutive

or intermittent, and that for these purposes P is present at a home only if, at the time, it is a home of P's.

20. Sub-paragraph (7) of paragraph 8 states that the test will be met so long as there is at least one period of 91 days where the conditions are satisfied, even if the period is in fact longer than 91 days.

21. Sub-paragraph (8) of paragraph 8 states that, if P has more than one home in the UK, the test must be applied to each of those homes individually.

22. Paragraph 9 specifies the third automatic UK test, usually known as "full time work in the UK".

23. Sub-paragraph (1) of paragraph 9. specifies that the test is met if P works sufficient hours in the UK over a period of 365 days without a significant break from work (defined in paragraph 29), and all or part of the 365-day period falls within the tax year. More than 75 per cent of P's working days in the 365-day period must be UK work days. A UK work day is a day in which P does more than 3 hours' work in the UK. There must be at least one day falling within both the 365-day period and the tax year that is a UK work day.

24. Sub-paragraph (2) of paragraph 9 sets out the steps to follow for the purposes of assessing whether or not P has worked sufficient hours in the UK over a period of 365 days. P will have worked sufficient hours in the UK if P has worked on average 35 hours a week or more in the UK, as calculated by following the steps set out.

25. Sub-paragraph (3) of paragraph 9 specifies that the third automatic UK test does not apply if P has a relevant job on board a vehicle, aircraft or ship at any time in the tax year (as defined in paragraph 30) and makes, as part of the job, at least six cross-border trips in the tax year that either begin or end in the UK (or both begin and end in the UK).

26. Paragraph 10 specifies the fourth automatic UK test which applies to a year of death. The broad effect of this provision is that where P has been resident under one of the automatic UK residence tests in each of the previous three tax years and has a home in the UK, P stays resident in the year of death unless P went abroad in the previous year in circumstances such that split year treatment applied (provided none of the automatic overseas tests is met).

27. Sub-paragraph (1) of paragraph 10 sets out five conditions. P is treated as UK resident for a tax year if P dies during the year, P had a home in the UK when P died, if P had a home overseas then P did not spend a sufficient amount of time there in year X, for the three preceding tax years P had met the automatic residence test (see paragraph 5), and, even assuming P was not resident in the year of death, the preceding year would not be a split year as defined in Part 3 of this Schedule.

28. Sub-paragraphs (2) and (3) of paragraph 10 define what is meant by a "sufficient amount of time". P must have been present in an overseas home for at least 30 days in the tax year, or have been there on every day from the beginning of the tax year (to meet the case where P died within 30 days of the start of the year).

29. Sub-paragraph (4) of paragraph 10 says that if P has more than one overseas home then the requirement of presence in the overseas home is met so long as it is met for each overseas home. So P need only satisfy the sufficient amount of time condition in respect of one such home in order to avoid being UK resident under this test.

The automatic overseas tests

30. Paragraphs 11 to 16 set out five automatic overseas tests. If P meets the conditions for any one of these, P will be non-resident for the tax year for which the test is applied.

31. Paragraph 12 specifies the first automatic overseas test, which is that P will be non-resident for a tax year if P spends fewer than 16 days in the UK in that year, does

not die during the year, and was resident for one or more of the three tax years immediately preceding that year. The exclusion for cases of death ensures that P does not automatically become non-resident if P dies early in the tax year.

32. Paragraph 13 specifies the second automatic overseas test, which is that P will be non-resident for a tax year if P spends fewer than 46 days in the UK in that year and was resident for none of the three tax years immediately preceding that year.

33. Paragraph 14 specifies the third automatic overseas test, usually known as "full time work overseas". P will be non-resident for a tax year if P works sufficient hours overseas for that year without a significant break from work (defined in paragraph 29), has fewer than 31 UK work days in that year and spends fewer than 91 days in the UK in that year (as defined in paragraph 22). A UK work day is a day on which P does more than 3 hours' work in the UK.

34. Sub-paragraph (2) of paragraph 14 ensures that the special rule in paragraph 23(4) (under which certain days on which P is present in the UK other than at midnight count as days spent in the UK) does not apply for the purposes of the third automatic overseas test.

35. Sub-paragraph (3) of paragraph 14 sets out the steps to follow for the purposes of assessing whether or not P has worked sufficient hours overseas in the tax year. P will have worked sufficient hours overseas if P has worked on average 35 hours or more a week overseas, as calculated by following the steps set out.

36. Sub-paragraph (4) of paragraph 14 specifies that the third automatic overseas test does not apply if P has a relevant job on board a vehicle, aircraft or ship at any time in the year (as defined in paragraph 30) and makes, as part of the job, at least six cross-border trips in the tax year that either begin or end in the UK (or both begin and end in the UK).

37. Paragraph 15 specifies the fourth automatic overseas test. P is non-resident for a tax year if P dies during the year and spends fewer than 46 days in the UK in that year, and either P was non-resident for the two tax years immediately preceding the tax year in which P dies or was non-resident for the tax year immediately preceding that tax year and the tax year before that was a split year by virtue of Case 1, 2 or 3 of Part 3 of this Schedule (see paragraphs 44 to 46). The effect of this provision is to ensure that an individual who dies without establishing three full years of non-residence may in certain circumstances benefit from a 46-day rule equivalent to that in paragraph 13.

38. Paragraph 16 specifies the fifth automatic overseas test which ensures that P's non-resident status is preserved in certain circumstances where P dies while working overseas. P is automatically non-resident if P dies during a tax year, having already been non-resident under the third automatic overseas test for the two preceding tax years (or for the year preceding the current tax year, with the year before that qualifying for Case 1 split year treatment) and if P meets the third automatic overseas test as modified.

39. Sub-paragraph (3) of paragraph 16 sets out the modifications to be applied to the third automatic overseas test in this situation. The third overseas test (in paragraph 14) is applied so that instead of assessing whether P has worked sufficient hours overseas for the whole tax year, the period assessed is that from the start of the tax year up to the day before the date of death. The permitted number of UK work days and days spent in the UK allowed under paragraph 14(1)(c) and (d) are not reduced.

The sufficient ties test

40. Paragraph 17 sets out the sufficient ties test. P will be resident under the sufficient ties test if P meets none of the automatic UK tests and none of the automatic overseas tests and if P has sufficient ties, as defined in Part 2 of this Schedule, for the tax year.

41. Sub-paragraph (3) of paragraph 17 specifies that the number of UK ties sufficient to make P UK resident for a tax year depends on whether P was UK resident for any of

the three tax years immediately preceding that year and the number of days P spends in the UK in the year. The number of ties required is set out in paragraphs 18 and 19.

Sufficient UK ties

42. Paragraph 18 sets out how the number of days P spends in the UK in a tax year determines the number of UK ties sufficient to make P resident for that year if P was UK resident in one or more of the three tax years immediately preceding the year.

43. Paragraph 19 sets out how the number of days P spends in the UK in a tax year determines the number of UK ties sufficient to make P resident for that year if P was UK resident in none of the three tax years immediately preceding the year.

44. Paragraph 20 sets out how paragraphs 18 and 19 are modified in order to apply the sufficient ties test to an individual who dies during the year.

45. Sub-paragraph (1) of paragraph 20 specifies that if an individual dies then the lower limit of 15 days spent in the UK is removed when applying paragraph 18.

46. Sub-paragraphs (2) to (4) of paragraph 20 set out how the day counts in paragraphs 18 and 19 are time-apportioned if the individual dies before 1 March in the tax year to which the test is applied.

Part 2

Key concepts

Days spent

47. Paragraph 22 specifies what counts as a day spent in the UK for the purposes of this Schedule.

48. Sub-paragraphs (1) and (2) of paragraph 22 specify that if P is in the UK at the end of a day, that day will count as a day spent in the UK, subject to the two exceptions set out in sub-paragraphs (3) to (6) of paragraph 22.

49. Sub-paragraph (3) of paragraph 22 specifies that where P is in transit through the UK, leaves the UK the day after arrival, and does not engage in any activities substantially unrelated to their transit, then the day of arrival will not count as a day spent in the UK.

50. Sub-paragraphs (4) and (6) of paragraph 22 specify that where P is only present in the UK at the end of a day because of exceptional circumstances beyond P’s control that prevented P from leaving, and P intends to leave as soon as those circumstances permit, that day will not count as a day spent in the UK up to a maximum of 60 days in a tax year.

51. Sub-paragraph (5) of paragraph 22 gives examples of circumstances that may be exceptional.

52. Paragraph 23 provides that if P is not present in the UK at the end of a day that day does not count as a day spent in the UK, subject to the exception provided by the deeming rule in sub-paragraph (4).

53. Sub-paragraphs (2) to (4) of paragraph 23 provide that even if P is not present in the UK at the end of a day, that day will count as a day spent in the UK if P was UK resident in one or more of the 3 tax years immediately preceding the tax year in which the day falls, P has 3 or more UK ties for the tax year in which the day falls and P is present in the UK at some point (but not at the end of the day) on more than 30 days in that tax year. Where this deeming rule applies, only the excess over 30 such days is added to the tally of days spent in the UK.

54. Sub-paragraph (5) of paragraph 23 provides that in establishing whether P has 3 UK ties for a tax year, the deeming rule in sub-paragraph (4) does not itself apply in calculating whether P has a 90-day tie.

Days spent "in" a period

55. Paragraph 24 specifies that days spent in the UK are aggregated for any period specified in this Schedule.

Home

56. Paragraph 25 contains provisions to assist in interpreting the word "home". Sub-paragraph (1) of paragraph 25 provides that a person's home could be a building or part of a building or, for example, a vehicle, vessel or structure of any kind. Sub-paragraph (2) of paragraph 25 states that whether there is a sufficient degree of permanence or stability about P's arrangements for a place to count as P's home will depend on all the circumstances of the case. Sub-paragraph (3) of paragraph 25 provides that somewhere that P uses periodically as nothing more than a holiday home or temporary retreat (or something similar) does not count as a home of P's. Sub-paragraph (4) of paragraph 25 provides that a place may count as a home whether or not P holds any estate or interest in it. This means, for example, that rented property or property which P lives in but which is owned by someone else, such as P's parents, may still count as P's home in appropriate circumstances. Sub-paragraph (5) of paragraph 25 provides that somewhere that was P's home does not continue to count as such merely because P continues to hold an estate or interest in it after P has moved out. This would apply, for example, where P had rented out the property on arms' length commercial terms and was unable to live in the property.

Work

57. Paragraph 26 specifies when an individual is considered to be working for the purposes of this Schedule.

58. Sub-paragraphs (1) to (3) of paragraph 26 specify that P is considered to be working if P is doing something in the performance of duties of an employment held by P or in the course of a trade carried on by P. In deciding whether or not something is being done in the course of duties of an employment, regard must be had to whether, if value were to be received by P for doing that thing, it would be employment income as defined in section 7 of ITEPA. Similarly, in deciding whether or not something is being done in the course of a trade, regard must be had to whether, if expenses were incurred by P, they could be deducted in calculating the profits of the trade for income tax purposes.

59. Sub-paragraph (4) of paragraph 26 specifies that time spent travelling counts as time spent working if the cost of the journey, if met by P, could be deducted in calculating P's earnings from the associated employment under one of the ITEPA provisions specified or in calculating the profits from the associated trade (making the assumption that P is chargeable to tax). Time spent working while travelling also counts as work for the purposes of this Schedule, irrespective of the tax deductibility position of that travel.

60. Sub-paragraph (5) of paragraph 26 specifies that time spent training counts as time spent working if the training is provided or paid for by the employer to help P perform the employment, or the cost of the training could be deducted in calculating the profits of the trade for income tax purposes.

61. Sub-paragraph (8) of paragraph 26 provides that a voluntary post where P has no contract of service does not count as employment for the purposes of this Schedule.

Location of work

62. Paragraph 27 sets out the rules for determining where work is actually carried out for the purposes of the statutory residence test.

63. Sub-paragraph (1) of paragraph 27 specifies that, for the purposes of this Schedule, work is considered as being done at the location where it is actually done rather than where an employment is held or a trade is carried on.

64. Sub-paragraph (2) of paragraph 27 specifies that, for the purposes of this Schedule, work done during travel to or from the UK by air or sea or via a tunnel under the sea will be assumed to be work done overseas, including work done during the part of the journey in or over the UK.

65. Sub-paragraph (3) of paragraph 27 specifies that, for the purposes of this Schedule, travelling to or from the UK begins when P boards an aircraft, ship or train and ends when P disembarks.

66. Sub-paragraph (4) of paragraph 27 specifies that the location of work rules are subject to the specific rules for people with relevant jobs on board vehicles, aircraft or ships. Such people are defined in paragraph 30 and the special rules are in paragraph 36.

Rules for calculating the reference period

67. Paragraph 28 sets out supplementary rules that feed into the calculation of the "reference period" which is part of the "sufficient hours in the UK" test at paragraph 9 and the "sufficient hours overseas" test at paragraph 14. Paragraph 28 sets out how certain days reduce the reference period, as required by step 3(b) within paragraphs 9(2) and 14(3). The days in question are days of annual, parenting or sick leave, non-working days embedded within a block of such leave, and days that are part of certain gaps between employments.

68. Sub-paragraph (2) of paragraph 28 sets out that the reference period may be reduced to take account of reasonable amounts of annual leave, parenting leave and absences from work at times during the period when P is on sick leave and cannot reasonably be expected to work. Reductions may also be made for non-working days embedded within each block of such leave.

69. Sub-paragraph (3) of paragraph 28 ensures that no day may reduce the reference period under paragraph 28 if it already reduces the reference period by virtue of being a "disregarded day". So there is to be no reduction from the reference period for the types of leave set out in this paragraph in relation to any disregarded days, which are defined at sub-paragraph 9(2) of the "sufficient hours in the UK" test and at sub-paragraph 14(3) of the "sufficient hours overseas" test and which are deducted from the reference period by virtue of step 3(a) within those sub-paragraphs.

70. Sub-paragraph (4) of paragraph 28 sets out that the nature of P's work and where P does the work will be relevant to what is considered to be 'reasonable amounts' of annual or parenting leave.

71. Sub-paragraph (5) of paragraph 28 sets out that non-working days will be considered to be "embedded within" a block of leave if there are three or more consecutive days of leave taken before and after the non-working days in question. The effect of these rules is that only non-working days that form part of a longer period of leave (such as a block of several months of maternity leave) reduce the reference period. Without this such non-working days would form part of the reference period and P would have to work longer hours in P's working weeks to make up for them. But other non-working days (not embedded within a longer block of leave) are effectively part of P's normal working week and so do form part of the reference period over which the 35-hour test is measured.

72. Sub-paragraph (6) of paragraph 28 sets out that a non-working day is defined as a day on which P is not normally expected to work for contractual reasons or as part of P’s normal pattern of work and is a day on which P does not in fact work.

73. Sub-paragraph (7) of paragraph 28 sets out that the total of reasonable amounts of annual leave, parenting leave and absences from work on sick leave are to be rounded down for the purposes of reductions to the reference period where those totals do not add up to a whole number of days.

74. Sub-paragraphs (8) and (9) of paragraph 28 provide that gaps between changes of P’s employment (during which time P does not work) may also be excluded from the reference period up to a total of 15 days for each change in employment, and subject to a maximum of 30 days in the tax year.

Significant breaks from UK or overseas work

75. Paragraph 29 sets out the definition of “significant break” for the purposes of the “sufficient hours in the UK” test at paragraph 9 and the “sufficient hours overseas” test at paragraph 14. A significant break is a period of at least 31 consecutive days on each of which P does less than three hours’ work, and where those days were not annual leave, sick leave, or parenting leave.

Relevant jobs on board vehicles, aircraft or ships

76. Paragraph 30 identifies the individuals to whom special rules apply because they have a job the duties of which are carried out when travelling and where substantially all the trips undertaken involve crossing international borders. P will be within this group of workers even if, for example, P occasionally performs duties on domestic journeys.

77. Examples of such individuals include international airline pilots and lorry drivers, fishermen who fish in international waters and people working on cruise ships.

UK ties

78. Paragraph 31 lists what counts as a UK tie for the purposes of this Schedule, depending on whether or not P was UK resident for one or more of the 3 tax years immediately preceding the tax year for which the test is applied. The UK ties are defined in paragraphs 32 to 38. Paragraph 31 specifies the requisite number of ties set out in paragraphs 18 and 19 must consist of different types of tie. So, for example, a family tie only counts once for a year regardless of the number of relatives that P has in the UK.

Family tie

79. Paragraph 32 specifies that P is considered to have a family tie for a tax year if P has a relevant relationship with another person in that tax year and that other person is someone who is resident in the UK in that tax year. P will have a relevant relationship with another person if that other person is P’s husband or wife or civil partner (so long as they are not separated) or someone P is living together with in that manner. P also has a family tie for a tax year if P has a child under age 18 who is UK resident in that tax year, unless P sees that child on no more than 60 days in that tax year, or the part of that tax year before the child reaches the age of 18.

80. Paragraph 33 sets out special rules for establishing whether, for the purposes of paragraph 32 only, a person with whom P has a relevant relationship is UK resident for a tax year. Sub-paragraph (2) of paragraph 33 provides that, in working out whether that other person is resident for the purposes of determining whether P has a family tie, their own family tie to P is to be disregarded. Sub-paragraphs (3) to (6) of paragraph 33 provide that a child of P’s under the age of 18 who is UK resident is to be treated as non-resident if they are in full-time education in the UK and would not be UK resident if the time spent in full-time education were to be disregarded. This test will only apply

if the child spends fewer than 21 days in the tax year in the UK outside term-time. Half-term breaks and other breaks during a term are treated as term-time.

Accommodation tie

81. Paragraph 34 specifies that P is considered to have an accommodation tie for a tax year if P has a place to live in the UK and that place is available to P for a continuous period of 91 days or more during the tax year (ignoring gaps of fewer than 16 days when it is unavailable). P is considered to have a place to live in the UK if P has one or more homes in the UK, a holiday home, temporary retreat or something similar in the UK or if accommodation is otherwise available to P where P can live when P is in the UK. P does not need to own or have an interest in the accommodation, but must spend at least one night in it during the tax year or, if it is the home of a close relative as defined in sub-paragraph (6) of paragraph 34, P must spend at least 16 nights in it during the tax year in order to have an accommodation tie.

Work tie

82. Paragraph 35 specifies that P has a work tie for a tax year if P does more than 3 hours' work a day in the UK on at least 40 different days in the tax year.

83. Paragraph 36 specifies that if P has a job within the scope of paragraph 30, then any day on which P starts a work-related cross-border trip in the UK is treated as one on which P did more than 3 hours' work in the UK. Any day on which P completes a work-related cross-border trip in the UK that began overseas is treated as one on which P did less than 3 hours' work in the UK. Any day on which P both starts a cross-border trip in the UK and completes it in the UK is treated as one on which P did more than 3 hours' work in the UK. If a cross-border trip is undertaken in stages across a number of days, the trip is considered to have started, or to be completed, on the day during which P crosses the UK border. Any day on which a stage of the trip takes place wholly within the UK will, so long as it takes more than 3 hours, be considered to be a UK work day.

90-day tie

84. Paragraph 37 specifies that P is considered to have a 90-day tie for a tax year if P spends more than 90 days in the UK in either or both of the two tax years immediately preceding that year.

Country tie

85. Paragraph 38 specifies that P is considered to have a country tie for a tax year if the country P is in at midnight for the greatest number of days in that year is the UK. P will also have a country tie for a tax year if P is in more than one country at midnight for the same number of days in that tax year if one of those countries is the UK and there is no country in which P has spent a greater number of midnights in that tax year.

Part 3

Split year treatment

Introduction

86. Paragraph 39 gives an overview of the content of this Part.

87. Paragraph 40 explains that the effect of a tax year being split into a UK part and an overseas part is as specified in the paragraphs in this Part amending the provisions concerned. But the individual's tax residence status for the whole year is not affected.

88. Paragraph 41 specifies that this Part does not apply when determining the residence status of personal representatives and applies only in a limited way in establishing the

residence status of trustees of a settlement. For trustees see also the amendments to section 475 of ITA and section 69 of TCGA made by paragraphs 102 and 103.

89. Paragraph 42 provides that split year treatment is not intended to affect whether an individual would be regarded as UK resident for the purposes of double taxation arrangements.

Definition of a "split year"

90. Paragraph 43 specifies that a tax year is a split year in relation to an individual if the individual is UK resident for that year and their circumstances fall within any of Cases 1 to 8 (set out in paragraphs 44 to 51). Split year treatment does not apply if the individual is non-UK resident for the year.

91. Cases 1 to 3 deal, broadly, with individuals going abroad. Cases 5 to 8 deal, broadly, with individuals coming to either work or live in the UK.

Case 1: starting full-time work overseas

92. Paragraph 44 specifies that an individual (the taxpayer) will fall within Case 1 for a tax year if they were UK resident for the previous tax year, are non-resident for the following tax year because they meet the third automatic overseas test (see paragraph 14), work sufficient hours overseas (without a significant break) and keep days in the UK within permitted limits over a period to the end of the year. In establishing the number of days the individual spends in the UK, days treated as spent in the UK by virtue of sub-paragraph (4) of paragraph 23 are to be ignored. The permitted limits are found by carrying out the calculation in sub-paragraphs (8) and (9) of paragraph 44.

Case 2: the partner of someone starting full-time work overseas

93. Paragraph 45 specifies that an individual (the taxpayer) will fall within Case 2 for a tax year if they were UK resident for the previous tax year, are non-resident for the following tax year and have a partner who falls within Case 1 for the relevant year or the previous tax year. 'Partner' is defined in sub-paragraph (4) of paragraph 52. The taxpayer must join the partner overseas so they can continue to live together while the partner is working overseas. After their deemed departure day, which is the later of the date the taxpayer joins the partner and the date the partner starts to work overseas, the taxpayer must either have no UK home or, if they have homes in both the UK and overseas, must spend the greater part of the time living in the overseas home. The number of days the taxpayer spends in the UK after the deemed departure day must not exceed the permitted limit (which is calculated in the same way as in sub-paragraphs (8)(b) and (9) of paragraph 44).

Case 3: ceasing to have a home in the UK

94. Paragraph 46 specifies that a taxpayer will fall within Case 3 for a tax year if they were UK resident for the previous tax year, are non-resident for the following tax year, and at the start of the tax year had at least one home in the UK but at some point in that year they cease to have any UK home and this continues until the end of that year. In addition, from the date of ceasing to have any UK home the taxpayer must not spend more than 15 days in the UK until the end of the tax year and must, within 6 months of ceasing to have any home in the UK, have a sufficient link with a country overseas (as defined in sub-paragraph (7) of paragraph 46).

Case 4: starting to have a home in the UK only

95. Paragraph 47 specifies that a taxpayer will fall within Case 4 for a tax year if that person was non-resident for the previous tax year and, at the start of the tax year, the taxpayer did not meet the only home test but there comes a point in the year when that ceases to be the case and the taxpayer then continues to meet the only home test for the rest of

the tax year. The taxpayer will satisfy the only home test if their only home, or all their homes if they have more than one, is in the UK.

96. In addition, for the part of the year before the point where the taxpayer meets the only home test in the UK, or the earliest of these points if there is more than one, the taxpayer must not have sufficient UK ties to make them UK resident for that part of the year considered in isolation. The UK ties are determined by applying paragraphs 17 to 20 (and Part 2 to the extent that it applies to these paragraphs) and reducing the numbers of days in the Tables in paragraphs 18 and 19 by the factor specified in sub-paragraph (7) of paragraph 47.

Case 5: starting full-time work in the UK

97. Paragraph 48 specifies that a taxpayer will fall within Case 5 for a tax year if they were non-resident for the previous tax year and are coming to work in the UK in circumstances such that they meet the third automatic UK test in paragraph 9.

98. In addition, the taxpayer must not have sufficient UK ties to make them UK resident during the part of the year before the period in which the period of 365 days begins. The UK ties are determined by applying paragraphs 17 to 20 (and Part 2 to the extent that it applies to these paragraphs) and reducing the number of days in the Tables in paragraphs 18 and 19 by the factor specified in sub-paragraph (6) of paragraph 48.

Case 6: ceasing full-time work overseas

99. Paragraph 49 specifies that a taxpayer will fall within Case 6 for a tax year if they were non-resident for the previous tax year because they met the third overseas test (see paragraph 14), was UK resident for at least one of the four years before that, are UK resident for the following tax year (whether or not it is a split year) and satisfy the overseas work criteria for a period from the beginning of the year. The overseas work criteria require the taxpayer to have worked sufficient hours overseas (without a significant break) and to have kept days in the UK within permitted limits up to the end of the period. The permitted limits are found by carrying out the calculation in sub-paragraphs (8) and (9) of paragraph 49.

Case 7: the partner of someone ceasing full-time work overseas

100. Paragraph 50 specifies that a taxpayer will fall within Case 7 for a tax year if they were non-resident for the previous tax year and are UK resident for the following year (whether or not it is a split year) and have a partner whose circumstances fall within Case 6 (see paragraph 49) for the previous tax year or the relevant year**.** Case 7 will apply if on a day in the relevant year the taxpayer moves to the UK so that the taxpayer and partner can continue to live together.

101. In addition, for the part of the year before the deemed arrival date the taxpayer must not have a home in the UK, or if having homes both in the UK and overseas must spend a greater part of the time living in the overseas home and keep days spent in the UK within the permitted limit. The permitted limit of days in the UK is found by carrying out the calculation in sub-paragraphs (9) and (10) of paragraph 50.

102. The deemed arrival date is the later of the day the taxpayer moves to the UK or the first day of the UK part of the year under Case 6 for the partner.

Case 8: starting to have a home in the UK

103. Paragraph 51 specifies that a taxpayer will fall within Case 8 for a tax year if they were non-resident for the previous tax year, are UK resident for the following tax year (which must not be a split year) and from the point at which the taxpayer starts to have a home in the UK, they continue to do so for the rest of the tax year and all of the following tax year.

104. In addition, for the part of year before the point at which the taxpayer starts to have a home in the UK, they must not have sufficient ties to make them UK resident. The UK ties are determined by applying the Tables in paragraphs 18 and 19 (and Part 2 as far as it relates to those paragraphs) with the adjustments specified in sub-paragraphs (6) and (7) of paragraph 51.

General rules for construing Cases 1 to 8

105. Paragraph 52 defines the meaning of terms used in paragraphs 44 to 51 and sets out how to calculate numbers of days in applying those paragraphs.

106. Sub-paragraph (2) of paragraph 52 specifies that the previous tax year is the one immediately before the tax year that is being considered.

107. Sub-paragraph (3) of paragraph 52 specifies that the next tax year is the one following the tax year that is being considered.

108. Sub-paragraph (4) of paragraph 52 specifies the meaning of a partner for the purposes of this schedule.

109. Sub-paragraph (5) of paragraph 52 specifies the method of rounding where a permitted limit calculation results in a number of days that is not a whole number.

The overseas part

110. Sub-paragraph (1) of paragraph 53 defines "the overseas part" of a split year as the part of the year as defined for the case in question or, if the taxpayer falls within more than one case, as defined in the case that has priority under paragraph 54 or 55.

111. Sub-paragraphs (2) to (9) of paragraph 53 specify the overseas part of a split year as the part of the year which:

- for Case 1, begins with the first day on which the individual meets the full-time work overseas criteria or, if there is more than one such period, the part beginning with the first day of the longest of those periods;
- for Case 2, begins on the deemed departure day;
- for Case 3, begins when the individual ceases to have any home in the UK;
- for Case 4, the part before the day on which the individual meets the only home test;
- for Case 5, the part before the first day of the period in which the individual works sufficient hours in the UK or, if there is more than one such period, the part before the first of those periods begins;
- for Case 6, the part ending with the last day of the period in which the individual satisfies the overseas work criteria or, if there is more than one such period, the last day of the longest of those periods;
- for Case 7, the part before the deemed arrival day;
- for Case 8, the part before the point in the tax year on which the taxpayer begins to have a home in the UK.

Priority between Cases 1 to 3

112. Paragraph 54 sets out the priority between Cases 1, 2 and 3 which deal with individuals who were UK resident in the previous year (i.e. are 'leaving' the UK).

Priority between Cases 4 to 8

113. Paragraph 55 sets out the priority between Cases 4, 5, 6, 7 and 8 which deal with individuals who were not resident in the UK in the previous year (i.e. are 'coming' to the UK).

The UK part

114. Paragraph 56 defines the "UK part" of a split year as the part of that year that is not the overseas part (see paragraph 53).

Special charging rules for employment income

115. Paragraphs 57 to 71 amend certain provisions in ITEPA that charge various types of employment income to tax where the charge depends on the residence status of the taxpayer. The individual is charged for the overseas part of a year as if non-UK resident.

116. Paragraph 58 amends section 15 of ITEPA so that general earnings attributable to the overseas part of a split year are not charged to tax unless the earnings relate to duties performed in the UK or to overseas Crown employment that is subject to UK tax. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.

117. Paragraph 59 amends section 22 of ITEPA to exclude general earnings taxable as chargeable overseas earnings on the remittance basis (as specified in section 23 of ITEPA) from the charge to tax on general earnings set by the amended section 15 of ITEPA. The provisions of section 22 are further amended by Schedule 46 on ordinary residence.

118. Paragraph 60 amends the definition of chargeable overseas earnings in section 23 of ITEPA to take into account whether a year is a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.

119. Paragraph 61 amends section 24 of ITEPA to take into account whether a year is a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis.

120. Paragraph 62 amends section 26 of ITEPA so that it only applies to foreign earnings taxable on the remittance basis that are attributable to the UK part of a split year. Attribution of earnings between the two parts of the year is to be done on a just and reasonable basis. The provisions of section 26 are further amended by Schedule 46 on ordinary residence.

121. Paragraph 63 amends section 232 of ITEPA so that the deduction for mileage allowance relief is restricted where earnings include 'excluded earnings' within section 15 of ITEPA.

122. Paragraph 64 amends section 329 of ITEPA so that the limit on deductions from earnings allowable for a split year takes into account that overseas earnings for the overseas part of the year may have been excluded from the charge to tax.

123. Paragraph 65 amends the definition of 'other relevant income' in section 394 of ITEPA. Section 394 provides that the value of a relevant benefit that a person receives under an employer-financed retirement scheme (EFRBS) is chargeable to tax as employment income only to the extent that the value received exceeds 'other relevant income' which that benefit gives rise to.

124. Sub-paragraphs (2) and (3) of paragraph 65 provide that when a relevant benefit is received under an EFRBS the following amounts in respect of the EFRBS are included in 'other relevant income' to determine how much of the relevant benefit counts as employment income by virtue of section 394(1):

- Such amounts chargeable to tax as general earnings or counting as employment income under Chapter 2 of Part 7A of ITEPA (employment income provided through third parties) in any tax year and
- Such amounts that would have been chargeable to tax as general earnings but not so chargeable because the employee either was not resident in the UK or was entitled to split year treatment for any tax year and
- Such amounts that would have counted as employment income under Chapter 2 of Part 7A of ITEPA but did not so count because the employee either was not resident in the UK or was entitled to split year treatment for any tax year.

'Relevant benefits' are defined in section 393B of ITEPA and are most commonly but not exclusively received in connection with retirement. Part 3 of this Schedule makes provisions for split year treatment.

125. Paragraph 66 amends section 421E of ITEPA to set out the conditions attaching to the exclusions from charges under Chapters 2, 3 and 4 of Part 7 of ITEPA that apply to employment-related securities respectively acquired in a tax year of residence (new subsection (1)), in the UK part of a split year (new subsection (1A)) and in the overseas part of a split year (new subsection (1B)). It also amends section 421E so that the charges under Chapters 3A to 3D of Part 7 apply to employment-related securities if they were acquired in the overseas part of a year which is split under Case 1, 2 or 3 (as specified in paragraphs 44, 45 and 46) and, had it not been a split year, all or part of earnings (or if there had been earnings, those earnings) at the time of acquisition would have been general earnings under sections 15, 22 or 26 of ITEPA.

126. Paragraph 67 amends section 474 of ITEPA so that Chapter 5 (apart from sections 473 and 483) of Part 7 does not apply in the circumstances specified to an employment-related securities option respectively acquired in a tax year of residence (new subsection (1)), in the UK part of a split year (new subsection (1A)) and in the overseas part of a split year (new subsection (1B)).

127. Paragraph 68 amends section 554Z4 of ITEPA so that, where a tax year is split, the value of a relevant step is reduced by the amount of the value that is attributable to the overseas part of the year and is not in respect of UK duties. Attribution of value between the two parts of the year is to be done on a just and reasonable basis.

128. Paragraph 69 amends section 554Z6 of ITEPA so that relevant earnings are excluded from the application of section 554Z6 if they are earnings attributable to the overseas part of a split year and are not earnings relating to duties performed in the UK or to overseas Crown employment that is subject to UK tax.

129. Paragraph 70 amends section 554Z9 of ITEPA so that employment income of the UK part of a split year is treated in the same way as employment income of a full year of residence for the purposes of that section. The provisions of section 554Z9 are further amended by Schedule 46 on ordinary residence.

130. Paragraph 71 makes changes to section 554Z10 of ITEPA that are consequential to the changes made to section 554Z4 and introduces a new term 'the overseas portion' to identify the employment income not attributable to UK duties. The provisions of section 554Z10 are further amended by Schedule 46 on ordinary residence.

Special charging rules for pension income

131. Paragraph 72 amends section 575 of ITEPA so that, in the case of a split year, the taxable foreign pension income for the year is that arising in the UK part of the year.

PAYE income

132. Paragraph 73 amends section 690 of ITEPA so that an officer of Her Majesty's Revenue & Customs can authorise a direction under that section if it appears likely to that officer that split year treatment applies in a tax year and that the employee works or will work both in the UK and overseas.

Special rules for trading income

133. Paragraph 75 amends section 6 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the individual is non-UK resident.

134. Paragraph 76 amends section 17 of ITTOIA so that if an individual is carrying on a trade, profession or vocation wholly or partly outside the UK other than in partnership, in the case of a split year the individual is treated as ceasing and immediately recommencing a new trade, profession or vocation at the beginning of whichever is the later of the UK part and the overseas part of the year.

135. Paragraph 77 amends section 243 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the individual is non-UK resident.

136. Paragraph 78 amends section 849 of ITTOIA so that, in the case of a split year, for the overseas part of the year the section has effect as if the partner is non-UK resident.

137. Paragraph 79 amends section 852 of ITTOIA so that if a partner has a change of residence the partner is treated as ceasing one notional trade and immediately commencing another and, in the case of a split year, is treated as ceasing and immediately recommencing at the beginning of whichever is the later of the UK part and the overseas part of the year.

138. Paragraph 80 amends section 854 of ITTOIA so that if a partner has a change of residence the partner is treated as ceasing one notional business and immediately commencing another and, in the case of a split year, is treated as ceasing and immediately recommencing at the beginning of whichever is the later of the UK part and the overseas part of the year.

Special charging rules for property income

139. Paragraph 81 amends section 270 of ITTOIA so that where an individual is carrying on an overseas property business, in the case of a split year, tax is charged only on profits of the business that arise in the UK part of the year. Apportionment of profit between the two parts of the year is to be done on a just and reasonable basis.

140. New subsection (4)(b) of section 270 introduces a rule to determine how capital allowances and balancing charges are taken into account in a split year.

Special charging rules for savings and investment income

141. Paragraph 83 amends section 368 of ITTOIA so that if income within Part 4 of ITTOIA arises to an individual in the overseas part of a split year it is treated as arising to a non-UK resident. Income arising to a non-resident is generally only chargeable if it is UK source income, but this is subject in particular to the rules for temporary non-residents (see Part 4 of this Schedule).

142. Paragraph 84 amends section 465 of ITTOIA so that, in the case of a split year, the individual is not liable to tax under Chapter 9 of Part 4 on gains arising in the overseas part of the year. But see Part 4 of this Schedule in relation to an individual who is temporarily non-resident.

143. Paragraph 85 amends section 467 of ITTOIA to include an additional absent settlor condition under subsection (4), which is that the gain arises in the overseas part of a split tax year applicable to the individual who created the trusts.

144. Paragraph 86 amends section 528 of ITTOIA to take into account days in the overseas part of a split year as well as days in a full year of non-residence in reducing the amount of the gain to be charged. This section is substituted by Schedule 8 to this Act dealing with chargeable event gains but continues in force for policies not covered by the new section. Accordingly, the amendments made by sub-paragraphs (3) to (6) of paragraph 86 apply to the new section 528 and the amendments made by sub-paragraphs (8) to (10) of paragraph 86 apply to the old section 528. If the period being considered is before 6 April 2013 then the reference to a split year is applied as if it referred to the relevant Extra-Statutory Concession then in force (usually ESC A11) – see paragraph 155.

145. Paragraph 87 amends section 528A of ITTOIA which is inserted by Schedule 8 to this Act dealing with chargeable event gains. It provides relief in respect of a deceased person's policy corresponding to that for individuals in section 528 of ITTOIA. The amendments correspond to those made by paragraph 86.

146. Paragraph 88 amends section 536 of ITTOIA (as itself amended by Schedule 8 to this Act dealing with chargeable event gains) to reflect the changes made to section 528 of ITTOIA.

Special charging rules for miscellaneous income

147. Paragraph 89 amends section 577 of ITTOIA so that if income falling under Part 5 arises to an individual in the overseas part of a split year it is treated under this section as arising to a non-UK resident.

Special charging rules for relevant foreign income charged on remittance basis

148. Paragraph 90 amends section 832 of ITTOIA to provide that an individual who is taxed on the remittance basis will be subject to UK tax on all relevant foreign income remitted in a tax year in which they are UK resident, or, if that year is a split year as respects the individual, on all relevant foreign income which they remit in the UK part of that year.

149. Paragraph 91 amends three provisions in Chapter 2 of Part 13 of ITA as a consequence of the amendments made to section 832 of ITTOIA.

Special charging rules for capital gains

150. Paragraph 93 amends section 2 of TCGA so that, in the case of a split year, an individual is not chargeable to capital gains tax on chargeable gains accruing to the individual in the overseas part of the year. This rule does not apply where gains are charged on a non-resident under section 10 of TCGA and is subject to the rules for temporary non-residents in section 10A of TCGA. The provisions of section 2 are further amended by Schedule 46 on ordinary residence.

151. Paragraph 94 amends section 3A of TCGA so that the period taken into consideration for the purpose of the amount of chargeable gains or chargeable disposals is, in the case of a split year applicable to the individual, the UK part of the year.

152. Paragraph 95 amends section 12 of TCGA so that, in the case of a split year when gains are remitted, they are treated as accruing to the individual in whichever part of the year (overseas part or UK part) in which the foreign gains are actually remitted to the UK. The provisions of section 12 are further amended by Schedule 46 on ordinary residence.

153. Paragraph 96 amends section 13 of TCGA so that, in the case of a split year for a participator in the company, the chargeable gain that accrues to the company in the overseas part of the year is not treated as accruing to the participator.

154. Paragraph 97 amends section 16 of TCGA so that, in the case of a split year for an individual, the loss accruing to the individual in the overseas part of the year is not an allowable loss under the Act.

155. Paragraph 98 amends section 16ZB of TCGA to reflect the fact that foreign chargeable gains remitted to the UK are treated under section 12 of TCGA as accruing to the individual in whichever part of the year (overseas part or UK part) the gains are remitted to the UK.

156. Paragraph 99 amends section 16ZC of TCGA so that the foreign chargeable gains in subsection (3)(a) and (b) respectively take into account that the relevant year may be a split year.

157. Paragraph 100 amends section 86 of TCGA so that, in the case of a split year for the settlor, the chargeable gains treated as accruing to the settlor are treated as accruing in the UK part of the year. The provisions of section 86 are further amended by Schedule 46 on ordinary residence.

158. Paragraph 101 amends section 87 of TCGA so that, if the year is a split year for the beneficiary, the amount on which the beneficiary is chargeable to capital gains tax under this section is the portion of the total that would have been chargeable for a full year of residence attributable on a time basis to the UK part of the year. The provisions of section 87 are further amended by Schedule 46 on ordinary residence.

Trustees of a settlement

159. Paragraph 102 amends section 69 of TCGA, which contains the residence rules of a body of trustees for capital gains tax purposes. Under the statutory residence test, an individual trustee who is resident in the UK for a year is resident for every day in that year, including those days that fall within the overseas part of a split year for that individual. The amendment provides that if the individual is a trustee of a settlement only in the overseas part of a split year then he or she is treated as not resident for that year in applying the residence rules to that settlement. This exception is overridden if the trustee is acting as such in the course of a UK business.

160. Paragraph 103 amends section 475 of ITA which contains the residence rules of a body of trustees for income tax purposes. It makes equivalent changes to those made for capital gains tax by the previous paragraph.

Definitions in enactments relating to income tax and CGT

161. Paragraph 104 amends section 288 of TCGA to insert definitions of a “split year” and “the overseas part” and “the UK part” of a split year.

162. Paragraph 105 amends Part 2 of Schedule 1 to ITEPA to insert cross-references to the ITA definitions of a “split year” and “the overseas part” and “the UK part” of a split year.

163. Paragraph 106 amends Part 2 of Schedule 4 to ITTOIA to insert cross-references to the ITA definitions of a “split year” and “the overseas part” and “the UK part” of a split year.

164. Paragraph 107 amends section 989 of ITA to insert definitions of a “split year” and “the overseas part” and “the UK part” of a split year.

165. Paragraph 108 amends Schedule 4 to ITA to insert entries relating to “split year”, “the overseas part” and “the UK part” of a split year.

Part 4

Anti-avoidance

Introduction

166. Paragraph 109 gives an overview of the content of this Part. This Part amends existing rules which apply to income and gains arising during a period of temporary non-residence and introduces new charges for certain income and gains not presently covered by such rules. In addition to the provisions amended or introduced by this Part there are two similar charges in secondary legislation (SI 2006/1958 (pension schemes, taxable property) and SI 2009/3001 (offshore funds)). Those provisions are brought into line with the rules in this Part by SI 2013/1810.

Meaning of temporarily non-resident

167. Paragraph 110 specifies that an individual is regarded as "temporarily non-resident" if he or she has sole UK residence for a residence period and, immediately following that period (referred to as period A), one or more residence periods occur for which the individual does not have sole UK residence. "Sole UK residence" is defined in paragraph 112 and "residence period" is defined in paragraph 111. In addition, in 4 or more tax years out of the 7 tax years immediately preceding the year of departure (a term defined in paragraph 114), the individual must have had either sole UK residence or the year must have been a split year that included a residence period for which the individual had sole UK residence. Finally, the temporary period of non-residence (see paragraph 113) must be 5 years or less.

168. The provisions in this Part apply if the period of temporary non-residence is 5 years or less. This is a change from the former temporary non-residence provisions which applied if there are fewer than 5 tax years ('intervening years') between the year of departure and the year of return.

Residence periods

169. Paragraph 111 defines a "residence period" as a tax year that is not split, or the overseas part or the UK part of a split year.

Sole UK residence

170. Paragraph 112 defines "sole UK residence" for a residence period as the individual being UK resident for an entire tax year and not Treaty non-resident, or the UK part of a split year and not Treaty non-resident in that part. "Treaty non-resident" is defined in sub-paragraph (3) of paragraph 112.

Temporary period of non-residence

171. Paragraph 113 defines "the temporary period of non-residence" as the period between the end of period A and the start of the next residence period after period A for which the individual has sole UK residence.

Year of departure

172. Paragraph 114 defines "the year of departure" as the tax year consisting of or including period A. It should be noted that this year may be earlier than the year in which the individual actually leaves the UK.

Period of return

173. Paragraph 115 defines "the period of return" as the first residence period after period A for which the individual has sole UK residence.

Consequential amendments: income tax

174. Paragraph 116 substitutes a new section 576A of ITEPA. Both the existing and new sections 576A provide that a withdrawal from a flexible drawdown pension fund under a relevant non-UK scheme during a period of temporary non-residence is to be treated as pension income when the individual returns to the UK. The new section 576A ensures the existing provision is made consistent with the other provisions in Part 4 of this Schedule.

175. Subsection (1) of new section 576A provides that the section applies to persons who are "temporarily non-resident" (as defined in paragraph 110).

176. Subsection (2) of new section 576A provides that relevant withdrawals are to be treated as pension income arising in the period of return (as defined in paragraph 115) for the purposes of section 575 of ITEPA. Section 575 provides that the amount of pension arising when a pension is paid by or on behalf of a person outside the UK to a person who is resident in the UK is taxable pension income.

177. Subsections (3) and (4) of new section 576A define a "relevant withdrawal" for the purpose of subsection (2).

178. Subsection (3)(a) of new section 576A provides that a relevant withdrawal must be paid during a period of temporary non-residence.

179. Subsection (3)(b) of new section 576A provides that a relevant withdrawal is a withdrawal that is either not chargeable to tax under Part 9 of ITEPA or, if it is so chargeable to tax, it would not be if the chargeable person made a claim under a double taxation agreement.

180. Subsection (4) of new section 576A provides that a relevant withdrawal is a withdrawal that is paid under a flexible drawdown arrangement relating to the person under a relevant non-UK scheme and would be an authorised pension or pension death benefit if the scheme paying it were a registered pension scheme. "Relevant non-UK scheme" is defined in paragraph 1 of Schedule 34 to FA 2004. The pension rules and the pension death benefit rules in relation to registered pension schemes are defined in sections 165 and 167 of FA 2004.

181. Subsection (5) of new section 576A provides that when an individual is chargeable to tax on the remittance basis for the year of return and both made a relevant withdrawal and remitted it to the UK during the period of temporary non-residence, the amount remitted is to be treated as having been remitted to the UK in the period of return.

182. Subsection (6) of new section 576A provides that the section does not apply unless the withdrawal from a flexible drawdown pension fund is referable to either the individual's UK tax-relieved fund or their relevant transfer fund. A member's UK tax-relieved fund is created by the accumulation of pension rights supported by UK tax relief. A member's relevant transfer fund is created by the transfer to the relevant non-UK scheme from a registered pension scheme or from another relevant non-UK scheme.

183. Subsection (7) of new section 576A provides that no double taxation relief arrangement is to be read as preventing a charge to tax under section 575 of ITEPA from arising by virtue of section 576A.

184. Subsections (8) to (10) of new section 576A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

185. Paragraph 117 substitutes a new section 579CA of ITEPA. Both the existing and the new sections 579CA provide that a withdrawal from a flexible drawdown pension fund under a registered pension scheme during a period of temporary non-residence is to be treated as pension income when the individual returns to the UK. The new section 579CA ensures the existing provision is made consistent with the other provisions in Part 4 of this Schedule.

186. Subsection (1) of new section 579CA provides that the section applies to persons who are "temporarily non-resident" (as defined in paragraph 110).

187. Subsection (2) of new section 579CA provides that relevant withdrawals are to be treated as pension income arising in the period of return (as defined in paragraph 115) for the purposes of section 579B of ITEPA. Section 579B provides that the amount of pension accruing when a pension is paid under a registered pension scheme is taxable pension income.

188. Subsection (3)(a) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is paid during a period of temporary non-residence (as defined in paragraph 113).

189. Subsection (3)(b) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is either not chargeable to tax under Part 9 of ITEPA or, if it is so chargeable to tax, it would not be if the chargeable person made a claim under a double taxation agreement.

190. Subsection (4) of new section 579CA provides that a withdrawal is not a relevant withdrawal unless it is paid under a flexible drawdown arrangement relating to the person under a registered pension scheme and is an authorised pension or pension death benefit. The pension rules and the pension death benefit rules in relation to registered pension schemes are defined in sections 165 and 167 of FA 2004.

191. Subsection (5) of new section 579CA provides that no double taxation relief arrangement is to be read as preventing a charge to tax under section 579B of ITEPA from arising by virtue of section 579CA.

192. Subsections (6) and (7) of new section 579CA provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

193. Paragraph 118 substitutes a new section 832A of ITTOIA which applies to individuals who are temporarily non-resident and taxed on the remittance basis. It provides that where such individuals remit relevant foreign income to the UK during the period of non-residence, they will be treated as having remitted that relevant foreign income to the UK in the period of return.

194. Subsection (4) of new section 832A provides that any apportionment which is required to determine the amount of relevant foreign income which relates to the UK part of a tax year must be done on a just and reasonable basis.

195. Subsection (5) of new section 832A provides that nothing in any double taxation arrangements is to be read as preventing relevant foreign income which is treated by this section as remitted to the UK in the period of return from being chargeable to UK tax.

196. Subsection (7) of new section 832A provides that the term "double taxation arrangements" means arrangements which have effect under section 2(1) of TIOPA.

Consequential amendments: capital gains tax

197. Paragraph 119 replaces existing section 10A of TCGA with new sections 10A and 10AA. The new section 10A replaces the concepts of intervening year, year of departure and year of return in the existing section with temporary period of non-residence (defined in paragraph 113), year of departure (defined in paragraph 114) and period of return (defined in paragraph 115).

198. The amendment to section 2 of TCGA in paragraph 93 means that gains arising in the overseas part of a split year will not be charged under that section but will instead be charged under new section 10A of TCGA if the individual meets the temporary non-resident conditions set out in this Part.

199. Subsection (1) of new section 10A restricts the scope of the section so that it only applies if an individual is temporarily non-resident (as defined in paragraph 110).

200. Subsection (2) of new section 10A provides that the individual's gains or losses within subsection (3) are chargeable to capital gains tax as if they were chargeable gains or losses accruing to the individual in the period of return.

201. Subsections (3) to (5) of new section 10A replace the existing subsections (2), (5) and (9B) and take into account split years. The more general carve-out in subsection (5) enables the structure of the legislation to be simplified and also corrects a defect in the current legislation which prevents a charge in certain cases of treaty non-residence.

202. Subsection (6) of new section 10A provides that subsection (2) is subject to sections 10AA and 86A of TCGA.

203. Subsections (7) and (8) of new section 10A replicates the effect of the existing rules in subsection (6) that limit the losses available in accordance with section 13 of TCGA.

204. Subsection (9) of new section 10A replicates the effect of the existing subsection (9ZA).

205. Subsection (10) of new section 10A provides that the terms temporarily non-resident, temporary period of non-residence and the period of return are as defined in Part 4 of this Schedule.

206. Subsection (11) of new section 10A provides the meanings of foreign chargeable gains, remitted to the United Kingdom and year of return.

207. New section 10AA of TCGA contains provisions supplementary to new section 10A of TCGA.

208. Subsection (1) of new section 10AA replicates the effect of the existing section 10A paragraphs (3)(a), (b), (c) and (d).

209. Subsection (2) of new section 10AA defines the term "relevant disposal" for the purposes of section 10AA.

210. Subsection (3) of new section 10AA replicates the effect of subsection (4) of the existing section 10A.

211. Subsection (4) of new section 10AA replicates the effect of subsection (9C) of the existing section 10A.

212. Subsection (5) of new section 10AA replicates the effect of subsection (7) of the existing section 10A.

213. Paragraph 120 substitutes a new section 86A of TCGA to make it compatible with new section 10A of TCGA and to correct for consequential amendments that were missed in FA 2008. New section 86A ensures that gains that are taxed under section 86 of TCGA in a period of return because section 10A applies do not include gains that have already been charged to tax under section 87 of TCGA. This may happen if non-UK resident trustees make capital payments to beneficiaries that section 87A of TCGA matches to trustees' gains that accrued in a period of temporary non-residence for the settlor.

214. Subsection (1) of new section 86A gives the conditions for the section to apply.

215. Subsection (2) of new section 86A gives the definition of "matched capital payment".

216. Subsection (3) of new section 86A provides for the amount charged on the returning settlor under section 86 of TCGA to be reduced if new section 86A applies.

217. Subsection (4) of new section 86A sets out the amount of the reduction.

218. Subsection (5) of new section 86A sets out the amount by which the trustees' gains available to be matched under section 87 of TCGA are reduced if those gains have been taxed under section 86 of TCGA as modified by new section 86A.

219. Subsections (6) and (7) of new section 86A also deal with the reduction of the trustees' gains. The rules ensure that the reduction cannot take the gains below zero. It will apply if capital payments have been made to which the reduction in new section 86A does not apply because they are not charged to tax.

220. Subsection (8) of new section 86A provides various definitions.

221. Paragraph 121 amends section 96 of TCGA. The changes are consequential to the changes made to section 10A of TCGA.

222. Paragraph 122 amends section 279B of TCGA. The changes are consequential to the changes made to section 10A of TCGA.

223. Paragraph 123 amends Schedule 4C to TCGA. The changes are consequential to the changes made to section 10A of TCGA.

224. The remaining provisions in this Part insert new rules into ITEPA, ITTOIA and ITA concerning the taxation of certain income and gains arising in a temporary period of non-residence**.**

New special rule: lump sum payments under pension schemes etc

225. Paragraph 124 introduces paragraphs 125 to 130 which amend ITEPA in connection with lump sums paid under pension schemes that are not registered pension schemes.

226. Paragraph 125 amends ITEPA to insert a new section 394A. New section 394A applies to certain lump sums paid under employer-financed retirement benefit schemes ('EFRBS').

227. Subsection (1) of new section 394A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 110).

228. Subsection (2) of new section 394A provides that the benefits described in subsection (3) are to be treated as if they were received in the period of return (as defined in paragraph 115).

229. Subsections (3)(a) to (c) of new section 394A provide that the section applies to relevant benefits provided in the form of a lump sum, when received by an individual during a temporary period of non-residence (as defined in paragraph 113).

230. Subsection (3)(d) of new section 394A provides that the section applies when the lump sum in question is not subject to tax under section 394 but would be subject to tax if the existence of double tax relief arrangements were disregarded.

231. Subsection (4) of new section 394A provides that there will be regarded as being no charge to tax for the purpose of section 394(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

232. Subsection (5) of new section 394A provides that subsection (2) does not affect the operation of section 394(1A).

233. Subsection (6) of new section 394A provides that no double taxation relief arrangement is to be read as preventing the value of the benefit from counting as employment income by virtue of section 394 as a result of section 394A applying.

234. Subsections (7) and (8) of new section 394A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

235. Paragraph 126 amends ITEPA to insert a new section 554Z4A. New section 554Z4A applies to certain relevant steps taken by relevant third persons providing employment income.

236. Subsection (1) of new section 554Z4A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 110).

237. Subsection (2) of new section 554Z4A provides that the relevant steps described in subsection (3) are to be treated as if they were taken in the period of return.

238. Subsection (3)(a) to (c) of new section 554Z4A provide that the section applies to relevant steps comprising payment of a lump sum relevant benefit by a relevant third person under a relevant arrangement, when the step is taken during a temporary period of non-residence (as defined in paragraph 113). The term “relevant benefit” is defined in section 393B of ITEPA. The terms “relevant arrangement” and “relevant third person” are defined in section 554A of ITEPA.

239. Subsection (3)(d) of new section 554Z4A provides that the section applies when the step does not give rise to a charge to tax by virtue of section 554Z2 of ITEPA but such a charge would arise if the existence of double tax relief arrangements were disregarded.

240. Subsection (4) of new section 554Z4A provides that there will be regarded as being no charge to tax for the purpose of section 554Z4A(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

241. Subsection (5) of new section 554Z4A provides that no double taxation relief arrangement is to be read as preventing the value of the relevant step from counting as employment income by virtue of section 554Z2 of ITEPA.

242. Subsections (6) and (7) of new section 554Z4A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

243. Paragraph 127 amends ITEPA to insert a new section 554Z11A. New section 554Z11A applies to certain amounts remitted to the UK.

244. Subsection (1) of new section 554Z11A provides that the section applies to individuals who are temporarily non-resident (as defined in paragraph 110).

245. Subsection (2) of new section 554Z11A provides that the amounts described in subsection (3) are to be treated as if they were remitted to the UK in the period of return.

246. Subsections (3)(a) to (c) of new section 554Z11A provide that the section applies if all or part of a lump sum relevant benefit provided to a relevant person by a relevant third person under a relevant arrangement is remitted to the UK during a temporary period of non-residence (as defined in paragraph 113). The term “relevant benefit” is defined in section 393B of ITEPA. The terms “relevant arrangement” and “relevant third person” are defined in section 554A of ITEPA. The definition of a “relevant person” is in section 554C of ITEPA.

247. Subsection (3)(d) of new section 554Z11A provides that the section applies when the amount remitted does not give rise to a charge to tax by virtue of section 554Z9 or section 554Z10 of ITEPA but such a charge would arise if the existence of double tax relief arrangements were disregarded.

248. Subsection (4) of new section 554Z11A provides that there will be regarded as being no charge to tax for the purpose of section 554Z11A(3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

249. Subsection (5) of new section 554Z11A provides that no double taxation relief arrangement is to be read as preventing the value of the relevant step from giving rise to tax by virtue of Chapter 2 of Part 7A of ITEPA.

250. Subsections (6) and (7) of new section 554Z11A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

251. Paragraph 128 amends section 554Z12 of ITEPA in connection with relevant steps within new sections 554Z4A and 554Z11A when the steps are taken after A has died during a period for which the relevant person was temporarily non-resident. The amendments provide that the relevant step in question is treated as taken in the relevant person's period of return unless the relevant person's temporary period of non-residence started before A died.

252. Paragraph 129 inserts a new section 572A into ITEPA. New section 572A applies to certain lump sums paid by UK pension schemes.

253. Subsection (1) of new section 572A provides that the section applies to individuals who are temporarily non-resident.

254. Subsection (2) of new section 572A provides that any pension within subsection (3) is to be treated as if it accrued in the period of return.

255. Subsection (3) of new section 572A prescribes the conditions that need to be satisfied in order for the section to apply. The conditions are that

- section 569 of ITEPA applies to the lump sum;
- the pension is paid in the form of a lump sum;
- the lump sum accrued during a period in which the individual was temporarily non-resident;
- the lump sum is not chargeable to tax as a United Kingdom pension under Chapter 3 of Part 9 of ITEPA but it would be so chargeable if there were no double tax arrangements under which the individual could claim an exemption from UK tax in respect of the lump sum.

256. Subsection (4) of new section 572A provides that there will be regarded as being no charge to tax for the purpose of subsection (3)(d)(i) where the person could make a claim to double taxation relief but has not yet done so.

257. Subsection (5) of new section 572A provides that no double taxation relief arrangements are to be read as preventing the pension to which the section applies from giving rise to tax in the period of return.

258. Subsections (6) and (7) of new section 572A provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

259. Paragraph 130 amends section 683 of ITEPA (PAYE income) in connection with amounts that are treated as employment income or pension income for a period of return by virtue of new sections 394A, 554Z4A, 572A or 579CA of ITEPA. The amendments provide that there is no requirement to operate PAYE in respect of any employment income or pension income which is chargeable to tax by virtue of one of those sections.

New special rule: distributions to participators in close companies etc

260. Paragraph 131 introduces paragraphs 132 to 136 which amend Part 4 of ITTOIA. They provide new charges on UK and foreign dividends and other distributions received (including loans being released) during a temporary period of non-residence.

261. Paragraph 132 inserts new section 368A in Chapter 1 of Part 4 of ITTOIA. It explains that the meaning of certain terms used in the temporary non-residence provisions is given by Part 4 of this Schedule. It also contains a general rule providing that no double taxation relief arrangement is to be read as preventing a charge to income tax arising by virtue of the temporary non-residence provisions.

262. Paragraph 133 inserts new section 401C in Chapter 3 of Part 4 of ITTOIA. This provision charges relevant UK distributions that arose during a temporary period of non-residence in relation to a year for which the individual was resident, but the UK charge was limited by the terms of a double taxation treaty. If the UK distribution arose in a year for which the individual was non-resident, new section 812A applies instead (see paragraph 138).

263. Subsection (1) of new section 401C provides the conditions for the section to apply. Where there is a double taxation treaty in place between the UK and the territory in which the individual is temporarily non-resident the tax charge when the relevant distribution is made will have been eliminated or restricted to 10% or 15% of the distribution (including the one-ninth tax credit if applicable).

264. Subsections (2) to (4) of new section 401C provide that the amount of the Chapter 4 charge is added to total income in the year of return with a credit for the tax on the distribution itself so as to avoid double taxation.

265. Subsection (5) of new section 401C explains the taxation treatment if the distribution is made in the treaty non-resident part of the year of return.

266. Subsection (6) of new section 401C defines ‘relevant distribution’. The company making the distribution must be a close company and the individual must have been a material participator or an associate of a material participator in the company.

267. Subsection (7) of new section 401C provides that new section 401C does not apply to cash dividends that are paid in respect of post-departure trade profits.

268. Subsection (8) of new section 401C defines the term ‘post-departure trade profits’ for the purposes of subsection (7) as those arising to the company in an accounting period which begins after the start of the temporary period of non-residence and, where such profits arise in an accounting period straddling the start of that temporary period, so much of those profits which can be attributed, on a just and reasonable basis, to the time after the start of that temporary period.

269. Subsection (9) of new section 401C provides that the extent to which a dividend is paid in respect of post-departure trade profits should be determined on a just and reasonable basis.

270. Subsection (10) of new section 401C provides that the amount of tax to be allowed against the charge under this provision is so much as the tax paid for the year in which the distribution was made as is just and reasonable to attribute to the distribution.

271. Subsection (11) of new section 401C provides in applying section 393 (special rule for cash dividends on shares in an approved share incentive plan) a reference to a distribution being made is to a cash dividend being paid over.

272. Subsection (12) of new section 401C defines terms used in this section.

273. Paragraph 134 inserts new section 408A in Chapter 4 of Part 4 of ITTOIA (which deals with foreign dividends).

274. Subsection (1) of new section 408A provides that this section applies to an individual who is temporarily non-resident.

275. Subsection (2) of new section 408A provides that dividends are to be treated for the purpose of Chapter 4 as if the individual received or became entitled to them in the period of return.

276. Subsection (3) of new section 408A sets out the conditions that must apply for a dividend to fall within subsection (2). These conditions are that:

- the individual receives or becomes entitled to the dividend in the temporary period of non-residence by virtue of being either a material participator in the company or an associate of such a participator at a relevant time;
- the dividend is from a company which would be a close company if it were UK resident; and,
- in the absence of this section, the individual would not be liable for tax under Chapter 4 in respect of the dividend but would have been so liable if they had received or become entitled to it in the period of return.

277. Subsection (4) of new section 408A defines the terms ‘associate’, ‘participator’, ‘material participator’ and ‘relevant time’ for the purposes of subsection (3) and provides that the subsection also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.

278. Subsection (5) of new section 408A provides that, where an individual is taxed on the remittance basis for the year of return, any dividend within subsection (3) which is remitted to the UK in the temporary period of non-residence will be treated as remitted to the UK in the period of return.

279. Subsection (6) of new section 408A provides that new section 408A does not apply to dividends within subsection (3) which are paid in respect of post-departure trade profits.

280. Subsection (7) of new section 408A defines the term ‘post-departure trade profits’ for the purposes of subsection (6) as those arising to the company in an accounting period which begins after the start of the temporary period of non-residence and, where such profits arise in an accounting period straddling the start of that temporary period, so much of those profits which can be attributed, on a just and reasonable basis, to the time after the start of that temporary period.

281. Subsection (8) of new section 408A provides that the extent to which a dividend is paid in respect of post-departure trade profits should be determined on a just and reasonable basis.

282. Subsection (9) of new section 408A provides that, where section 406 or 407 of ITTOIA applies to the dividend, references in this section to a dividend being received by the individual are to a cash dividend being paid to the individual or to a dividend treated as paid to the individual

283. Subsection (10) of new section 408A defines terms used in this section.

284. Paragraph 135 inserts new section 413A in Chapter 5 of Part 4 of ITTOIA. The section applies to stock dividends from UK companies in the same way that new section 401C applies to other distributions from UK companies. Accordingly, the commentary in paragraphs 262 to 272 above applies with appropriate modifications.

285. Paragraph 136 inserts new section 420A in Chapter 6 of Part 4 of ITTOIA. This provision applies to loans released in a period of temporary non-residence.

286. Subsection (1) of new section 420A provides that this section applies where an individual is temporarily non-resident.

287. Subsection (2) of new section 420A provides that debts within subsection (3) are treated as if they had been released or written off in the period of return.

288. Subsection (3) of new section 420A provides that a debt is within this subsection if:

- the debt is all or part of a debt in respect of a loan or advance made by a company to the individual;
- the debt is released or written off in the temporary period of non-residence; and,

- in the absence of this section, the individual would not be liable for tax under Chapter 6 of Part 4 of ITTOIA in respect of the release or write-off of the debt, but would have been liable if the debt had been released or written off in the period of return.

289. Subsection (4) of new section 420A provides that subsection (3) applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.

290. Paragraph 137 inserts new section 689A in Chapter 8 of Part 5 of ITTOIA 2005 dealing with distributions not charged by other provisions of ITTOIA.

291. Subsection (1) of new section 689A provides that new section 689A applies if an individual is temporarily non-resident.

292. Subsection (2) of new section 689A provides that distributions within subsection (3) are to be treated for the purpose of Chapter 8 of Part 5 of ITTOIA as if the individual received or became entitled to them in the period of return.

293. Subsection (3) of new section 689A defines the conditions in which distributions are to be treated under the rule provided by subsection (2). These conditions are that:

- the individual receives or becomes entitled to the distribution in the temporary period of non-residence by virtue of being either a material participator in the company or an associate of such a participator at a relevant time;
- the distribution is from a close company or from a company which would be a close company if it were UK resident; and
- in the absence of this section, the individual would not be liable for tax under Chapter 8 of Part 5 of ITTOIA in respect of the distribution but would have been so liable if they had received or become entitled to it in the period of return.

294. Subsection (4) of new section 689A defines the terms ‘associate’, ‘participator’, ‘material participator’ and ‘relevant time’ for the purposes of subsection (3) and provides that the subsection also applies where double taxation relief is available for the tax liability in question, even if no claim for such relief is actually made.

295. Subsection (5) of new section 689A provides that, where an individual is taxed on the remittance basis for the year of return, any distribution within subsection (3) which is relevant foreign income and is remitted to the UK in the temporary period of non-residence will be treated as remitted to the UK in the period of return.

296. Subsection (6) of new section 689A defines the term ‘remitted to the UK’ for the purposes of this section.

297. Paragraph 138 inserts new section 812A in Chapter 1 of Part 14 of ITA.

298. Subsection (1) of new section 812A provides that new section 812A applies where:

- an individual is temporarily non-resident;
- the individual’s income tax liability is limited under section 811 of ITA;
- the non-resident year falls within the temporary period of non-residence; and
- the individual’s income for that tax year includes relevant investment income.

299. Subsection (2) of new section 812A provides that the total income, as defined by Step 1 in section 23 of ITA, on which the individual is taxed for the year of return, is to be increased by an amount which is equal to the amount of the relevant investment income (“amount X”).

300. Subsection (3) of new section 812A provides that a credit is to be allowed for the notional UK tax on relevant investment income against the individual's income tax liability for the year of return to the extent that the relevant investment income does not exceed amount X.

301. Subsection (4) of new section 812A provides that 'relevant investment income' is income where:

- the income is chargeable under either Chapter 3 or Chapter 5 of Part 4 of ITTOIA;
- the distributing company is a close company;
- the income either arises or is treated as arising to the individual because they were a material participator in the company or an associate of such a participator at a relevant time.

302. Subsection (5) of new section 812A provides that income within subsection (4) in the form of a cash or stock dividend is not relevant investment income to the extent that the dividend is paid, or the share capital is issued, in respect of post-departure trade profits.

303. Subsection (6) of new section 812A defines the terms 'post-departure trade profits' for the purposes of subsection (5) as those arising to the distributing company in an accounting period which begins after the start of the temporary period of non-residence and, where such profits arise in an accounting period straddling the start of that temporary period, so much of those profits which can be attributed, on a just and reasonable basis, to the time after the start of that temporary period.

304. Subsection (7) of new section 812A defines the term 'notional UK tax' on relevant investment income for the purpose of subsection (3) as the total income included within amount A in section 811 of ITA less any credit for foreign tax paid in respect of that income under Chapter 2 of Part 2 of TIOPA for the non-resident year.

305. Subsection (8) of new section 812A provides that the extent to which a dividend is paid, or share capital is issued, in respect of post-departure trade profits, and the extent to which a sum included within amount A is a sum in respect of relevant investment income should both be determined on a just and reasonable basis.

306. Subsection (9) of new section 812A provides that double taxation arrangements are not to be read as preventing the individual from being chargeable to income tax under this section.

307. Subsection (10) of new section 812A provides that the meaning of the terms 'temporarily non-resident', 'the temporary period of non-residence', 'the year of departure' and 'the period of return' is as defined in Part 4 of this Schedule.

308. Subsection (11) of new section 812A defines the terms 'associate', 'participator', 'material participator', 'relevant time' and 'year of return' for the purposes of this section.

New special rule: chargeable event gains

309. Paragraph 139 provides for Chapter 9 of Part 4 of ITTOIA to be amended. This provides a new charge on chargeable event gains arising in a temporary period of non-residence and makes related amendments.

310. Paragraph 140 inserts new section 465B in ITTOIA.

311. Subsection (1) of new section 465B provides that the section applies if an individual is temporarily non-resident (as defined in paragraph 110).

312. Subsection (2) of new section 465B provides a charge for the year of return following a temporary period of non-residence if the conditions in subsection (3) are met.

313. Subsection (3) and (4) of new section 465B state the conditions to be met for a gain to be charged under this section. It is necessary that the gain would have been chargeable had the individual been resident in the year in which the gain arose, and assuming that year was not a split year for that individual.

314. Subsections (5) and (6) of new section 465B provide that the amount chargeable in the year of return is the amount that would have been chargeable applying the assumptions in subsection (4).

315. Subsection (7) of new section 465B contains a rule determining the date an insurance or contract is made for the purposes of subsection (3)(b).

316. Subsection (8) of new section 465B provides that in certain circumstances a gain is not chargeable under this section.

317. Subsection (9) of new section 465B provides that nothing in any double taxation arrangements is to be read as preventing the charge under this section.

318. Subsections (10) and (11) of new section 465B provide statutory cross-references for terms used in the section but defined in legislation elsewhere.

319. Paragraph 141 inserts new subsection (7) into section 468 of ITTOIA ensuring no double charge arises under sections 465B and 468.

320. Paragraph 142 inserts new subsection (4A) into section 514 of ITTOIA and provides that the special rule in subsection (4) charging the gain for the tax year in which the insurance year ends takes precedence over the timing rule in section 465B.

321. Paragraph 143 makes a consequential amendment to section 541 of ITTOIA.

322. Paragraph 144 makes a consequential amendment to section 552 of ICTA.

Part 5

Miscellaneous

Interpretation

323. Paragraph 145 defines terms used in this Schedule.

324. Paragraph 146 specifies the interpretation of annual and parenting leave for an individual carrying on a trade, and what are “reasonable amounts” for the purposes of this Schedule.

325. Paragraph 147 provides that a reference to less than a specified number of days includes nil days.

Consequential amendments

326. Paragraph 148 amends TCGA to delete section 9, which defines residence and related expressions for the purposes of that Act, and inserts into section 288 the definition of “resident” given by this Schedule.

327. Paragraph 149 makes a minor consequential amendment to section 27 of ITEPA.

328. Paragraph 150 makes a minor consequential amendment to section 465 of ITTOIA.

329. Paragraph 151 amends section 28 of FA 2005 to incorporate the concept of a split year as defined in Part 3 of this Schedule and amends section 41 of FA 2005 to insert the definitions of “non-UK resident” and “UK resident” in accordance with the meaning arising from this Schedule. Minor amendments are also made to sections 30, 31 and 32 of that Act.

330. Paragraph 152 amends ITA to delete sections 829 to 832, which contain provisions about the meaning of residence for income tax purposes. It also makes consequential amendments to sections 809B, 809D, 809E and 810.

Commencement

331. Paragraph 153 specifies when this Schedule shall have effect. Parts 1 and 2 have effect for determining whether individuals are resident or not resident in the UK for the tax year 2013-14 or any subsequent tax year. Part 3 of the Schedule has effect in calculating an individual's liability to income tax or capital gains tax for the tax year 2013-14 or any subsequent tax year. Part 4 of the Schedule has effect if the year of departure (as defined in paragraph 114) is the tax year 2013-14 or a subsequent tax year.

Transitional and saving provision

332. Paragraph 154 provides that where for the purposes of this Schedule it is necessary to determine for the tax year 2013-14, 2014-15, 2015-16, 2016-17 or 2017-18 whether an individual was UK resident or non-UK resident for a tax year before 2013–14, this will be determined in accordance with the rules then in force unless the individual elects for the determination to be made in accordance with this Schedule. Such an election must be made by notice in writing to HMRC no later than the first anniversary of the tax year to which it applies. This paragraph also modifies the application of the fourth automatic UK test, the fifth automatic overseas test (which apply if P dies in year X) and the Case 6 split year rule in paragraph 49 in cases where no such election has been made. These modifications cater for an earlier year referred to in each provision being a year for which the third automatic overseas test did not exist.

333. Paragraph 155 provides that where for the purposes of this Schedule it is necessary to determine for the tax year 2013-14 or any subsequent year whether a tax year before 2013–14 was a split year with respect to the individual, this will be determined in accordance with the relevant Extra Statutory Concession in place for that pre-commencement year. Those concessions are ESC A11, ESC A78 and ESC D2.

334. Paragraph 156 provides a transitional rule for Case 7 (see paragraph 50). It caters for the earlier year referred to in paragraph 50(3) being the year 2012-13 for which Case 6 split year treatment did not exist.

335. Sub-paragraph (1) of paragraph 156 provides that the year in question under paragraph 50(3) must be 2013-14.

336. Sub-paragraph (2) of paragraph 156 explains how the reference in paragraph 50(3) to Case 6 is to be applied where the partner's position for 2012-13 is being considered.

337. Sub-paragraph (3) of paragraph 156 explains how the reference in paragraph 50(7)(b) to the UK part of the relevant year is to be applied where the partner's position for 2012-13 is being considered. The year is split into a UK part and an overseas part following the treatment given under the relevant extra-statutory concession (ESC).

338. Sub-paragraph (4) of paragraph 156 explains what is meant by 'the relevant ESC'. For income tax purposes it would have been ESC A11. For capital gains tax purposes it would have been ESC D2.

339. Paragraph 157 sets out how the temporary non-residence rules in paragraph 110(1)(c) are to work in relation to pre-commencement years for which the concept of 'sole UK residence' does not apply. The rule instead uses the concepts of residence and treaty non-residence with residence being determined by the pre-commencement rules and not in accordance with the statutory residence test.

340. Paragraph 158 provides that the temporary non-resident provisions listed in sub-paragraph (3) will continue to have effect where the year of departure (as defined in paragraph 114) is a tax year before 2013-14, and that an individual's residence for the

year 2013-14 and after will be determined in accordance with this Schedule with the effect of split-years being disregarded.

341. Paragraph 159 provides that section 13 of FA 2012, which is a tax exemption in relation to the May 2013 Champions League final at Wembley, is applied using the concept of residence without regard to this Schedule.

Background

342. At Budget 2011, the Government announced that it would introduce a statutory definition of tax residence for individuals. Following extensive consultation, rules have been formulated which are contained within Parts 1 and 2 of the Schedule. The test makes an individual resident or not resident in the UK for a whole tax year. It applies for 2013-14 and following years.

343. Under a number of extra-statutory concessions, an individual could be taxed as if resident and non-resident for parts of the same tax year provided certain conditions were met. Part 3 of the Schedule replaces those concessions by giving statutory effect to 'split year' treatment and the concessions will be withdrawn with effect from 6 April 2013.

344. There are already several provisions (including two in secondary legislation) which charge certain income and gains when an individual resumes UK residence after a temporary period of non-residence. Those rules in primary legislation are aligned and updated by Part 4 of the Schedule which also extends the scope of the temporary non-resident rules to certain other income and gains. The two provisions in secondary legislation are brought into line by SI 2013/1810.

345. HMRC has published a guidance note RDR3 about how this legislation will be applied.

Section 219, Schedule 46: Ordinary Residence

Summary

1. Section 219 and Schedule 46 remove the concept of 'ordinary residence' from nearly all primary tax legislation (see Background for details of references retained). In many provisions, where the term 'ordinarily resident' is used on its own it is replaced by 'resident'. And, where there is a requirement to be both resident and ordinarily resident, the requirement will be simply 'resident'. Ordinary residence is important in relation to the taxation of individuals claiming the remittance basis. That basis of taxation will no longer be available on the grounds of being not ordinarily resident in the UK. With the abolition of ordinary residence, availability of the special relief in respect of overseas earnings due to remittance basis claimants (commonly called 'overseas workday relief') will depend on how long the individual has been resident in the UK. For several reliefs that depend on the individual being not ordinarily resident, transitional provisions ensure that an individual will retain relief for so long as he or she would have done so under current law.

Details of the Section

2. Subsection (1) introduces the Schedule.

3. Subsections (2), (3), (6) and (7) provide that the Treasury may by statutory instrument make further provision removing or replacing rules relating to ordinary residence which may be retrospective back to the start of the year in which the order is made. Such an order is subject to the affirmative resolution procedure, so is subject to debate in the House of Commons.

4. Subsections (4), (5), (6) and (8) provide that the Treasury may by statutory instrument make other provision which is incidental to provisions in the Schedule or in an order under subsection (2). Such an order is subject to the negative resolution procedure.

Details of the Schedule

Part 1

Income tax and capital gains tax: remittance basis of taxation

Remittance basis restricted to non-doms

5. Paragraph 2 amends section 809A of ITA. The remittance basis of taxation in Chapter A1 of Part 14 of ITA will be available only to an individual who is not domiciled in the UK. An individual who is domiciled in the UK, but not ordinarily resident, will not be able to claim the remittance basis for 2013-14 onwards (subject to transitional provisions).

6. Paragraph 3 makes amendments to section 809B of ITA to restrict the remittance basis to non-domiciled individuals. Section 809B(2) is repealed because a claim to the remittance basis can be made only on the basis of being non-domiciled.

7. Paragraphs 4 and 5 make corresponding changes to sections 809D and 809E of ITA.

Treatment of relevant foreign earnings

8. Paragraph 7 amends section 22 of ITEPA. That section provides that where the remittance basis applies and the employee is ordinarily resident in the UK, 'chargeable overseas earnings' are taxed only to the extent to that they are remitted to the UK. With the abolition of ordinary residence, section 22 will apply where the employee does not meet the requirement of new section 26A of ITEPA (see commentary in paragraph 11 below).

9. Paragraph 8 amends section 23 of ITEPA which defines 'chargeable overseas earnings' for the purposes of section 22. The condition that an employee is ordinarily resident is replaced by a condition that the employee is outside new section 26A.

10. Paragraph 9 amends section 26 of ITEPA. That section provides that where the remittance basis applies and the employee is not ordinarily resident in the UK, earnings in respect of overseas duties (other than from Crown employments) are taxed only to the extent that they are remitted to the UK. With the abolition of ordinary residence, section 26 will apply where the employee meets the requirement of new section 26A. This provision is often known as overseas workday relief.

11. Paragraph 10 inserts new section 26A into ITEPA. A UK resident employee is within this section for a tax year X if he or she has been non-resident for three consecutive tax years and that year X is any of the three years immediately following that spell of non-residence.

12. Paragraph 11 replaces the references to being ordinarily resident in section 41C(4) of ITEPA and not ordinarily resident in section 41C(6) with requirements to be outside or within section 26A respectively.

13. Paragraph 12 replaces the references to being ordinarily resident in section 271(2)(a) of ITEPA and not ordinarily resident in section 271(2)(b) with requirements to be outside or within section 26A respectively.

14. Paragraph 13 replaces the reference to being ordinarily resident in section 554Z9(1)(c) of ITEPA with a reference to being outside section 26A.

15. Paragraph 14 replaces the reference to being not ordinarily resident in section 554Z10(1)(c) of ITEPA with a reference to being within section 26A.

16. Paragraph 15 replaces the references to being not ordinarily resident in section 690(1)(a) and (2A) of ITEPA with a reference to being within section 26A and being not domiciled in the UK respectively.

Consequential amendments

17. Paragraph 16 replaces the references to being ordinarily resident in section 266A(8)(a) of ICTA and not ordinarily resident in section 266A(8)(b) with requirements to be outside or within section 26A respectively.

18. Paragraph 17 substitutes section 12(1) of TCGA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

19. Paragraph 18 amends section 87B of TCGA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

20. Paragraph 19 substitutes section 726(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

21. Paragraph 20 substitutes section 730(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

22. Paragraph 21 amends section 735(1) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

23. Paragraph 22 amends section 809F(4) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

24. Paragraph 23 amends section 809YD(3) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual.

25. Paragraph 24 amends section 809Z7(2)(d) of ITA to reflect the fact that the remittance basis can only be claimed by a non-domiciled individual and replaces the reference to being ordinarily resident in section 809Z7(3)(a) with a reference to being outside section 26A.

Commencement

26. Paragraph 25 provides that the amendments made by Part 1 of this Schedule apply to an individual’s foreign income and gains for 2013-14 onwards.

Savings

27. Paragraph 26 contains transitional provisions which apply where an individual is not ordinarily resident at the end of the tax year 2012-13 and that year is the first, second or third year of residence. It reflects the fact that an individual, unless having established an intention to settle in the UK, would have been regarded as not ordinarily resident for a maximum of three years (typically straddling four tax years). So provisions amended by this Part will continue to apply on the basis of current law for 2013-14 (where that is the fourth year of residence), for 2013-14 and 2014-15 (where they are the third and fourth years of residence) or for 2013-14, 2014-15 and 2015-16 (where they are the second, third and fourth years of residence).

Interpretation

28. Paragraph 27 attracts the meaning of ‘foreign income and gains’ in section 809Z7 of ITA to provisions in this Part.

Part 2

Income tax: arising basis of taxation

ICTA 1988

29. Paragraph 28 removes references to ‘ordinarily resident’ from section 614 of ICTA.

ITEPA 2003

30. Paragraph 30 amends a reference in section 56(5)(a) of ITEPA to being ordinarily resident outside the UK to a reference to being within section 26A and removes a similar reference from section 56(5)(b).

31. Paragraph 31 amends a reference in section 61G(5)(a) of ITEPA to being ordinarily resident outside the UK to a reference to being within section 26A and removes a similar reference from section 61G(5)(b).

32. Paragraph 32 amends section 328(5) of ITEPA as a consequence of changes made to section 378 of ITEPA (see commentary in paragraph 37 below).

33. Paragraph 33 removes a reference to ordinarily resident from section 341(3) of ITEPA.

34. Paragraph 34 removes a reference to ordinarily resident from section 342(6) of ITEPA.

35. Paragraph 35 removes a reference to ordinarily resident from section 370(6) of ITEPA.

36. Paragraph 36 removes a reference to ordinarily resident from section 376(1)(b) of ITEPA.

37. Paragraph 37 amends section 378 of ITEPA which, in conjunction with the other provisions in Chapter 6, provides an exemption for certain earnings of seafarers who are ordinarily resident in the UK or resident in an EEA State provided that various conditions are met. The exemption will now apply on the basis of residence in the UK or in an EEA State which allows the structure of section 378 to be simplified. As part of the simplification of section 378, the provision in subsection (5)(b) which means that remittance basis claimants are not entitled to seafarers' earnings deduction, is omitted.

38. Paragraph 38 inserts two new subsections (2A) and (3ZA) into section 413 of ITEPA. The old rules setting out what constitutes 'foreign service' are retained for service prior to 6 April 2013.

39. New subsection (2A) provides that for 2013-14 onwards service will only count as 'foreign service' where the earnings are not 'relevant earnings' and to the extent that the duties are performed outside the UK. The provision whereby service for which earnings are subject to the deduction from seafarer's earnings under Chapter 6 of Part 5 of ITEPA also counts as 'foreign service' is retained.

40. New subsection (3ZA) defines 'relevant earnings' for the purposes of new subsection (2A). With the abolition of ordinary residence, relevant earnings are defined for 2013-14 onwards in terms of earnings within section 15 of ITEPA directly or which would fall under that section even if a remittance basis claim under section 809B of ITA were made. The savings provisions in paragraph 73 apply for the purposes of sections 413 and 414 of ITEPA. For 2013-14 onwards an anomaly in the old rules is corrected whereby for an individual who was resident but not ordinarily resident, all service, including UK duties, could count as 'foreign service'. For 2013-14 onwards, service under a contract providing for both UK and overseas duties which could be subject to overseas workday relief under section 26 of ITEPA will be apportioned.

41. Paragraph 39 substitutes section 681A(4) of ITEPA which concerns the conditions for exemption from tax in respect of certain foreign state benefits paid to consular officers and employees. The reference to the individual being not ordinarily resident prior to taking up duty in the UK is replaced by a reference to being not UK resident for the two preceding tax years.

42. Paragraph 40 omits paragraph 8(2)(b) of Schedule 2 to ITEPA. In order for a share incentive plan to be an approved plan it must be open to all individuals who are both resident and ordinarily resident (as well as the individuals meeting other conditions). The amendment removes the ordinary residence condition in respect of plans approved on or after the day this Act was passed.

43. Paragraph 41 omits paragraph 6(2)(ca) of Schedule 3 to ITEPA. In order for a SAYE option scheme to be approved it must be open to all individuals who are ordinarily resident (as well as the individuals meeting other conditions). The amendment removes the ordinary residence condition in respect of option schemes approved on or after the day this Act was passed.

44. Paragraph 42 removes a reference to ordinarily resident from paragraph 27(3)(b) of Schedule 5 to ITEPA.

ITTOIA 2005

45. Paragraph 44 amends section 154A(1) of ITTOIA so that the exemption for profits on War Loan securities operates on the basis of the holder being non-resident rather than being not ordinarily resident. This does not affect the way in which the exemption applies to existing holders of War Loan securities (see the commentary in paragraphs 99 and 100 below).

46. Paragraph 45 amends section 459(2) of ITTOIA so that it refers to an individual who is resident rather than ordinarily resident in the UK. This reflects changes made to the basis on which the provisions of Chapter 2 of Part 13 of ITA (transfer of assets abroad) operate.

47. Paragraph 46 substitutes section 468(2) of ITTOIA so that the reference to an individual who is ordinarily resident is changed to one who is UK resident, reflecting changes to the transfer of assets abroad regime. The amendment also corrects an error – the words ‘of ICTA’ should have been repealed by ITA 2007.

48. Paragraph 47 amends section 569(2) of ITTOIA so that it refers to an individual who is resident rather than ordinarily resident in the UK. This reflects changes to the transfer of assets abroad regime.

49. Paragraph 48 removes a reference to ordinarily resident from section 636(2)(b) of ITTOIA in respect of income arising from 6 April 2013.

50. Paragraph 49 removes a reference to ordinarily resident from section 648(1)(b) of ITTOIA.

51. Paragraph 50 removes a reference to ordinarily resident from section 651(3) of ITTOIA.

52. Paragraph 51 removes a reference to ordinarily resident from section 664(2)(b)(i) of ITTOIA.

53. Paragraph 52 amends section 715 of ITTOIA to reflect the fact that the exemption condition attaching to FOTRA securities (as set out in section 713(2)(a) of ITTOIA) will change to the holder being non-resident rather than being not ordinarily resident for securities issued on or after 6 April 2013. Where the security was acquired by the trust before 6 April 2013 the existing references to the ordinary residence status of the beneficiaries remain in force.

54. Paragraph 53 substitutes section 771(4) of ITTOIA which concerns the conditions for exemption from tax in respect of relevant foreign income of consular officers and employees. The reference to the individual being not ordinarily resident prior to taking up duty in the UK is replaced by a reference to being not UK resident for the two preceding tax years.

ITA 2007

55. Paragraph 55 removes a reference to ordinarily residence from section 465(4) of ITA.

56. Paragraph 56 substitutes section 475(1) of ITA to remove reference to the ordinary residence status of the body of trustees. There are corresponding changes to

section 475(2) and (3). Section 475 is further amended by Part 3 of the statutory residence test.

57. Paragraph 57 removes references to the ordinary residence status of a settlor from section 476(2)(b) and (3)(b) of ITA. In the case of a settlement arising on the settlor's death the change only applies to deaths on or after 6 April 2013. In the case of other settlements the change only applies where the settlement is made on or after 6 April 2013.

58. Paragraph 58 removes a reference to ordinarily resident from section 643(1) of ITA.

59. Paragraph 59 removes a reference to ordinarily resident from section 718(2)(b) of ITA.

60. Paragraph 60 removes the word 'ordinarily' from section 720(1) of ITA. This is the first of a number of amendments to the transfer of assets abroad provisions in Chapter 2 of Part 13 of ITA which ensure that the provisions will apply in future where the individual subject to the charge is resident rather than ordinarily resident.

61. The savings provisions in paragraph 73 apply for the purposes of the transfer of assets abroad provisions in Chapter 2 of Part 13 of ITA.

62. Paragraph 61 amends section 721 of ITA to reflect the fact that the provision applies to a UK resident individual.

63. Paragraph 62 amends section 727 of ITA to reflect the fact that the provision applies to a UK resident individual.

64. Paragraph 63 amends section 728 of ITA to reflect the fact that the provision applies to a UK resident individual.

65. Paragraph 64 amends section 732 of ITA to reflect the fact that the provision applies to a UK resident individual.

66. Paragraph 65 removes a reference to ordinarily resident from section 749(2) of ITA. The change only applies to a transfer or associated operation made on or after 6 April 2013.

67. Paragraph 66 removes a reference to ordinarily resident from section 812(1)(a) of ITA.

68. Paragraph 67 removes a reference to ordinarily resident from section 834(3) of ITA which determines the residence status of an individual's personal representatives. The change only applies where the deceased dies on or after 6 April 2013.

69. Paragraph 68 amends section 858 of ITA so that a declaration made by an individual to enable a deposit taker or building society to pay interest without deduction of tax is that the person entitled to the interest is not resident rather than not ordinarily resident. Similarly, the undertaking given to notify becoming ordinarily resident will be an undertaking to notify becoming UK resident. This is the first in a number of similar provisions and they all come into force on 6 April 2014 instead of the general commencement date for this Schedule of 6 April 2013.

70. Paragraphs 68 to 71 do not affect declarations and undertakings given before 6 April 2014 which will continue to operate on the basis of declaring and notify changes to ordinary residence status.

71. Paragraph 69 makes corresponding amendments to section 859 of ITA in respect of a declaration and undertaking given in respect of members of a Scottish partnership.

72. Paragraph 70 makes corresponding amendments to section 860 of ITA in respect of a declaration made by a personal representative of an individual who was not ordinary resident immediately before death.

73. Paragraph 71 makes corresponding amendments to section 861 of ITA in respect of a declaration and undertaking given by the trustees of a settlement in respect of the beneficiaries of the settlement.

74. Paragraph 72 provides that the amendments made by Part 2 have effect for 2013-14 onwards unless otherwise stated.

75. Paragraph 73 provides transitional provisions for sections 413 and 414 of ITEPA (foreign service termination payments) and Chapter 2 of Part 13 of ITA (transfer of assets abroad). They apply where an individual is not ordinarily resident at the end of the tax year 2012-13 and that year is the first, second or third year of residence. It reflects the fact that an individual, unless having established an intention to settle in the UK would have been regarded as not ordinarily resident for a maximum of 3 years (typically straddling four tax years). So the provisions specified will continue to apply on the basis of current law for 2013 - 14 (where that is the fourth year of residence), for 2013-14 and 2014-15 (where they are the third and fourth years of residence) or for 2013-14, 2014-15 and 2015-16 (where they are the second, third and fourth years of residence), provided in the case of termination payments that the employment in question began before 6 April 2013.

Part 3

Capital gains tax: accruals basis of taxation

TCGA 1992

76. Paragraph 75 amends section 2 of TCGA. At present the charge to capital gains tax is on all gains for a year during any part of which the person is resident or ordinarily resident. From 2013-14 ordinary residence ceases to be a factor and the charge is on gains arising if the residence condition is met. In new subsection (1A) the residence condition is expressed separately for the various categories of person chargeable to capital gains tax. In particular, the condition for an individual is based on residence status for the tax year so as to be consistent with the wording of the statutory residence test. Section 2 is further amended by Part 3 of the statutory residence test to provide that for an individual a year of residence may be split into a UK part and overseas part in certain circumstances with the charge restricted according to the period in which the gains accrue.

77. Paragraph 76 amends section 10(1) of TCGA so that instead of a reference to being not resident and not ordinarily resident there is a reference to the residence condition in section 2(1A) not being met.

78. Paragraph 77 removes references to ordinarily resident from section 13 of TCGA.

79. Paragraph 78 amends section 16(3) of TCGA so that instead of a reference to being not resident and not ordinarily resident there is a reference to the residence condition in section 2(1A) not being met.

80. Paragraphs 79 to 81 remove references to ordinarily resident from sections 62(3), 65(3)(b) and 67(6)(a) of TCGA.

81. Paragraph 82 removes references to ordinarily resident from section 69 of TCGA. Section 69 is further amended by Part 3 of the statutory residence test.

82. Paragraphs 83 to 92 remove references to ordinarily resident from sections 76(1B)(a), 80(1), 81, 82(3)(b), 83(1), 83A, 84(1)(b), 85(1), 86 and 87 of TCGA.

83. Paragraph 93 removes references to ordinarily resident and ordinary residence from section 88(1) of TCGA.

84. Paragraph 94 removes references to ordinarily resident and ordinary residence from section 96 of TCGA.

85. Paragraph 95 removes a reference to ordinarily resident from section 97(1)(a) of TCGA.

86. Paragraph 96 removes a reference to ordinarily resident from section 99(1)(c) of TCGA. The ordinary residence status of a company is considered to be equivalent to its residence status.

87. Paragraphs 97 to 102 remove references to ordinarily resident from section 106(5A), 159, 166, 167, 168 and 169(3)(a) of TCGA.

88. Paragraph 103 amends section 199(2) of TCGA so that instead of a reference to being not resident and not ordinarily resident there is a reference to the residence condition in section 2(1A) not being met.

89. Paragraph 104 removes references to ordinarily resident from section 261 of TCGA.

90. Paragraph 105 removes a reference to ordinarily resident from paragraph 2(7)(a) of Schedule 1 to TCGA.

91. Paragraph 106 removes references to ordinarily resident from paragraph 5 of Schedule 4A to TCGA and amends the language of paragraph 6 to refer to the residence condition in section 2(1A). Since the condition in paragraph 6 looks back to the residence and ordinary residence status of the five previous years that condition is applied to years before 2013-14 as if the amendments in this paragraph had not been made.

92. Paragraph 107 removes references to ordinarily resident from paragraphs 4, 5, 9 and 10 of Schedule 4C to TCGA and amends the language of paragraph 1A(3) to refer to the residence condition in section 2(1A).

93. Paragraph 108 removes references to ordinarily resident from paragraphs 2A and 9 of Schedule 5 to TCGA.

94. Paragraph 109 removes references to ordinarily resident from paragraphs 2, 3, 4 and 5 of Schedule 5A to TCGA.

95. Paragraph 110 removes references to ordinarily resident from paragraphs 1, 3 and 19 of Schedule 5B to TCGA.

96. Paragraph 111 removes a reference to ordinarily resident from paragraph 8 of Schedule 7C to TCGA by substituting paragraph (a).

97. Paragraph 112 provides that the amendments made by Part 3 have effect for 2013-14 onwards unless otherwise stated.

Part 4

Other amendments

FA 1916

98. Paragraph 113 repeals section 63 FA 1916 which is obsolete.

F(No.2)A 1931

99. Paragraph 114 amends section 22 of F(No.2)A 1931 so that with effect from Royal Assent FOTRA securities may be issued with the condition for exemption based on the beneficial owner being not resident in the UK rather than being not ordinarily resident in the UK. This change does not affect the taxation treatment of any securities which are issued before this Act was passed (for which the exemption continues to be based on being not ordinarily resident) except where the beneficial owner acquired the security on or after 6 April 2013. So, for example, the inheritance tax provisions in sections 6(2) and 48(4) of IHTA 1984 will continue to apply to securities issued on the basis

of exemption for persons not ordinarily resident provided that the beneficial owner acquired them before 6 April 2013.

100. The other exemptions for FOTRA securities are contained in section 714 of ITTOIA for income tax, section 1279 of CTA 2009 for corporation tax and section 115 of TCGA (a wider general gilts exemption) for capital gains tax. Where a person acquires a FOTRA security on or after 6 April 2013, paragraph 114(5) provides that the exemption is based on being non-resident in the UK even though the exemption stated in the terms of issue was based on being not ordinarily resident.

TMA 1970

101. Paragraph 116 removes a reference to ordinarily resident from section 98(4E)(d) of TMA reflecting the change made to section 18 F(No.2)A 2005 by paragraph 136 of this Schedule and the change that will shortly be made to the supporting Authorised Investment Funds (Tax) Regulations 2006 (see Background).

102. Paragraph 117 removes a reference to ordinarily resident from paragraph 2(6) of Schedule 1A to TMA.

IHTA 1984

103. Paragraph 118 removes references to ordinarily resident from section 157 of IHTA 1984 in cases of death on or after 6 April 2013.

FA 2004

104. Paragraphs 119 to 131 remove references to ordinarily resident from pensions provisions in sections 185G(3)(a), 205(3), 205A(3), 206(3), 207(3), 208(4), 209(5), 217(5), 237A(2), 237B(8), 239(4) and 242(3) of FA 2004.

105. Paragraph 132 provides that the amendments to the pensions provisions apply from 6 April 2013.

FA 2005

106. Paragraph 133 removes a reference to ordinarily resident from section 30(1) of FA 2005 by substituting paragraph (c). The amendment applies from 6 April 2013.

F(No.2)A 2005

107. Paragraph 135 removes a reference to ordinarily resident from section 7(3) of F(No.2)A 2005. The amendment applies from 6 April 2013.

108. Paragraph 136 removes references to ordinarily resident from section 18(1)(f) and (g) of F(No.2)A 2005.

CTA 2009

109. Paragraph 138 removes a reference to ordinarily resident from section 900(2) of CTA 2009. The ordinary residence status of a company is considered to be equivalent to its residence status.

110. Paragraphs 139 to 144 remove references to ordinarily resident as applied to personal representatives and individuals in the context of corporation tax provisions concerning estate income and shares or options acquired by employees. The provisions concerned are sections 936(3), 947(2)(b)(i), 1009(5)(a), 1017(4)(a), 1025(5)(a) and 1032(5)(a) of CTA 2009.

CTA 2010

111. Paragraph 145 removes references to ordinarily resident and ordinary residence from section 1034 of CTA 2010.

TIOPA 2010

112. Paragraph 146 removes a reference to ordinarily resident from section 363A(3) of TIOPA. The ordinary residence status of a company is considered to be equivalent to its residence status.

Constitutional Reform and Governance Act 2010

113. Paragraph 147 removes a reference to ordinarily resident from section 41(2) of the Constitutional Reform and Governance Act 2010.

Background

114. At Budget 2012, the Government announced that it would abolish the concept of ordinary residence. This represents a major simplification to the UK tax system which was welcomed by those who responded to HM Treasury consultations in June 2011 and June 2012. The second consultation included draft legislation which is substantially the same as that in this Schedule except for the simplified new rules relating to overseas workday relief.

115. Three references to ordinary residence have been retained in primary (direct) tax legislation. They are in section 693 of ITTOIA 2005 (Ulster Savings Certificates, which refers to ordinary residence in Northern Ireland), section 38 of ITA 2007 (blind person's allowance which refers to ordinary residence in Scotland or Northern Ireland) and section 841 of ITA 2007 (which concerns the certification of ordinary residence outside the UK by a High Commissioner or Agent-General). The Government does not want to change the scope or application of any of these provisions. In addition, a fourth reference in section 228(6) of TCGA 1992 has been left alone on the basis that the provision is no longer of relevance.

116. The concept of ordinary residence will continue to apply for the time being in circumstances where transitional rules are in point, for example in relation to FOTRA securities issued on the basis that the holder is not ordinarily resident.

117. There are a number of places in secondary legislation where the term 'ordinary residence' is used. Where the term is clearly being used in an income tax context the Government will abolish the reference. Two statutory instruments came into force on 6 April 2013 (2013/557 and 2013/615). A third statutory instrument (SI 2013/1810) concerning certain rules applying to temporary non-residents (and incidentally removing references to ordinary residence) was laid in July 2013 to apply from 6 April 2013. A fourth statutory instrument concerning Authorised Investment Funds will be laid in time to come into force on 6 April 2014.

Section 220, Schedule 47: Controlled Foreign Companies Etc

Summary

1. Section 220 introduces Schedule 47 which ensures the Controlled Foreign Companies (CFC) regime at Part 9A of the Taxation (International and Other Provisions) Act 2010 (TIOPA) operates as intended. It makes amendments to Part 2 (double taxation relief), Part 6 (tax arbitrage) and Part 9A (controlled foreign companies) TIOPA. The above amendments, subject to one transitional rule, will come into force on 1 January 2013.

Details of the Schedule

Relevant finance leases

2. Paragraph 3 of the Schedule removes the limitation in section 371ED(1) that excludes non-trading finance profits arising from a relevant finance lease from the scope of section 371ED. This ensures that all non-trading finance profits that arise from either arrangements made as an alternative to paying dividends, or from relevant finance leases are within the scope of Chapter 5 of Part 9A TIOPA.

3. Paragraph 4 amends section 371EE(2)(b) so that the alternative scenario considered is both the purchase (directly or indirectly) of an asset, and an arrangement falling within new section 371EE(3). That section deals with an arrangement whereby a UK company purchases rights to use an asset (such as a licence to use a patent). It provides for two counterfactuals:

   - An arrangement that involves purchasing the rights to use the relevant asset from a person other than the CFC (and so the arrangement could involve a relevant finance lease provided the CFC was not the lessor); or

   - An arrangement that involves purchasing the rights to use the asset, but not by way of a relevant finance lease (and so the counterfactual could be an arrangement such as a licence granted by the CFC).

4. Paragraphs 5 and 6 refer to the new definition of "relevant finance lease" in new section 371VIA.

5. Paragraph 7 amends the definition of finance profits in section 371VG.

6. Paragraph 8 amends section 371VH(9) and inserts new section 371IH(10A) to make clear that in determining whether a person has an interest in a CFC by virtue of a loan relationship with embedded derivatives, in a situation where accounts have not been prepared in accordance with generally accepted accounting standards, then that issue will be determined on the assumption that accounts have been prepared in accordance with international accounting standards.

7. Paragraph 9 inserts new section 371VIA (relevant finance leases). The new section has the effect of including all finance leases over assets and arrangements that are of a similar character, within the definition of relevant finance lease.

8. New section 371VIA(1) provides that relevant finance leases are the arrangements that fall within new subsections (2) and (3) and specifies that loan relationships of any company are not included within the definition of relevant finance lease.

9. New section 371VIA(2) identifies arrangements where a lessor provides an asset to be leased, or otherwise made available, to another person. These arrangements are relevant finance leases for the purposes of Part 9A TIOPA where, in accordance with generally accepted accounting practice, they are treated in the accounts of the lessor, or a person connected with the lessor, as a finance lease or loan.

10. New section 371VIA(3) provides that the term relevant finance lease shall also include certain hire-purchase, conditional sale or other arrangements. These arrangements are included where they do not fall within new section 371VIA(2), but are of a similar character to the arrangements that would fall within new section 371VIA(2).

11. New section 371VIA(4) stipulates for the purposes of new section 371VIA, that where the accounts of a person are not drawn up in accordance with generally accepted accounting practice (which is specified as either UK GAAP or international accounting standards), any question that has to be considered by reference to generally accepted accounting practice is determined by assuming that the accounts of the person are prepared in accordance with international accounting standards.

12. New section 371VIA(5) makes clear that for the purposes of this section the "accounts" of a company include accounts that relate to two or more companies of which that company is one and so includes consolidated accounts.

Limit on double taxation relief in cases involving qualifying loan relationships of CFCs

13. Paragraphs 10 to 14 of the Schedule limit double taxation relief given by way of credit against corporation tax, or by deduction in calculating corporation tax profits in certain circumstances involving qualifying loan relationships of CFCs.

14. Paragraph 12 inserts new section 42(5) that makes clear that the limitation provided by new section 49A is an additional limitation to double taxation relief to that provided for by section 42.

15. Paragraph 13 inserts new section 49A after section 49. New sections 49A(1)(a)-(c) identify the circumstances under which this section will apply.

16. New section 49A(1)(a) provides that section 49A will take effect only if a claim has been made under Chapter 9 of Part 9A TIOPA in relation to an accounting period of the CFC. A Chapter 9 claim is for partial or full exemption from a CFC charge for certain non-trading finance income profits that arise on a loan relationship between two non-UK resident group companies.

17. New section 49A(1)(b) stipulates that in that period there needs to be a qualifying loan relationship between the two CFCs (the "Creditor CFC" in respect of which a Chapter 9 claim has been made and an "Ultimate Debtor" CFC).

18. New section 49A(1)(c) requires that the UK resident company ("the relevant UK company") has profits which include loan relationship credits in the period which originate directly or indirectly from "Loan B". "Loan B" is defined by the new CFC rules. Where "Loan B" is made by a person out of funds provided directly as a loan from the "Creditor CFC" or where for example another person is interposed between the "Creditor CFC" and the first person and provides the funds in such a way that the loan made by the "Creditor CFC" would be a qualifying loan relationship (as defined in Chapter 9 of Part 9A), then the condition in new section 49A(1)(c) is met.

19. New section 49A(2) limits entitlement to double taxation relief by way of credit under Part 2 TIOPA to a relevant UK company that has loan relationship credits that have been subject to foreign tax. This section further limits the credit entitlement by reference to the formula:

$R \times S$

Where

R is the rate of Corporation Tax payable by the relevant UK company (before any credit relief).

S is

(a) the relevant UK company's share of the relevant profit amount; or

(b) the proportion of the relevant UK company's share of the relevant profit amount that arises in the relevant period.

20. New section 49A(3) states that the limit introduced by this new section applies in addition to the limits to credit against corporation tax specified in section 42(2).

21. New section 49A(4) provides the steps for the calculation of the relevant UK company's share of the relevant profit amount for the relevant period ("S" in the above example).

Step 1 - ascertains the loan relationship credits in the period from "Loan B"

Step 2 - establishes the loan relationship credits of the Creditor CFC's qualifying loan relationship and subtracts this sum from the amount established in Step 1 above. This is the relevant profit amount.

Step 3 - the relevant profit amount is allocated between all the persons in the lending chain in a way that seems the most reasonable.

Example

CFC A (Creditor CFC) lends (Loan A) to UK Company (Relevant UK Company) that in turn lends (Loan B) to CFC B (Ultimate Debtor CFC). In the relevant period:

- UK Company has interest receivable of 100 on Loan B from CFC B (Ultimate debtor CFC),
- CFC A (CFC Creditor) has interest receivable of 90.

The relevant profit amount is therefore 10 which would be apportioned to UK Company in the lending chain.

22. New section 49A(5) determines the persons amongst whom the relevant profit amount is apportioned. It includes the person who made “Loan B” and any other person in the lending chain between the Creditor CFC and the “Loan B” lender. It includes anyone who has made or received a loan in that lending chain, for example a person who has received a loan and then passes the funds on as an investment by way of preference shares in another company in the lending chain. It also includes persons who only provide part of the funds for “Loan B”.

23. New sections 49A(6)(a)(i) and (ii) provide a limitation to the amount of “Loan B” where that loan is not wholly funded by “Loan A” provided by the Creditor CFC, or where “Loan B” is used to make a further loan to another person.

24. New section 49A(6)(b) defines “loan relationship credit” in line with a loan relationship credit under Part 5 of CTA 2009. The definition is extended to persons in the lending chain who are not liable to corporation tax, by assuming they are a UK resident company within the charge to corporation tax.

25. New section 49A(6)(c) defines “loan” for the purposes of this section.

26. Paragraph 14 inserts new sections 112(3A) and (3B). These new sections modify the amount of foreign tax that is allowed as a deduction from the income subject to that foreign tax, where a claim for relief by way of credit is not made.

27. New sections 112 (3A)(a) and (b) set out the first two conditions for new section 112(3B) to apply. New subsection (a) mirrors the conditions which trigger S49A to act. New subsection (b) applies if the loan relationship credits received by the relevant UK company have had foreign tax paid in respect of those credits.

28. New section 112 (3A)(c) sets out the third condition for new section 112(3B) to apply. It modifies the amount of foreign tax that can be deducted in section 112(1) to take account of any repayment of the foreign tax, reducing the amount to be considered for deduction to the net amount after any repayment. It does this by defining Z as that net amount and compares whether Z exceeds the amount

$R \times S$

, where

R is the rate of Corporation Tax payable by the Company (before any credit relief)

S is

(a) the UK resident company’s share of the relevant profit amount or

(b) the proportion of the UK resident company’s share of the relevant profit amount that arises in the relevant period,

as determined in accordance with new section 49A.

If Z were for example nil (because all the foreign tax had been repaid), then Z would not exceed RxS and so the third condition would not be met. In that case the amount of foreign tax deducted in section 112(1) would be nil because of the application of section 112(3). Alternatively if Z equals the amount of the foreign tax deducted (because there is no repayment of foreign tax) then the third condition is met and the limitation in new section 112(3B) applies.

29. New section 112(3B) limits the deduction from income for foreign tax by reference to the formula RxS.

30. In section 112(6) “this section” is inserted in place of “subsection 1”.

Miscellaneous

31. Paragraph 15 substitutes new section 236(4) in TIOPA. It ensures condition B is brought into line with the introduction of Part 9A TIOPA. Condition B, which assists in determining whether the scheme is a deduction scheme for the purposes of the arbitrage rules, shall not be failed solely because the profits of the company in question are treated as taxable on another person by a rule in a territory outside the UK, which is similar to Part 9A TIOPA.

32. Paragraph 16 introduces further amendments to Part 9A TIOPA.

33. Paragraph 17 substitutes new sections 371CE(4) and (5) in TIOPA that determine when a CFC is a group treasury company.

34. New sections 371CE(4)(a) and (b) set out the conditions for a CFC to be a group treasury company. It does this by reference to section 316 TIOPA, as amended by Finance Act 2013 and therefore maintains the alignment of the definition of a group treasury company between the Worldwide Debt Cap rules (see Part 7 TIOPA) and Part 9A TIOPA. While new section 371(4)(a) applies the conditions in new section 316(2), sections 316(9) to (11) are read through as a consequence.

35. New sections 371CE(5)(a) and (b) modify the application of new section 316(2) for the purpose of defining a group treasury company for the purposes of Part 9A TIOPA. New section 371CE(5)(a) removes the need, as it is not relevant for the purposes of the CFC rules, for an election under new section 316(2)(d) to be made. The Worldwide Debt Cap rules only apply to groups that are large. New section 371CE(5)(b) removes this restriction, in order for a group that is not large to be able to issue a notice under section 371CE(2).

36. Paragraph 18 introduces paragraphs 19 and 20 which contain amendments to Chapter 9.

37. Paragraph 19 inserts new sections 371IB(9A)-(9D). New section 371IB(9A) switches off in two sets of circumstances the limitation to what are qualifying resources provided by section 371IB(9). That rule limits the amount of qualifying resources where the qualifying loan relationship is part of an arrangement that results in an increase in debt in the UK of members of the group.

38. New section 371IB(9B) sets out the conditions for the first set of circumstances and switches off section 371IB(9) when any UK debt identified by section 371IB(8) is repaid within 48 hours of it being made.

39. New section 371IB(9C) provides a purpose based test which stops the application of new section 371IB(9B), where arrangements are made to effectively extend the relaxation of section 371IB(9) beyond 48 hours, or where the main purpose of the loan is to obtain the relaxation of section 371IB(9). It applies where the loan repayment occurs under, or is connected (directly or indirectly) with, an arrangement which has as its main purpose, or one of its main purposes, to ensure the section 371IB(9) restriction does not apply because of:

- the loan, or

- any other debt which a member of the CFC group incurs (or is expected to incur) in the UK.

40. New section 371IB(9D) sets out the conditions for the second set of circumstances where section 371IB(9) won't apply to limit the level of qualifying resources. It applies where an amount of short-term debt is repaid out of the proceeds of the issue of ordinary non-redeemable shares by the parent company to persons who are not members of the CFC group.

41. New sections 371IB(9D)(a) – (d) set out the conditions for switching off section 371IB(9) in those circumstances. These are:

- there must be an issue of shares that meets the requirements of sections 371IB(7)(c)(i)-(iii);
- there must be an expectation that the UK debt incurred before the issue of those shares, would be repaid by the company from the funds derived (directly or indirectly) from the issue of those shares;
- that the above repayment is made within 6 months from the day on which the loan is incurred, and
- the loan was neither made by a person who was a member of the CFC group, nor was it (wholly or partly and directly or indirectly) funded by a member of the CFC group.

The final condition ensures that new section 371IB(9D) only applies where the short-term funding has been provided by a third party and not as part of an arrangement whereby some or all of the funding is provided by the CFC group.

42. Paragraph 20 amends the matched interest rules at section 371IE.

43. Paragraph 20(2) amends the condition at section 371IE(1)(d)(ii). It ensures that the condition will be met where, if it were not for the application of section 371IE, some or all of the leftover profits within section 371IE are treated, by section 314A(1)(d), as relevant finance profits for the purposes of the Worldwide Debt Cap. This in turn ensures that the amount of leftover profits that can be exempted by the matched interest rule is not limited to only those profits that are treated as financing income amounts by section 314A. This will mean for example that the loan relationship credit from a FOREX gain that forms part of a CFC's non-trading finance profits can potentially be exempted under the matched interest rule.

44. Paragraph 20(3) inserts new section 371IE(7A). This makes clear that the amounts of leftover profits referred to in section 371IE(6) shall only include the leftover profits that fall to be included in the relevant finance profits amount of section 314A(1)(d). This ensures that the calculation of the proportion of leftover profits that can exempted under the matched interest rule is made using only those leftover profits that would otherwise be treated as financing income amounts under section 314A.

Commencement and transitional provision

45. Paragraph 21 states that the amendments made by this Schedule come into force on 1 January 2013.

46. Paragraph 22 introduces a transitional rule for the group treasury company notice within section 371CE (as amended by Finance Act 2013). The transitional rule applies to accounting periods of CFCs that begin before 20 March 2003.

Accounting periods ending before 20 March 2013

47. Paragraph 22(2) amends section 371CE by omitting section 371CE(4)(b). This means that for accounting periods that begin on or after 1 January 2013 and end before 20 March 2013, the definition of a group treasury company for the purposes of Part 9A

excludes the new restriction on the definition of a group treasury company for the purposes of the Worldwide Debt Cap that is introduced in Finance Act 2013.

Accounting periods ending on or after 20 March 2013

48. Paragraph 22(3) introduces the transitional rule for accounting periods beginning before and ending on or after 20 March 2013, for CFCs that will meet the updated definition of a group treasury company after 20 March 2013, but not before.

49. Paragraph 22(4) allows a notice under section 371CE(2)(b) to still be made even though the condition provided by section 371CE(2)(a) is not met.

50. Paragraph 22(5) outlines that where section 371CE(2)(a) is not met but a notice under section 371CE(2)(b) is given, the CFC's trading finance profits shall be apportioned between two deemed accounting periods on a just and reasonable basis. This apportionment will be between a deemed accounting period ending on 19 March 2013 ("Period A") and a deemed accounting period representing the period from 20 March 2013 ("Period B"). This sub-paragraph will only apply in practice where the CFC cannot meet the updated definition of a group treasury company before 20 March 2013, but can meet that definition after 20 March 2013. If the CFC can meet the updated definition of a group treasury company throughout its accounting period spanning 20 March 2013 then there is no need to apply paragraphs 22(5) to (9).

51. Paragraphs 22(6) and (7) outline the treatment of the CFC's trading finance profits apportioned to Period A. Those profits shall be treated as non-trading finance profits if the CFC is a group treasury company in Period A. In determining whether the CFC is a group treasury company in that period a modified section 371CE(4) shall apply, whereby:

- references to accounting period are referring to Period A, and
- only the group treasury conditions at section 371CE(4)(a) apply.

52. Paragraphs 22(8) and (9) outline the treatment of the CFC's trading finance profits apportioned to Period B. Those profits shall be treated as non-trading finance profits if the CFC is a group treasury company in Period B. In determining whether the CFC is a group treasury company in that period, section 371CE(4) applies whereby:

- references to accounting period are referring to Period B, and
- all the group treasury conditions at section 371CE(4) apply.

Background

53. The new CFC rules at Part 9A TIOPA (introduced in Finance Act 2012) better reflect the way that businesses operate in a global economy whilst maintaining adequate protection against artificial diversion of UK profits. This Schedule amends Part 9A in order to ensure the CFC rules operate as intended and continue to protect the UK's corporation tax base. It also amends Part 2 of TIOPA to limit the amount of double tax relief available to UK companies where they are involved in certain financing arrangements involving CFCs.

54. The Schedule addresses two tax planning opportunities, and in addition makes six minor consequential amendments to provide consistency of interpretation and to ensure the CFC rules operate as intended. The amendments:

- expand the definition of 'relevant finance lease' within Part 9A, to ensure certain hire purchase business is within scope of the new CFC rules and so that the definition applies to any asset (other than an asset which would be a loan relationship);

- limit the amount of double taxation relief that can be claimed by UK companies that form part of certain arrangements involving the routeing of a loan from one CFC to another CFC through one or more UK companies;
- ensure that references to the interpretation of certain accounting practices in Part 9A are consistent; and
- introduce a minor consequential amendment to the arbitrage anti-avoidance rules in Part 6 of TIOPA.
- make changes to the matched interest rule at section 371IE TIOPA to ensure that the leftover profits that can be exempted under that rule are not restricted to only those profits that would otherwise be subject to section s314A TIOPA. This will ensure for example that where the leftover profits include a FOREX gain, that gain can be included in the profits exempted.
- make a minor consequential amendment to the CFC regime’s definition of group treasury companies. This brings the CFC definition in line with the wider changes to the Worldwide Debt Cap definition of group treasury companies at section 316 TIOPA.
- relax the UK debt restriction rule applied to qualifying resources within section 371IB(9) TIOPA for two types of UK debt arrangements. These are:
  - ○ UK debt incurred and repaid as part of arrangements which are, or are similar to, ‘daylight facilities’, defined as debt repaid within 48 hours, and
  - ○ UK debt incurred, that is required as short term bridging finance, from a person who was not a member of the CFC group. The debt must not be funded (wholly or partly and directly or indirectly) by a member of the CFC group. The debt must also be expected to be repaid from a subsequent rights issue within section 371IB(7)(c)(i)–(iii) and that the expected repayment must take place within 6 months of the loan being taken out.

Section 221: Agreement between UK and Switzerland

Summary

1. Section 221 amends Schedule 36 to Finance Act 2012 which gave effect to the UK-Swiss Confederation Taxation Cooperation Agreement (the Agreement) signed on 6 October 2011 between the UK and Switzerland on co-operation in tax matters. It provides that certain transfers made under the Agreement will not give rise to a taxable remittance where they are made by a person who is taxed on the remittance basis.

Details of the Section

2. Subsection 1 introduces new paragraph 26A to Schedule 36 to Finance Act 2012 which provides that foreign income and gains of a person are treated as not remitted to the UK when they are used to make a transfer in accordance with the Agreement, provided the conditions A to D are met:

- Condition A is that the foreign income and gains would be treated as remitted to the UK in the absence of subparagraph 26A(1) as a result of money being brought to the UK;
- Condition B is that the money is brought to the UK as part of a transfer made under the terms of the Agreement;
- Condition C is that, where the money brought to the UK is a sum under Article 19(2)(b) of the Agreement, that sum is levied within 45 days from the day on which the amount derived from the foreign income and gains was remitted to the UK;

- Condition D is that the transfer is made in relation to a tax year in which the person is taxed on the remittance basis;

3. Subparagraph (6) provides that the exemption provided by subparagraph (1) does not apply to money brought to the UK if, or to the extent that, it is set off against other tax liabilities, repaid or refunded by HMRC.

4. Subsection 2 introduces new paragraph 26B to the Schedule and provides that any payment made under the Agreement from a mixed fund to which subparagraph (1) of new paragraph 26A applies will, for the purposes of determining the composition of the mixed fund, be treated as an offshore transfer as defined in section 809R of the Income Tax Act 2007.

Background

5. The UK-Switzerland Agreement was signed on 6 October 2011. Schedule 36 to Finance Act 2012 was enacted to give the terms and principles of that Agreement statutory effect in the UK.

6. The Agreement is designed to provide an effective mechanism to enable HMRC to secure payment of both past and future UK tax liabilities in respect of assets located in Switzerland held by UK resident individuals. It does so by introducing an obligation on such individuals to make a one-off payment on 31 May 2013 to clear past unpaid tax liabilities and become subject to a withholding tax on income and gains arising from 1 January 2013.

7. The Agreement came into force on 1 January 2013 and this section will come into force from the same date.

Section 222: International Agreements to Improve Tax Compliance

Summary

1. Section 222 gives HM Treasury a power to make regulations for the purpose of, or in connection with, giving effect to the agreement between the Government of the United Kingdom and the Government of the United States of America to improve international tax compliance and to implement FATCA. FATCA means the United States' provisions commonly known as the Foreign Account Tax Compliance Act contained within the Hiring Incentives to Restore Employment Act. The power also enables HM Treasury to make regulations in respect of agreements or arrangements entered into for the exchange of tax information which are corresponding or substantially similar.

Details of the Section

2. Subsection (1) provides that HM Treasury may make regulations for the purpose of giving effect to certain agreements or arrangements regarding international tax compliance.

3. Subsections 1(a) - 1(d) set out the type of similar agreements or arrangements to which the regulations may give effect.

4. Subsection (2) (a) and (b) permit HMRC to require specified persons to provide certain information to HMRC in a specified manner at a designated time.

5. Subsection (2) (c) provides that the regulations may impose obligations on relevant financial institutions, including an obligation to obtain details of tax residence from specified persons.

6. Subsections (2) (d) and (e) set out that the regulations may make provision (including provision on penalties) for non compliance and appeals in relation to any penalties imposed.

7. Subsection (3) allows for further provisions to be made as needed in relation to the arrangements or agreements to which subsection 1 refers.

8. Subsection (4) provides relevant definitions.

9. Subsection (5) provides that the exercise of this power does not affect any powers under any other enactment.

10. Subsection (6) provides that regulations made under this power are to be made by statutory instrument.

11. Subsection (7) provides that orders made under the provision are subject to the negative resolution procedure.

Background

12. This section enables the United Kingdom to implement the United Kingdom's (UK) international obligations under an Intergovernmental Agreement (IGA) entered into between the United States (U.S.) and the UK and other agreements or arrangements entered into for the exchange of tax information which are corresponding or substantially similar.

13. In 2010 the U.S. introduced provisions known as the Foreign Accounts Tax Compliance Act (FATCA) aimed at combating tax evasion by US tax residents using foreign accounts. It includes certain provisions on withholding taxes and requires financial institutions outside the US to pass information about their US customers to the US tax authorities, the Internal Revenue Services (IRS). Failure to meet these new reporting obligations would result in a 30 per cent withholding tax on the financial institutions U.S. source income.

14. Significantly for UK institutions the Data Protection Act precludes UK businesses from passing the required information to the US. Current UK law does not allow financial institutions to pass FATCA information either direct to the U.S. or to HMRC on a voluntary basis, nor does it enable HMRC to require it.

15. Under the IGA, if UK financial institutions comply with legislation that meets the terms negotiated between the U.S. and the UK, and the UK shares this information with the U.S., those institutions will be deemed to have complied with FATCA and will not be subject to the 30% withholding tax. The regulations to implement the IGA sets out what financial institutions have to report to HMRC, and the due diligence that needs to be applied to identify and then report relevant account information.

16. As part of the Agreement the US has agreed to provide the UK with reciprocal data on the US accounts of UK persons. The information provided to HMRC (both by the UK banks and by the U.S.) is expected to generate additional compliance cases. Financial institutions will be required to begin collecting data in 2013, with HMRC receiving the data from 2015.

17. The Government has stated that it will look to sign further Agreements with other jurisdictions as part of their commitment to combat tax evasion. The Crown Dependencies (Isle of Man, Guernsey and Jersey) and the British Overseas Territories (the Cayman Islands, the British Virgin Islands, Bermuda, Anguilla, Turks and Caicos Islands, Montserrat and Gibraltar) have all agreed to enter into similar automatic tax information exchange agreements with the UK.

18. On 9 April 2013 the Government - along with France, Germany, Italy and Spain - also announced an agreement to develop and pilot multilateral tax information exchange based on the Model Intergovernmental Agreement to Improve International Tax Compliance and to Implement FATCA. To date, a total of 17 EU Member States (including the UK) have committed to join this pilot.

Section 223: Disclosure of Tax Avoidance Schemes

Summary

1. Section 223 relates to the Disclosure of Tax Avoidance Schemes (DOTAS). In particular, it relates to the existing requirement for the promoter of a disclosed scheme to provide HM Revenue & Customs (HMRC) with information concerning clients (a client list). Firstly, it provides a power for HMRC to require the promoter to provide further information about parties to the scheme in cases where it suspects the reported clients are not the only parties to the scheme. Secondly, it introduces a requirement for the client to provide information to the promoter that will enable HMRC to identify the client. This section also makes the client and promoter liable to a penalty for the failure to provide such information.

Details of the Section

2. This section inserts two new information provisions into Part 7 Finance Act 2004 (Part 7). Both contain powers for regulations to prescribe the detail of the information to be provided and the time limits for providing it.

3. Paragraph (2) inserts new section 312B into Part 7. It provides that the client of a promoter must provide that promoter with prescribed information that will enable HMRC to identify the client.

4. Paragraph (3) inserts new section 313ZB into Part 7. It provides that HMRC can, in cases where it suspects the client identified on a promoter client list is not the only party to the arrangements, require the promoter to provide further prescribed information about parties to the arrangements.

5. Paragraph (4) applies penalty provisions in section 98C Taxes Management to a failure by a promoter or client to comply with the new provisions.

Background

6. The primary legislation for the DOTAS regime is mainly contained in Part 7 consisting of sections 306 to 319. Penalties for failure by a person to comply with a Part 7 requirement to provide information are provided for in section 98C of the Taxes Management Act 1970.

7. Part 7 requires certain persons, normally a scheme promoter, who is the designer and seller of the scheme, to provide information to HMRC about tax avoidance schemes falling within certain descriptions prescribed in regulations. This gives HMRC an early warning of new schemes, the opportunity to consider changes in the law to close any loopholes identified, or challenge the scheme where it does not agree with the tax effect claimed.

8. HMRC may issue a Scheme Reference Number (SRN) to the promoter of a disclosed scheme. The promoter is required to pass the SRN to each client it becomes aware of entering into the scheme. A client who is not the user is required to pass the SRN on to the user if it knows who that is. The user is required to report the SRN to HMRC, usually on the relevant return in which the tax liability or claim is affected by the scheme.

9. Promoters who issue SRNs to clients are also required to provide a quarterly return of these client names and addresses (i.e. a client list). This informs risk assessment of the scheme and allows HMRC to cross-check against the relevant returns for the scheme users.

10. Currently, the information that promoters are required to provide on client lists is the client's name and address. Frequently, this is insufficient in order for the user of the scheme to be matched to a person in HMRC's records (for example, the promoter's data may be out of date or the client may be merely an intermediary).

11. The section provides for the client to be required to provide prescribed information to the promoter within prescribed time limits. That information will consist primarily of the client's unique tax reference number (UTR) or national insurance number (NINO). Regulations (under section 312ZA of Part 7) in turn require the promoter to include that information in a client list.

12. The section also provides that where HMRC suspects that the client is not the user of the scheme, it may require the promoter to produce further information about users of the scheme and other parties involved in the selling and execution of the scheme.

13. Failure to provide information required or requested under the new powers will make the promoter or the promoter's client, as appropriate, liable to a penalty not exceeding £5,000.

14. This section implements proposals consulted upon in *Lifting the Lid on Tax Avoidance*, which ran from 23 July to 15 October 2012.

Section 224, Schedule 48: Powers under the Proceeds of Crime Act 2002

Summary

1. Section 224 introduces Schedule 48 which provides for amendments to be made to Proceeds of Crime Act 2002 (POCA). HM Revenue & Customs (HMRC) has criminal asset recovery powers under POCA but for former Inland Revenue (IR) functions the powers can only be exercised by the police on HMRC's behalf. This presents a potential loss of revenue to the Exchequer when HMRC are unable to exercise the powers, for example, during a search when the police are not present. This section and Schedule extend certain powers under POCA so they can be exercised by officers of HMRC in respect of a limited number of former IR functions.

Details of the Schedule

2. The Schedule amends the various references to a 'customs officer' in Chapter 3 of Part 5 and in Part 8 of POCA to read "officer of Revenue and Customs". These changes will align with POCA amendments introduced by Schedule 10 of the Serious Crime Act 2007 (SCA) which use "officer of Revenue and Customs" in relation to the detained cash investigation powers.

3. Paragraph 1 provides for POCA to be amended as set out in paragraphs 2 to 20.

4. Paragraph 2 amends section 289 of POCA. This section concerns searches.

5. Sub-paragraphs (2) and (3) replace references to 'customs officer' with references to 'officer of Revenue and Customs'.

6. Sub-paragraph (4) inserts new subsections (5)(ba) which provides that HMRC officers may only exercise powers under section 289 in respect of matters which are not "excluded".

7. Sub-paragraph (5) inserts new subsection (5A). This subsection defines "excluded matters" which are listed below. These are mainly ex-IR matters which are not within the scope of a Finance Act or matters in respect of which it is not considered necessary to extend the POCA powers. Consequently, an officer of Revenue and Customs is only allowed to search for cash using the POCA power when exercising a function which is not an excluded matter. The excluded functions are:

- Disabled person's tax credit;
- Child benefit;
- Child trust funds;

- Guardian's allowance;
- The issue of bank notes;
- The National Insurance Fund;
- Oil and gas royalties;
- Payment of or in lieu of rates;
- Payment in lieu of tax reliefs, in so far as the Commissioners of Inland Revenue were responsible before the commencement of section 5;
- Pension schemes;
- Petroleum revenue tax;
- Rating lists;
- Recovery of taxes due in other member States, in relation to matters corresponding to those for which the Commissioners of Inland Revenue were responsible before the commencement of section 5 Stamp duty;
- Stamp duty land tax;
- Stamp duty reserve tax;
- Statutory maternity pay;
- Statutory paternity pay;
- Statutory sick pay;
- Student loans;
- Valuation lists in relation to council tax; and,
- Valuation of property.

8. Paragraphs 3, 4 and 5 make consequential amendments to sections 290, 291 and 292 to replace references to "customs officers" with references to "officers of Revenue and Customs".

9. Paragraph 6 amends section 294 of POCA which deals with seizure of cash.

10. Sub-paragraph (2) makes consequential amendments to subsections (1) and (2) of section 294 to replace references with "customs officers" with references to "officers of Revenue and Customs".

11. Sub-paragraph (3) inserts new subsections (2A) to (2C) to section 294. These new subsections limit the amendments so that they only apply to ex IR functions that are not 'excluded matters' as listed above. This amendment ensures that the section remains within the scope of a Finance Act. Consequently, an officer of Revenue and Customs is only able to seize cash under POCA when exercising a function which is not an excluded matter. New subsection (2B) confirms that an officer of Revenue and Customs who is exercising a function that is not an excluded matter is able to seize cash that the officer suspects is connected to an excluded matter.

12. Paragraphs 7, 8, 9 10 and 11 make consequential amendments to sections 295, 296, 297, 302 and 351 to replace references to "customs officers" with references to "officers of Revenue and Customs".

13. Paragraphs 12 and 13 make consequential amendments to sections 352 and section 353 so as to replace references to "customs officer" with "officer of Revenue and Customs" in relation to confiscation investigations or money laundering investigations. Officers

of Revenue and Customs can already conduct detained cash investigations so the sections are simplified by amalgamating the definitions for detained cash investigations, confiscation investigations and money laundering investigations into one subsection.

14. Paragraphs 14 and 15 make consequential amendments to sections 369 and 375 so as to replace references to “Customs officers” with references to “officers of Revenue and Customs”.

15. Paragraph 16 inserts new section 375A. This section limits the amendments to Chapter 2 of Part 8, so that they only apply to ex IR functions that are not ‘excluded matters (as listed in the note to paragraph 2 above). This ensures that the section remains within the scope of the Finance Act). Consequently, an officer of Revenue and Customs is only able to exercise the related powers when exercising a function which is not an excluded matter.

16. Paragraphs 17 and 18 made consequential amendments to sections 377 and 378, replacing references to “customs officers” with references to “officers of Revenue and Customs”.

17. Paragraph 19 inserts new section 408A. This section limits the amendments to Chapter 3 of Part 8, so that they only apply to ex IR functions that are not ‘excluded matters (as listed in the note to paragraph 2 above). This ensures that the section remains within the scope of the Finance Act). Consequently, an officer of Revenue and Customs is only able to exercise the related powers when exercising a function which is not an excluded matter.

18. Paragraph 20 makes the consequential amendment to section 412 to replace the reference to “a customs and excise officer” with the reference to “an officer of Revenue and Customs”.

19. Paragraph 21 repeals paragraphs 13 and 13A of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (CRCA). These two paragraphs reinforced the generic restriction within CRCA on the use of the POCA cash seizure and detained cash investigation powers for former IR matters and are no longer needed now that the POCA powers are being extended.

20. Paragraph 22 is an avoidance of doubt provision that confirms that the generic restriction within CRCA does not apply to the POCA asset recovery powers (as amended by this schedule).

21. Paragraph 23. Section 80 of the SCA amended the definition of ‘appropriate person’ in both section 325(5) and section 353(10) POCA to include ‘financial investigator’. Following the deletion of paragraph (a) of section 325(5) and 353(10) (see paragraphs 12 and 13 above) this amendment is no longer needed.

22. Paragraph 24 omits Paragraph 11 of Schedule 7 to the Policing and Crime Act 2009 (PCA) which amended paragraph 13A to Schedule 2 to CRCA. As paragraph 13A is repealed (see paragraph 19 above) this amendment is no longer needed.

Background

23. When the IR and HM Customs and Excise (C&E) merged in 2005 legislation in the CRCA prevented the automatic transfer of powers from one regime to another.

24. Following the HMRC Powers Review, most of the powers were harmonised when Police and Criminal Evidence Act (PACE) replaced former IR and C&E powers in England, Wales and Northern Ireland (FA 2007), and by amendments to the Criminal Law (Consolidation) (Scotland) Act 1995 for Scotland. The POCA powers were not included in the Powers Review process and this section and Schedule correct this.

Section 225: Definition of "Goods" for Certain Customs Purposes

Summary

1. Section 225 amends the current definition of "goods" in section 1 of the Customs and Excise Management Act 1979 (CEMA) to make clear that the definition of "goods" includes containers. This will ensure that items such as packages of commercial documents, containers containing live animals and containers containing human remains are within the scope of the Commissioners' powers.

Details of the Section

2. Subsection 1 amends the definition of 'goods' in section 1(1) of CEMA 1979 (interpretation) from 'includes stores and baggage' to 'includes containers'.

Background

3. Some importers and exporters have questioned Commissioners' powers to search, examine and require information about goods extends to parcels and packages that are empty or that contain (or are said to contain) only documents, or that contain things in which there may be no value or property.

Section 226: Detention of Excise Goods

Summary

1. Section 226 amends section 139 of the Customs and Excise Management Act 1979 (CEMA). It makes explicit provision for the detention of things on reasonable grounds to suspect that they may be liable to forfeiture. It also applies section 9 of the Finance Act 1994 to provide for a penalty to be imposed if goods are removed from the place they are detained where they are detained in situ. A person liable to a penalty will have a right of appeal if there is a reasonable excuse.

Details of the Section

2. Subsection (1) introduces the amendments to section 139 of CEMA.

3. Subsection (2) inserts new subsections (1A) and (1B) after section 1 of s139 of CEMA.

4. New subsection (1A) provides for an officer to detain anything if they have reasonable grounds to suspect that it is liable to forfeiture.

5. New subsection (1B) explains that a thing detained as liable to forfeiture has the same meaning as that in subsection 1A.

6. Subsection (3) removes references to an 'office of customs and excise', as these premises no longer exist following the merger of HM Revenue & Customs (HMRC). It replaces that expression with the expression 'officer' which will include HMRC officers and those who work for the UK Border Force.

7. Subsection (4) removes references to the 'Commissioners' and 'office of customs and excise'. It replaces those references with the expression 'officer', which will include HMRC officers and those who work for the UK Border Force.

8. Subsection (5) provides for goods that are detained to be dealt with under section 139(5) of CEMA. This allows the goods to be disposed of in a suitable manner.

9. Subsection (6) explains that a new Schedule 2A provides for supplementary provisions.

10. Subsection (7) inserts the new Schedule 2A to CEMA.

11. New schedule 2A provides for supplementary provisions relating to the detention of things as liable to forfeiture.

12. New paragraph 1 explains that a reference to a ‘thing’ being detained is the same as any other references in the Customs & Excise Acts.

13. New paragraph 2 provides for the period of detention.

14. New paragraph 2(1) applies the period of detention where a thing is detained under the new provisions.

15. New paragraph 2(2) provides for a period of detention of 30 days, beginning on the day that the thing is first detained.

16. New paragraph 2(3) provides that, at the end of the 30 day period, the thing will be deemed to be seized as liable to forfeiture unless it is released.

17. New paragraph 3(1) provides that the Commissioners must take reasonable steps to provide a notice of detention to the owner of anything detained.

18. New paragraph 3(2) (a), (b) and (c), detail the circumstances in which the Commissioners do not need to provide a notice of detention.

19. New paragraph 3(2)(a) states that notice need not be given if the person suspected of the offence, leading to the seizure, is present when the goods are detained.

20. New paragraph 3(2)(b) states that notice need not be given if the owner, or the owners’ agent or servant is present.

21. New paragraph 3(2)(c) states that notice need not be given if the goods are detained on board a ship or aircraft and the master or commander are present.

22. New paragraph 4(1) provides for the circumstances under which goods can be detained and left at the place of detention with the agreement of a person defined as “the responsible person”.

23. New paragraph 4(2) defines “the responsible person”.

24. New paragraph 4(2)(a) defines the responsible person as the owner at the time the goods were detained, or that person’s agent or servant.

25. New paragraph 4(2)(b) defines a responsible person alternatively as the person that an officer believes to be the responsible person.

26. New paragraph 4(3) provides for penalties if the responsible person fails to prevent the detained goods from being removed from the place where they are detained. It makes provisions for a civil penalty under the Finance Act 1994.

27. New paragraph 4(4) provides that the disposal of any goods, detained at the place where first discovered, is unauthorised if not with the permission of an officer.

28. New paragraph 4(5)(a) provides for the penalty to be calculated on the duty value of the goods, whether that duty is due or not.

29. New paragraph 4(5)(b) applies section 9 of the Finance Act 1994 with modification to take account of this.

30. New paragraph 4(6)(a) and (b) provide that where things, which do not attract duty, are detained, the penalty will be based on the value of the thing at the time when it was first detained or £250, whichever is the greater.

31. New paragraph 5(1)(a) to (c) sets out the circumstances in which the paragraph applies.

32. New paragraph 5(1)(a**)** details that the paragraph applies when goods are detained at a revenue trader’s premises.

33. New paragraph 5(1)(b) details that the paragraph applies when the thing is liable to forfeiture.

34. New paragraph 5(1)(c) details that the paragraph applies when the goods are removed traders premises or disposed of.

35. New paragraph 5(2) provides for the Commissioners to seize from revenue traders' premises, goods of an equivalent value to the thing, where paragraph 5(1) applies.

36. New paragraph 5(3) provides that revenue traders' premises include any premises that are used to hold or store anything for the purpose of revenue traders' trade. It does not matter who owns or occupies the premises.

37. Subsection (8) provides for the measure to take effect, in relation to things detained, on and after the date that Finance Act 2013 receives Royal Assent.

Background

38. This measure will strengthen our powers to detain goods on reasonable grounds pending investigation of their duty status. It will also clarify the law in respect of our powers and put beyond doubt our ability to detain goods that officers suspect are liable to forfeiture.

39. This measure will also provide statutory safeguards and allow the goods to remain in place when detained, minimising disruption to businesses.

Section 227: Penalty Instead of Forfeiture of Larger Ships

Summary

1. Section 227 increases the level of financial penalties that can be imposed by HM Revenue & Customs (HMRC) under section 143 of the Customs and Excise Management Act 1979 (CEMA). Section 143 applies to ships of 250 tons register and over, where a responsible officer has been complicit or negligent in respect of customs or excise offences committed on board their ship.

Details of the Section

2. Subsection (1) provides that section 143 of CEMA (penalty in lieu of forfeiture of larger ships where responsible officer is implicated in offence) is amended.

3. Subsection (2) removes the Commissioner's power to impose a fine up to £50.

4. Subsection (3) increases the maximum penalty that a court can impose on ships involved in revenue offences from £500 to £10,000.

5. Subsection (4) increases the deposit the Commissioners may require whilst a ship is detained pending proceedings to a maximum of £10,000.

6. Subsection (5) amends the definition of responsible officer in section 143 to add bosuns, remove 'the serang' and ensure that persons 'acting as' any of the listed persons are included.

7. Subsection (6) enables the amount of the penalty (and deposit) to be altered, by statutory instrument, if there is a change in the value of money.

Background

8. The maximum level of the penalties has been the same since 1952 and their value has been eroded by inflation.

Section 228: Data-Gathering from Merchant Acquirers Etc.

Summary

1. Section 228 amends HM Revenue & Customs' (HMRC) bulk data-gathering powers. The change enables HMRC to issue notices to merchant acquirers and similar bodies, who process payment card transactions, requiring them to provide data about business taxpayers. The changes will have effect on the date that Finance Act 2013 receives Royal Assent.

Details of the Section

2. Subsection 1 amends Schedule 23 to Finance Act 2011 (FA 2011) to include merchant acquirers and similar bodies as a new category of relevant data-holder. Accordingly, it enables HMRC to issue notices to merchant acquirers to obtain bulk data about businesses using their services.

3. The existing provisions and safeguards of Schedule 23 FA 2011 apply to the new power for HMRC to obtain data from merchant acquirers.

4. Subsection 2 provides that, following these changes coming into effect, data can be required which relates to periods before the law comes into effect. This approach follows that taken for Schedule 23 FA 2011 and is subject to the time limits in Schedule 23.

Background

5. HMRC's data-gathering powers were modernised in Schedule 23 to FA 2011 following consultation. Schedule 23 provides a framework of powers for HMRC to obtain third-party data from a range of specified data-holders, subject to appeal, with penalties for non-compliance. The data is used for risk analysis, to enable HMRC to target its compliance work more accurately.

6. Merchant acquirers were not explicitly specified as data-holders in Schedule 23 FA 2011 as originally enacted, and do not fall within any other existing categories of data-holder specified in the schedule.

7. The section applies to parties who contract with businesses to reimburse them for supplies made where a credit, charge, or debit card (or an equivalent method) was accepted as payment. This includes both merchant acquirers and businesses, known as "aggregators", which act as intermediaries by aggregating a number of retailers under a single merchant account.

8. The data held by merchant acquirers and aggregators about payment card transactions represents a valuable source of information about businesses' incomes. The data will be matched with data HMRC already holds to check returns and identify businesses that may not have declared their full sales, or who are not registered for tax. This will improve HMRC's ability to identify and target those who are underpaying tax.

9. HMRC will use the data to help in the risk assessment of businesses, and will not be obtaining data about individual card holders.

10. Treasury secondary legislation is needed to specify the data that HMRC may require merchant acquirers and aggregators to provide.

11. Draft legislation was published on 11 December 2012. Following consultation, the drafting was changed to focus on the settlement of card payments, to ensure that the section is comprehensive in its coverage.

Section 229, Schedule 49: Corporation Tax: Deferral of Payment of Exit Charge

Summary

1. Section 229 and Schedule 49 introduce two options for companies to defer payment for UK corporation tax where it arises under provisions taxing unrealised profits and gains when the company ceases to be resident in the United Kingdom or a non-resident company ceases to carry on all or part of its business in the UK. Exit charge payment plans are available to companies incorporated in the European Union or European Economic Area (EU/EEA), including UK companies, which transfer their business and their place of residence for tax purposes to another Member State. Deferred tax payments will be subject to interest under the usual rules. The changes ensure that UK rules taxing such profits and gains are compatible with EU law.

Details of the Section

2. Section 229 outlines the scope of the changes introduced by this Schedule.

3. A company may apply for deferred payment of that part of its corporation tax liability payable in respect of specified unrealised chargeable gains or income profits under an exit charge payment plan. An exit charge is the corporation tax on profits or gains which a company is deemed to have realised when it ceases to be UK resident, or when a non-resident company ceases to hold assets for the purposes of a trade carried on in the UK through a permanent establishment ('PE'). The Section specifies that the relevant tax provisions are:

- Sections 25, 185 and 187(4) of the Taxation of Chargeable Gains Act 1992 ('TCGA'), which deem a company to have disposed of all its assets at the time it ceases to be UK resident, when assets held for the purposes of a trade carried on by a UK PE cease to be situated in the UK or when a UK PE it ceases to use or hold assets for the purposes of a trade carried on by a UK permanent establishment, and tax any net chargeable gain.
- Sections 333, 334 609 and 610 of the Corporation Tax Act 2009 ('CTA 09') which deem a company to have disposed of all of its loan relationships and derivative contracts at their fair value immediately before it either ceases to be UK resident, or ceases to hold assets for the purposes of a trade carried on a UK PE.
- Sections 859 and 862 of CTA 09 which deem a company to have realised its intangible fixed assets for market value at the time that it ceases to be UK resident, or ceases to hold assets for the purposes of a trade carried on a UK PE, and taxes any resulting profit.
- Section 162[164(4)] CTA 2009 which requires a company to revalue its trading stock from the lower of cost or market value to the amount which it would realise if sold in the open market when it ceases to trade in the UKPE UK resident.

Details of the Schedule

4. Paragraphs 1 to 3 of the Schedule provide for amendments to be made to the Taxes Management Act 1970 ('TMA'), which in Part VA sets out the rules for payment of tax.

5. Paragraph 4 adds references to exit charge payment plans into section 109B TMA, which is concerned with the obligations imposed on a company intending to cease to be resident in the UK, and which it must comply with prior to migration.

6. Paragraph 5 amends section 109E TMA, which is concerned with the powers to recover tax from an individual involved in the management of a company that has ceased to be resident in the UK and which has failed to pay tax that is owed. The amendments ensure that the provisions are adapted to take account of the revised payable dates for tax that is subject to an exit charge payment plan.

7. Paragraph 6 inserts the new Schedule 3ZB to the TMA which sets out the arrangements for companies to enter into in an exit charge payment plan.

8. Part 1 of the new Schedule 3ZB deals with companies that cease to be resident in the UK. Part 2 deals with companies that are not resident in the UK but trade here through a PE (generally a branch, agency or other fixed place of business through which the trade is carried on). Part 3 makes provision for each of these companies to enter into exit charge payment plans.

9. Paragraph 1 of new Schedule 3ZB TMA specifies the conditions under which a UK resident company may apply for an exit charge payment plan.

10. An exit charge payment plan is available for companies that are formed in accordance with the laws of an EU or EEA Member State and who transfer their tax residence from the UK to another EU or EEA State, exercising a right to Freedom of Establishment that is protected by Article 49 of the Treaty on the Functioning of the European Union, or equivalent rights in the Agreement on the European Economic Area.

11. Exit charge payment plans are also available to companies resident elsewhere in the EU or EEA, which are formed in accordance with the laws of an EU or EEA Member State, and that are carrying on a trade in UK through a permanent establishment. Where all or part of their business ceases to be carried on in the UK, but they continue to carry on business and be resident elsewhere in the EU or EEA, they can use an exit charge payment plan to defer the payment of corporation tax related to exit charges. New paragraph 2 specifies the amount of tax on which a UK resident company may defer payment by entering into an exit charge payment plan. This is the difference between the amount of corporation tax that the company is liable to pay for the migration accounting period, and the amount to which it would be liable for the same period in the absence of the various exit charge provisions in the Taxation of Chargeable Gains Act 1992 (TCGA) and the Corporation Tax Act 2009 (CTA 2009).

12. In respect of income arising on loan relationships and derivative products, this is limited to tax on the amount of profits which would not otherwise have been brought into account if the company had drawn up accounts to the date on which it migrates.

13. New paragraph 3 defines various terms used in new Schedule 3ZB that apply to a UK resident company.

14. New paragraph 4 sets out the conditions under which a non-resident company may apply for an exit charge payment plan.

15. Exit charge payment plans are available to companies resident elsewhere in the EU or EEA, which are formed in accordance with the laws of an EU or EEA Member State, and that are carrying on a trade in UK through a PE. Where all or part of their business ceases to be carried on in the UK, but they continue to be resident elsewhere in the EU or EEA, they can use an exit charge payment plan to defer the payment of corporation tax related to exit charges.

16. New paragraph 5 specifies the amount of tax on which a non resident company may defer payment by entering into an exit charge payment plan. This is the difference between the amount of corporation tax that the company is liable to pay for the accounting period, and the amount to which it would be liable for the same period in the absence of the various exit charge provisions in the Taxation of Chargeable Gains Act 1992 (TCGA) and the Corporation Tax Act 2009 (CTA 2009).

17. In respect of income arising on loan relationships and derivative products, this is limited to tax on the amount of profits which would not otherwise have been brought into account if the company had drawn up accounts to the date of the event which gives rise to the exit charge. This ‘PE qualifying event’ may not bring about the end of an accounting period, so the definition of the migration accounting period for such a

company is modified to refer to an accounting period of a company that contains one or more PE qualifying events.

18. New paragraph 6 specifies the amount of tax on which a non-resident company may defer payment by entering into an exit charge payment plan. This is the difference between the amount of corporation tax that a company is liable to pay for the migration accounting period, and the amount to which it would be liable for the same period in the absence of the various exit charge provisions in the Taxation of Chargeable Gains Act 1992 (TCGA) and the Corporation Tax Act 2009 (CTA 2009).

19. New paragraph 7 defines various terms used in new Schedule 3ZB that apply to a non-resident company.

20. New paragraphs 8 to 9 explains that an exit charge payment plan is an agreement between a company and an officer of HMRC which will override the usual collection and penalty consequences where a company does not pay the full amount of its corporation tax liability at the normal time.

21. Under the agreement, the company agrees to pay the deferred tax liabilities in accordance with the plan, along with interest from the normal due date for payment of the tax to the date it is actually paid.

22. An exit charge payment plan may include provision for HMRC to take security for the deferred payments under the plan where an HMRC officer considers that there would otherwise be a serious risk to the collection of tax. This security would generally take the form of a bank guarantee.

23. New paragraph 10 sets out the details that the company will need to supply when making an application for an exit charge payment plan. In addition to giving details of when, and to where the company is migrating, it should quantify to the best of its ability, the amount of tax that qualifies for deferral, how much of that qualifying tax it wishes to include in the exit charge payment plan, and the method it will use to determine when the tax is to be paid under the plan.

24. There are two alternative methods that the company may use to determine the period over which tax payments can be deferred. These are the standard instalment method and the realisation method. A company may choose which method to apply for, and need not apply the same method in respect of all assets and liabilities that give rise to exit charges. It may adopt the instalment method for certain assets and the realisation method for others, so long as the application clearly sets out which method is to be adopted for tax attributable to particular assets.

25. In order to prevent abuse of the deferral arrangements, a company may not use the standard instalment method where obtaining a deferral of tax payments is the main purpose, or one of the main purposes of arrangements that include the change of residence of the company (in relation to a company that ceases to be UK resident) or for the transfer of the assets that are the subject of exit charges (in relation to a non-resident company with a UK PE).

26. New paragraphs 11 and 12 set out additional details that the company needs to provide on entering into an exit charge payment plan where it intends to adopt the realisation method.

27. New paragraph 11 specifies that the company must identify the assets (and, where appropriate, the liabilities) in respect of which income, profits or gains arise under the exit charge provisions, the amount of each item of such income, profits or gains arising under the various exit charges, and the amount of deferred tax that is to be attributed to each of the exit charge assets and liabilities. The attribution of deferred tax is to be made in proportion to the income, profits or gains arising on each of the assets or liabilities. No amount is to be apportioned to an asset or liability that has given rise to a loss.

28. New paragraph 12 then specifies what further information is required to determine the period over which tax will be payable under the plan in respect of intangible fixed assets, loan relationships or derivative contracts. Intangible fixed assets for these purposes are defined in new paragraph 3(2)(c) and (3) to include assets that are pre-2002 assets for the purposes of Part 8 of CTA 2009. The company must include in the exit charge payment plan details of the remaining term of a financial instrument or the remaining useful life of intangible fixed assets as of the date of migration.

29. New paragraph 13 sets out how tax may be deferred under the standard instalment method. Any qualifying tax to be deferred using this method can be paid in six equal annual instalments which commence nine months and one day after the end of the accounting period in which the exit charges arise.

30. Where a company adopts only this method, it is not required to provide HMRC with annual reports on the realisation of its exit charge assets and liabilities. The deferral of tax under this method will run for the full six years unless either the company decides to pay the balance of any unpaid tax and interest, or one of the events specified in new paragraph 14 paragraph 9(4) occurs. Under any of these circumstances the balance of any deferred tax is payable no later than the next instalment date. These circumstances include the company becoming insolvent, entering into administration or having a liquidator appointed, or the equivalent processes under the Company Law of another Member State.

31. The balance of tax due under an exit charge payment plan will also become payable if the company is no longer regarded as resident in any Member State, although a transfer of residence within the EU or EEA will not affect the deferral arrangements.

32. New paragraphs 14 to 16 set out how tax may be deferred under the realisation method in respect of different classes of asset or liability.

33. Where a company adopts the realisation method in relation to some or all of its assets, it will be required to provide HMRC with annual reports detailing the realisation of its exit charge assets and liabilities.

34. Deferral periods will vary depending upon the nature of the asset or liability, and its treatment for tax and accounting purposes. The general scheme is that tax will either be paid in instalments or on disposal of the asset, depending upon how the value of the asset or liability is expected to be realised, either through use or through subsequent disposal. This is specified as being in instalments over the useful economic life of an intangible fixed asset, in instalments over the term of a financial instrument or deferred until a disposal of the asset in any other case. For all assets and liabilities, the maximum period over which payments may be deferred is the shorter of ten years, or until the company ceases to hold the asset or liability.

35. New paragraph 14 provides for the deferral of tax attributed to any asset other than an intangible fixed asset, a loan relationship or a derivative contract until disposal, subject to an upper limit of ten years. A disposal for these purposes includes a sale and all the matters that would fall to be treated as a disposal by the company for the purposes of chargeable gains, including any occasions when an asset is deemed to have been disposed of, in whole or in part. Where there is a part disposal of the asset, the tax attributable to the part disposed of is payable on the next anniversary of the first potential payment date under the exit charge payment plan. Attribution of the tax is to be made on a just and reasonable basis.

36. New paragraph 15 sets out the deferral periods applicable to loan relationships, derivative contracts and intangible fixed assets. The general scheme provides for the tax to be paid in equal annual instalments over the expected term or useful economic life of the asset or liability, up to a maximum period of ten annual instalments.

37. New paragraphs 16 and 17 modify the general scheme and determine when the balance of tax outstanding in respect of an exit charge asset or liability where tax is deferred

under the realisation method is to be payable in full, or in part, on the next instalment date following the occurrence of particular events.

38. New paragraph 16 requires the outstanding balance to be paid in full where either the company no longer holds the exit charge asset or liability, or one of the events listed in new paragraph 14paragraph 9(4) occurs.

39. New paragraph 17 provides equivalent rules to the part disposal rules for chargeable gains assets dealing with instances where an exit charge asset or liability is realised or disposed of in part. A just and reasonable proportion of the tax is attributed to the part realised, which is to be paid on the next instalment date, along with a proportionate part of the tax relating to the balance of the asset or liability. Tax that remains unpaid in respect of the asset continues to be treated in accordance with the exit charge payment plan.

40. Paragraph 7 of this Schedule inserts a reference to corporation tax payable in accordance with an exit charge payment plan into Schedule 56 of Finance Act 2009, which sets out when a taxpayer may incur a penalty for late payment of tax. Although these rules are provided in the statute, they will only apply for corporation tax purposes after such time as an Order to that effect has been made.

41. Paragraph 8 sets out the commencement rule. Companies may apply to defer tax payments in respect of an amount of an exit charge arising for accounting periods ended on or after 10 March 2012. For a company that is not in the quarterly instalment payment scheme for large companies, its corporation tax bill for an accounting period ended on that date would be due and payable on or after 11 December 2012. Applications to enter into an exit charge payment plan must be made within nine months and one day of the end of an accounting period.

42. Subparagraph (3) provides a transitional rule for periods where the relevant day falls between 11 December 2012 and 31 March 2013, in which case an application may be made at any time until 31 March 2013.

Background

43. The changes introduced in this Section and Schedule implement recent decisions of the Court of Justice of the European Union in cases where the compatibility of Member State exit charges with Article 49 of the Treaty on the Functioning of the European Union was considered. Article 49 is concerned with ensuring the Freedom of Establishment of EU nationals and is extended by Article 54 to companies or firms formed in accordance with the law of a Member State having their registered office, central administration or principal place of business within the EU or EEA. Consequently, these changes apply only to companies that are nationals of the EU or EEA and who are seeking to exercise their rights of establishment within the EU/EEA.

44. This Section and Schedule were published in draft on 11 December 2012, and its provisions apply to allow applications for exit charge payment plans from that date. A consultation document, including details of the legislation was published on the same date. Consultation on the draft legislation was limited to consideration of matters such as the administrative impacts of the reporting requirements imposed by certain options available under the legislation.

45. Following consultation, the draft legislation has been amended primarily to:

- restructure the provisions into a new Schedule 3ZB to the TMA 1970;
- provide for exit charge payment plans to be available to non-resident companies of other EU or EEA states that trade in the UK through a PE;
- include charges relating to the revaluation of trading stock when a company ceases to be UK resident, or a non-resident company ceases to trade in the UK though a PE.

Section 230, Schedule 50: Penalties: Late Filing, Late Payment and Errors

Summary

1. Section 230 introduces Schedule 50 which amends Schedule 24 of Finance Act 2007 (FA 2007) (for returns under the PAYE Regulations and the Construction Industry Scheme (CIS)) and Schedules 55 and 56 to Finance Act 2009 (FA 2009) (penalties for failure to make returns and failure to make payment on time) to provide, as a consequence of the introduction of Real Time Information (RTI) from 6 April 2013, for penalties to apply where the Real Time Information returns and payments required under the Income Tax (Pay As You Earn) Regulations 2003 (the PAYE Regulations) are not made on time or the returns are inaccurate.

Details of the Schedule

2. Paragraph 1(3) inserts new sub-paragraphs (1ZA) to (1ZD) so that penalty notices for inaccuracies that occur more than once during a tax year are required to state only the year in which they occurred.

3. Paragraph 3 removes RTI returns from the definition of "penalty date" in paragraph 1(4) of Schedule 55 FA 2009. It also inserts new paragraph 1(4A) to permit the Treasury to amend item 4 of the Table at the end of paragraph 1 of Schedule 55 FA 2009 as a consequence of any amendment to the PAYE regulations.

4. Paragraph 5 removes RTI returns from paragraph 2 of Schedule 55 FA 2009, which means the penalties set out in paragraphs 3 to 6 of that Schedule do not apply to RTI returns.

5. Paragraph 6 inserts new paragraphs 6B to 6D into Schedule 55 FA 2009. New paragraph 6B provides that paragraphs 6C and 6D apply where the return is an RTI return.

6. New paragraph 6C provides for a penalty to apply where a return is late. No late filing penalty will arise in the "initial period", which is designed to provide some flexibility for new employers filing their first RTI returns, and there will be an unpenalised filing default each tax year for each PAYE scheme. The paragraph also provides that a person is only liable to one penalty in each tax month and that where a person has elected under the PAYE Regulations to be treated as a different employer for different groups of employees, new paragraph 6C will apply to each PAYE scheme.

7. The Commissioners for Her Majesty's Revenue and Customs (HMRC) are provided with a power to set the duration of the "initial period" and the size of the late filing penalties in Regulations and to specify in Regulations the circumstances in which either the unpenalised default or the initial period are disapplied.

8. New paragraph 6D provides for a penalty for "extended failures", that is where a return is outstanding for 3 months or more. This penalty is not automatic, and will be calculated at 5 per cent. of the amount that would have been shown as due on any missing return(s). These penalties may be charged together for several returns or separately for each return to which an extended failure applies. Sub-paragraphs (9) and (10) provide for the payment date of the extended failure penalty. This may be before the date of the penalty notice, but not before the end of the period of 3 months beginning with the day after the filing date.

9. Paragraph 7 substitutes paragraph 18(5) of Schedule 55 FA 2009 and inserts new sub-paragraphs (6) and (7) so that the quantum of the penalties assessed under this Schedule can be amended (rather than the assessment being withdrawn and replaced), where the original penalty assessment is based on an excessive tax liability. This provision applies to all late filing penalties within Schedule 55 FA 2009 and not just those applicable to RTI returns.

10. Paragraph 8 amends paragraph 19 of Schedule 55 FA 2009 in relation to RTI returns. As a consequence of the amendments, penalties in relation to such returns can be assessed within the normal time limits for all other penalties assessed under Schedule 55 FA09.

11. Paragraph 11 amends the definition of "penalty date" in paragraph 1(4) of Schedule 56 FA 2009 to make it clear that a late payment penalty arises on the day after the date specified in column 4 of the Table in paragraph 1 of schedule 56 FA09.

12. Paragraph 12 amends paragraph 6 of Schedule 56 FA 2009 to provide that penalties are incurred for each late payment relating to a tax year, rather than for each payment due during a tax year.

13. Paragraph 12(4) substitutes paragraphs 6(3) to (7) and inserts a new subparagraph (7A) into Schedule 56 FA 2009. The substituted paragraph 6(3) provides that the first default in relation to a tax year will not be liable to a penalty. Substituted paragraphs 6(4) to (7) detail how the quantum of a penalty is to be established and provide that an earlier penalty does not have to be recalculated should a later penalty be incurred in the tax year.

14. Paragraph 12(6) introduces new sub-paragraphs (8A) and (8B). New sub-paragraph (8A) provides that HMRC may in regulations specify the circumstances in which payment of less than the full amount due under the PAYE Regulations may be treated as full payment, and so not incur a late payment default. HMRC may also set out in regulations the circumstances in which the first default in a tax year will count as a default for penalty purposes.

15. Paragraph 13 introduces a new paragraph 9A into Schedule 56 FA 2009 to ensure that the quantum of tax-geared penalties charged under Taxes Management Act 1970, inaccuracy penalties and penalties for failure to notify chargeability to tax are not affected by penalties under Schedule 56 FA 2009. This provision applies to all penalties under Schedule 56 FA 2009 and not just those in relation to late payments under the PAYE Regulations.

16. Paragraph 14(2) substitutes a new paragraph 11(4A) of Schedule 56 FA 2009 to ensure that a late payment penalty can be reduced, rather than withdrawn and replaced, should the quantum of the tax upon which the penalty is based be reduced. This paragraph also inserts new sub-paragraph (4B) into Schedule 56 FA 2009 which makes it clear that such a reduction does not affect the penalty payment date, and that it can be made after the final date for raising the initial late payment penalty as set by paragraph 12 of Schedule 56 FA 2009. Paragraph 14(3) repeals paragraph 11(5) of Schedule 56 FA 2009, which permitted a supplementary assessment to be made in respect of penalties under paragraph 6 of that Act. This provision is not required as a consequence of the changes being made to paragraph 6 to effectively ring-fence each monthly late payment penalty.

Background

17. Under RTI, employers are required to provide HMRC with pay and deduction details on or before they pay their employees (unless the PAYE Regulations provide otherwise). The majority of employers will do this via their payroll software.

18. The increased frequency of returns under RTI could lead to an increase in the number of inaccurate returns submitted by employers. When an inaccuracy is made on an RTI or Construction Industry Scheme return and is repeated in subsequent returns, this legislation allows HMRC to notify the penalties together rather than individually, as would be required under the current provisions.

19. If the pay and deduction information is not received within the statutory period then a late filing default will arise. This may lead to a late filing penalty under the provisions inserted into Schedule 55 FA09 and described above.

20. PAYE payment obligations are not changing under RTI. All employers must continue to pay HMRC the sums deducted from the payments to their employees within 17 days after the end of the tax period where payment is made by an approved method of electronic communications, or within 14 days after the end of the tax period where payment is made by any other means. If these payments are not received in full and on time a late payment default will arise, which could lead to a late payment penalty. From April 2014 these late payment penalties will be automated and will be charged in-year, rather than after the end of the tax year.

Section 231: Overpayment Relief: Generally Prevailing Practice Exclusion and Eu Law

Summary

1. Section 231 removes the practice generally prevailing restriction within overpayment relief provisions if the tax overpaid was charged contrary to European Union (EU) law.

Details of the Section

2. Subsection (1) amends the overpayment relief provision for income tax and capital gains tax in Schedule 1AB to TMA 1970 by inserting new sub-paragraphs (9A) and (9B) into paragraph 2.

3. New sub-paragraph (9A) disapplies two restrictions (Cases G and H) for overpayment relief if the tax was charged contrary to EU law. The restrictions apply to tax which is calculated in accordance with the practice generally prevailing.

4. New sub-paragraph (9B) defines when tax is charged contrary to EU law.

5. Subsections (2) to (4) make similar changes to disapply Case G in the overpayment relief provisions for petroleum revenue tax, corporation tax and stamp duty land tax.

6. Subsection (5) provides that the amendments will have effect for claims made six months or more after Royal Assent to the Finance Act.

Background

7. Overpayment relief provisions provide relief where tax has been paid or a person is liable to tax as a result of an assessment, determination or direction and the taxpayer believes that the tax is not due. There are four such provisions applying to income tax and capital gains tax, corporation tax, petroleum revenue tax, and stamp duty land tax.

8. Cases A to G (or H in the case of employment income) of the overpayment provisions list circumstances in which relief is not due. Case G (H in the case of employment income) disallows relief where the amount paid or liable to be paid is excessive by reason of a mistake in calculating liability and the liability was calculated in accordance with the practice generally prevailing at the time.

9. Member States of the EU are obliged to provide remedies for tax levied contrary to EU law. In most cases such tax will have been paid in accordance with the practice generally prevailing at the time.

10. The Court of Appeal in *Test Claimants in the Franked Investment Income Group Litigation v Commissioners of Inland Revenue and another* [2010] STC 1251 (the "FII GLO litigation") held that the restriction for practice generally prevailing in error or mistake relief (the predecessor of overpayment relief) could be read out of the provision when claims were made in respect of tax charged contrary to EU law.

11. Following this decision HM Revenue & Customs (HMRC) explained in Revenue & Customs Brief 22/10 that in applying the new overpayment relief provisions claims in

respect of tax paid in breach of EU law would not be disallowed on the grounds that it was paid in accordance with generally prevailing practice.

12. The Supreme Court in the FII GLO litigation ([2012] UKSC 19) called the Court of Appeal decision into question. Although the Supreme Court did not consider overpayment relief the judgment has created uncertainty about the application of those provisions which this section resolves.

13. The changes made by this section place on a legislative footing the current practice set out in Revenue & Customs Brief 22/10, ensuring that the overpayment relief provisions provide appropriate relief for overpayment of tax charged contrary to EU law.

Section 232: Overpayment Relief: Time Limit for Claims

Summary

1. Section 232 ensures that the time limit for claims to relief for tax which has been over assessed as a result of a mistake in a return runs from the tax year or chargeable period to which the mistake relates.

Details of the Section

2. Subsection (1) amends the overpayment relief provision for income tax and capital gains tax in Schedule 1AB to TMA 1970. Paragraph 3 of that Schedule provides that claims to relief must be made within four years of the end of the "relevant tax year". In the case of claims to relief where a person has been assessed as liable to pay an amount which is not due as a result of a mistake in a return this subsection provides that the relevant tax year is the tax year to which the return relates.

3. Subsections (2) to (3) make similar amendments to the overpayment relief provisions for petroleum revenue tax and corporation tax.

4. Subsection (4) provides that the amendments will have effect for claims made six months or more after Royal Assent to the Finance Act.

Background

5. The four overpayment relief provisions provide relief where tax has been paid or a person is liable to tax as a result of an assessment, determination or direction and the taxpayer believes that the tax is not due. There are four such provisions applying to income tax and capital gains tax, corporation tax, petroleum revenue tax and stamp duty land tax. (The stamp duty land tax provision is not affected by this amendment.) Overpayment or over assessment may arise from a mistake in a return or for other reasons.

6. A four year time limit for claims to the relief runs from the end of "the relevant tax year", "relevant accounting period" or "relevant chargeable period". If tax has been overpaid the relevant tax year, etc is that to which the return relates and otherwise it is the tax year in respect of which the payment was made. If a person is liable to tax as a result of an assessment, determination or direction there is no separate provision for claims resulting from a mistake in a return. Instead there is only one rule for the relevant tax year, etc and that is the year to which the assessment, determination or direction relates.

7. The section corrects this and ensures that the time limit runs in all cases from the year or period to which the return in respect of which the mistake was made relates.

Section 233, Schedule 51: Withdrawing a Notice to File a Self Assessment Return

Summary

8. Section 233 and Schedule 51 provide HM Revenue & Customs (HMRC) with a power to withdraw a notice to file a Self Assessment (SA) tax return (individual, partnership and trustee), on request in certain circumstances. The Schedule also provides for late filing penalties under Schedule 55 to the Finance Act 2009 to be cancelled where HMRC withdraw a notice using this power.

Details of the Schedule

9. Paragraph 2 amends section 7 Taxes Management Act 1970 (TMA 1970). Section 7 TMA 1970 requires every person who is chargeable to income tax or capital gains tax for any year of assessment to notify HMRC that they are chargeable to tax if they have not received a notice under section 8 or 8A TMA 1970 within a specified time period.

10. Sub-paragraphs (2) and (4) make consequential amendments to section 7 of TMA 1970 as a result of the insertion of new subsections (1A) to (1C) by sub-paragraph (3).

11. Sub-paragraph 3 amends section 7 TMA 1970 by inserting new subsections (1A) to (1C). A person to whom new subsection (1A) or (1B) applies must notify HMRC that they are chargeable to tax within the period specified in new subsection (1C).

12. New subsection (1A) applies to a person who has not received a notice to file a SA return under section 8 TMA 1970.

13. New subsection (1B) applies to a person who has received a notice to file a SA tax return under section 8 TMA 1970 and has received a notice under new section 8B TMA 1970 (as inserted by paragraph 3) withdrawing that notice.

14. New subsection (1C) defines “the notification period” as, in the case of a person falling within new subsection (1A), 6 months from the end of the year of assessment and, in the case of a person falling within new subsection (1B), 6 months from the end of the year of assessment or 30 days from the day after the day on which the notice under section 8 TMA 1970 was withdrawn, whichever ends later.

15. Paragraph 3 inserts a new section 8B into TMA 1970 which provides that a person who receives a notice to deliver a personal or trustee SA tax return may make a request to HMRC to withdraw the notice before the end of the withdrawal period.

16. New subsection 8B(3)(a) and (b) explains that a request to withdraw a notice cannot be made if the person or trustee has already submitted a SA tax return or they have received a notice of determination under section 28C TMA 1970.

17. New subsections 8B(4) and (5) provide that if HMRC decide to withdraw the section 8 or section 8A notice they must do so by giving the person or trustee a notice specifying the date on which the notice is withdrawn.

18. New subsection 8B(6) defines the “withdrawal period” within which a person or trustee can make a request to withdraw a notice to file a SA return.

19. New subsection 8B(7) provides that the withdrawal of a notice does not prevent the issue of a further notice by HMRC.

20. Paragraph 4 inserts a new section 12AAA into TMA 1970 which provides that a partner who receives a notice to file a partnership tax return may make a request to HMRC to withdraw the notice before the end of the withdrawal period.

21. New subsection 12AAA(3) explains that a request to withdraw a notice cannot be made if the person has already submitted a partnership tax return.

22. New subsections 12AAA(4) and (5) provide that if HMRC decide to withdraw the notice to file a partnership tax return they must do so by giving the partner required to make the return a notice specifying the date on which the notice is withdrawn.

23. New subsection 12AAA(6) defines the "withdrawal period" within which a partner can request the withdrawal of a notice to file a partnership tax return.

24. New subsection 12AAA(7) provides that the withdrawal of a notice to file a partnership return does not prevent the issue of a further notice by HMRC.

25. New subsection 12AAA(8) explains that references to a partner include references to any successor of the partner.

26. Paragraph 5 inserts new subsections (4ZA) and (4ZB) into section 59B TMA 1970. Section 59B sets out the payment dates for income tax and capital gains tax. New subsections (4ZA) and (4ZB) provide that where a further notice to file is issued following withdrawal of a notice under new section 8B, it is to be treated as if it were the original notice to file issued under sections 8 or 8A TMA 1970. This means that the date for payment will be the same as it would have been if the original notice had not been withdrawn.

27. Paragraph 6 amends paragraph 7 to Schedule 41 to FA 2008 by inserting new sub-paragraphs (1A) and (1B) and making a consequential amendment to paragraph 7(2). Schedule 41 imposes penalties for failing to notify HMRC of, amongst other things, an obligation to notify chargeability to tax under section 7 TMA 1970.

28. New subsection (1A) defines the potential lost revenue where there is a failure to notify chargeability to tax or capital gains in accordance with new section 7(1B) TMA 1970 (as inserted by this Schedule). The potential lost revenue is so much of any income tax or capital gains to which the person is liable in respect of the tax year in question as is, by reason of the failure to comply with the obligation where subsection 1C (b) (ii) applies and ends after the "relevant date" unpaid at the end of that period specified in new section 7(1C) TMA 1970 or any other case unpaid on the relevant date.

29. New subsections (1B)(a) and (b) define the "relevant date" for payment of potential lost revenue as 31 January following the tax year. For potential lost revenue through refunded payments on account after that date the relevant date is the day after the refund was issued.

30. Paragraph 7 amends paragraph 3 of Schedule 53 to FA 2009. It inserts a new sub-paragraph (3A) which provides that where a person has a notice to file withdrawn under new section 8(B) but has to notify chargeability to income tax or capital gains tax under new subsection 7(1B), late payment interest starts from the due date for payment as would have applied had the original notice to file not been withdrawn.

31. Paragraph 8 inserts new paragraphs 17A and 17B into Schedule 55 to FA 2009. Schedule 55 imposes penalties for the late filing of returns.

32. New paragraph 17A provides that HMRC may cancel the liability to a late filing penalty where they have agreed to the withdrawal of the notice to file a SA tax return for individuals and trustees under new section 8B TMA 1970 (as inserted by this Schedule).

33. New paragraph 17B provides that HMRC may cancel the liability to a late filing penalty where they have agreed to the withdrawal of the notice to file a SA tax return for partnerships under new section 12AAA.

34. Paragraph 9 provides for the amendments to have effect, in relation to partnerships which include one or more companies, in respect of a relevant period beginning on or after 6 April 2012 and for any other partnership or individual or trustee in respect of a return for a year of assessment beginning on or after 6 April 2012.

Background

35. Under the Self-Assessment (SA) regime anyone sent a notice to file a SA tax return by HMRC is required to complete and file a SA return with HMRC.

36. This Schedule will introduce a new power to enable HMRC to withdraw a notice to file a SA tax return (individual, partnership and trustee) when they agree a SA tax return is not required and cancel any late filing penalties.

Section 234 Restrictions on Interim Payments in Proceedings Relating to Taxation Matters

Summary

1. Section 234 applies to applications for interim remedies, in particular for repayments of tax, made in High Court and other court of justice proceedings relating to points of law in taxation matters. It brings the courts' discretion closer to that of statutory tax tribunals by limiting the circumstances in which applications may be granted.

Details of the Section

2. Subsections (1), (2) and (10) set out the scope of the provision. It restricts the power of a court to require HM Revenue & Customs (HMRC) to pay any sum to a claimant (however described) by way of interim remedy (however described) made in any court proceedings relating to a taxation matter on an application founded at least in part on a point of law not yet finally decided. For this purpose taxation matter includes anything within the collection and management responsibility of the Commissioners for Revenue & Customs, other than national insurance contributions.

3. Subsection (3) sets out the new restriction. The court may grant the interim remedy only if (a) payment of the sum is necessary to enable the proceedings to continue, or (b) the claimant's circumstances are exceptional and such that grant of remedy is necessary in the interests of justice. For the purposes of (a) above, all sources of funding reasonably likely to be available, including borrowing capacity of the claimant, are taken into account.

4. The powers of the court affected by the section are those set out in its procedural rules. Subsection (4) gives examples of these.

5. Subsections (5) to (8) deal with commencement matters. The section applies on or after 26 June 2013 in relation to proceedings whenever they were commenced. If any remedy is granted by a court between 26 June 2013 and Royal Assent, provision is made to oblige the court to revoke or modify any remedy so as to give effect to the restriction and to order recovery of any related payment made by HMRC.

6. Subsection (9) makes clear that proceedings on appeal are treated for the purposes of the section as part of the original proceedings from which the appeal lies.

Background

7. There are currently several examples of long running tax litigation which, because of particular circumstances, are subject to procedural rules of the court rather than the statutory rules which normally apply to tax litigation.

8. The section brings the rules relating to interim repayments in these cases more closely into line with statutory rules which normally apply to tax litigation.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	***Date***	***Hansard reference***
House of Commons		
Presentation and First Reading	25 March 2013	No debate
Second Reading	15 April 2013	Vol .561 Cols. 54 – 135
Committee of Whole House	17, 18 April 2013	Vol 561 Cols. 332 – 456 and Cols. 506- 611
Public Bill Committee	23, 25 April, 09, 16, 21 May and 04, 06, 11, 13, 18, 20 June 2013	Hansard – Finance Bill 2013 Public Bill Committee
Report	1, 2 July 2013	Vol. 565 Cols. 609 - 719 and 786 - 883
Third Reading	2 July 2013	Vol. 565 Cols. 883 - 892
House of Lords		
First Reading	3 July 2013	No Debate
Second Reading	15 July 2013	Vol. 747 Cols. 612 - 632
Third Reading	15 July 2013	Vol. 747 Col. 632
Royal Assent – 17 July 2013		**House of Lords Hansard Vol. 747 Col. 751**
		House of Commons Hansard Vol. 566 Col. 1124